

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

CITY OF PARMA, :
 :
 Plaintiff-Appellee, :
 : No. 107797
 v. :
 :
 LAZARO BURGOS, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: June 20, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-18-896955

Appearances:

Timothy G. Dobeck, City of Parma Director of Law, and
Richard D. Summers and Milos Veljkovic, Assistant
Directors of Law, *for appellee.*

Mancino, Mancino & Mancino, and Paul A. Mancino, Jr.,
for appellant.

SEAN C. GALLAGHER, P.J.:

{¶ 1} Lazaro Burgos appeals the injunction entered against his continued residence at 1611 Grovewood Avenue in the city of Parma (“Grovewood property”). The Grovewood property is owned by Burgos’s wife. Burgos is a Tier II sex offender

and has a 25-year reporting requirement following a 2012 conviction. In 2016, Burgos updated his registration to reflect his residence at the Grovewood property. According to Parma, the Grovewood property was located approximately 615 feet from a child day-care center premises. Under R.C. 2950.034, which is applicable to Burgos as a registered sex offender, Parma successfully sought an injunction enjoining Burgos from his continued residency at the Grovewood property because it was located within 1,000 feet of a child day-care center.

{¶ 2} Burgos claims that he would have to trespass across neighboring properties and cross a heavily wooded ravine if attempting to access the day-care center's property in a straight line. According to the map introduced by Parma, there are at least eight properties between the Grovewood property and the day-care center premises. No intersecting ravine is apparent from the map. The ravine and river Burgos discussed during the hearing appears to be adjacent to all the properties involved, but it does not intersect the straight-line path between the two properties. Along that same vein, Burgos asks to apply a "reasonably navigable path" calculation as a more appropriate method of calculating the "within 1,000 feet" restriction. Burgos does not define what constitutes a "reasonably navigable path" but claims that the calculation should be limited to the travelled distance between the two properties when traversing surface streets and sidewalks. If calculated in this manner, his residence was over the 1,000-foot restriction and in compliance with R.C. 2950.034(A) (the distance between the two properties if walking along the road is approximately 1,500 feet according to Burgos).

{¶ 3} Thus, the dispute in this case is limited to one of statutory interpretation. Statutory interpretation is a question of law, reviewed de novo. *State v. Lindstrom*, 8th Dist. Cuyahoga No. 96653, 2011-Ohio-6755, ¶ 8, citing *State v. Sufronko*, 105 Ohio App.3d 504, 506, 664 N.E.2d 596 (4th Dist.1995). When examining the actual language of a statute, words should be given their common and ordinary meaning unless the legislature has clearly expressed a contrary intention. *Youngstown Club v. Porterfield*, 21 Ohio St.2d 83, 86, 255 N.E.2d 262 (1970); R.C. 1.42.

{¶ 4} R.C. 2950.034 precludes sex offenders from establishing a residence “within 1,000 feet” of any school, preschool, or child day-care center premises. Parma contends that the measurement contemplated in R.C. 2950.034(A) is calculated “as a crow flies,” or through the “straight-line” approach. Parma presented a geographical information systems (“GIS”) map calculating the straight-line distance between the Grovewood and child day-care center properties to be approximately 615 feet. *State ex rel. O’Brien v. Heimlich*, 10th Dist. Franklin No. 08AP-521, 2009-Ohio-1550, ¶ 19, citing *State v. Franklin*, 164 Ohio App.3d 758, 2005-Ohio-6854, 843 N.E.2d 1267 (12th Dist.) (GIS is an acceptable tool to calculate the distance between two fixed points). Burgos did not contest the evidence. In this context, the trial court necessarily concluded that the statutory phrase “within 1,000 feet,” refers to the straight-line path between the two points. Thus, the sole issue is whether R.C. 2950.034 uses the “straight line” or “reasonably navigable path” to measure whether a sex offender resides within 1,000 feet of a restricted premises.

