

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-09-045

Appellee

Trial Court No. 08CRB01404

v.

Arlene Boyer

DECISION AND JUDGMENT

Appellant

Decided: March 12, 2010

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Linda F. Holmes, Assistant Prosecuting Attorney, for appellee.

Arlene Ann Hoffman Boyer, pro se.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Bowling Green Municipal Court in which the trial court imposed a \$10,000 fine on appellant, Arlene Boyer, after finding that appellant failed to comply with the court's order to: (1) convey her property via land contract to her son; and (2) comply with the directive of the Wood County Health

Department by connecting the property to the sanitary sewer system and disabling her old septic system by December 1, 2008. On appeal appellant, acting pro se, sets forth the following two assignments of error:

{¶ 2} "Assignment of Errors:

{¶ 3} "The first assignment of error presented for review: Did the Municipal Court of Wood County of Ohio err in its tender of non-performance of the Wood County Health District Household Sewage Treatment and Disposal Regulations 612.171 and 612.172 by Appellant * * * [.]

{¶ 4} "The second assignment of error presented for review: Did the Municipal Court of Wood County of Ohio err in its providing Appellant with a list of contractors, through [the] Northwestern Water and Sewer District, and then, promoting the contractor, MAIN AND SONS PLBG, HTG & A/C, INC., to breach its contract with Appellant * * * [.]"

{¶ 5} Appellant is the owner of property located at 22759 Defiance Pike, in the village of Custar, in Wood County, Ohio. On May 27, 2008, a complaint was filed by Jerry Bingham, Registered Sanitarian for the Wood County Board of Health, in which Bingham stated that appellant was in violation of R.C. 3709.21 and 3709.99, as well as the Wood County Combined General Health District, Household Sewage Treatment and Disposal Regulations, Sections 612.171 and 617.172, for failing "to connect to the sanitary sewer system in proximity to [the] above property and to properly abandon the existing septic tank" since June 23, 2007.

{¶ 6} Appellant entered a no contest plea on November 3, 2008. In exchange for appellant's plea, the state agreed to dismiss all but 100 of the 315 counts pending against her.¹ In addition, the magistrate recommended that appellant transfer her property, via land contract, to her son, and ordered appellant to connect the property to the sewer system by December 1, 2008, or show cause as to why it could not be done by that date. Appellant was ordered to obtain at least two estimates of the cost to complete the sewer hook up, and was provided with a list of local contractors who were certified to perform the work. The magistrate recommended imposing a \$10,000 statutory fine,² to be suspended pending completion of the work within the required time frame. On November 8, 2008, the trial court adopted the magistrate's decision, and placed appellant on community control.

{¶ 7} On February 25, 2009, the Wood County Prosecutor, acting on behalf of the Wood County Health Department, filed a motion to revoke appellant's community control and impose sentence, in which the prosecutor stated that appellant failed to comply with the trial court's order by December 3, 2008. A hearing date was set for March 23, 2009. Appellant did not appear at the hearing. Although the trial court was prepared to revoke the stay of appellant's community control and impose the \$10,000 fine at that time, the hearing ultimately was postponed until April 13, 2009, because the health

¹Originally, one violation was charged for each day appellant failed to connect her property to the public sewer system.

²The fine was calculated at the rate of \$100 per day for 100 days.

department had received notice that a contractor was scheduled to connect appellant's home to the sewer system that same morning.

{¶ 8} On April 13, 2009, a hearing was held, at which appellant appeared without an attorney. Appellant testified at the hearing that F. L. Main ("Main"), of Bowling Green, Ohio, agreed to connect her property to the sewer line in exchange for \$1,500 on March 23, 2009, and that she gave Main an "International Bill of Exchange" in the amount of \$1,500 as payment for the work. However, when Main took the document to the bank, he was told it was not a negotiable instrument. Consequently, Main refused to perform the services, and appellant was therefore unable to comply with the trial court's order to connect her property to the sewer line.

{¶ 9} The trial court responded to appellant's explanation by stating:

{¶ 10} "Well, I am guessing that if [Main] can't squeeze cash out of this documentation that you have given him, then he is not going to bring anybody out to dig holes and connect. It sounds like a lot of complicated paperwork for a relatively * * * simple transaction, that transaction being you hire someone to come over and dig a hole and connect to the pipe that is there.

{¶ 11} "And you either write them a good check, you give them a money order or a cashier's check, or you give them cash. But, the Court is not going to get into your arrangement with Mr. Main such as paying on an International Bill of Exchange or Bill of Lading or, you know, that kind of stuff. The bank won't take it, the bank is not taking it.

* * *"

{¶ 12} Appellant told the trial court she had no money other than the funds represented by the International Bill of Exchange, and that she was unable to turn that instrument into cash. The trial court stated that, in order to avoid a court-imposed fine, appellant would have to find a way to pay for the sewer connection. Appellant replied that she did everything she was supposed to do to comply with the trial court's order, including paying Main for his services. The trial court disagreed, and ordered appellant to pay the \$10,000 fine. On April 23, 2009, appellant petitioned the trial court for a stay of judgment pending appeal, which was denied. On May 11, 2009, appellant filed a notice of appeal.

{¶ 13} In her first assignment of error, appellant asserts that the trial court erred by finding that she did not make a good faith effort to comply with its order by tendering an acceptable form of payment to the contractor who agreed to connect her property to the public sewer system. In support, appellant argues that she did, in fact, attempt to perform in accordance with the trial court's order; however, her efforts were nullified because the trial court's finding both impaired her existing contract to complete the work and deprived her of adequate time to find another contractor. In her second assignment of error, appellant asserts that the trial court erred by providing her with a list of contractors, and then supporting Main's decision to not perform the work unless appellant tendered another form of payment. Because appellant's two assignments of error are interrelated, we will address them together.

{¶ 14} The Supreme Court of Ohio has held that, pursuant to R.C. 3701.34, local boards of health have been granted authority to "require that a household sewer be directly connected to a sanitary sewerage system whenever such a system becomes accessible to the property." *Clark v. Greene Co. Combined Health Dist.*, 108 Ohio St.3d 427, 2006-Ohio-1326, ¶ 17, citing *DeMoise v. Dowell* (1984), 10 Ohio St.3d 92, 95. See, also, Ohio Adm.Code 3701-29-02. Wood County Health District ("WCHD") Regulation 612.171 states that a property becomes accessible to a sanitary sewer system when "the sanitary sewer system controlling authority provides a connection point on the property or within the right-of-way and the shortest direct line distant from the foundation wall of any structure with plumbing drains to the available connection point does not exceed four hundred (400) feet." Pursuant to WCHD regulation 612.172, whenever a sanitary sewer system is available, "any household disposal system shall be abandoned, and the building sewer shall be connected directly to the sanitary sewer within one hundred twenty (120) days after completion of the sanitary sewer system." Pursuant to R.C. 3709.99, the penalty for failure to connect to an accessible sanitary sewer line within the prescribed time frame is \$100.00 per day, with each day charged as a separate offense.

{¶ 15} In this case, it is undisputed that appellant did not connect her property to the sewer line within 120 days of the line becoming accessible. The record further reflects that the complaint was filed on May 27, 2008, and appellant entered a no contest plea on November 3, 2009, in which she agreed to connect her property to the sanitary sewer and convey it to her son, in exchange for the dismissal of over 200 separate

charges of non-compliance and a suspended \$10,000 fine. Nevertheless, five months later, appellant still had not complied with the trial court's order. As set forth above, appellant attempted to excuse her non-compliance by blaming Main for refusing to connect her property to the sanitary sewer line unless appellant paid for the work by cash or bank check. Appellant offered no excuse for her failure to convey the property to her son, and no evidence that she attempted to contact any other contractor to complete the work.³

{¶ 16} On consideration, we agree with the trial court that: (1) appellant had ample time to connect her property to the sanitary sewer system and thereby avoid penalties pursuant to R.C. 3709.99; and (2) one contractor's refusal to perform the work, based on appellant's tender of a non-negotiable instrument as payment, is not sufficient to show that appellant made a good faith attempt to comply with the trial court's order. Accordingly, the trial court did not err by revoking appellant's community control and imposing the \$10,000 fine. Appellant's two assignments of error are not well-taken.

{¶ 17} The judgment of the Bowling Green Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

³The record does not support appellant's assertion in her second assignment of error that the trial court provided her with a list of contractors.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.