

[Cite as *Cleveland v. Robshir Properties, L.L.C.*, 2017-Ohio-191.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104340

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

ROBSHIR PROPERTIES, L.L.C.

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cleveland Municipal Court
Case No. 2014 CRB 19881

BEFORE: E.T. Gallagher, J., Jones, P.J., and Kilbane, J.

RELEASED AND JOURNALIZED: January 19, 2017

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EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Robshir Properties, L.L.C. (“Robshir”), appeals from a judgment of the Housing Division of Cleveland Municipal Court that fined it \$215,000 for violating the terms of previously imposed community control sanctions. Robshir raises the following assignments of error for our review:

1. The trial court erred when it imposed a “maximum fine” of \$215,000 upon appellant for violating the terms of the trial court’s community control sanction, as such sanction violates the constitutional prohibitions against excessive fines.
2. The trial court erred when it imposed a “maximum fine” of \$215,000 upon appellant for violating the terms of the trial court’s community control sanction, as it did not have the authority to impose such an additional financial sanction.

{¶2} After careful review of the record and relevant case law, we reverse the trial court’s judgment and remand for proceedings consistent with this opinion.

I. Procedural and Factual History

{¶3} Robshir is the owner of rental properties located in Cleveland, Ohio. On April 4, 2014, the city of Cleveland served Robshir with a notice of Building and Housing Ordinance violations that required Robshir to bring one of its multi-unit properties into compliance by May 4, 2014.

{¶4} Following Robshir’s failure to timely correct the violations, the city filed a complaint in the Cleveland Municipal Housing Court on July 16, 2014. The complaint charged Robshir with failure to comply with an order of the city’s building department in violation of Cleveland Codified Ordinances (C.C.O.) 3103.25 and 367.99(a). The

complaint further alleged that the violations occurred between May 5, 2014, and June 16, 2014.

{¶5} On November 5, 2014, Robshir pleaded no contest to the charges. The trial court found Robshir guilty, placed it on inactive community control sanctions for a period of one year, and imposed a \$500 fine. The judgment entry, which was a standardized form, further contained a checked box indicating that the court provided Robshir with “CC [community control] warnings.”

{¶6} On July 7, 2015, the trial court received a communication from its housing specialist requesting a hearing to assess whether Robshir had violated the terms and conditions of its community control sanctions. The housing specialist alleged that Robshir violated the terms of its community control sanctions by failing to maintain four separate properties in compliance with applicable city’s ordinances.

{¶7} On July 22, 2015, the trial court issued a journal entry, stating that “there is probable cause to believe that defendant has violated the terms of probation in this case.”

On September 8, 2015, a magistrate held a community control violation hearing to assess the housing specialist’s communication. At the conclusion of the hearing, the magistrate found that Robshir had violated the terms of its community control sanctions. However, prior to assessing the appropriate penalty for the perceived violations, the magistrate stated that it would provide Robshir with the opportunity to correct the relevant building code violations.

{¶8} On October 29, 2015, the magistrate determined that there was no significant improvement in the condition of the properties and imposed a \$215,000 fine for Robshir’s violation of its community control sanctions. Although the judgment entry does not specify how the fine was calculated, the magistrate’s imposition of a \$215,000 fine appears to rely on C.C.O. 601.99 and 3103.99(a). With respect to the scope of the fine, C.C.O. 601.99 enhances the penalties for business entities and authorizes a maximum fine of \$5,000 for a first-degree misdemeanor for such an entity. Furthermore, C.C.O. 3103.99(a) states that “[e]ach day during which noncompliance or a violation continues shall constitute a separate offense.” Thus, the court’s imposition of a \$215,000 fine appears to represent the maximum fine of \$5,000 for each of the 43 first-degree misdemeanor counts — one count for each day between May 5, 2014, and June 16, 2014.

{¶9} On November 12, 2015, Robshir filed objections to the magistrate’s decision. On March 9, 2016, the trial court overruled the objections and adopted the magistrate’s decision, finding the \$215,000 fine was authorized by statute and was “consistent with the seriousness of the offense and the gravity of the offenses.”

{¶10} Robshir now appeals from the trial court’s judgment.

II. Law and Analysis

{¶11} On appeal, Robshir argues “the trial court erred when it imposed a ‘maximum fine’ of \$215,000 upon Robshir for violating the terms of the trial court’s community control sanctions, as it did not have the authority to impose such an additional financial sanction.” Robshir contends that pursuant to R.C. 2929.28(A)(2)(a)(i) and

C.C.O. 601.99(a)(1), the housing court had no authority to impose an additional financial sanction in excess of \$1,000. In addition, Robshir maintains “[it] was never properly notified of the potential for a \$215,000 fine” prior to the October 29, 2015 community control violation hearing.

{¶12} Although Robshir raises substantive arguments concerning the scope of the trial court’s authority to impose financial sanctions following a community control sanction violation, we are forced to conclude that the court’s original judgment entry did not properly convict Robshir. Accordingly, Robshir’s community control sanctions are void. As such, Robshir could not be found in violation of its community control sanctions. *See Cleveland v. U.S. Bank, N.A.*, 8th Dist. Cuyahoga No. 104101, 2016-Ohio-7402.

{¶13} As an appellate court, our jurisdiction is limited to the review of “final” orders. *See* Article IV, Section 3(B)(2), 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 * * *.”).

{¶14} 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.

{¶15} 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.”

{¶16} In this case, Robshir pleaded no contest and was ultimately found guilty of violating certain city ordinances. As reflected in the original judgment entry, dated November 5, 2014, Robshir was placed on inactive community control sanctions for a period of one year and was ordered to pay a \$500 fine. Although the journal entry is silent, the conditions imposed by the court appear to be in the nature of nonresidential sanctions permitted 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.” As noted in the court’s July 22, 2015 journal entry finding probable cause of a community control violation, the conditions of Robshir’s community control sanctions were designed to discourage Robshir from committing future building code violations.

{¶17} 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). *See U.S. Bank, N.A.*, 8th Dist. Cuyahoga No. 104101, 2016-Ohio-7402, ¶ 9. In this case, the judgment entry merely contains a checked box, titled “CC warnings given.”

There was no enumeration of the terms of the community control, or the consequences associated with a violation of its terms. As this court held in *U.S. Bank, N.A.*, “the court’s failure to incorporate the terms of community control meant that there was no final judgment of conviction.” *Id.*, citing *State v. Chavers*, 9th Dist. Wayne No. 09CA0012, 2010-Ohio-2276, ¶ 6.

{¶18} Moreover, we find the original sentencing entry failed to “either fully describe the crime for which the accused was convicted or set forth the Revised Code section number under which [Robshir] was convicted.” *U.S. Bank, N.A.* at ¶ 10, citing *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).

{¶19} In this case, the standardized entry listed the charge against Robshir simply as “M1- Building Code Violation,” without identifying the specific code section for which Robshir was found guilty. In addition, the judgment entry did not specify the dates of violations, the number of counts Robshir was convicted of, and imposed a \$500 fine without specifying whether the fine was for one count or for 43 counts. Under these circumstances, we find the trial court “failed to state the ‘fact of conviction’ consistent with Crim.R. 32(C).” *U.S. Bank, N.A.* at ¶ 12, citing *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶ 14.

{¶20} In light of the multiple deficiencies found in the standardized November 5, 2014 judgment entry, we find there was no final judgment of conviction. Having

determined that the court's original sentencing entry is a nullity, the trial court could not find Robshir in violation of it. Accordingly, we vacate both the trial court's original sentence and the court's subsequent determination that Robshir violated the terms of its community control sanctions. See *U.S. Bank, N.A.* at ¶ 13, citing *State v. Blair*, 8th Dist. Cuyahoga No. 102548, 2015-Ohio-5416, ¶ 13.

{¶21} Judgment reversed and remanded.

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

The court finds 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.

EILEEN T. GALLAGHER, JUDGE

LARRY A. JONES, SR., P.J., and
MARY EILEEN KILBANE, J., CONCUR