[Cite as *Toledo v. Parra*, 2013-Ohio-3182.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo — Court of Appeals No. L-12-1261

Appellee — Trial Court No. CRB-12-07360

v.

Mary Parra — **DECISION AND JUDGMENT**

Appellant — Decided: July 19, 2013

* * * * *

David L. Toska, City of Toledo Chief Prosecuting Attorney,
and Arturo Quintero, Assistant Prosecuting Attorney, for appellee.

Adam H. Houser for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals her conviction for interference with custody entered following a finding of guilty on a no contest plea in the Toledo Municipal Court. Because we conclude that a municipal interference with custody ordinance may be applicable in visitation disputes, we affirm.

{¶ 2} Appellant, Mary Parra, is the mother, and, by order of the Lucas County Court of Common Pleas, Domestic Relations Division, the sole residential parent and legal custodian of minor children. By the same order, the children's father, Carlos Bonilla, was awarded parenting time.

{¶ 3} On May 1, 2012, Bonilla filed a complaint with the trial court alleging that appellant interfered with his custody of these children. Appellant pled not guilty and the court appointed an attorney to represent her.

{¶ 4} Appellant filed a motion to dismiss, arguing that since disputes concerning custody and visitation have a remedy in R.C. 2705.031, a criminal sanction should not be applied. As a matter of policy, appellant argued, this family law matter would be best handled by the domestic relations court which has already exercised jurisdiction. The trial court denied the motion, concluding that the motion required examination of the evidence beyond the face of the complaint.

{¶ 5} Following the court's ruling, appellant amended her plea to no contest and was found guilty of interference with custody in violation of Toledo Municipal Code 515.04. The court imposed a $50 fine and costs. This appeal followed. Appellant sets forth three assignments of error:

1. The conviction of the appellant was the result of an improper interpretation of the statute by the trial court.

2. There was insufficient evidence to convict the appellant of interference with custody.

3. The Toledo Municipal Court was the improper forum for the case and was [sic] an abuse of discretion for the court to hear the case.

I. Interpretation of Law

{¶ 6} In her first assignment of error, appellant maintains that the trial court misinterpreted the ordinance defining the offense of interference with custody.

{¶ 7} In material part, Toledo Municipal Code 515.04 provides:

(a) No person, knowing he is without privilege to do so or being reckless in that regard, shall entice, take, keep or harbor any of the following persons from his parent, guardian or custodian:

(1) A child under the age of eighteen, or a mentally or physically handicapped child under the age of twenty-one * * *.

{¶ 8} Except for some minor language modernization in the state version, Toledo Municipal Code 515.04 is identical to R.C. 2919.23. Appellant concedes that R.C. 2919.23 has been held to be properly employed in the instance of a mother who failed to return a child to a father in violation of a shared parenting agreement, *State v. Sprinkle*, 12th Dist. No. CA2006-08-101, 2007-Ohio-4967,¶ 42; *see also State v. Brickles*, 2d Dist. No. 17526, 1999 WL 957643 (Sept 3, 1999) (Failed to return daughter after visitation.), but insists that she has found no use of the law to prosecute a custodial parent who refuses to comply with an order granting a non-custodial parent parenting time.

Moreover, appellant argues, the intent of the legislature is plain in the very title of the offense: the act prohibited is interference with the custody of a defined person. Since appellant is the legal custodian of the children at issue here, according to appellant, there can be no offense by her.

{¶ 9} It is a rule of statutory construction that, with exceptions inapplicable here, "Title, Chapter, and section headings * * * do not constitute any part of the law as contained in the 'Revised Code,'" R.C. 1.01, thus, consideration of a statute's title in ascertaining its meaning is "unnecessary and improper." *State v. Beener*, 54 Ohio App.2d 14, 16, 374 N.E.2d 435 (2d Dist.1977). The principle is equally applicable to municipal ordinances. *See State v. Short*, 2d Dist. No. 1731, 2009-Ohio-1964, ¶ 5. Consequently, appellant's argument that the title of the ordinance/statute excludes applicability to a legal custodian is not persuasive.

