

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. : No. 1463 C.D. 2010
 :
 Bernard D. Holland, : Submitted: December 23, 2010
 :
 Appellant :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
 HONORABLE MARY HANNAH LEAVITT, Judge
 HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: June 22, 2011

Bernard D. Holland (Mr. Holland) appeals from the May 25, 2010, Order of the Court of Common Pleas of Allegheny County (trial court), which, after a *de novo* hearing, found Mr. Holland guilty of one charge of violating the Borough of McKees Rocks Property Maintenance Ordinance (Ordinance) and ordered Mr. Holland to pay a \$300 fine plus costs. On appeal, Mr. Holland argues, *inter alia*, that the trial court erred in finding him guilty of violating the Ordinance because the Borough of McKees Rocks (Borough) did not have the authority to enact and enforce the Ordinance, and the Ordinance violates Mr. Holland's constitutional rights to his property.

Mr. Holland owns a property located within the Borough (Property) and, on July 7, 2009, the Borough's building inspector and code enforcement officer (Code Officer) inspected the Property. Code Officer issued a Notice of Condemnation and Correction List (Notice), which included a list of the conditions of the Property in violation of the Ordinance, the specific Ordinance provisions violated (including Section 110.1 of the Ordinance),¹ an indication that the structure was condemned, and a request for abatement by August 28, 2009. (Hr'g Tr. at 16-17, May 25, 2010; Notice, July 15, 2009.) The Notice was sent to Mr. Holland by certified mail and a receipt was returned. (Hr'g Tr. at 16-17.) Thereafter, Code Officer issued non-traffic summary citations charging Mr. Holland with twenty-two violations for failing to comply with Section 110.1 of the Ordinance.² (Trial Ct. Op. at 1.) The matter went before a Magisterial District Judge (MDJ), who found Mr. Holland

¹ Section 110.1 of the Ordinance provides:

DEMOLITION (GENERAL)

The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

(Notice at 1.) At the hearing, the Borough's counsel indicated that the Borough merely wanted Mr. Holland to remedy the situation either by obtaining a building permit, which is valid for five years as long as work is ongoing, and bringing the Property into conformity, or demolishing the Property if it remains in its current condition. (Hr'g Tr. at 6-8.)

² The twenty-two citations were issued for twenty-two separate days in which the Property's violations of the Ordinance were not abated.

guilty of all charges. (Trial Ct. Op. at 1; Trial Ct. Disposition Sentencing/Penalties at 8-10.) Mr. Holland appealed to the trial court, which held a *de novo* hearing on May 25, 2010.

At the *de novo* hearing, the Code Officer testified that, upon inspection of the Property on July 7, 2009, he observed “[poor e]xterior sanitation, rubbish and debris, firewood excess on the [P]roperty, high grass, weeds, rodents, [an] eroded porch and peeling exterior paint damage, eroded awnings, [defective] supports that hold in siding, loose brick on the chimney, missing rain gutters [and] downspouts . . . rotted fascia, broken and boarded up windows and door,” and that “portions of the roof were in poor condition.” (Hr’g Tr. at 15-16.) Code Officer stated that he returned to the Property on January 20, 2010, and May 24, 2010, and observed that, although the yard area had been cleared up and the broken windows were boarded up, the other violations remained. (Hr’g Tr. at 17-18.) Code Officer further indicated that the Property was uninhabitable and that he took photographs on January 20, 2010, and May 24, 2010, showing the condition of the Property. (Hr’g Tr. at 18.) In opposition, Mr. Holland argued that the Borough lacked authority to require him to bring his private Property into conformity with the Ordinance. (Hr’g Tr. at 8, 13-14.) According to Mr. Holland, as long as he was not damaging anyone else’s property or infringing upon the rights of others, he should be allowed to do what he would like with his Property. (Hr’g Tr. at 14.)

After considering Code Officer’s testimony, the photographs of the Property, and the “lack of meaningful testimony or evidence” by Mr. Holland to contradict Code Officer’s testimony, the trial court found Mr. Holland guilty on one count of

violating Section 110.1 of the Ordinance.³ (Trial Ct. Order, May 25, 2010; Trial Ct. Disposition Sentencing/Penalties at 10-13.) The trial court sentenced Mr. Holland to pay a reduced fine of \$300 and costs. (Trial Ct. Order.) Mr. Holland now appeals to this Court.⁴

On appeal, Mr. Holland asserts that: (1) the Borough neither has the authority to enact the Ordinance nor to delegate any authority to enforce that Ordinance to Code Officer; (2) the trial court did not have jurisdiction; and (3) the Ordinance is overly broad and infringes upon his constitutional rights to do with his Property as he wishes. We will address each issue in turn.

Mr. Holland first asserts that the Borough does not have the authority to enact the Ordinance and regulate the use and maintenance of his Property. He asserts that “Boroughs have no powers other than those given them specifically by statute or necessarily implied from the powers specifically given.” (Mr. Holland’s Br. at 9 (citing Commonwealth v. Bove, 12 Pa. D.&C.2d. 672, 678 (1957).) Additionally, Mr. Holland asserts that, because the Borough does not have this authority, it could not delegate that authority to Code Officer.

³ The trial court indicated that it was dismissing the other twenty-one citations and treating them as a warning to Mr. Holland. (Hr’g Tr. at 29.)

⁴ This Court’s review of a “trial court’s determination on appeal from a summary conviction is limited to whether there has been an error of law or whether competent evidence supports the trial court’s findings.” Commonwealth v. Hall, 692 A.2d 283, 284 n.2 (Pa. Cmwlth. 1997).

The General Assembly has authorized the Borough, and other municipalities, to enact property maintenance ordinances in the Municipal Housing Ordinance Authorization Law (Law), 53 P.S. §§ 4101-4103.⁵ Section 1 of the Law, 53 P.S. § 4101, provides, in relevant part:

In addition to other remedies provided by law, and **in order to promote the public health, safety, morals, and the general welfare, . . . boroughs . . . in this Commonwealth are hereby authorized and empowered to enact and enforce suitable ordinances to govern and regulate the construction, alteration, repairs, occupation, maintenance, sanitation, lighting, ventilation, water supply, toilet facilities, drainage, use and inspection of all buildings and housing and to the sanitation and inspection of land appurtenant thereto . . .**

Id. (emphasis added). Section 1 of the Law also permits a municipality, like Borough, to adopt or enact standard building or housing codes as the municipality's ordinance. Id. Section 2 of the Law states:

In case any building, housing or structure is constructed, reconstructed, altered, repaired, converted or maintained, or any building, housing or land is used in violation of any ordinance enacted under authority conferred hereby, the corporate authorities of any . . . borough, . . . in addition to the penalties provided by ordinances enacted herewith, may institute appropriate actions or proceedings at law or in equity to prevent and restrain such unlawful construction, reconstruction, alteration, repairs, conversion, maintenance, or use and to restrain, correct, or abate such violation, and to prevent the occupancy of said building, housing or structure.

53 P.S. § 4102 (emphasis added). Accordingly, the Borough is specifically authorized by law to enact ordinances that regulate the maintenance and sanitation

⁵ Act of April 14, 1937, P.L. 313, as amended.

of all buildings and land appurtenant thereto, such as Ordinance, and to enforce those ordinances by the means set forth in both the Law and The Borough Code.⁶

Mr. Holland next asserts that the trial court neither has jurisdiction over this matter, apparently based on his contentions that the Borough did not have the authority to enact or enforce the Ordinance, nor jurisdiction over himself or his Property. However, as previously discussed, the Borough does have statutory authority to enact the Ordinance, and Section 3301 of The Borough Code, 53 P.S. § 48301, states that “[a]ny violation or failure to comply with any provision of any borough ordinance shall constitute a summary offense and prosecution for every such offense shall be according to the practice in the case of summary convictions.” Id. A summary offense is a crime under the Crimes Code. See 18 Pa. C.S. § 106(c) (indicating that summary offenses include those offenses defined as such in statutes other than the Crimes Code). Pursuant to Section 1515(a)(1) of the Judicial Code, with a few exceptions not applicable here, MDJs have jurisdiction over summary offenses, 42 Pa. C.S. § 1515(a)(1), which, as stated above, include a violation or failure to comply with a provision of a borough ordinance. Moreover, Section 932 of the Judicial Code grants the courts of common pleas, such as trial court here, “exclusive jurisdiction of appeals from final orders of the minor judiciary established within the judicial district.” 42 Pa. C.S. § 932. Based on these statutory provisions enacted by our General Assembly, the MDJ and the trial court had jurisdiction in this matter.

⁶ Act of February 1966, P.L. (1965) 1656, as amended, 53 P.S. §§ 45101-48501.

Finally, Mr. Holland argues that the Ordinance violates the Fifth and Fourteenth Amendments of the United States Constitution because it is overbroad. He states, “An overbroad statute violates substantive due process by depriving a person of a constitutionally protected interest through means which are not rationally related to valid state objectives because they sweep unnecessarily broadly.” (Mr. Holland’s Br. at 9 (citing Pennsylvania Medical Society v. Foster, 608 A.2d 633, 636 (Pa. Cmwlth. 1992) (citations omitted))). Moreover, Mr. Holland argues, essentially, that the Ordinance violates the United States and Pennsylvania Constitutions because the Ordinance abrogates his rights to use his Property as he wishes. He contends that courts must be watchful of Constitutional rights and that if “a statute purporting to have been [e]nacted to protect the public health, the public morals or the public safety has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.” (Mr. Holland’s Br. at 10 (citing Mugler v. Kansas, 123 U.S. 623, 661 (1887))).

The Borough responds that, through its police power, it has the authority pursuant to Section 1 of the Law to regulate the use and maintenance of property within its boundaries to promote public health, safety, morals, and general welfare. It asserts that allowing deteriorated structures in an urban setting is inimical to the public health, safety, and to the general welfare. Moreover, the Borough contends that, Mr. Holland did not meet the heavy burden of proving that the Ordinance is unconstitutional.

The party challenging the constitutionality of a municipal ordinance “bears the burden of proof to show that the [Ordinance] is unconstitutional by rebutting its strong presumption of validity.” Herrit v. Code Management Appeal Board, 704 A.2d 186, 188 (Pa. Cmwlth. 1997). In order to establish that the Ordinance is unconstitutional, Mr. Holland “must establish that it is arbitrary, unreasonable and has no substantial relation to the promotion of the public health, safety, morals or general welfare of the” Borough. Id. at 189. This Court previously has held that ordinances that require the abatement of “unsafe structures [are] rationally related to the promotion of the public welfare and [are] a proper and necessary exercise of a city’s police power as long as there is factual evidence to support [their] application to a specific property” and “afford[] the property owner proper notice and the ability to abate” the nuisance and repair the property. Id. In Herrit, this Court declared as unconstitutional a provision of a property maintenance ordinance that **required** a property owner to demolish a structure if the cost of repairing it would exceed 100 percent of the current value of the structure. Id. at 188-89. We held that such a provision was “not rationally related to the public health, safety or general welfare because there is no rational reason for the [municipality] not to allow a property owner the ability to abate” the nuisance and repair the property. Id. at 189.

Although Mr. Holland bears the heavy burden of establishing the unconstitutionality of the Ordinance, he does not cite any particular provision of the Ordinance as being unconstitutional. He does not explain how the Ordinance’s provisions are overbroad or how the Ordinance is arbitrary, unreasonable, or lacks a substantial relationship to the promotion of public health, safety, morals, or

general welfare of the Borough. The Borough is not requiring Mr. Holland to demolish the Property, as in Herrit, and Section 110.1 provides a property owner with the opportunity to repair a property and bring the property into compliance with municipal codes. Therefore, Section 110.1 does not suffer the same constitutional infirmity as the property maintenance provision at issue in Herrit. Indeed, the Borough stated that its intention, essentially, was to require Mr. Holland to remedy the situation by either obtaining a building permit and repairing the Property or demolishing the Property. (Hr’g Tr. at 6-8.) Accordingly, we conclude that Mr. Holland has not satisfied his burden of establishing that the Ordinance is unconstitutionally broad or impermissibly infringes upon his property rights.

We acknowledge Mr. Holland’s desire to be vigilant and his concern about the encroachment of government regulation, but the courts have held that the power of the government, including municipalities like the Borough, to regulate the use and maintenance of land and structures is “founded upon the constitutional principles of the police powers of government to promote the public health, morals, safety and general welfare.” Forks Township Board of Supervisors v. George Calantoni & Sons, Inc., 297 A.2d 164, 166 (Pa. Cmwlth. 1972); 53 P.S. § 48301. The use of a municipality’s “police power inevitably gives rise to tension between the [municipality] and holders of property. Although the police power ‘may, indeed, seem harsh in its exercise, [and] usually is on some individual, . . . the imperative necessity for its existence precludes any limitation upon it when not exerted arbitrarily.’” National Wood Preservers, Inc. v. Department of Environmental Resources, 489 Pa. 221, 232, 414 A.2d 37, 43 (1980) (quoting

Hadacheck v. Sebastian, 239 U.S. 394, 410 (1915)) (alteration in the original). In the context of zoning, our Supreme Court stated the following in In re Realen Valley Forge Greenes Associates, 576 Pa. 115, 838 A.2d 718 (2003):

Property owners have a constitutionally protected right to enjoy their property. . . . That right, however, may be reasonably limited by zoning ordinances that are enacted by municipalities pursuant to their police power, *i.e.*, governmental action taken to protect or preserve the public health, safety, morality, and welfare. Cleaver [v. Board of Adjustment], 414 Pa. 367, 372, 200 A.2d [408] at 411-12 [(1964)] (“it is well settled that [the] constitutionally ordained right of property is and must be subject and subordinated to the Supreme Power of Government – generally known as the Police Power – to regulate or prohibit an owner’s use of his property”).

Id. at 131, 838 A.2d at 727-28 (quoting C & M Developers, Inc. v. Bedminster Township Zoning Hearing Board, 573 Pa. 2, 14, 820 A.2d 143, 150 (2002)) (alterations added). Moreover, “[a] property owner is obliged to utilize his property in a manner that will not harm others in the use of their property, and zoning ordinances may validly protect the interests of neighboring property owners from harm.” Hopewell Township Board of Supervisors v. Golla, 499 Pa. 246, 255, 452 A.2d 1337, 1341-42 (1982). Finally, “[a] municipality has the right to reasonably limit an owner’s absolute right to use his or her property with zoning ordinances designed to protect or preserve public health, safety and welfare.” Keinath v. Township of Edgmont, 964 A.2d 458, 462 (Pa. Cmwlth. 2009). Although these cases involve zoning regulations, and not property maintenance regulations, both Section 1 of the Law and Section 105 of the Pennsylvania Municipalities Planning Code (MPC),⁷ 53 P.S. § 10105, rely upon a municipality’s

⁷ Act of July 31, 1968, P.L. 805, as amended.

police power to protect and preserve public health, safety, morals, and general welfare as the basis for the regulatory provisions contained therein. The rationales set forth in the above-cited cases, such as the obligation of a property owner to utilize his property in a manner that will not harm others, or the interests of neighboring property owners, also apply to matters involving property maintenance ordinances. Mr. Holland has not established that the Ordinance is arbitrary, unreasonable, or substantially unrelated to the Borough's interest in protecting the public health, safety, and general welfare. Accordingly, we may not conclude that the Borough exceeded its police power in enacting or enforcing the Ordinance in this matter.

For the foregoing reasons, we affirm.

RENÉE COHN JUBELIRER, Judge

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Commonwealth of Pennsylvania	:	
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	:	
Bernard D. Holland,	:	
	:	
Appellant	:	

ORDER

NOW, June 22, 2011, the Order of the Court of Common Pleas of Allegheny County in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge