

[Cite as *State v. Wood*, 2010-Ohio-884.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

AMANDA WOOD

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 2009 CA 00190

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common
Pleas, Case No. 2008 CR 01461(A)

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

March 8, 2010

APPEARANCES:

For Plaintiff-Appellee

JOHN D. FERRERO
PROSECUTING ATTORNEY
KATHLEEN O. TATARSKY
ASSISTANT PROSECUTOR
110 Central Plaza South, Suite 510
Canton, Ohio 44702-1413

For Defendant-Appellant

DEREK LOWRY
116 Cleveland Avenue NW
800 Courtyard Center
Canton, Ohio 44702

Wise, J.

{¶1} Appellant Amanda Wood appeals from her kidnapping conviction and sexual offender classification in the Court of Common Pleas, Stark County. The appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

{¶2} On August 10, 2008, Z.M., a five-year-old male child, was taken by ambulance to Akron Children's Hospital. The child was unconscious and had burns and bruises on his body. Following an investigation by law enforcement officials, the Stark County Grand Jury indicted appellant and her husband, Daniel W. Wood, on four counts of child endangering and one count of kidnapping.

{¶3} Appellant initially pled not guilty, but later changed her plea to guilty as charged in the indictment. Appellant was thereafter sentenced to five years in prison on each count, to be served concurrently. After appellant's prison term commenced, however, the trial court permitted appellant to withdraw her plea of guilty to the kidnapping charge and to enter a plea of no contest as to that count. The court thereupon found appellant guilty of kidnapping and again accepted her pleas of guilty to four counts of child endangering.

{¶4} Appellant was thereupon resentenced to five years in prison on each count, to run concurrently. She was also classified a Tier III sex offender.

{¶5} On July 17, 2009, appellant filed a notice of appeal. She herein raises the following sole Assignment of Error:

{¶6} "1. THE TRIAL COURT ERRED IN CLASSIFYING THE APPELLANT AS A TIER III SEX OFFENDER."

I.

{¶17} In her sole Assignment of Error, appellant contends the trial court erred in classifying her as a Tier III sexual offender. We disagree.

{¶18} Ohio enacted a sexual offender classification system in 1997, although sex offender registration in Ohio dates to 1963. S.B. 10, effective January 1, 2008, altered Ohio's classification system. The revised statutes now require a trial court to classify an offender (Tier I, Tier II, or Tier III) based solely on the specific conviction. R.C. 2950.01(E)-(G). "Tier III, the highest tier and similar to the old sexual predator finding, requires registration every 90 days for life, and the community notification may occur every 90 days for life." *State v. Omiecinski*, Cuyahoga App.No. 90510, 2009-Ohio-1066, ¶ 29, citing R.C. 2950.07.

{¶19} A Tier III classification is warranted for a violation of division (B) of R.C. 2905.01 (Kidnapping) "when the victim of the offense is under eighteen years of age and the offender is not a parent of the victim of the offense." See R.C. 2950.01(A)(9); R.C. 2950.01(G)(1)(f).

{¶10} Appellant does not dispute that she is Z.M.'s aunt and is not his "parent." Furthermore, although apparently not presented to the trial court, she has attached a copy of a judgment entry from the Tuscarawas County Court of Common Pleas, Juvenile Division, purporting to show that she was the child's legal custodian at the time of the kidnapping offense. Appellant essentially urges that a kidnapping (under R.C. 2905.01(B)) committed by a legal custodian should be exempt from sexual offender classification in the same manner as a kidnapping (under R.C. 2905.01(B)) committed by a parent.

{¶11} Nonetheless, as the State responds in its brief, the General Assembly has utilized the expanded terminology of parent/guardian/custodian in other statutes in the Revised Code (see, e.g., R.C. 2151.03 and R.C. 2905.05), as well as the phrase “in loco parentis” (see R.C. 2919.22). Clearly, the General Assembly has chosen not to similarly expand the use of the word “parent” in R.C. 2950.01(A)(9) and R.C. 2950(G)(1)(f). As an appellate court, we ordinarily must presume that the legislature means what it says; we cannot amend statutes to provide what we consider a more logical result. See *State v. Link*, 155 Ohio App.3d 585, 2003-Ohio-6798, 802 N.E.2d 680, ¶ 17, citing *State v. Virasayachack* (2000), 138 Ohio App.3d 570, 741 N.E.2d 943.

{¶12} Accordingly, upon review of the record, we find no merit in appellant’s argument that the Tier III classification should not apply to her. Appellant’s sole Assignment of Error is overruled.

{¶13} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Stark County, Ohio, is affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

/S/ JOHN W. WISE

/S/ WILLIAM B. HOFFMAN

/S/ SHEILA G. FARMER

JUDGES

