

[Cite as *Cleveland v. GIG6, L.L.C.*, 2021-Ohio-2684.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

CITY OF CLEVELAND, :
 :
 Plaintiff-Appellee, :
 : No. 110124
 v. :
 :
 GIG6 L.L.C., :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 5, 2021

Criminal Appeal from the Cleveland Municipal Court
Housing Division
Case No. 19 CRB 019274

Appearances:

Barbara A. Langhenry, Cleveland Director of Law, and
William H. Armstrong, Jr., Assistant Director of Law, *for*
appellee.

Cavitch Familo & Durkin Co., L.P.A., and Bradley Hull IV,
for appellant.

ANITA LASTER MAYS, P.J.:

{¶ 1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc.App.R. 25. The purpose of an accelerated appeal is to allow an appellate court to render a brief and conclusory decision. *State v. Trone*, 8th Dist.

Cuyahoga Nos. 108952 and 108966, 2020-Ohio-384, ¶ 1, citing *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1.

{¶ 2} Defendant-appellant GIG6 L.L.C. (“GIG6”) appeals the judgment of the Cleveland Municipal Court, Housing Division. The sole challenge on appeal is the scope of the community control sanctions imposed against GIG6 as part of the sentence for housing code violation convictions. We affirm the trial court’s judgment.

{¶ 3} On August 2, 2019, GIG6 purchased a multi-unit storefront and apartment building located at 13000 Buckeye Road, Cleveland, Ohio (the “property”) from Green Apple Building Supplies L.L.C. The property was inspected by the Cleveland Housing Department on September 10, 2019. The September 11, 2019 notice declared the property to be unsafe, dangerous, and a public nuisance. The inspection revealed that the property had been condemned on June 4, 2015, and posed a serious hazard due to the poor exterior and interior conditions. Chunks of the exterior wall and masonry décor were falling onto the sidewalk, portions of the roof had collapsed into the building, and there were multiple broken windows. The property was deemed unsafe for human occupancy, and it was determined that the accumulated debris and material on the exterior of the property constitutes a hazardous condition.

{¶ 4} The resolution deadline was October 11, 2019. The city reinspected the property on October 15, 2019, and it determined that outstanding issues remained. The city filed a complaint on November 13, 2019.

{¶ 5} On October 22, 2020, GIG6 entered a no contest plea and was found guilty. GIG6 was sentenced on November 3, 2020, for four counts of failure to comply with citations dated October 12, 13, 14, and 15, 2019, Cleveland Codified Ordinances (“C.C.O.”) 3103.25, a first-degree misdemeanor. A \$5,000 fine and three years of community control were imposed for each count, to be served concurrently. The community control sanctions included oversight by the housing court specialist who was assigned to serve as the community control officer.

{¶ 6} GIG6 offers that it took prompt action to resolve the issues immediately and bring the property to code requirements. The exterior of the property was brought into compliance with the building code. At the time of the sentencing, blueprints for interior repairs and renovation had also been approved by the city of Cleveland.

{¶ 7} GIG6 argues that the scope of the community control sanctions is unreasonable and unnecessary because GIG6 has worked actively to resolve the situation. It also points out that the trial court’s community control terms may have been inspired by the recent, vocal community efforts to have the blighted, condemned property repaired. Approximately 20 witnesses testified to this end at the sentencing. The final order was issued on November 3, 2020. GIG6 advises that the trial court’s recognition that GIG6 had been making progress supports the argument that the sanctions are unnecessary.

{¶ 8} GIG6 assigns a single error on appeal:

The trial court committed an abuse of discretion in imposing community control sanctions upon defendant-appellant including “report to and cooperate with the assigned community control officer”, “advise housing specialist Englebrecht of all progress on a monthly basis”, and “provide housing specialist Englebrecht with all appropriate receipts.”

{¶ 9} “A trial court enjoys broad discretion in imposing sentence on a misdemeanor offense.” *Lakewood v. Dobra*, 8th Dist. Cuyahoga No. 106001, 2018-Ohio-960, ¶ 8, citing *Cleveland v. Meehan*, 8th Dist. Cuyahoga No. 100202, 2014-Ohio-2265, ¶ 7. “The sentence imposed by the trial court will not be disturbed on appeal absent an abuse of this discretion.” *Id.* at ¶ 8.

In fashioning a misdemeanor sentence, a trial court must consider the overriding purposes of misdemeanor sentencing “to protect the public from future crime by the offender and others and to punish the offender.” R.C. 2929.21. The trial court must also consider all factors enumerated in R.C. 2929.22(B).

Id. at ¶ 9.

{¶ 10} Generally, a trial court’s failure to consider the factors is an abuse of discretion. *Id.* at ¶ 10, citing *Maple Hts. v. Sweeney*, 8th Dist. Cuyahoga No. 85415, 2005-Ohio-2820, ¶ 7. “[T]he trial court is not required to make factual findings on the record related to these factors.” *Dobra* at ¶ 10, citing *Sweeney* at ¶ 8. “[W]hen a misdemeanor sentence is within the statutory limits, the trial court is presumed to have considered the required factors [under R.C. 2929.22], absent a showing to the contrary by the defendant.” *Id.*, quoting *id.*

{¶ 11} In the context of a housing code violation, the court’s primary goal is not to punish the defendant but to bring the property into compliance with all building codes. *Cleveland v. Pentagon Realty, L.L.C.*, 2019-Ohio-3775, 133 N.E.3d

580, ¶ 9 (8th Dist.), citing *Lakewood v. Krebs*, 150 Ohio Misc. 2d 1, 2008-Ohio-7083, 901 N.E.2d 885, ¶ 19 (M.C.).

{¶ 12} Thus, “[t]o achieve this goal, trial courts have broad discretion in fashioning a sentence to determine the most effective way to bring about compliance.” *Id.*, citing *Cleveland v. Schornstein Holdings, L.L.C.*, 2016-Ohio-7479, 73 N.E.3d 889, ¶ 19 (8th Dist.); see R.C. 2929.22(A). “[U]nless a specific sanction is either required or precluded by law, a trial court may impose upon a misdemeanor offender any sanction or combination of sanctions under R.C. 2929.24 to 2929.28.” *Id.* citing *id.* “For a building code violation, other than for a minor misdemeanor, the penalties set forth by statute or ordinance may include fines, jail time, and community control sanctions for a maximum of five years.” *Pentagon Realty, L.L.C.*, at ¶ 10, citing *N. Olmsted v. Rock*, 8th Dist. Cuyahoga No. 105566, 2018-Ohio-1084, ¶ 32; R.C. 2929.25(A)(1). “The court may impose one or more sanctions, and it may suspend all or some of a sanction.” *Id.*, citing *Krebs*, 150 Ohio Misc. 2d 1, 2008-Ohio-7083, 901 N.E.2d 885, ¶14, 15 (M.C.); R.C. 2929.25.

{¶ 13} We also noted in *Pentagon Realty, L.L.C.* that:

in ordering community control sanctions, a trial court has the discretion to “impose additional conditions aimed at preserving the interest of justice, protection of the community, and the rehabilitation of the offender.” *Rock* at ¶ 32, citing *Krebs* at ¶ 15. In cases involving an organizational entity, where the entity cannot be confined for failure to comply, “the housing court is empowered to tailor the amount of financial sanctions to compel compliance.” *Schornstein Holdings, L.L.C.* at ¶ 19; R.C. 2929.31 (providing that an organization such as a corporation, partnership, or joint venture can be convicted of any

offense under certain circumstances, and because an organization cannot be jailed, a court may fine an organization up to \$5,000 for a first-degree misdemeanor conviction); see R.C. 1.59 (stating that “person” includes an individual or a corporation, “as used in any statute, unless another definition is provided * * *”).

Pentagon Realty, L.L.C. at ¶ 11.

{¶ 14} It is also true that additional conditions may be imposed as part of community control

as long as those conditions are “not * * * overbroad and [are] reasonably relate[d] to the goals of community control: ‘rehabilitation, administering justice, and ensuring good behavior.’”

Id. at ¶ 13, citing, *State v. Mahon*, 8th Dist. Cuyahoga No. 106043, 2018-Ohio-295, ¶ 7, quoting *State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, 814 N.E.2d 1201, ¶ 11.

{¶ 15} *State v. Jones*, 49 Ohio St.3d 51, 550 N.E.2d 469 (1990), lists a three-prong test to determine whether the trial court abused its discretion. “All three prongs of the *Jones* test must be satisfied for the reviewing court to find that the trial court did not abuse its discretion.” *Pentagon Realty, L.L.C.*, 2019-Ohio-3775, 133 N.E.3d 580, ¶ 13 (8th Dist.), citing *Solon v. Broderick*, 8th Dist. Cuyahoga No. 107043, 2018-Ohio-4900, ¶ 8. The court must decide “whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of [community control].” *Id.*, quoting *Jones* at 53.

{¶ 16} GIG6 argues that three of the conditions are not reasonably related to the goals of community control in this case. Specifically, to: (1) report to and cooperate with the assigned community control officer, (2) advise the housing specialist of all progress on a monthly basis, and (3) provide the housing specialist with all appropriate receipts.

{¶ 17} Upon our review of the record, we find that the conditions imposed are reasonably related to the goals of community control in this case. The property was condemned in 2015, served as a nuisance and blight to the area, and posed a safety concern. GIG6's ownership of the property is inarguably subject to any applicable codes or laws. The record supports that the trial court's goal is to bring the property into compliance in a timely and efficient manner.

{¶ 18} The trial court heard testimony from concerned prominent community members, the housing inspector that issued the violation, the city prosecutor, the community control officer who prepared the presentence report, and GIG6. Photographs of the property were also presented. Also delivered to the trial court was a statement by neighborhood stakeholders that was signed by 563 petitioners.

{¶ 19} GIG6 advised the trial court that a plan to improve the property was put into place before the citations were issued and that GIG6 continued to move forward as the plans to address the remaining issues had been approved by the city by the time of sentencing. Housing specialist Engelbrecht, subsequently appointed to serve as the community control officer, testified at the hearing and gave kudos to

the progress that GIG6 had made to achieve compliance, particularly regarding the exterior of the property and window replacement.

{¶ 20} In fact, Engelbrecht recommended to the trial court that GIG6 provide receipts and photographs at the end of each month to document work performed. Engelbrecht also suggested that GIG6 meet monthly with the probation officer to discuss the rehabilitation efforts.

{¶ 21} The trial court meticulously explained the “court’s goals for imposing CCS * * * are rehabilitation, administering justice, and ensuring the defendant’s future good behavior * * * [and] imposes each CCS condition because the condition is related to one or more of these goals.” Journal entry, p. 2 (Nov. 3, 2020). The trial court also explained that it is a “remedial court whose primary goal is for * * * owners to maintain their properties * * * up to minimum code requirements. Each CCS condition that the Court imposes is designed to meet this goal.” *Id.* “Some CCS requirements are mainly related to administering justice. These are sanctions for the criminal conduct at issue in the case. Examples are fines, court work service, house arrest, and jail.” *Id.*

{¶ 22} The trial court further elucidated:

Other CCS requirements are primarily related to rehabilitating the offender. Some examples are reporting to the Community Control Officer, attending a landlord class presented by the Court, providing a list of all real property that the defendant owns or controls, drafting a written maintenance plan for all properties owned in Cleveland and Bratenahl and keeping those properties in good repair, depositing escrow funds for board-up and demolition costs, consenting to inspections for properties by Court representatives or City inspectors, and entering into payment plans for board-up, demolition, grass

cutting, water charges, and delinquent property taxes. Without maintenance plans and payment plans, the defendant may become overwhelmed by financial obligations related to managing the defendant's properties. This leads to deferred maintenance, code violations, new violation notices, and criminal charges.

Finally, there are some CCS requirements that are intended to deter future criminal conduct and charges. Examples of these are requiring the defendant to register residential rental units with the Cleveland Building Department, requiring the defendant to obtain a certificate of disclosure for certain real property transfers, and requiring business entities that are defendants to register with the Ohio Secretary of State.

Journal entry, at p. 2-3 (Nov. 3, 2020).

{¶ 23} We also observe that placing the conditions complained of within the context of the other conditions imposed demonstrates the reasonableness of the trial court's holding:

Obtain permission from the Court before transferring the property.

Draft a written maintenance and repair plan and submit it to Specialist Geoffrey Englebrecht by December 10, 2020.

Pull all plumbing, mechanical, and electrical permits within sixty (60) days.

Advise Housing Specialist Englebrecht of all progress on a monthly basis.

Provide Housing Specialist Englebrecht with all appropriate receipts.

Board up the entire building.

Keep the property maintained, secure, clean, hazard and graffiti free.

Remove all of the graffiti from the property.

Permit the Housing Court Specialist to access and inspect the interior of the property.

Journal entry, p. 3 (Nov. 3, 2020).

{¶ 24} In light of the history and concerns about the property and the zealous advocacy of the community, the trial court formulated conditions to bring about a proper balance of communication and oversight between the parties. An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). We find that the record does not support that the trial court abused its discretion.

{¶ 25} The single assignment of error lacks merit. The trial court's judgment is affirmed.

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 issue out of this court directing the Cleveland Municipal Court, Housing Division, 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.

ANITA LASTER MAYS, PRESIDING JUDGE

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