

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2011-05-043
 :
 - vs - : OPINION
 : 11/7/2011
 :
 STANLEY J. HALL, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 08CR25141

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive,
Lebanon, Ohio 45036, for plaintiff-appellee

Barbara A. Lahmann, 65 Tahlequah Trail, Springboro, Ohio 45066, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Stanley J. Hall, appeals the sentence he received from the Warren County Court of Common Pleas following his conviction for one count of child endangering. For the reasons outlined below, we affirm.

{¶2} On June 30, 2008, appellant was indicted for one count of felonious assault in violation of R.C. 2903.11(A)(1) and one count of child endangering in violation of R.C. 2919.22(B)(1), both second-degree felonies. On November 25, 2008, after posting bail, and

upon entering into a plea agreement, appellant pled guilty to the child endangering charge in exchange for the felonious assault charge being dismissed. Thereafter, on January 9, 2009, the trial court held a sentencing hearing where it sentenced appellant to serve seven years in prison and ordered him to pay "restitution for attorney fees and the cost of prosecution." That same day, the trial court filed its judgment entry of sentencing that included an order requiring appellant to pay "all prosecution costs, court appointed counsel costs, and any fees permitted pursuant to R.C. §2929.18(A)(4), for which execution is hereby ordered."

{¶3} Appellant now appeals from his sentence, raising a single assignment of error for review.

{¶4} "THE TRIAL COURT'S SENTENCE IS CONTRARY TO LAW."

{¶5} In his single assignment of error, appellant argues that the trial court's sentencing decision was contrary to law. In support of this claim, appellant presents three issues for our review. We will address each of these three issues separately.

{¶6} Initially, appellant argues that his sentence is contrary to law for the trial court "did not consider on the record the factors specified in either R.C. 2929.11 or R.C. 2929.12." We disagree.

{¶7} While the trial court did not specifically verbalize at the sentencing hearing that it had considered the overriding purposes and principles of felony sentencing as outlined in R.C. 2929.11, nor the seriousness and recidivism factors listed in R.C. 2929.12, the trial court made clear in its sentencing entry that it had properly considered these necessary sentencing statutes. See *State v. Lancaster*, Butler App. No. CA2007-03-075, 2008-Ohio-1665, ¶4; *State v. Leopard*, Clark App. No. 2010-CA087, 2011-Ohio-3864, ¶44; *State v. Parson*, Auglaize App. No. 2-10-17, 2011-Ohio-168, ¶16. In fact, the trial court specifically stated in its sentencing entry that it considered "the principles and purposes of sentencing under R.C. §2929.11, and has balanced the seriousness and recidivism factors under R.C. §2929.12."

In turn, although a statement on the record at the sentencing hearing would have likely clarified this issue for appellant, appellant's sentence is not contrary to law merely because the trial court failed to specifically cite to either statute during his sentencing hearing. See *State v. Miller*, Clark App. No. 09-CA-28, 2010-Ohio-2138, ¶43. Appellant's first argument, therefore, is overruled.

{¶8} Next, appellant argues that the trial court "erred in ordering [him] to pay court appointed counsel fees." In support of this claim, appellant, relying on recent unemployment statistics, argues that although the trial court determined he was able to work, "[b]eing able to work is not the same as actually working." However, while we are mindful of the continued economic struggles facing the region, we find the record is devoid of any evidence indicating appellant suffered from any physical or mental disabilities that would prevent him from obtaining gainful employment. In fact, when asked by the trial court whether he had any disabilities that would prevent him from finding work in the future, appellant, who was just 25 years old at the time, answered that he did not.

{¶9} In addition, while not part of the record, before finding appellant was "reasonably expected to have the means to pay" the costs of his court-appointed counsel and other financial sanctions, the trial court indicated that it had considered his presentence investigation report, a document detailing his financial and personal information. See *State v. Christman*, Preble App. Nos. CA2009-03-007, CA2009-03-008, 2009-Ohio-6555, ¶22-27. In turn, while appellant may face some difficulties in obtaining employment upon his release, because there is nothing in the recording indicating appellant did not have the ability to obtain employment in order to pay the costs of his court-appointed counsel in the future, we find no error in the trial court's decision ordering him to pay the same. See R.C. 2941.51(D); see, also, *State v. Smith*, Warren App. No. CA2010-06-057, 2011-Ohio-1188, ¶38-41 (finding no error in the trial court's decision ordering defendant to pay the cost of his court-appointed

counsel where he had "future ability to pay" said costs); *State v. Lane*, Butler App. No. CA2002-03-069, 2003-Ohio-1246, ¶21-23. Appellant's second argument, therefore, is overruled.

{¶10} In his final argument, appellant claims the trial court erred by including in its judgment entry of sentence an order requiring him to pay "any fees permitted pursuant to R.C. 2929.18(A)(4)," which, according to him, "were not imposed during the sentencing hearing." We disagree.

{¶11} In *State v. Clark*, Ashtabula App. No. 2006-A-0004, 2007-Ohio-1780, overruled on other grounds, 119 Ohio St.3d 239, 2008-Ohio-3748, the Eleventh District Court of Appeals was faced with a comparable situation to the case at bar. In *Clark*, while merely verbalizing that the defendant was to pay "court costs" at the sentencing hearing, the trial court included language in its sentencing entry indicating appellant was to also pay "any fees permitted pursuant to R.C. 2929.18(A)(4)." *Id.* at ¶33. In its decision vacating the "additional sanction" included in the trial court's sentencing entry, the Eleventh District determined that "a trial court errs when it imposes additional sanctions, including mandatory court costs, in its sentencing entry outside the defendant's presence." *Id.* at ¶35. While factually similar, we disagree with the Eleventh District's analysis in *Clark*, and decline to follow that precedent here.

{¶12} Pursuant to R.C. 2929.18(A)(4), in addition to imposing mandatory court costs under to R.C. 2947.23, "the court imposing a sentence upon an offender for a felony *may* sentence the offender to any financial sanction" including, but not limited to, "[a] state fine or costs as defined in section 2949.111 of the Revised Code." (Emphasis added.) "State fines or costs," as defined by R.C. 2949.111(A)(2), means "any costs imposed or forfeited bail collected by the court under section 2743.70 of the Revised Code for deposit into the reparations fund or under section 2949.091 of the Revised Code for deposit into the indigent

defense support fund established under section 120.08 of the Revised Code and all fines, penalties, and forfeited bail collected by the court and paid to a law library association under section 307.515 of the Revised Code."

{¶13} However, while the language of R.C. 2929.18(A)(4) merely allows for the court to order a felony offender to pay "a state fine or costs as defined in [R.C. 2949.111(A)(2)]," both R.C. 2743.70(A)(1)(a) and R.C. 2949.091(A)(1)(a)(i) require the court to impose upon the offender an additional thirty dollars "as cost in the case in addition to any other court costs that the court is required to by law to impose upon the offender" when the offender is convicted of or pleads guilty to a felony. See *State v. Ricketts*, Adams App. No. 07CA846, 2008-Ohio-1637, ¶4; *Cleveland v. Tighe*, Cuyahoga App. Nos. 81767 and 81795, 2003-Ohio-1845, ¶9-13.

{¶14} Moreover, pursuant to R.C. 2743.70(A)(1)(b) and R.C. 2949.091(A)(1)(b), the trial court "shall not waive" the payment of these "court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender." In turn, "[t]he language of R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1), thus, unambiguously discloses that the General Assembly's intention in enacting these sections was to provide for the imposition of a specific sum of money as costs in any case in which a person is convicted or pleads guilty[.]" *Middleburg Heights v. Quinones*, Cuyahoga App. No. 88242, 2007-Ohio-3643, ¶92, quoting 1991 Ohio Atty.Gen.Ops. No. 91-022, at 4-5.

{¶15} Construing these statutes in pari materia, although R.C. 2929.18(A)(4) indicates the trial court has some discretion in imposing a state fine or costs as defined by R.C. 2949.111(A)(2), as noted above, this discretion only applies where "the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender." See R.C. 2743.70(A)(1)(b) and R.C. 2949.091(A)(1)(b); see, also, R.C. 2949.092. The trial court, therefore, was required to impose these mandatory court costs absent a

"finding of indigency." See *Tighe* at ¶13.

{¶16} In this case, at the sentencing hearing, and upon finding appellant had the future ability to pay the costs of his court-appointed counsel and other financial sanctions, the trial court ordered appellant to pay "restitution for attorney fees and the cost of prosecution." The term "cost of prosecution," although not defined, is synonymous with "court costs" as defined by R.C. 2949.111(A)(1), meaning "any assessment that the court requires an offender to pay to defray the costs of operating the court." See *State v. Boice*, Washington App. No. 08CA24, 2009-Ohio-1755, ¶7, citing *State v. Christy*, Wyandot App. No. 16-04-04, 2004-Ohio-6963, ¶22. In turn, because the "costs" required to be collected by the court pursuant to R.C. 2743.70 and R.C. 2949.091 are mandatory additional "court costs," we find the trial court, although not specifically citing to these statutes, did order appellant to pay these monies at the sentencing hearing when it ordered him to pay "the cost of prosecution." By ordering appellant to pay the "cost of prosecution," this invariably included all mandatory court costs, including those "fees as permitted under R.C. 2929.18(A)(4)." Therefore, appellant's final argument is without merit and the assignment of error is overruled.

{¶17} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.