

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION - LAW

COMMONWEALTH OF PENNSYLVANIA, :

v. :

No. SA-35-2022

BARBARA CHRISTINA GONCALVES, :

Appellant :

Robert T. Yurchak, Esquire

Lansford Borough Solicitor

Barbara Christina Goncalves

Pro Se

MEMORANDUM OPINION

Serfass, J. - December 30, 2022

Barbara Christina Goncalves (hereinafter "Appellant") appeals from this Court's Order of November 1, 2022, pursuant to which she was sentenced to pay a series of fines in regard to her continued violations of the Lansford Borough Property Maintenance Code. We file the following Memorandum Opinion pursuant to Pa.R.A.P. 1925(a), respectfully recommending that the instant appeal be denied and that our Order of November 1, 2022 be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

Appellant is the owner of real property situated at 340 West Snyder Avenue, Lansford, Pennsylvania. On October 5, 2020, Appellant received the following citations regarding the subject property: L.O. § 108.1.3 (Structure Unsafe for Human Occupation); L.O. § 108.4.1 (Removal of Condemnation Order Placard); L.O. §

302.2 (Grading and Drainage); and L.O. § 302.4 (Weeds). Appellant was convicted of all four (4) summary offenses on June 13, 2022 following an evidentiary hearing at which Appellant failed to appear before the Honorable Casimir T. Kosciolk of Carbon County Magisterial District Court 56-3-03.

Thereafter, Appellant filed a Notice of Appeal in the Court of Common Pleas of Carbon County. A trial *de novo* was held before the undersigned on November 1, 2022. During the *de novo* trial, James Dean, Lansford Borough Zoning and Code Enforcement Officer, and James Golla and Dorothy Golla, Appellant's neighbors,¹ testified on behalf of the Commonwealth. Appellant testified on her behalf. At the conclusion of the *de novo* trial, Appellant was convicted of the aforesaid offenses. She was immediately sentenced to pay the costs of prosecution and four (4) separate fines in the amount of two hundred dollars (\$200.00). Appellant then filed a Notice of Appeal to the Superior Court of Pennsylvania that same day.² On November 2, 2022, we entered an order directing Appellant to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). In compliance with our order, Appellant filed her concise statement on November 21, 2022.

¹ The Gollas reside at 338 West Snyder Avenue, Lansford, Pennsylvania.

² We note that Appellant should have filed her appeal to the Commonwealth Court of Pennsylvania. *See* 42 Pa.C.S. §762(a)(4). The instant appeal should not be dismissed on this basis, but rather transferred to the proper court. *See* Pa.R.A.P. 751(a).

ISSUES

In her Concise Statement, Appellant raises the following issues which we summarize as follows:

1. Whether this Court erred in finding the testimony of Mr. and Mrs. Golla credible; and
2. Whether this Court erred in finding that the citations were enforceable against Appellant.

DISCUSSION

1. Credibility Determinations

Appellant argues that this Court erred in finding the testimony of Mr. and Mrs. Golla credible because the Gollas are biased against Appellant due to their hostile relationship. Appellant further asserts that the testimony of Mr. and Mrs. Golla is not credible because it was not bolstered by other physical evidence. We note that "[w]hen the trial court sits as fact finder, the weight to be assigned the testimony of the witnesses is within its exclusive province, as are credibility determinations, and the court is free to choose to believe all, part, or none of the evidence presented. ...". M.E.W. v. W.L.W., 240 A.3d 626, 634 (Pa.Super. 2020) (*quoting Mackay v. Mackay*, 984 A.2d 529, 533 (Pa.Super. 2009)). We found the direct testimony of Mr. and Mrs. Golla to be credible. Mr. and Mrs. Golla were not required to produce physical evidence to bolster their testimony in order for this Court to find their testimony to be credible.

2. Enforceability of Citations

Appellant argues that she cannot be found guilty of the underlying citations because she is not the record owner of the subject property and does not reside at the property.³ We note that the underlying citations are based upon the 2006 International Property Maintenance Code ("IPMC"), which Lansford Borough adopted pursuant to Ordinance No. 2007-02 dated January 3, 2007. The Code provides that "[a]ny person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a misdemeanor or civil infraction as determined by the local municipality ...". 2006 International Property Maintenance Code Section 106.3. "Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. ...". 2006 International Property Maintenance Code Section 106.4. The Code defines a "person" as "[a]n individual, corporation, partnership or any other group acting as a unit." 2006 International Property Maintenance Code Section 202. Additionally, the Code defines an "owner" as "[a]ny person, agent, operator, firm or corporation ... otherwise having control of the property ...". Id.

³ Testimony was presented that the record owner of the property is Ronald Spiegel, LLC and that Appellant currently resides in Baltimore, Maryland.

Mr. and Mrs. Golla testified that they observed Appellant staying at the subject property for intermittent periods of time over the course of several years. Mr. Golla testified that he observed Appellant bring bags filled with items to the property and that she told him she was renovating the property. Mr. and Mrs. Golla testified that Appellant told them that she owned the property. Mr. Dean addressed the underlying citations to Appellant based on the observations of Mr. and Mrs. Golla. Based upon Appellant's exercise of control over the West Snyder Avenue property, her assertion of ownership and her clear violations of the IPMC, we find that she is subject to the underlying citations and that they are enforceable against her.

Appellant argues that she was improperly cited for violating Section 108.1.3 of the IPMC. Section 108.1.3 provides:

A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code ...

2006 International Property Maintenance Code Section 108.1.3.

Mr. Dean testified that there was no running water at the subject property and that he confirmed with the borough water authority that there was no running water at the property.

Therefore, we find that Mr. Dean properly cited Appellant for violating Section 108.1.3 of the IPMC.

Appellant argues that she was improperly cited for violating Section 302.4 of the IPMC. Section 302.4 provides: "All premises and exterior property shall be maintained free from weeds or plant growth in excess of [8 inches]⁴ ...". 2006 International Property Maintenance Code Section 302.4. Mr. Dean and the Gollas testified that they observed weeds in excess of eight (8) inches at the subject property. Therefore, we find that Mr. Dean properly cited Appellant for violating Section 302.4 of the IPMC.

Appellant argues that she was improperly cited for violating Section 108.4.1 of the IPMC. Section 108.4.1 provides:

The code official shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the code official shall be subject to the penalties provided by this code.

2006 International Property Maintenance Code Section 108.4.1.

Mr. and Mrs. Golla testified that they observed Appellant remove the condemnation placard. Therefore, we find that Mr. Dean properly cited Appellant for violating Section 108.4.1 of the IPMC.

Finally, Appellant argues that she was improperly cited for violating Section 302.2 of the IPMC. Section 302.2 provides: "All

⁴ As revised by Lansford Borough Ordinance No. 2007-02.

premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon ...". 2006 International Property Maintenance Code Section 302.2. Mr. Dean and Mrs. Golla testified that they observed several containers collecting rainwater on the subject property for an extended period of time. Therefore, we find that Mr. Dean properly cited Appellant for violating Section 302.2 of the IPMC.

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be denied and that our Order of November 1, 2022, sentencing Appellant to pay the costs of prosecution and four (4) separate fines in the amount of two hundred dollars (\$200.00), be affirmed accordingly.

BY THE COURT:



Steven R. Serfass, J.