

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Richard Babich,	:	
	:	
Appellant	:	
	:	
v.	:	
	:	No. 2284 C.D. 2009
Rochester Borough	:	Submitted: August 13, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: September 23, 2010

Richard Babich (Babich) appeals from the September 29, 2009 order of the Court of Common Pleas of Beaver County (trial court) ordering Babich to either demolish a house and remove a tree from his property, or authorize the Borough of Rochester (Borough) to do so, failure to comply resulting in a contempt proceeding; and the January 26, 2010 order of the trial court holding Babich in contempt of court, and granting the Borough authority to enter Babich's property and demolish the structure and remove the tree; and permitting the Borough to file a lien against the property for the cost of demolition and removal.<sup>1</sup> Babich essentially raises two issues before the Court: (1) whether Babich was given sufficient notice of the hearing before the Borough, and (2) whether there was substantial evidence to

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<sup>1</sup> Babich technically filed an appeal of the September 29, 2009 order, however, as the Contempt of Court was not entered at that time, that order is not appealable and since the Contempt of Court was subsequently ordered, and Babich referred to that order in his 1925 (b) Statement filed with the trial court, in the interest of judicial economy, this Court will address both orders, as did the trial court.

support the trial court's October 31, 2008 order.<sup>2</sup> For reasons that follow, we affirm the trial court's September 29, 2009 and January 26, 2010 orders.

Babich owns property located at 496 East Washington Street, Rochester, Pennsylvania (Property). On February 28, 2007, Paul Butcher, the Code Enforcement Officer for the Borough, notified Babich that the property was in violation of numerous building ordinances. On March 21, 2007, the Borough issued a Condemnation and Demolition Notice to Babich, requiring him to demolish the house and remove the tree by May 20, 2007. Babich filed an appeal with the trial court on March 27, 2007.<sup>3</sup> The trial court remanded the appeal to the Rochester Board of Appeals (Board).

On September 19, 2007, the Board held a public hearing on Babich's appeal and Babich failed to appear. The Board issued its decision on June 3, 2008, affirming the Condemnation and Demolition Notice and ordering Babich to demolish the structure and remove the tree. On July 16, 2008, Babich appealed to the trial court. On October 28, 2008, the trial court held a hearing, and on October 31, 2008, the trial court affirmed the Board's holding that Babich received proper notice of the Board's hearing, the Board's procedure was lawful, and the Board's findings were supported by substantial evidence.

Babich failed to file a timely appeal, and filed a petition to file an appeal *nunc pro tunc*. On February 17, 2009, the trial court held a hearing, and on February 24, 2009, the trial court denied Babich's petition to appeal *nunc pro tunc* holding that his failure to file was not the result of extraordinary circumstances, fraud, or a breakdown of judicial process. On March 18, 2009, Babich filed an Application for Leave to Appeal *Nunc Pro Tunc* of the February 24, 2009 order in this Court, and this

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<sup>2</sup> Babich raised nine separate issues; this Court condensed them into two.

<sup>3</sup> Babich's notice specifically advised him to appeal to the Rochester Board of Appeals.

Court denied the application without prejudice to Babich's right to file an appeal in the trial court of the February 24, 2009 order. On April 17, 2009, Babich filed an application to appeal the February 24, 2009 order *nunc pro tunc* with the trial court. On May 14, 2009, the Borough filed a request for sanctions. The trial court denied Babich's application on June 4, 2009, and the Borough's request on June 30, 2009.

On August 25, 2009, the Borough filed a Petition for Contempt of Court for Babich's failure to comply with the trial court's October 31, 2008 order. On September 29, 2009, the trial court held a hearing and ordered Babich to either demolish the house and remove the tree, or authorize the Borough to do so; failure to comply would result in a contempt proceeding. On October 27, 2009, Babich appealed the September 29, 2009 order pro se to this Court.<sup>4</sup>

On December 18, 2009, the Borough filed another Petition for Contempt of Court for failure to comply with the September 29, 2009 order. The trial court held a hearing on January 5, 2010, and on January 26, 2010, it entered an order holding Babich in Contempt of Court, and authorizing the Borough to demolish the house and remove the tree. Babich referred to the January 26, 2010 order in his 1925 (b) Statement,<sup>5</sup> as opposed to the September 29, 2009 order which he appealed on October 27, 2009. Thus, in the interest of judicial economy, we will address both orders in this opinion.

Initially we recognize the two orders currently before this Court: (1) the order entered September 29, 2009,<sup>6</sup> wherein the trial court ordered Babich to either demolish the house and remove the tree, or authorize the Borough to do so, with

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<sup>4</sup> Babich has been acting pro se throughout the entire proceedings.

<sup>5</sup> The trial court ordered Babich to file a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925 (b) after he appealed the September 29, 2009 order.

<sup>6</sup> This order was entered after a hearing on the Borough's Petition for Contempt of Court, not a hearing on the merits of the case.

failure to comply resulting in a contempt proceeding, and (2) the order entered January 26, 2010 wherein the trial court held Babich in Contempt of Court, and authorized the Borough to demolish the house and remove the tree. The issues raised by Babich in his brief, however, refer to the order entered October 31, 2008, wherein the trial court affirmed the Board's holding that Babich received proper notice of the Board's hearing, the Board's procedure was lawful, and the Board's findings were supported by substantial evidence. Babich missed the appeal deadline for the October 31, 2008 order, and filed a petition to appeal *nunc pro tunc* with the trial court, which was denied. He subsequently appealed the February 24, 2009 order to this Court which denied it as well, but gave him the opportunity to appeal the order to the trial court, which he did. On June 4, 2009, the trial court again denied the appeal. Babich however, did not appeal the June 4, 2009 order to this Court. "It is axiomatic that issues not preserved for appellate review will not be addressed by the appellate court. See Pa. R.A.P. 302." *Riedel v. Human Relations Comm'n of City of Reading*, 559 Pa. 34, 38, 739 A.2d 121, 123 (1999).

Had Babich appealed the June 4, 2009 order to this Court *and* this Court reversed the trial court, then the issues raised by the October 31, 2008 order could be before us. As that did not happen, and Babich did not raise any issues concerning the orders currently before the Court, there is nothing for this Court to address. Accordingly, we affirm the trial court.

For all of the above reasons, the September 29, 2009, and January 26, 2010 orders of the trial court are affirmed.

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JOHNNY J. BUTLER, Judge

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Richard Babich,   :  
  Appellant        :  
  v.   :  
Rochester Borough   :     No. 2284 C.D. 2009  
   :

ORDER

AND NOW, this 23<sup>rd</sup> day of September, 2010, the September 29, 2009,  
and January 26, 2010 orders of the Court of Common Pleas of Beaver County are  
affirmed.

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JOHNNY J. BUTLER, Judge