

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07—CF—2226
)	
NANETTE A. FINK,)	Honorable
)	Allen M. Anderson,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

Held: (1) The trial court didn't abuse its discretion in imposing 240 hours of community service as a condition of defendant's probation; the court said that it would waive that condition only if defendant executed quitclaim deeds, and defendant's acquiescence in the entry of judicial deeds was insufficient; (2) we vacated a DNA collection fee, which was statutorily unauthorized, and a trauma-center fee, which did not apply to defendant's offense.

Following a bench trial, defendant, Nanette A. Fink, was convicted of nine counts of forgery (720 ILCS 5/17—3(a)(2), (a)(3) (West 2006)). The trial court sentenced defendant to 24 months' probation. Defendant appeals, arguing that (1) the trial court abused its discretion in imposing 240 hours of community service as a condition of her probation and (2) the trial court lacked the authority

to impose DNA collection and trauma center fees. For the reasons that follow, we affirm the imposition of the 240 hours of community service and vacate the DNA collection and trauma center fees.

BACKGROUND

Defendant was convicted of nine counts of forgery for the possession and delivery, with the intent to defraud, of certain quitclaim deeds purported to be signed by others. On October 29, 2008, the trial court sentenced defendant to 24 months' probation. The trial court agreed to waive the imposition of the 240 hours' community service, so long as defendant satisfied certain requirements.

The order read:

“Defendant is ordered to transfer back property in question on 3 [q]uit [c]laim [d]eeds within 60 days of today's date to rightful owners of property.

If property is deeded back to rightful owners within 60 days [and] if restitution issue is resolved within 60 days, 240 CRS hours will be waived.”

On December 17, 2008, a hearing was held to determine whether defendant had complied with the requirements. At the hearing, the trial court was informed that the complainants had filed a civil suit against defendant. At trial in the civil proceeding, defendant stipulated to the evidence presented by the complainants and offered no defense, resulting in the civil trial court entering judicial deeds transferring the property back to the complainants. Finding that defendant failed to comply with the requirement that she transfer the property back to the complainants via quitclaim deed, the trial court declined to waive the 240 hours of community service. The trial court stated:

“There's a distinction between taking a voluntary act which is the court's intention that should the defendant have chosen to quitclaim those deeds and properties back, it would

have obviated further court activity, and obviously further court activity in the civil case continues on certainly by the preparation and the execution of judicial deeds.”

Following an unsuccessful motion to reconsider, defendant appealed.

ANALYSIS

On appeal, defendant argues that (1) the trial court abused its discretion in imposing 240 hours of community service as a condition of her probation and (2) the trial court lacked the authority to impose DNA collection and trauma center fees.

1. Community Service

Defendant first argues that the trial court abused its discretion in imposing the 240 hours of community service, because she complied with the requirement of transferring the property back to its rightful owners. We disagree.

A sentence within the statutory limits for the offense will not be disturbed unless the trial court has abused its discretion. *People v. Coleman*, 166 Ill. 2d 247, 258 (1995). An abuse of discretion occurs if the trial court imposes a sentence that “is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.” *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). It is well established that “[a] trial court has wide latitude in sentencing a defendant, so long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation.” *People v. Roberts*, 338 Ill. App. 3d 245, 251 (2003). It is the trial court’s responsibility “to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case.” *People v. Latona*, 184 Ill. 2d 260, 272 (1998).

According to defendant, she complied with the trial court’s requirement when she “stipulat[ed] to the conveyance of the properties by judicial deed.” Defendant did not, however,

stipulate to the conveyance of the property by judicial deed. Rather, in all of her representations to the trial court—in arguments during sentencing and in her motion to reconsider—defendant indicated that she merely stipulated to the evidence presented by the complainants, *i.e.*, that they did not sign the deeds at issue. While defendant did not present any evidence at the trial in the civil case, she also did not take the affirmative action of transferring the property back to the complainants. Even with her stipulation to the evidence, her failure to transfer the property by quitclaim deed resulted in the necessity of a civil suit and trial, which in turn resulted in the expenditure of additional resources.

Defendant contends that the trial court’s intent to have her take the affirmative step of transferring the property was not clear and that her acquiescence in the civil proceeding should have been sufficient because it achieved the same result. The trial court’s intent was clear, however, in the language of its order and in its statements during sentencing. In its order, the trial court specifically stated that defendant was to transfer the property via quitclaim deeds. In imposing the transfer requirement, the trial court stated:

“[T]he cost of recording shall be borne by the [d]efendant, cost of preparation of those deeds or the preparation of those deeds. *** [I]f the court receives deeds that paralleled those exhibits [the deeds defendant possessed and delivered that were purportedly signed by the complainants] or if the probaton office receives deeds that parallel those exhibits for the transfer of those three properties and all related lots, showing them to be executed, then as executed by [defendant] ***, reversing the transfers that were the subject of this litigation, and then her obligation will be considered satisfied ***.”

By placing the cost of preparing and recording the deeds on defendant, the trial court made clear that the transfer was to be defendant’s responsibility. In addition, the trial court specifically indicated

that it wished to see deeds executed by defendant. The judicial deeds that resulted from the civil litigation imposed additional costs on the complainants and were not executed by defendant.

Accordingly, because the trial court's intent to have defendant affirmatively transfer the property, rather than just acquiesce in their judicial transfer, was clear, and because defendant failed to transfer the property, the trial court did not abuse its discretion in finding that defendant did not execute a quitclaim deed within 60 days of the court order and, thus, defendant remained obligated to perform 240 hours of community service as a condition of her probation.

2. DNA Collection and Trauma Center Fees

In sentencing defendant, the trial court imposed a \$12 fee for DNA collection and a \$100 trauma center fee. Defendant contends that the trial court lacked the authority to impose these fees. The State agrees, as do we.

Section 5—4—3 of the Unified Code of Corrections (730 ILCS 5/5—4—3 (West 2008)), which provides for the collection of DNA and a \$200 DNA analysis fee, does not authorize trial courts to impose on defendants the costs of collecting the DNA. Accordingly, the \$12 fee imposed on defendant must be vacated. *People v. Hunter*, 358 Ill. App. 3d 1085, 1097 (2005).

In addition, the trial court was not authorized to impose a trauma center fee. That fee may be imposed only upon those convicted of driving under the influence of alcohol or drugs (730 ILCS 5/5—9—1(c—5) (West 2008)), certain drug-related offenses (730 ILCS 5/5—9—1.1 (West 2008)), or certain weapons offenses (730 ILCS 5/5—9—1.10 (West 2008)). Defendant was not convicted of any of these offenses. Accordingly, the \$100 trauma center fee must also be vacated.

CONCLUSION

For the foregoing reasons, we vacate the \$12 DNA collection fee and the \$100 trauma center fee. In all other respects, the judgment of the circuit court of Kane County is affirmed.

Affirmed in part and vacated in part.