[Cite as *In re West*, 2015-Ohio-1501.]

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

AMANDA WEST

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. Patricia A. Delaney, J.

Case No. 14CA22

O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Knox County Court of Common Pleas, Juvenile Division, Case No. 214-3088
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	April 15, 2015

APPEARANCES:

For Appellee	For Appellant
CHARLES T. MCCONVILLE Knox County Prosecuting Attorney MICHAEL D. MILLER Assistant Prosecuting Attorney 117 East High Street, Suite 234 Mount Vernon, Ohio 43050	JOHN A. DANKOVICH Knox County Public Defender 11 East High Street Mount Vernon, Ohio 43050

Hoffman, P.J.

{¶1} Appellant Amanda West appeals the October 9, 2014 Journal Entry entered by the Knox County Court of Common Pleas, Juvenile Division, which found her in contempt of court. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant is the mother of M.W. M.W. was adjudicated a delinquent child and placed on probation by the trial court on January 15, 2014. On that date, Appellant and M.W. signed Knox County Juvenile Court Rules of Probation.

{¶3} M.W. was subsequently ordered into detention for a period of four days, commencing May 30, 2014. Upon release from detention, M.W. was placed on house arrest by electronic monitor. On June 13, 2014, Appellant and M.W. contacted Zachary Green with the Knox County juvenile probation department, seeking permission for M.W. to attend the Danville Turkey Festival on June 14, 2014. P.O. Green informed Appellant M.W. could go to the festival if she was present with him at all times. P.O. Green explained to Appellant she was required to keep M.W. within arm's reach at all times. Appellant indicated she understood the instructions. Appellant and M.W. attended the festival.

{¶4} On June 24, 2014, the trial court ordered Appellant to appear and show cause why she should not be held in contempt for her failure to comply with M.W.'s house arrest orders. The trial court conducted a show cause hearing on September 17, 2014. The following evidence was adduced at the hearing.

{¶5} Danville Police Officer Chad Lishness testified he was on duty at the Danville Turkey Festival on the evening of June 14, 2014. The festival is housed on the

Danville High School football field. Officer Lishness was accompanied by Corporal Lisa Lyons during the course of the evening. Officer Lishness and Corporal Lyons were on the Visitor's side of the football field when M.W. approached and spoke with them. Officer Lishness stated M.W. was by himself during this encounter. Officer Lishness saw M.W. later in the evening on the Home side of the field. Again, the officer did not observe anyone with M.W. Officer Lishness also recalled he saw Appellant on a separate occasion and M.W. was not with her.

{¶6} Appellant testified she used the restroom on three occasions during the evening, but did not take M.W. with her. During one restroom visit, Appellant stopped at the concession stand to purchase a drink. Appellant also walked away from M.W. to visit with a friend. Appellant stated it was her understanding M.W. was permitted to be at the festival as long as she was with him at all times, but indicated it was not feasible to keep him within arm's reach the entire time. Appellant believed M.W. was in her vicinity because she could still see him even when he was not with her.

{¶7} Upon conclusion of the hearing, the trial court found Appellant in contempt. The trial court sentenced Appellant to 30 days in jail and imposed a $250 fine plus court costs, but suspended the sentence and provided Appellant with an opportunity to purge the contempt by complying with all the orders of the trial court and the probation department relative to M.W. The trial court memorialized its decision via Journal Entry filed October 9, 2014.

{¶8} It is from this entry Appellant appeals, raising the following assignments of error:

{¶9} "I. THE TRIAL COURT ERRED IN APPLYING R.C. 2705.02(A).

{¶10} "II. THE TRIAL COURT ABUSED ITS DISCRETION IN FINDING INTENT."

I

{¶11} In her first assignment of error, Appellant asserts the trial court erred in applying R.C. 2705.02(A). Specifically, Appellant asserts a probation officer is not an "officer" within the meaning of R.C. 2705.02(A). We disagree.

{¶12} R.C. 2705.02(A) provides: “A person guilty of any of the following acts may be punished as for a contempt: (A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer”.

{¶13} Appellant contends she was not subject to an order or command of a court or officer. Rather, she was merely given verbal permission by her son’s probation officer, via telephone and outside the presence of the court, temporarily releasing him from house arrest. Appellant argues the trial court could not use the language of R.C. 2705.02(A) “to bootstrap verbal commands by a probation officer to a person who is not on probation outside the presence of the court” to find her guilty of contempt. Brief of Appellant at 3.

{¶14} Contrary to Appellant’s position, we find a juvenile probation officer falls within the gamut of “officer” as the term is used in R.C. 2705.02(A). The duties of a juvenile probation officer include supervising the probationers assigned to him, ensuring those probationers do what the judge ordered them to do, and notifying the judge if the probationers violated any of the terms of their probation. The statute clearly contemplates an individual with such authority to be an “officer”.

{¶15} In addition, the record reveals Appellant signed the Knox County Juvenile Court – Rules of Probation, thereby subjecting herself to the lawful orders of the juvenile court probation officers. The Rules expressly state: "I have read and understand these rules of Probation, and the expectations placed upon my child and me by this Court. I understand these rules are binding and that I may be held liable should I fail to use my best efforts to enforce these conditions."

{¶16} Based upon the foregoing, we find no error in the trial court's application of R.C. 2705.02(A) in the instant action.

{¶17} Appellant's first assignment of error is overruled.

II

{¶18} In her second assignment of error, Appellant maintains the trial court abused its discretion in finding her in contempt because Appellee failed to prove she "intended to defy the court."

{¶19} The burden of proof in an indirect criminal contempt proceeding is proof beyond a reasonable doubt. *Brown v. Executive 200, Inc.,* 64 Ohio St.2d 250, 252, 416 N.E.2d 610 (1980). In cases of indirect criminal contempt, intent to violate the order or defy the court is an essential element. *In re Purola,* 73 Ohio App.3d 306, 596 N.E.2d 1140 (3rd Dist.1991). In an effort to ascertain an alleged contemnor's intent, the court must consider the totality of the circumstances. *Id.* An appellate court, when reviewing a trial court's finding of indirect criminal contempt, must determine whether sufficient evidence existed for the trial court to reasonably conclude beyond a reasonable doubt that the contemnor purposely, willfully, or intentionally violated a prior court order. See

Midland Steel Prods. Co. v. U.A.W. Local 486, 61 Ohio St.3d 121, 573 N.E.2d 98 (1991).

{¶20} At the contempt hearing, P.O. Green testified he informed Appellant M.W. could attend the festival if she was present with him at all times. He also noted he explained to Appellant that she was required to keep M.W. within arm's reach at all times. According to P.O. Green, Appellant indicated she understood the instructions. Appellant testified she never heard P.O. Green use the term "arm's length". Appellant added "it's not feasible to keep any child at arm's length at all times."

{¶21} Upon review of the record, we find there was sufficient evidence for the trial court to reasonably conclude beyond a reasonable doubt Appellant intentionally violated the order of the probation officer. The trial court, as the trier of fact, was free to accept or reject any or all of the testimony of the witnesses. The trial obviously chose to believe the testimony of P.O. Green. We find the trial court did not abuse its discretion in finding Appellant in contempt.

{¶22} Appellant's second assignment of error is overruled.

{¶23} The judgment of the Knox County Court of Common Pleas, Juvenile Division, is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur