

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. : No. 1891 C.D. 2010
 :
 Marie Jurena, : Submitted: July 1, 2011
 Appellant :

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: August 24, 2011

Marie Jurena appeals, *pro se*, from the July 20, 2010, order of the Court of Common Pleas of Allegheny County (trial court) adjudging Jurena guilty of violating Robinson Township’s (Township) Property Maintenance Code and fining her \$150.00, plus costs. We affirm.

Jurena filed a summary appeal from four citations issued by the Township for violations of its Property Maintenance Code. The only citation at issue herein is citation number 561-09¹ that was issued to Jurena for her alleged violation of Chapter 20, Section 103 of the Property Maintenance Code² governing prohibited activities.³ The citation stated that Jurena had yard debris and waste piled against her neighbor’s fence which was causing damage to the fence.

¹ See Certified Record at Item 2.

² See Supplemental Reproduced Record at 46b-47b. Section 103 provides in pertinent part that “[i]t shall be unlawful to accumulate or permit to accumulate upon any public or private property within the Township, any garbage, rubbish, bulky waste, or any other municipal or residual solid waste”

³ Jurena was found not guilty by the trial court of the violations cited in the other three citations.

A *de novo* hearing was held before the trial court on July 20, 2010, at which Jurena appeared and testified on her own behalf. Jurena also submitted five photographs into evidence. The Township's ordinance officer, Greg Cuthbert, appeared and testified on behalf of the Commonwealth. The Commonwealth submitted several exhibits into evidence including photographs of Jurena's property.

Based upon the evidence presented, the trial court found Jurena guilty of violating Chapter 20, Section 103 of the Property Maintenance Code for having yard debris and waste piled on her property and against her neighbor's fence which caused damage to the fence. The trial court imposed a fine in the amount of \$150.00, plus costs. This *pro se* appeal followed.⁴

Initially, we note that Jurena originally filed a brief and reproduced record with this Court in support of this *pro se* appeal on February 25, 2011. However, by order entered March 1, 2011, this Court refused to accept Jurena's brief because it did not comply with Chapter 21 of the Pennsylvania Rules of Appellate Procedure governing the form and content of briefs and reproduced records.⁵

⁴ Our scope of review of a trial court's summary conviction is limited to determining whether an error of law occurred or whether the trial court's findings are supported by substantial evidence. Commonwealth v. Snyder, 688 A.2d 230 (Pa. Cmwlth. 1996).

⁵ Specifically, this Court stated that Jurena's brief lacked:

- a. a statement of jurisdiction as required by Pa. R.A.P. 2111(a)(1);
- b. a copy of the order or other determination in question as required by Pa. R.A.P. 2111(a)(2);
- c. a statement of the scope of review and standard of review as required by Pa. R.A.P. 2111(a)(3);
- d. a copy of the opinion or adjudication of the trial court/administrative agency as required by Pa. R.A.P. 2111(a)(10); and
- e. a certificate of service as required by Pa. R.A.P. 121, 122.

(Continued....)

Accordingly, this Court ordered Jurena to file and serve an amended brief that conformed to the requirements of Chapter 21 of the Pennsylvania Rules of Appellate Procedure on or before March 30, 2011.

On March 26, 2011, Jurena filed a handwritten document offering a response to this Court's March 1, 2011, order concerning her unaccepted brief and a supplemental record. By order of March 28, 2011, this Court accepted Jurena's filing as her amended brief filed pursuant to this Court's March 1, 2011, order.⁶ As such, this Court will refer to Jurena's filing as her "amended brief."

Jurena's brief further did not comply with the Rules of Appellate Procedure because: (1) the brief and reproduced record were not double spaced, with 12pt. type, bound along left side with staples, if any, covered. Pa. R.A.P. 2171(a); Pa. R.A.P. 124; and (2) the pages in reproduced record were not properly numbered. Pa. R.A.P. 2173.

⁶ Despite this Court's acceptance of Jurena's amended brief, a review of the same reveals that the document still fails to conform to Chapter 21 of the Pennsylvania Rules of Appellate Procedure as outlined in this Court's March 1, 2011 order. For example, with respect to the required statement of jurisdiction, Jurena simply states that this Court can hear matters concerning Pennsylvania issues of law. With respect to the copy of the order or other determination in question, Jurena states that a copy of the order in question was attached to her brief and reproduced record as exhibit A. With respect to the required statement of the scope of review and standard of review, Jurena states that the trial court's opinion was not timely as by law and that she was ordered by the trial court to file her appeal with the Superior Court, which she did. Jurena states further that she was "denied due process, as standard, to Judge Gallo's order July 20, 2010 and trial transcript." With respect to the required copy of the opinion of the trial court, Jurena states that a copy of the trial court's opinion "was attached to the reproduced record by Appellant under summary appeal docket Entire Record by the Director of Court Records (Kate Barkman) dated October 29, 2010." Finally, with respect to the required certificate of service, Jurena states that "it was attached to Proof of Service of Appellant's Supplemental Record 25th day of February 2011." In support of all the foregoing statements, Jurena refers this Court to certain exhibits; however, it is difficult to discern exactly what some of the referred exhibits are and where or what they are attached to.

The remainder of Jurena's amended brief contains, *inter alia*, copies of this Court's March 1, 2011 order, the trial court's July 20, 2010 order, the trial court's opinion in support of its July 20, 2010 order, a page of the trial transcript, and the trial court's docket entries. Jurena's amended brief also contains a conclusion requesting, based on the foregoing reasons, that this Court review her appeal and grant a level playing field.

(Continued....)

In the amended brief, Jurena sets forth the following lone statement in support of her appeal: “The ordinance violates the uniformity clause of the State Constitution and U.S. Constitution. Exhibit case: Relo v. New London.” However, this issue was not raised before the trial court and therefore has been waived for review by this Court.⁷ See Pa.R.A.P. 302(a) (“Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.”); Monroe Meadows Housing Partnership, LP v. Municipal Council of the Municipality of Monroeville, 926 A.2d 548 (Pa. Cmwlth. 2007). See also Kimmel v. Somerset County Commissioners, 460 Pa. 381, 384, 333 A.2d 777, 779 (1975) (“[I]t is a fundamental principle of appellate review that we will not reverse a judgment or decree on a theory that was not presented to the trial court.”) (citations omitted).”); Walton v. Philadelphia National Bank, 545 A.2d 1383, 1386 (Pa. Super. 1988) (“The doctrine of waiver has become firmly entrenched in Pennsylvania law and it is clear that on appeal a new and different theory of relief may not be successfully advanced for the first time.’ We find no evidence in the record that appellants ever raised a claim of estoppel in the court below. We therefore find this contention waived....”) (citation and footnote omitted).

Moreover, Jurena’s initial brief filed on February 25, 2011, was specifically not accepted by this Court and she was ordered to file an amended brief that conformed to Chapter 21 of the Pennsylvania Rules of Appellate Procedure. In other words, Jurena was required to file an entirely new and conforming amended brief that contained not only the missing items as outlined in our March 1, 2011 order, but also: (1) a statement of the questions involved, Pa.R.A.P. 2111(a)(4); (2) a statement of the case, Pa.R.A.P. 2111(a)(5); (3) a summary of the argument, Pa.R.A.P. 2111(a)(6); and (4) an argument section, Pa.R.A.P. 2111(a)(8).

⁷ We point out that a *pro se* litigant must to some extent assume the risk that her lack of legal training will prove to be her undoing. Vann v. Unemployment Compensation Board of Review, 508 Pa. 139, 148, 494 A.2d 1081 (1985).

Accordingly, the trial court's July 20, 2010, order is affirmed.⁸

⁸ Notwithstanding Jurena's waiver of any issues on appeal to this Court, our review of the record reveals that the trial court's July 20, 2010 order finding Jurena guilty of violating Chapter 20, Section 103 of the Township's Property Maintenance Code, is supported by substantial evidence. The trial court found that the photographs of Jurena's property showed that she had accumulated trash and debris that was against her neighbor's fence, which is a clear violation of the Township's Property Maintenance Code. The trial court also did not err in rejecting Jurena's contentions that the citation constituted "official oppression" by the Township and that the Township was violating her constitutional right to free speech. As stated by the trial court, Jurena's contentions are not supported by the facts and are not valid and relevant defenses to her violation of the Township's Property Maintenance Code.

