

[Cite as *Cleveland v. U.S. Bank, N.A.*, 2016-Ohio-7402.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104101

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

U.S. BANK, N.A.

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cleveland Municipal Court
Case No. 2011 CRB 019423

BEFORE: Stewart, J., Jones, A.J., and E.A. Gallagher, J.

RELEASED AND JOURNALIZED: October 20, 2016

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MELODY J. STEWART, J.:

{¶1} In 2012, the court found defendant-appellant U.S. Bank guilty of city of Cleveland housing code violations at a residential property that the bank owned through foreclosure. The house on the property had already been demolished, but the court imposed community control sanctions that required the bank to keep all other properties that it owned within the court's jurisdiction in good repair. Break-ins and vandalism at those other properties resulted in additional housing code violations and caused the court to find the bank in violation of community control. Following the sixth violation, the court ordered the bank to institute security patrols at each of the bank's properties where there had been a break-in and ensure that the patrols visited each house every 90 minutes; install a wireless security system in every house that it owns, regardless of whether it had been vandalized; and required the bank, in the event of a break-in, to visit each house within five houses on the same street, on both sides of the street, to inquire whether those residents "observed anything about the break-in[.]" The court also fined the bank \$10,000.

{¶2} The bank raises procedural and substantive arguments on appeal. The procedural argument is that the court erred by finding that the bank did not file a transcript of the hearing before the magistrate to whom the community control violation was referred, so the court would not consider the bank's objection that the magistrate lacked sufficient evidence to find that the bank violated the terms of community control. The substantive arguments complain that the court exceeded its authority by finding the bank's victimization by acts of vandalism at the houses it owned constituted community control violations; that the court could not impose community control sanctions that required action on properties that were not the subject of the original criminal complaint; and that the bank was being punished for the criminal acts of vandals and trespassers.

{¶3} Although the bank raises arguments of public interest concerning the scope of community control sanctions and whether the victim of a criminal activity can be sanctioned for third-party crimes and forced to investigate those third-party crimes, we are forced to conclude that the court did not properly convict the bank, therefore, the community control sanctions are void.

{¶4} As an appellate court, our jurisdiction is limited to the review of "final" orders. See Section 3(B)(2), Article IV, Ohio Constitution ("Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district * * *").

{¶5} For a judgment of conviction to be final, it must set forth “the plea, the verdict, or findings, upon which each conviction is based, and the sentence.” Crim.R. 32(C). Importantly, these requirements for a final order must be set forth in a single document. *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, ¶ 19.

{¶6} The clerk journalized the judgment of conviction on February 23, 2012. The sentencing entry states that the bank originally pleaded no contest, that the court found the bank guilty and imposed a fine of \$100,000, that the court suspended \$90,000 of the fine, and that the court placed the bank on one year of inactive “probation.”

{¶7} The bank filed a motion for clarification of the terms of community control because the court “has not provided its terms of community control[.]” By judgment entry issued May 8, 2012, the court imposed “the following specific community control sanctions which are based on the Court’s general community control sanctions in Local Rule 2.18 and Appendix to Rule 2.18, but which are specifically tailored to this Defendant.” Those sanctions were (1) to pay a fine; (2) to provide a list of properties; (3) to keep properties in good repair; (4) to abide by all laws; and (5) to visit and inspect properties.

{¶8} R.C. 2929.25(A)(1)(a) allows a court sentencing an offender for a misdemeanor to “[d]irectly impose a sentence that consists of one or more community control sanctions authorized by section 2929.26, 2929.27, or 2929.28 of the Revised Code.” The conditions imposed by the court were in the nature of nonresidential sanctions under R.C. 2929.27(C). That section allows the court to “impose any other sanction that is intended to discourage the offender or other persons from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing.” The conditions of community control — that the bank provide a list of its properties, visit and inspect all properties, and maintain its properties in good repair — were designed to discourage the bank from committing future housing code violations.

{¶9} Community control as ordered in this case was a part of the court’s sentence. As a “sentence,” the specific terms of community control had to be stated or incorporated into a single document to be a valid judgment of conviction under Crim.R. 32(C). The court’s failure to incorporate the terms of community control meant that there was no final judgment of conviction. *State v. Chavers*, 9th Dist. Wayne No. 09CA0012, 2010-Ohio-2276, ¶ 6. In addition to the failure to include the specific terms of community control, the sentencing entry failed to state the offense for which the bank was found guilty.

{¶10} A judgment of conviction “must either fully describe the crime for which the accused was convicted or set forth the Revised Code section number under which he was convicted. Either is sufficient.” *State v. Tanner*, 10th Dist. Franklin Nos. 91AP-263 and 91AP-651, 1991 Ohio App. LEXIS 6411, at *25 (Dec. 31, 1991), citing *Braxton v. Maxwell*, 1 Ohio St.2d 134, 136, 205 N.E.2d 397 (1965).

{¶11} The judgment of conviction states the charge against the bank as “MM - BCV-ORG.” Under the heading “short description,” the judgment entry states “BUILDING CODE VIOLATION-ORG.”

{¶12} The judgment of conviction entry fails to describe the precise building code section that the bank violated. This is a significant omission because the citation issued to the bank listed 22 building code violations under 15 different building code sections. The bank pleaded no contest to a single, unidentified building code violation. The court’s judgment of conviction gives no indication of which code section had been violated. To say that the bank had been found guilty of an unnamed building code violation means that the court failed to state the “fact of conviction” consistent with Crim.R. 32(C). See *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶ 14.

{¶13} The deficiencies in the judgment entry mean that there was no final judgment of conviction.¹ With no final judgment of conviction, the community control sanctions imposed by the court never went into effect. Therefore, the court’s order finding that the bank violated community control was void. *State v. Blair*, 8th Dist. Cuyahoga No. 102548, 2015-Ohio-5416, ¶ 13.

{¶14} Judgment reversed and remanded.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cleveland Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE

¹ The letters “MM” in the court’s judgment entry indicate that the “building code violation” was a minor misdemeanor. If that is so, it is unclear how the court imposed a \$100,000 fine. Cleveland Codified Ordinances 3109.99(c) states: “Organizations convicted of an offense shall be fined as provided by RC 2901.23 and 2929.31.” R.C. 2929.31(A)(12) and (15) provide that an organization convicted of an offense (the bank is an “organization” as defined by R.C. 2901.23(D)) shall be fined “not more than one thousand dollars” for either a minor misdemeanor or minor misdemeanor not specifically classified. The \$100,000 fine far exceeds the statutory fine allowed for a minor misdemeanor — only aggravated murder committed by an organization is subject to a \$100,000 fine. What is more, the court made no finding that the bank committed continuing violations of the building code offense nor does the record disclose the existence of any plea agreement in which the bank agreed to pay a fine in excess of the statutory amount.

LARRY A. JONES, SR., A.J., and
EILEEN A. GALLAGHER, J., CONCUR