

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Sheila G. Farmer, P.J.
	:	John W. Wise, J.
Plaintiff-Appellee	:	Julie A. Edwards, J.
	:	
-vs-	:	Case No. 2009 AP 02 0014
	:	
	:	
CHRISTINE WASSEM	:	<u>OPINION</u>
	:	
Defendant-Appellant	:	

CHARACTER OF PROCEEDING: Criminal Appeal from Tuscarawas
County Court of Common Pleas Case
No. 2008 CR 04 0115

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: November 13, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Edwards, J.

{¶1} Defendant-appellant, Christine Wassem, appeals from the February 26, 2009 Judgment Entry of the Tuscarawas County Court of Common Pleas revoking defendant-appellant's community control. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On April 18, 2008, the Tuscarawas County Grand Jury indicted appellant on one count of burglary in violation of R.C. 2911.12(A)(3), a felony of the third degree. At her arraignment on May 20, 2008, appellant entered a plea of not guilty to the charge.

{¶3} On July 28, 2008, appellant withdrew her former not guilty plea and entered a plea of guilty to one count of burglary. Pursuant to a Judgment Entry filed on September 11, 2008, appellant was placed on community control for a period of three (3) years under specified terms and conditions. Appellant, as part of her community control, was ordered to comply with all ACT Team supervision, including mental health treatment and medication monitoring. Appellant signed the terms and conditions of her community control.

{¶4} On January 7, 2009, a Motion to Revoke Community Control or Modify Former Order was filed. In the motion, it was alleged that appellant had violated the following terms and conditions of her community control:

{¶5} "State Condition #15, which states: 'I agree to fully participate in, and successfully complete, the following indicated Sanctions/Special conditions: Comply with mental health programming & ACT Team Case Management and meds,' to-wit:

The offender has repeatedly refused to take prescribed medication during her supervision term and/or refused to comply with ACT Team case management.

{¶6} “State Condition #5, which states: ‘I will follow all orders verbal or written given to me by my supervising officer or other authorized representatives of the Court or the Department of Rehabilitation and Correction,’ to-wit: The offender has informed her supervising officer that she does not have to follow any orders given by her supervising officer or disclose information related to her mental health and prescription monitoring.”

{¶7} A hearing on such motion was scheduled for February 4, 2009. After appellant refused to appear for the same, a *capias* was issued for her arrest.

{¶8} On February 23, 2009, a hearing was held on the Motion to Revoke. At the hearing, Mark Ritzman, who was appellant’s probation officer, testified that he went over the terms of community control with appellant on October 7, 2008, and that she appeared to fully understand them. Ritzman testified that, prior to being placed on community control, appellant was linked up with the ACT Team, which was a local mental health provider. The ACT Team, according to Ritzman, went to the client’s home on a daily basis to make sure that the client was taking any ordered medications.

{¶9} Ritzman testified that, after October 7, 2008, he had contact with the ACT Team regarding appellant. The following testimony was adduced when he was asked about such contact:

{¶10} “Q. And what, can you take us through that evolution of communication?”

{¶11} “A. After I met Ms. Wasseem on October 7, I’ve had periodic telephone conversations with her, assigned an acting case manager, Kristal Slade, generally to update her progress or her lack thereof. It was initially over the first month or two, there

was some ebb and flow as far as whether she was complying or not to the point where it did digress and get worse where Ms. Wassem was reported to not take her medication. She was acting in an intimidating fashion at times, not take her medication or just being downright and saying I'm not going to take it.

{¶12} “So finally, after I've had conversation with her and obviously her case manager as well to no avail, we decided, myself, Kristal, the nurse from the ACT Team to travel out to her residence on October, or December 17th and kind of give Christine an ultimatum that hey, look, this is serious stuff. You've been court ordered to take you're your medication, you need to start complying. If you don't, the Court will be notified.

{¶13} “At that time, Christine confronted myself and Kristal and the nurse out in the hallway. When we explained everything to her, that you know, the consequences of her continuing not to take her medication, she informed me that she did not have to listen to anything that I told her to do. She wasn't ordered to take medication on a daily basis, that she did not have to comply with that and - - .” Transcript at 8-9.

{¶14} Ritzman testified that he worked with Kristal Slade, the case manager with ACT, and had contact with her every one to two weeks. He testified that Slade called him when there were problems with appellant and that there were problems fairly often due to appellant's failure to take medication and her being argumentative about taking medication. Ritzman further testified that when he went to see appellant on December 17, 2008, appellant said that Ritzman was not her guardian and that she did not have to listen to him and that no one could force her to take medication. After the December 17, 2008, meeting, the Motion to Revoke was filed.

{¶15} On cross-examination, Ritzman testified that on the three other occasions when he saw appellant prior to December 17, 2008, appellant was cooperative. He testified that appellant appeared to be lucid on December 17, 2008. Ritzman, when asked if appellant, during her first three sessions with him, had indicated that she was allergic to certain medications, testified that appellant had used such an excuse in the past and it had been confirmed that she was not allergic to the medication that she was ordered to take. Ritzman testified that appellant told him that she was allergic to “[w]hatever the medication was that was an injection which I don’t know the name for it, Proxylexin or something along those lines.” Transcript at 14. He further testified that he talked with Kristal Slade who confirmed that appellant was not allergic to that medication. Ritzman never spoke to appellant’s doctor about whether she was allergic to the medication.

{¶16} At the hearing, Kristal Slade testified that she was case manager with the ACT Team at Crisis Recovery Center. She testified that she had been involved with appellant since June of 2008 and that appellant had personality disorders and schizoid-effective disorder. Slade testified that her agency monitored appellant’s medications and would watch her take her medication. According to Slade, the agency went to appellant’s house every morning to watch appellant take her morning dosage of medication.

{¶17} The following testimony was adduced when Slade was asked what was expected of appellant as far as her agency was concerned:

{¶18} “A. She was expected to comply with treatment, taking her medication, coming into counseling sessions as well as seeing our psychiatrist once a month.

{¶19} “Q. And beginning in October, early October, how did that go? How would you characterize her participation in your program?”

{¶20} “A. It, it wasn’t, her participation, it wasn’t stable at all, she would, sometimes she would be compliant, sometimes she wouldn’t. Sometimes she would make appointments, sometimes she wouldn’t. It, that’s pretty much been the history since she’s been on our team.

{¶21} “Q. When you characterize her as being noncompliant, is it your opinion that was voluntary noncompliance?”

{¶22} “A. Yes.” Transcript at 20-21.

{¶23} Slade testified that appellant was non-compliant in taking her oral medication, which she took twice a day. She testified that when appellant first joined the ACT Team, the agency wanted to supervise appellant two times a day, during the morning and evening, to ensure that she took her medication. Slade testified that appellant did not agree with the agency coming in the evening and that the agency then agreed to see appellant just once a day in the morning. Slade testified that the agency left appellant’s evening dose of medication with appellant to take on her own without supervision. While, for a few weeks, the arrangement worked out, Slade testified that appellant slowly just stopped taking her medications and sometimes refused to let the agency into her home.

{¶24} Slade testified that by the time appellant was placed on community control, her agency already had had problems with appellant taking her medication. According to Slade, during the three months appellant was on community control, appellant’s medication intake varied and appellant “didn’t go long periods of time of

taking medication.” Transcript at 24-25. Slade testified that appellant sometimes would not take her morning medication in front of Slade and indicated that she would take it later or when she was ready. During the months of October, November and December of 2008, appellant sometimes refused to let Slade into her house and, on those days, appellant did not receive any medication to ingest.

{¶25} Slade testified that she was present at the meeting on December 17, 2008, along with Mark Ritzman, a nurse, and appellant’s psychiatrist. She testified that, at the meeting, appellant was advised of the consequences of her failure to take an injection. Appellant was told that if she refused to do so, she would be violating her community control. According to Slade, appellant stated that they could not make her take the injection and that she was allergic to it.

{¶26} On cross-examination, Slade admitted that appellant told her more than once that she was allergic to the injections which she took in addition to her twice daily oral medications. With respect to the oral medication, Slade testified that the agency left the evening dosage with appellant and that sometimes the evening dose would still be there when Slade went back the next day. Slade testified that the agency did not force appellant to take the evening dosage and that appellant did not always take the morning dosage either. The following is an excerpt from her testimony on cross-examination:

{¶27} “Q. So did she always take the morning medications then?

{¶28} “A. Not always, no. She, I can’t say if she would take them or not. She wouldn’t take them for me so I didn’t know and then there were days where she didn’t open the door at all and wouldn’t let me in so sometimes she didn’t have them then either.

{¶29} “Q. So on the days that she didn’t let you in, would you just knock on the door and the door never opened or what happened on those days?”

{¶30} “A. Or no, it would be that, or I would knock on the door, she would answer, be very upset, what do you want, just angry, agitated, having a bad day, morning, or something, it wouldn’t work.

{¶31} “Q. So when she would be agitated or angry, would this be during the time when you weren’t forcing her to take the second set of medication?”