{¶ 10} What remains is the language of the ordinance/statute, which defines the offense, consisting of the following elements:

1. A person, acting with knowledge that he or she is without privilege or being reckless in that regard;

2. Entices, takes, keeps, or harbors;

3. A child under age 18 or, if physically or mentally handicapped, age 21;

4. From his or her parent, guardian or custodian.

{¶ 11} In this case it was stipulated that appellant was the legal custodian and residential parent of the children at issue by virtue of a domestic relations court order. The complainant was awarded parenting time by the same order. At the plea hearing, the prosecutor recited what the evidence would have shown had the matter gone to trial:

> [The complainant] has repeatedly gone there to pick up the children at his allotted time and even with police and even under those circumstances, [appellant] has refused to allow him visitation; therefore, she interfered with his custodial privileges, which were the visitation privileges, which were given by the Court.

{¶ 12} The domestic relations court order defines the responsibilities and privileges of the complainant and appellant. If, as recited by the prosecutor, appellant withheld visitation with the minor children from the complainant during the time such visitation was ordered by the court, this constitutes acting with knowledge that she was without privilege to keep the children from the parent who, by court order, was entitled to their custody at that time. This may be criminally prosecuted. *See State v. Skelly*, 2d Dist. No. 13306, 1992 WL 361833 (Dec. 7, 1992). Accordingly, the court did not misinterpret the ordinance and appellant's first assignment of error is not well-taken.

II. Insufficiency of Evidence

{¶ 13} In his second assignment of error, appellant asserts that there was insufficient evidence to find her guilty of the offense of which she was convicted.

{¶ 14} In the normal course of considering whether there was sufficient evidence to support a conviction, we would look to see if the evidence submitted is legally sufficient to support all of the elements of the offense charged. The test would be, viewing the evidence in a light most favorable to the prosecution, could any rational trier of fact have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997).

{¶ 15} In this matter, however, appellant entered a no contest plea to the allegations in the complaint. "[A] plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint * * *." Crim.R. 11(B)(2). The complaint in this matter alleges:

> Mary Para, the defendant, while knowing that she is without privilege to do so and being reckless in that regard, did take, keep, and harbor from their father, Carlos Bonilla, their children who are under the age of 18. This event did take place in Toledo, Lucas County, Ohio.

Since the complaint in this matter materially tracks the language of the ordinance,[1] appellant has essentially admitted the offense. Accordingly, appellant's second assignment of error is not well-taken.

[1] Compare the language in the complaint in *City of Toledo v. Jenkins*, 6th Dist. No. L-12-1223, 2013-Ohio-3058, ¶ 13.

III. Improper Forum

{¶ 16} In his remaining assignment of error, appellant maintains that the proper forum for this complaint is a contempt proceeding in the domestic relations court. Consequently, the trial court erred in denying appellant's motion to dismiss. Attached to appellant's brief, in support of this argument is an order from a different judge in the Toledo Municipal Court granting such a motion in a different case because "judicial economy [so] dictates."

{¶ 17} The order to which appellant refers is not in the record as having been presented to the trial court and consequently is not properly before this court. *See* App.R. 9(A). It is certainly not an abuse of discretion for a court to decline to dismiss a case over which it has personal jurisdiction, subject matter jurisdiction and is the proper venue. While we may find understandable appellant's position that custody and visitation matters are best addressed in a domestic relations setting, appellant has directed our attention to no authority that mandates deference to such court.

{¶ 18} The sometimes complicated evidentiary issues in proving an offense in which the element of knowledge of privilege, or absence thereof, is based on the interpretation of the order of another court may implicate prosecutorial discretion. There is nothing in the law, however, that dictates dismissal of a criminal offense properly before the court. Accordingly, appellant's third assignment of error is not well-taken.

{¶ 19} On consideration whereof, the judgment of the Toledo Municipal Court is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE