

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FILED
19 APR -2 PM 11:36
CARBON COUNTY
PROTHONOTARY

BOROUGH OF PARRYVILLE,
CARBON COUNTY, PENNSYLVANIA
Plaintiff

v.

MARK W. STEMLER,
Defendant

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:
:

No. 17-2289

Robert S. Frycklund, Esquire

Counsel for Plaintiff

John L. Siejk, Esquire

Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - April 2, 2019

This Memorandum Opinion addresses Plaintiff Borough of Parryville's ("Parryville" or "Plaintiff") "Plaintiff's Motion for Judgment on the Pleadings Pursuant to Pa.R.C.P. No. 1034 and Carbon County Local Rule of Civil Procedure No. 1034(a)" ("Motion for Judgment on the Pleadings"). For the reasons set forth herein, Parryville's Motion for Judgment on the Pleadings is **DENIED**.

I. FACTUAL AND PROCEDURAL BACKGROUND.

A. Parryville's Complaint.

Parryville initiated this matter by its Complaint filed against Defendant Mark W. Stemler ("Stemler" or "Defendant") on February 16, 2018. In its Complaint, Parryville alleges *inter alia* that Stemler, without obtaining a zoning permit, constructed

a dining/bar patio area and a deck on a parcel of real estate owned by Stemler and located at 101 Center Street in Parryville. See Complaint at ¶¶3, 5.

Parryville alleges that on April 10, 2017, its zoning officer sent an enforcement notice (the "April 10, 2017 Notice of Violation") to Stemler "in accordance with Section 616.1 of the MPC [Municipalities Planning Code, 53 P.S. §10101 et seq.] and Section 7.201 of the Zoning Ordinance." See Complaint at ¶8.¹

¹ The Court may take judicial notice of the relevant Parryville Borough Zoning Ordinance, which in this matter is the Parryville Borough Zoning Ordinance adopted on, and effective as of, August 4, 1986. ("1986 Parryville Borough Zoning Ordinance").

Section 6107 of Title 42 of the Pennsylvania Consolidated Statutes Annotated provides that:

§ 6107. Judicial notice of certain local government ordinances.

(a) **General rule.**--The ordinances of municipal corporations of this Commonwealth shall be judicially noticed.

(b) **Manner of proving ordinances.**--The tribunal may inform itself of such ordinances in such manner as it may deem proper and the tribunal may call upon counsel to aid it in obtaining such information.

(c) **Construction of ordinances.**--The construction of such ordinances shall be made by the court and not by the jury and shall be reviewable.

See 42 Pa.C.S.A. §6107.

The April 10, 2017 Notice of Violation, attached to the Complaint as Exhibit "A," does not reference the Municipalities Planning Code. It does, however, contain multiple references to the 1986 Parryville Borough Zoning Ordinance, including Section 7.903 thereof, which explicitly provides for imprisonment upon conviction and failure to pay the amount of any judgment. The April 10, 2017 Notice of Violation specifically states:

"Section 7.401 of the Parryville Borough Zoning Ordinance states, 'The purpose of the Zoning Permit is to determine compliance with the provision of this Ordinance, and no person shall erect, structurally alter in a major way, or convert any structure, building or part thereof, nor alter the use of any land, subsequent to the adoption of this Ordinance, until a Zoning Permit has been issued by the Zoning Official.'

In order to comply:

- You shall make complete application to the zoning official for a zoning permit no later than May 12, 2017. The application shall be for the following:
 - Dining/bar patio area
 - Deck structure
- All pertinent information required by the Zoning official to complete the permit review shall be submitted no later than May 12, 2017. This includes:
 - Completed application
 - Permit fee
 - Site plan showing sizes and locations of all structures, and paving, dimensions to property lines from each structure.
- All uses and structures on the site shall be made compliant in accordance with a valid Zoning Permit issued by the Zoning Official no later than June 9, 2017.

Failure to comply will result in further action in accordance with Section 7.903 which states, "Any person, firm or corporation violating any provision of this Ordinance shall, upon conviction, be punished by a fine not to exceed \$100 for any offense, recoverable with costs, together with judgment or imprisonment not exceeding thirty (30) days if the amount of said judgment is not paid. Each day that a violation is permitted shall constitute a separate offense."

See Complaint at Exhibit "A" (April 10, 2017 Notice of Violation) (bold-faced, italicized emphasis added) (italics and bold-faced underlined in original).

Parryville alleges that Stemler neither submitted an application for a zoning permit nor appealed the April 10, 2017 Notice of Violation to the Parryville Zoning Hearing Board within the delineated twenty day appeal period. See Complaint at ¶11. As a consequence, Parryville alleges that, on or about July 31, 2017, it "instituted an enforcement proceeding against the Defendant before the Honorable Magisterial District Judge William J. Kissner to docket number MJ-56302-CV-0000153-2017, seeking the imposition of a judgment pursuant to Section 617.2 of the MPC **and Section 7.903 of the Zoning Ordinance.**" See Complaint ¶14 (emphasis added).

Subsequently, Parryville asserts that "[o]n October 3, 2017, Magisterial District Judge William J. Kissner entered a monetary judgment in favor of the Plaintiff and against the Defendant in the amount of Seven Hundred Eighty-Two Dollars and Fifty Cents

(\$782.50), plus reimbursement of the Plaintiff's filing fees in the amount of One Hundred Four Dollars and Fifty Cents (\$104.50)." See Complaint ¶15.

By virtue of its Complaint, Parryville requests *inter alia* that the Court enter judgment against Stemler "...in the amount of One Hundred Dollars (\$100.00) per day for each day that the violations have continued..." and for a court order directing Stemler "...to immediately remove the dining/bar patio area and deck from the Subject Property..." See Complaint at [un-numbered page] 5.

B. Stemler's Answer and Stemler's Amended New Matter & Counterclaims.

In his Answer, Stemler admits that "...the document attached to the Complaint as Exhibit "A" [the April 10, 2017 Notice of Violation] speaks for itself" and, consistent with the text of the April 10, 2017 Notice of Violation, "...denies that the April 10, 2017 Notice of Violation mentions the Municipalities Planning Code." See Answer at ¶¶8, 9, 10.²

² Stemler filed his casually titled "Answer W/ New Matter & Counterclaims" ("Answer") on March 20, 2018. After judicial disposition of multiple sets of preliminary objection, Stemler filed his Amended New Matter & Counterclaims on November 15, 2018. While the "Answer" portion of the "Answer W/ New Matter & Counterclaims" remains operative, the "New Matter & Counterclaims" portion of the "Answer W/New Matter & Counterclaims" has been superseded by the Amended New Matter & Counterclaims filed on November 15, 2018.

With respect to the magisterial level proceedings before Magisterial District Judge Kissner, Stemler denies that "Plaintiff instituted any proceeding under the MPC" and also denies "that Judge Kissner rendered any decision under the MPC against Plaintiff." See Answer at ¶¶14-15. Stemler does not specifically deny Parryville's allegation that it sought judgment pursuant to Section 7.903 of the 1986 Parryville Borough Zoning Ordinance. See Answer at ¶14.

In his Amended New Matter & Counterclaims, Stemler contends *inter alia* that "Plaintiff's claims are barred by the Constitution of the United States of America" and that "Plaintiff's claims are barred for infringing upon Plaintiff's constitutionally protected rights as described more fully in that action pending before the Federal District Court for the Middle District of Pennsylvania and styled "Stemler et. al. v. Borough of Parryville et. al. [sic], 3:18 cv 01763 MEM." See Amended New Matter & Counterclaims at ¶¶33, 34 (New Matter).³

³ This Court does not possess the authority to consider Stemler et al. v. Borough of Parryville et al., 3:18-cv-01763-MEM.

Rule 1019(g) of the Pennsylvania Rules of Civil Procedure states:

"(g) Any part of a pleading may be incorporated by reference in another part of the same pleading or in another pleading in the same action. A party may incorporate by reference any matter of record in any State or Federal court of record whose records are within the county in which the action is pending or any matter which is recorded or transcribed verbatim in

C. Parryville's Motion for Judgment on the Pleadings and Stemler's Opposition Thereto.

On December 3, 2018, Parryville filed its Motion for Judgment on the Pleadings and an accompanying "Memorandum of Law in Support of Plaintiff's Motion for Judgment on the Pleadings Pursuant to Pa.R.C.P. No. 1034 and Carbon County Local Rule of Civil Procedure 1034(a)" ("Memorandum of Law in Support of Motion for Judgment on the Pleadings").⁴ Parryville seeks, *inter alia*:

"a. An Order of Court adjudicating Defendant to be in violation of Section 7.401 of the Parryville Borough Zoning Ordinance, by reason of his construction and placement of a dining/bar patio area and deck upon the Subject Property without first [having] duly applied for and obtained a zoning permit from the Parryville Borough Zoning Officer;

the office of the prothonotary, clerk of any court of record, recorder of deeds or register of wills of such county."

See Pa.R.C.P. 1019(g).

Pennsylvania courts long have interpreted Rule 1019(g) to mean that only those records located within the county in which the action is pending may be incorporated by reference into a pleading. See *Huda v. Kirk*, 44 Pa.D.&C.3d 624, 627-628 (C.C.P. Montgomery 1987) citing *inter alia Finch v. White*, 190 Pa. 86, 88, 42 A. 457, 457-458 (1899); *Stockley v. McClurg*, 14 Pa.Super. 629, 634 (1900). Stemler's attempt to incorporate the entire record of an action pending in a court that does not sit in Carbon County runs squarely afoul of the straightforward guidance set forth in Rule 1019(g). Rule 1019(g) precludes this Court's consideration of Stemler et al. v. Borough of Parryville et al., 3:18-cv-01763-MEM.

⁴ As discussed in more detail, *infra*, Stemler did not initially endorse his Amended New Matter & Counterclaims with a notice to plead. Parryville, without further pleading and concomitant with contending the pleadings in this matter to be closed, filed the subject Motion for Judgment on the Pleadings.

b. An Order of Court directing Defendant to immediately cease the use of the subject dining/bar patio area and deck from the Subject Property, and to either remove same or duly and properly apply for the appropriate zoning permit(s) within thirty (30) days;

c. A judgment in favor of Plaintiff and against Defendant in the amount of One Hundred Dollars (\$100.00) per day for each day that the violations have continued from the date of the Notice of Violation on April 10, 2017;

d. A judgment in favor of Plaintiff and against Defendant for reimbursement of all legal costs and reasonable attorneys' fees and costs incurred by Plaintiff as a result of Defendants' unjust and unlawful actions as set forth hereinabove;

e. An Order of Court specifically retaining this Court's jurisdiction over this matter to ensure that the Court's directives are strictly adhered to by Defendant, and to hear any and all claims for contempt of same..."

See Motion for Judgment on the Pleadings at [un-numbered pages] 4, 5.

In response, Stemler, on January 7, 2019, filed his Brief in Opposition to Motion for Judgment on the Pleadings.⁵ Stemler asserts therein that, because "[i]mprisonment is a potential sanction under the Parryville Borough Zoning Ordinance..."

⁵ The Court recognizes that Stemler filed his Brief in Opposition to Motion for Judgment on the Pleadings at 11:56 a.m. on Monday, January 7, 2019 - the first business day following the Friday, January 4, 2019 filing deadline the Court set for Stemler in its December 5, 2018 Scheduling Order. The Court finds that Stemler's delay of less than four business hours in filing his Brief in Opposition to Motion for Judgment on the Pleadings, addressing an April 10, 2017 Notice of Violation that had been issued over twenty months prior thereto, to be non-prejudicial to Parryville and to not affect any substantial rights of Parryville.

"Respondent [Stemler] is entitled to the protections afforded in traditional criminal proceeds [sic], including a hearing during which the alleged violation must be proved beyond a reasonable doubt." See Brief in Opposition to Motion for Judgment on the Pleadings at [un-numbered page] 6.

This Court conducted oral argument with respect to the Motion for Judgment on the Pleadings on February 11, 2019.

II. DISCUSSION.

A. Rule 1034 of the Pennsylvania Rules of Civil Procedure.

Rule 1034 of the Pennsylvania Rules of Civil Procedure, entitled "Motion for Judgment on the Pleadings," provides that [a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for judgment on the pleadings" and that "[t]he court shall enter such judgment or order as shall be proper on the pleadings" See Pa.R.C.P. 1034.

"[A] motion for judgment on the pleadings is in the nature of a demurrer; all of the opposing party's allegations are viewed as true and only those facts which have been specifically admitted by him may be considered against him." See *Department of Public Welfare v. Joyce*, 571 A.2d 536 (1990) (citations omitted). See also *Pennsylvania Association of Life Underwriters v. Foster*, 608 A.2d 1099 (Pa.Cmwlth. 1992). In deciding upon a motion for judgment on the pleadings, the Court may consider only the

pleadings and any documents attached thereto. *See Pfister v. City of Philadelphia*, 963 A.2d 593, 497 (Pa.Cmwlth. 2009). *See also Department of Public Welfare v. Joyce*, 571 A.2d at 536 (citations omitted). A motion for judgment on the pleadings may summarily dispose of a case when no genuine issue of material facts exists, the moving party is entitled to judgment as a matter of law, and to proceed to trial would be a fruitless exercise. *See Simon v. Commonwealth*, 659 A.2d 631 (Pa.Cmwlth. 1995); *Commonwealth v. Riverview Leasing, Inc.* 648 A.2d 850 (Pa.Cmwlth. 1994); *In re Estate of Blom*, 642 A.2d 498 (Pa.Super. 1994). *See also Giddings v. Tartler*, 567 A.2d 766 (1989; *Pennsylvania Association of Life Underwriters v. Foster*, 608 A.2d 1099 (Pa.Cmwlth. 1992). *See generally, Citicorp North America, Inc. v. Thornton*, 707 A.2d 536, 538 (Pa.Super. 1998).

B. The Closing of the Pleadings in this Matter.

In the instant matter Stemler filed his Amended New Matter & Counterclaims - without a notice to plead, on November 15, 2018. On December 3, 2018, Parryville filed its Motion for Judgment on the Pleadings. Parryville subsequently filed a notice to plead with respect to the Amended New Matter & Counterclaims on December 13, 2018.

Insofar as Stemler did not initially endorse its Amended New Matter and Counterclaim with a notice to plead, Parryville did not

have an obligation to respond. Rule 1026(a) of the Pennsylvania Rules of Civil Procedure provides, in pertinent part hereto, that "...every pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading, *but no pleading need be filed unless the preceding pleading contains a notice to defend or is endorsed with a notice to plead.*" See Pa.R.C.P. 1026(a) (emphasis added). With no further pleading required by operation of procedural rule as of the filing date of Parryville's Motion for the Judgment on the Pleadings, the Court finds the pleadings to be closed.

C. Rule 1029 of the Pennsylvania Rules of Civil Procedure.

Rule 1029(a) of the Pennsylvania Rules of Civil Procedure provides that:

"[a] responsive pleading shall admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive. A party denying only a part of an averment shall specify so much of it as is admitted and shall deny the remainder. Admissions and denials in a responsive pleading shall refer specifically to the paragraph in which the averment admitted or denied is set forth."

See Pa.R.C.P. 1029(a).

Rule 1029(b) of the Pennsylvania Rules of Civil Procedure provides that "[a]verments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication" and that [a] general denial or a demand

for proof... shall have the effect of an admission." See Pa.R.C.P. 1029(b). See also *Swift v. Milner*, 538 A.2d 28, 30-31 (Pa.Super. 1988); *First Wisconsin Trust Co. v. Strausser*, 653 A.2d 688, 692 (Pa.Super. 1995); *City of Philadelphia v. Hertler*, 539 A.2d 468, 472 (1988) (general denial unacceptable and deemed an admission where obvious that defendant possessed sufficient knowledge and means of information stood within defendant's control).

Additionally, the Superior Court has held that, "[w]hen it is obvious . . . that the information necessary to formulate a specific denial is neither within the exclusive control of the adverse party nor unascertainable after reasonable investigation, the court ought to ignore the 1029(c) averment." See *Scales v. Sheffield Fabricating and Mach. Co.*, 393 A.2d 680, 682-83 (Pa.Super. 1978). See also Pa.R.C.P. 1029(c) ("A statement by a party that after reasonable investigation the party is without knowledge or information sufficient to form a belief as the truth of an averment shall have the effect of a denial."); *Cercone v. Cercone*, 386 A.2d 1, 4 (Pa.Super. 1978) (A defendant's assertion that after reasonable investigation defendant cannot determine the truth or falsity of assertions in a complaint is not an alternative to a specific denial where the defendant clearly had sufficient personal knowledge to admit or deny the allegation.).

Finally, Rule 1029(d) of the Pennsylvania Rules of Civil Procedure states that "[a]verments in a pleading to which no responsive pleading is required shall be deemed to be denied." See Pa.R.C.P. 1029(d).

D. The Enforcement of Municipal Ordinances that Provide for Imprisonment Upon Conviction or Failure to Pay a Fine Must Follow the Pennsylvania Rules of Criminal Procedure.

The Commonwealth Court, in *Township of Penn v. Seymour*, 708 A.2d 861 (Pa.Cmwltth. 1998), while acknowledging the decriminalization of zoning enforcement actions brought under (1) the Pennsylvania Municipalities Planning Code and (2) local ordinances that do not provide for imprisonment as a possible penalty for violation of their provisions, specifically recognized the continuing applicability of the Pennsylvania Rules of Criminal Procedure in cases where the violation of a municipal ordinance *may* result in a fine or imprisonment.

In particular, the Commonwealth Court recited:

"The General Assembly, in the Act of December 21, 1988, P.L. 1329, repealed Section 616 of the MPC, 53 P.S. §10616, which provided that zoning ordinances were to be enforced through summary criminal proceedings. Under Section 616, a violator could be imprisoned for a maximum of 60 days for failing to pay a fine.

By repealing Section 616, the General Assembly decriminalized zoning enforcement actions. Now, Section 617.2 of the MPC, 53 P.S. §10617.2, provides for the following enforcement remedies:

Any person... who... has violated... the provisions of any zoning ordinance... shall, upon being found liable therefor in a *civil enforcement proceeding* commenced by a municipality, pay a judgment of not more than \$500 plus all court costs... If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the applicable rules of civil procedure... (Emphasis added.)

Imprisonment is not an available remedy under Section 617.2 of the MPC. In addition, our review of the Ordinance [at issue in *Township of Penn v. Seymour*] reveals that imprisonment is not a possibility for the violation of its provisions, and that the penalties imposed under the Ordinance are substantially the same as Section 617.2 of the MPC.

See *Township of Penn v. Seymour*, 708 A.2d at 865 (emphasis in original).

The Commonwealth Court then highlighted the ongoing viability of criminal procedures and protections in enforcement cases in which the relevant municipal ordinance ***does in fact provide*** for imprisonment upon conviction or upon failure to pay a fine - a formulation that addresses ordinance provisions and not the remedy actually pursued by a municipal body. The Commonwealth Court specifically recited Rule 86(a) of the Pennsylvania Rules of Criminal Procedure *verbatim*, and stated:

"When an appeal is authorized by law in a summary proceeding, ***including a prosecution for a violation of a municipal ordinance which provides for imprisonment upon conviction or upon failure to pay a fine***, an appeal shall be perfected by filing a notice of appeal within 30 days after the conviction... and by appearing in the

court of common pleas for a trial *de novo*. The notice of appeal shall be filed with the clerk of courts."

See *Township of Penn v. Seymour*, 708 A.2d at 865 quoting Pa.R.Crim.P. 86(a).⁶ Finally, the Commonwealth Court in *Township of Penn v. Seymour* specifically referenced prior Pennsylvania Supreme Court precedent that held that "[w]hen the violation of a municipal ordinance may result in a fine or imprisonment, the enforcement of such ordinances must follow the Rules of Criminal Procedure regardless of the fact that the action is technically civil." See *Township of Penn v. Seymour*, 708 A.2d at 865 citing *City of Philadelphia v. Pennrose Management Co.*, 598 A.2d 105 (1991).

One month after the Commonwealth Court decided *Township of Penn v. Seymour*, the Pennsylvania Supreme Court, in a zoning enforcement action styled *Town of McCandless v. Bellisario*, 709 A.2d 379 (Pa. 1998) specifically reinforced that "...enforcement of municipal ordinances **that provide for imprisonment upon conviction of failure to pay a fine or penalty** must follow the Pennsylvania Rules of Criminal Procedure..." See *Town of McCandless v. Bellisario*, 709 A.2d at 381. In so doing, the Pennsylvania Supreme Court cited with approval language from the

⁶ Effective April 1, 2001, this language appears as part of Rule 460(A) of the Pennsylvania Rules of Criminal Procedure. See Pa.R.C.P. 460(A), Comment.

Commonwealth Court's decision in *City of Philadelphia v. Pennrose Management Co.* stating that "...a person who violates an ordinance which provides for imprisonment upon conviction or failure to pay a fine is entitled to the same protections afforded in criminal proceedings." See *Town of McCandless v. Bellisario*, 709 A.2d at 381 quoting *City of Philadelphia v. Pennrose Management Co.* 598 A.2d at 109.

E. A Genuine Issue of Material Fact Exists With Respect to the Complete Nature of the Magisterial Level Enforcement Proceedings; Stemler may not have been Afforded the Protections or Procedures Afforded to Criminal Defendants under the Pennsylvania Rules of Civil Procedure and therefore Parryville's Motion for Judgment on the Pleadings Must be Denied.

A straightforward application of Rule 1029 of the Pennsylvania Rules of Civil Procedure to the pleadings in this matter highlighted above reveals that a genuine issue of material fact exists with respect to the underlying magisterial level proceeding regarding the April 10, 2017 Notice of Violation.

Stemler's allegations in his Amended New Matter & Counterclaims that "Plaintiff's claims are barred by the Constitution of the United States of America" and that "Plaintiff's claims are barred for infringing upon Plaintiff's constitutionally protected rights as described more fully in that action pending before the Federal District Court for the Middle District of Pennsylvania and styled "Stemler et. al. v. Borough of Parryville

et. al. [sic], 3:18 cv 01763 MEM" raise constitutional concerns and Parryville has not challenged the specificity of the allegations. See Amended New Matter & Counterclaims at ¶¶33, 34 (New Matter). By operation of Rule 1029 of the Pennsylvania Rules of Civil Procedure, these allegations by Stemler have been deemed to be denied by Parryville. See Pa.R.C.P. 1029(d) ("Averments in a pleading to which no responsive pleading shall be deemed to be denied.").

As delineated above, Stemler contends that, because "[i]mprisonment is a potential sanction under the Parryville Borough Zoning Ordinance," "Respondent [Parryville Properties] is entitled to the protections afforded in traditional criminal proceeds [sic], including a hearing during which the alleged violation must be proved beyond a reasonable doubt." See Brief in Opposition to Motion for Judgment on the Pleadings at [un-numbered page] 6. The Court finds Stemler's legal contention to be meritorious.

This Court, based upon the pleadings before it, confronts questions of material fact with respect to the constitutional protections afforded to Stemler, and the nature of the proceedings, at the magisterial level.

Parryville's April 10, 2017 Notice of Violation attached as Exhibit "A" to the Complaint contains a specific, pointed reference

to Section 7.903 of the 1986 Parryville Borough Zoning Ordinance and the language therein that states "[a]ny person, firm or corporation violating any provision of this Ordinance shall, upon conviction, be punished by a fine not to exceed \$100 for any offense, recoverable with costs, together with judgement or imprisonment not exceeding thirty (30) days of the amount of the judgment is not paid." See Complaint at Exhibit "A" (April 10, 2017 Notice of Violation). In contrast, Parryville's Complaint contains no reference to the Municipalities Planning Code. See Complaint at Exhibit "A" (April 10, 2017 Notice of Violation).

In this action, Parryville alleges that it sought "the imposition of a judgment pursuant to Section 617.2 of the MPC **and Section 7.903 of the Zoning Ordinance.**" and that it did so in an action bearing a civil docket number, alleging that "[o]n or about July 31, 2017, the Plaintiff instituted an enforcement proceeding against the Defendant before Honorable Magistrate District Judge William J. Kissner to docket number MJ-56302-CV-0000153-2017..." See Complaint at ¶14.

The pleadings contain no indicia that Stemler has been afforded the constitutional and procedural protections afforded by the Pennsylvania Rules of Criminal Procedure and issues of material fact remain pertaining thereto. The pleadings do at a minimum, however, indicate that Stemler stood as the object of an

enforcement action which, by the explicit terms of the April 10, 2017 Notice of Violation and Parryville's own allegations in this action, proceeded, at least in part, pursuant to a zoning ordinance which unequivocally provides for imprisonment upon conviction or failure to pay a fine.

Accordingly, since the pleadings in this matter indicate that genuine issues of material fact exist as to whether Stemler has had the protections and procedures afforded to criminal defendants under the Pennsylvania Rules of Criminal Procedure, Parryville's Motion for Judgment on the Pleadings must be denied.

III. CONCLUSION.

After having reviewed the pleadings in this matter in accordance with Rule 1034 of the Pennsylvania Rules of Civil Procedure and for the reasons set forth herein, the Court enters the following order:

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BOROUGH OF PARRYVILLE,
CARBON COUNTY, PENNSYLVANIA
Plaintiff

v.

MARK W. STEMLER,
Defendant

No. 17-2289

Robert S. Frycklund, Esquire

Counsel for Plaintiff

John L. Siejk, Esquire

Counsel for Defendant

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CARBON COUNTY
PROTHONOTARY

ORDER OF COURT

AND NOW, this 2nd day of April, 2019, upon consideration
of

- the December 3, 2018 "Plaintiff's Motion for Judgment
on the Pleadings Pursuant to Pa.R.C.P. No. 1034 and
Carbon County Local Rule of Civil Procedure 1034(a)"
filed by Plaintiff Borough of Parryville,


- the December 3, 2018 "Memorandum of Law in Support of
Plaintiff's Motion for Judgment on the Pleadings
Pursuant to Pa.R.C.P. No. 1034 and Carbon County Local
Rule of Civil Procedure 1034(a)" filed by Borough of
Parryville,

- the January 7, 2019 "Brief in Opposition to Motion for
Judgment on the Pleadings" filed by Defendant Mark W.
Stemler,

and upon consideration of any argument thereon and upon
comprehensive review of the pleadings in this matter, it is hereby

ORDERED and DECREED that Plaintiff's Motion for Judgment on the Pleadings is DENIED.

BY THE COURT:



Joseph J. Matika