{¶32} “A. Well, we never forced her. It was she, sometimes she would take it, sometimes she wouldn’t. We weren’t there for the evening pills, I could only tell if that dose of medication wasn’t there when I arrived the next morning so I don’t, I don’t know how often she was taking it for sure.

{¶33} “Q. But she was supposed to take medication twice a day, correct?”

{¶34} “A. Yes.” Transcript at 28-29.

{¶35} At the hearing, appellant testified that she was allergic to the Prolexin injections that that she experienced urinary and bowel problems and severe congestion after she took the first two injections. She testified that, for such reason, she refused to take the third injection. Appellant testified that she advised Slade and Ritzman of her allergy and that on her advanced directive, it was noted that she was allergic to Prolexin, which also caused her face to swell. With respect to the oral medication that she was supposed to take twice a day, appellant testified that she took the morning dosage in front of Slade. Appellant testified that the agency left the evening dosage for her to take and that she only missed her evening dosage two or three times in eight months. She testified that she forgot the evening dosage when she was very sick or in

the hospital. Appellant further testified that her doctor had changed her injection to a different medication.

{¶36} Appellant testified that, on December 17, 2008, she told Mark Ritzman that she was allergic to Prolexin and that they could not make her take drugs that were on her allergy list. She denied telling him that she did not have to listen to him.

{¶37} At the conclusion of the hearing, the trial court found that appellant had violated the terms and conditions of her community control by refusing to comply with all ACT Team supervision, including mental health treatment and medication monitoring. The trial court noted that appellant had repeatedly refused to take prescribed medication and/or to comply with the ACT Team case management and granted the Motion to Revoke. Pursuant to a Judgment Entry filed on February 26, 2009, the trial court sentenced appellant to two (2) years in prison.

{¶38} Appellant now raises the following assignments of error on appeal:

{¶39} "I. REVOKING THE COMMUNITY CONTROL SANCTIONS OF A MENTALLY ILL PERSON FOR REFUSING A MEDICATION THAT MAKES HER ILL VIOLATES THE 14TH AMENDMENT AND ARTICLE I SECTION 1 OF THE OHIO CONSTITUTION.

{¶40} "II. THERE WAS INSUFFICIENT EVIDENCE PRESENTED BY THE STATE TO SHOW THAT MS. WASSEM WAS NOT COMPLYING WITH HER TREATMENT PLAN."

I, II

{¶41} Appellant, in her two assignments of error, argues that the trial court erred in revoking her community control. Appellant specifically argues that revoking the

community control of a mentally ill person for refusing to take a medication that makes her ill violates the 14th Amendment and Article I, Section I of the Ohio Constitution and that there was insufficient evidence that she violated the terms of her community control.

{¶42} A community control revocation hearing is not a criminal trial, therefore, the State does not have to establish a violation with proof beyond a reasonable doubt. *State v. Payne*, Warren App. No. CA2001-09-081, 2002-Ohio-1916, citing *State v. Hylton* (1991), 75 Ohio App.3d 778, 782, 600 N.E.2d 821. Instead, the prosecution must present “substantial” proof that a defendant violated the terms of his community control sanctions. *Id.*, citing *Hylton* at 782, 600 N.E.2d 821. Accordingly, we apply the “some competent, credible evidence” standard set forth in *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, to determine whether a court's finding that a defendant violated the terms of his community control sanction is supported by the evidence. See *State v. Ball*, Delaware App. No. 2008 CA A 07 0046, 2009-Ohio-2006 at paragraph 37. This highly deferential standard is akin to a preponderance of the evidence burden of proof. *Id.*

{¶43} Once a court finds that a defendant violated the terms of his community control sanction, the court's decision to revoke community control may be reversed on appeal only if the court abused its discretion. *Columbus v. Bickel* (1991), 77 Ohio App.3d 26, 38, 601 N.E.2d 61. An abuse of discretion connotes more than an error in law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *State v. Maurer* (1984), 15 Ohio St.3d 239, 253, 473 N.E.2d 768.

{¶44} The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison* (1990), 49 Ohio St.3d 182, 552 N.E.2d 180, certiorari denied (1990), 498 U.S. 881, 111 S.Ct. 228, 112 L.Ed.2d 183. Reviewing courts should accord deference to the trial court's decision because the trial court has had the opportunity to observe the witnesses' demeanor, gestures, and voice inflections which cannot be conveyed to us through the written record, *Miller v. Miller* (1988), 37 Ohio St.3d 71, 523 N.E.2d 846.

{¶45} As is stated above, appellant initially argues that the revocation of the community control of a mentally ill person such as appellant for refusing to take a medication that makes him or her ill is unconstitutional. Appellant notes that she told Mark Ritzman and Kristal Slade that she was allergic to the Prolexin injections and that she refused the third injection after the first two caused her severe allergic reactions. Appellant cites two cases for the proposition that she could not be forced to take the injections.

{¶46} However, unlike in the cases cited by appellant, appellant was never forcibly medicated. At her sentencing, appellant agreed, as a condition of her community control, to comply with ACT Team supervision and medication monitoring. The record of the hearing established that appellant went over the terms and conditions of her community control with her attorney and also with Mark Ritzman who testified that appellant appeared to understand the same. In addition, Kristal Slade testified that appellant was never forced to take her medications, but rather was advised of the consequences of her failure to do so. There was testimony adduced at the hearing that,

as noted by appellee, “[w]hether [a]ppellant complied with the dosing instruction...or not on any given day was entirely [a]ppellant’s decision.”

{¶47} Moreover, we note that there is no evidence that appellant’s community control was revoked based on her refusal to take the injections. As is stated above, in addition to the injections, appellant was required to take oral medications twice a day. There is no indication that appellant was allergic to the same. At the hearing, Slade testified that appellant often failed to take the evening dosage that was left with her and sometimes, with respect to the morning dosage, refused to let Slade into her apartment. As a result, on those days, appellant did not receive her morning dosage.

{¶48} While appellant also contends that there was insufficient evidence that she violated the terms of her community control, we disagree. There was testimony that appellant repeatedly refused to take both of her oral dosages of medication as directed and that she told Mark Ritzman that she did not need to listen to him or comply with any medication requirements. Appellant testified that, during an eight month period, she only failed to take her evening dosage two or three times when she was very sick or in the hospital. When asked to describe appellant’s medication intake during the three months that appellant was on community control and Slade was her case worker, Slade responded as follows:

{¶49} “A. Yes, it was, it was daily, day by day, it was something different. She didn’t go long periods of time of taking medication. Sometimes she would take it or she would appear to take it when I was there. Other times, she wouldn’t take it at all, she wouldn’t, she wouldn’t let me into the apartment or other case managers into the apartment. Sometimes she was nasty but then also her behavior started to

decompensate so that's what I was questioning what she was doing with the medication even though it was (inaudible).

{¶50} "Q. Did you, did she ever personally refuse the medication when you tried to administer the medication?

{¶51} "A. She would, she wouldn't take it in front of me. I would go to her apartment and she'll say well, yeah, I'll take it later or I'm not ready to take it now, I don't want to take it now or I'll do it when I'm ready. Or other times when she wouldn't let me in period, those were the times she would (inaudible).

{¶52} "Q. Okay. So there were days she wouldn't let you into the house?

{¶53} "A. Yes.

{¶54} "Q. And on those days, she did not receive the medication to ingest?

{¶55} "A. Right.

{¶56} "Q. Correct?

{¶57} "A. Right.

{¶58} "Q. Okay. And when this happened, did this happen more than once?

{¶59} "A. Yes.

{¶60} "Q. And did this happen during the month of October?

{¶61} "A. I believe so, yes.

{¶62} "Q. During the month of November?

{¶63} "A. Yes.

{¶64} "Q. And during the month of December?

{¶65} "A. Yes." Transcript at 24-26.

{¶66} The trial court, as trier of fact, was in the best position to assess their credibility. Clearly, the trial court found that Slade was a credible witness.

{¶67} Based on the foregoing, we find that the trial court had competent, credible evidence upon which to find that appellant violated the terms of her community control by failing to comply with ACT Team case management and medication monitoring. We, therefore, find that the trial court did not abuse its discretion in revoking appellant's community control and imposing a prison term.

{¶68} Appellant's first and second assignments of error are, therefore, overruled.

{¶69} Accordingly, the judgment of the Tuscarawas County Court of Common Pleas is affirmed.

By: Edwards, J.
Farmer, P.J. and
Wise, J. concur

s/Julie A. Edwards

s/Sheila G. Farmer

s/John W. Wise

JUDGES

JAE/d0824

IN THE COURT OF APPEALS FOR TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
CHRISTINE WASSEM	:	
	:	
Defendant-Appellant	:	CASE NO. 2009 AP 02 0014

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Tuscarawas County Court of Common Pleas is affirmed. Costs assessed to appellant.

s/Julie A. Edwards

s/Sheila G. Farmer

s/John W. Wise

JUDGES