{¶ 5} The trial court did not err. The reasonably navigable path interpretation of calculating statutory distance restrictions has been previously rejected. In *State v. Shepherd*, 61 Ohio St.2d 328, 331, 401 N.E.2d 934 (1980), the defendant argued that because the General Assembly did not specify the method to calculate whether a weigh station was “within three miles” of the point of the traffic stop, the defendant’s interpretation of using the actual road miles from the point of origin was a reasonable one. The “actual road miles” is indistinguishable to the “reasonably navigable path” definition as discussed herein.

{¶ 6} As was relevant in *Shepherd*, R.C. 4515.33 permitted police officers to require a motorist to weigh its vehicle if the traffic stopped occurred “within three miles” of a weigh station. *Id.* The statute was silent as to the meaning of “within three miles.” According to the factual record in *Shepherd*, the weigh station was within one mile from where the defendant was stopped if calculating the distance by a straight-line or “as the crow flies” measurement. *Id.* The actual road miles to the weigh station, however, was seven miles in light of the fact that there was no road directly leading to the station. *Id.* The Ohio Supreme Court concluded that the statutory phrase “within three miles” is to be given its ordinary meaning of a straight-line distance measurement between the two points. According to the Ohio Supreme Court, the phrase “within three miles” was not ambiguous or susceptible to multiple interpretations. *Id.*

{¶ 7} In *State ex rel. O’Brien v. Messina*, 10th Dist. Franklin No. 10AP-37, 2010-Ohio-4741, ¶ 16, the Tenth District extended *Shepherd* to the similar language

used in R.C. 2950.034(A) — interpreting the phrase “within 1,000 feet” to be unambiguous in light of the ordinary meaning of the word “within.” In doing so, the *Messina* court concluded that “the straight line approach provides more predictability and more uniform application than does the navigable distance approach, which would put the distance between the two locations in flux depending on the construction or destruction of infrastructure.” *Id.*

{¶ 8} Burgos limited his application of a “reasonably navigable path” to the shortest distance between two properties as calculated by traversing the streets and sidewalks that connect the two properties. Even if we entertained the notion that R.C. 2950.034 contemplated a “reasonably navigable path” calculation as Burgos suggests, nothing limits that path to streets and sidewalks alone. Hypothetically speaking, if a residence was located directly next to a restricted premises, but the shortest paved route involved roads connecting the two properties that were miles in length, Burgos’s limited method of calculation would lead to absurd results. In that situation, a registered sex offender could live directly next to a restricted premises. Further, the fact that Burgos would have to trespass to navigate in the straight line is of little consequence. Under the above hypothetical, even if there were a vacant property between the restricted premises and the sex offender’s residence, limiting the distance calculation to roads or sidewalks would permit sex offenders to live in close proximity to the restricted premises. Such an interpretation could nullify R.C. 2950.034.

{¶ 9} In light of this observation, *Messina* is persuasive. The straight-line measurement offers uniformity in application. It is for this reason that courts generally favor a straight-line method of measuring distances in statutes that do not specify the particular method of distance calculation. *M6 Motors, Inc. v. Nissan of N. Olmsted, L.L.C.*, 2014-Ohio-2537, 14 N.E.3d 1054, ¶ 55 (8th Dist.). This is especially true when the legislature defines the specified boundary in terms of being “within” a set distance. *Id.*, citing *Shepherd*, 61 Ohio St.2d 328, 401 N.E.2d 934. If the legislature contemplates a different method of calculation, the Ohio Supreme Court has directed that there must be an alternate phrase “explicitly indicating that intent.” *Shepherd* at ¶ 331; *M6 Motors* at ¶ 62; *see also Heimlich*, 10th Dist. Franklin No. 08AP-521, 2009-Ohio-1550, ¶ 20. R.C. 2950.034 does not expressly indicate an intent to measure the residency restriction other than with the straight-line measurement.

{¶ 10} In this case, it is undisputed that the Grovewood property is within 1,000 feet of a child day-care center premises when the distance is measured by the straight-line measurement. Burgos has not otherwise challenged the injunction. App.R. 16(A)(7). In light of the foregoing, the trial court did not err in granting Parma injunctive relief under R.C. 2950.034(B). We affirm.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.**

SEAN C. GALLAGHER, PRESIDING JUDGE

**KATHLEEN ANN KEOUGH, J., and
EILEEN A. GALLAGHER, J., CONCUR**