[Cite as *Toledo v. Grove*, 2015-Ohio-910.]

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

City of Toledo — Court of Appeals No. L-14-1048

Appellee — Trial Court No. CRB-13-08008

v.

James Grove — **DECISION AND JUDGMENT**

Appellant — Decided: March 13, 2015

* * * * *

David Toska, City of Toledo Chief Prosecutor, and
Rebecca L. West-Estell, Assistant Prosecutor, for appellee.

Jeffrey P. Nunnari, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from an April 21, 2014 sentencing judgment of the Toledo Municipal Court, Lucas County, Ohio, following appellant's conviction on one count of menacing by stalking. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, James Grove, sets forth the following two assignments of error:

I. THE TRIAL COURT ERRED AS A MATTER OF LAW BY IMPOSING CONDITIONS OF COMMUNITY CONTROL THAT ARE OVERBROAD, THAT ARE NOT REASONABLY RELATED TO REHABILITATION AND CRIMINALITY, AND WHICH EXTEND BEYOND THE FIVE-YEAR STATUTORY TERM LIMIT FOR COMMUNITY CONTROL.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW BY FAILING TO ADVISE APPELLANT OF THE CONSEQUENCES OF VIOLATING COMMUNITY CONTROL.

{¶ 3} The following undisputed facts are relevant to this appeal. In early 2012, appellant met the victim while attending Hope United Methodist Church in Whitehouse, Ohio. At all times relevant to this case, the victim resided in Grand Rapids, Ohio and appellant resided in Whitehouse, Ohio. The victim had separated from her husband in 2010 and filed for divorce shortly before meeting appellant.

{¶ 4} Appellant and the victim dated for approximately nine months during 2012. Significantly, during the time when the parties were dating, the victim never introduced appellant to her parents or took him to their home in Toledo.

{¶ 5} The victim eventually became concerned about appellant and broke off her relationship with him. At this juncture, a series of highly unusual and suspect incidents

involving appellant commenced which eventually culminated in the case before this court.

{¶ 6} Subsequent to the victim terminating the relationship with appellant, she arrived home from work one day and discovered that her 50-pound shepherd dog was missing from her Grand Rapids, Ohio home. The victim reported her missing dog to the Wood County Sheriff's Department.

{¶ 7} Interestingly, later that same evening that the dog had disappeared from inside the victim's home while she was at work, she observed appellant's Ford Festiva, which has a loud and distinctive engine, driving around her Grand Rapids neighborhood even though the parties were broken up and appellant lives in a different county.

{¶ 8} Shortly thereafter, appellant called the victim and claimed that while driving back to his home in Whitehouse, Ohio from a Harley store in Napoleon, Ohio, appellant was driving through Grand Rapids and coincidentally discovered the victim's lost dog which had inexplicably disappeared from the victim's home earlier that same day. When returning the dog to the victim at her home, appellant stated, "Don't you know how much I love you?" The victim was quite concerned regarding the circumstances surrounding her dog's disappearance from her home and return the same day by appellant. Appellant initially told the victim over the phone that he discovered her dog at Mary Jane Thurston Park. While dropping off the dog at her home, appellant conversely stated that he found her dog at Rita's, a business at the opposite end of town from the park. These contradictions were troubling to the victim. Accordingly, she filed a police report.

{¶ 9} Notably, appellant is skilled in opening locked doors without keys. Appellant's own testimony conveyed, "I guess the way to define locksmith, that come up that she knows I am. On several occasions she's locked herself out of her car * * * I had a slim jim."

{¶ 10} Based upon her heightened suspicions regarding appellant, the victim began parking in a more visible location in the parking lot of the office building where she works on Sunforest Court in West Toledo. Shortly after the dog incident, the victim arrived at work one day to find appellant outside of her office building. Appellant stood in the path of the victim and blocked her from entering her workplace. Appellant urged the victim to go with him around the side of the building and she refused to do so. As she reached into her purse where she carries a Taser, appellant stepped aside. The victim quickly proceeded into her office and called the police.

{¶ 11} In another unsettling incident occurring after the victim broke up with appellant, appellant traveled with his dog from his home in Whitehouse, Ohio to the neighborhood in West Toledo where the victim's parents live. The victim had never introduced appellant to her parents or advised him where they resided. Appellant approached the victim's parents outside of their home on the pretense of being an area resident walking his dog down the street. Appellant engaged the victim's parents in friendly conversation and did not disclose his identity to them. Sensing something was amiss when appellant began encouraging the victim's parents to attend an upcoming church function with him at the church attended by their daughter, the victim's parents

contacted their daughter and discovered that the true identity of the dog walker in their West Toledo neighborhood was their daughter's ex-boyfriend from Whitehouse, Ohio. Ultimately, the victim's concerns with appellant's pattern of conduct against her rose to the point where the victim initiated legal action.

{¶ 12} On May 14, 2013, appellant was charged with one count of menacing by stalking, in violation of Toledo Municipal Code 537.25, a misdemeanor the first degree. A motion for a protection order was simultaneously filed. On December 16, 2013, the case proceeded to a jury trial. Appellant was found guilty. On February 18, 2014, appellant was sentenced to a 180-day term of incarceration with 150 days suspended. Appellant was also placed on community control and ordered to have no contact with the victim, undergo a mental health assessment, cease attending services or events at the victim's church, and to not enter Grand Rapids, Ohio, where the victim resides. Appellant does not live, work, or belong to any organization in Grand Rapids, Ohio. This appeal ensued.

{¶ 13} In appellant's first assignment of error he asserts that the terms and conditions of community control imposed by the trial court were so unduly restrictive as to constitute a manifest miscarriage of justice. We do not concur.

{¶ 14} Pursuant to R.C. 2951.02, trial courts are vested with broad discretion in establishing appropriate terms and conditions of probation. In conjunction with this, it is well-established that the conditions crafted cannot be so unduly and overly broad so as to constitute such an unnecessary infringement upon the defendant's liberty so as to

constitute a miscarriage of justice. *State v. Jones*, 49 Ohio St.3d 51, 550 N.E.2d 469 (1990).

{¶ 15} We have carefully reviewed and considered this matter. We find the record replete with evidence of conduct by appellant sufficient so as to suggest that the victim faced risk through exposure to or contact with appellant. The level of the risk is reflected by appellant's own testimony at trial. Appellant and the victim briefly, casually dated. The relationship was terminated by the victim. The victim was later forced to file charges and obtain a protection order against appellant. Despite these events, appellant persisted at trial, "I love her more than life itself."

{¶ 16} In the context of these unique facts and circumstances, we find that the trial court's imposition of conditions on appellant including a mental health assessment, attending a different church other than the one attended by the victim, and no longer entering the village in which the victim resides for which appellant has no separate, objective purpose to visit, to not be so unduly broad and burdensome so as to constitute a manifest miscarriage of justice against appellant. We find appellant's first assignment of error not well-taken.

{¶ 17} In appellant's second assignment of error, appellant contends that the trial court inadequately informed him of the consequences of violations of his community control conditions. We do not concur.

{¶ 18} The sentencing transcript reflects that the trial court fully and clearly put appellant on notice of the risks associated with potential future violations of the

conditions of community control. Contrary to appellant's contention, the transcript of the sentencing hearing reflects that the trial court exhaustively and methodically advised appellant precisely what was expected of him and what consequences could occur in the event of his failure to adhere to those conditions. We find appellant's second assignment of error not well-taken.

{¶ 19} Wherefore, the judgment of the Toledo Municipal Court is hereby affirmed. Appellant is ordered to pay the 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.

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE

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