

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. : No. 2528 C.D. 2009
 : Submitted: June 25, 2010
 William Lucabaugh, :
 Appellant :

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: October 19, 2010

William Lucabaugh (Lucabaugh) appeals pro se from the November 23, 2009, order of the Court of Common Pleas of Schuylkill County (trial court) finding Lucabaugh guilty of violating section 110.1 of the International Property Maintenance Code (Code) with respect to a structure located in Pottsville, Pennsylvania.¹ We affirm.

¹ The City of Pottsville (City) adopted the Code by ordinance on March 12, 2007. Section 110.1 of the Code provides as follows:

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, unsanitary 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.

Lucabaugh is the owner of property located at 317 North George Street in Pottsville, Pennsylvania. By letter dated November 25, 2008, Donald Chescavage, the code enforcement officer for the City, advised Lucabaugh that he was issuing a repair/demolish order for the property due to its deteriorated condition and the threat it posed to the public health and safety in violation of section 110.1 of the Code.² (R.R. at 7a.) A copy of the order was enclosed with the letter. The letter further advised Lucabaugh that he had forty-five (45) days within which to make the necessary repairs or demolish the structure. Lucabaugh responded with a letter to Chescavage dated December 11, 2008, requesting an administrative appeal hearing. (R.R. at 8a.) Chescavage sent a letter to Lucabaugh dated December 15, 2008, with enclosed forms and instructions for requesting an appeal. (R.R. at 9a.)

Lucabaugh failed to submit these forms. On May 6, 2009, Chescavage issued a citation against Lucabaugh relating to the condition of the property and his failure to make the property safe and sanitary or to demolish and remove the structure thereon, a summary offense in violation of section 110.1 of the Code.³ This citation included a fine of \$500.00 plus costs of \$65.50. Lucabaugh appealed the citation to the district magistrate. The district magistrate found Lucabaugh guilty of the violation and upheld a fine and costs totaling \$565.50.

² Lucabaugh had been previously cited in June 2007 for an identical violation of Code section 110.1 at this property. He was found guilty by the district magistrate of violating section 110.1 of the Code and ordered to pay a fine and costs in the amount of \$361.00. Lucabaugh appealed to the trial court, which also found him guilty and imposed the same fine and costs as imposed by the district magistrate. Lucabaugh appealed to this Court, and we affirmed in an unreported opinion, Commonwealth of Pennsylvania v. Lucabaugh (Pa. Cmwlth., No. 631 C.D. 2008, filed July 13, 2009).

³ A copy of the citation is included in the original record.

Lucabaugh thereafter filed a notice of appeal with the trial court. At the same time, Lucabaugh filed a motion to dismiss with the trial court, objecting to the forum of the proceedings, complaining about the failure of Chescavage to provide him with an administrative hearing, and generally alleging fraud. On November 17, 2009, Lucabaugh filed a request for clarification with the trial court concerning a postmark date on a hearing notice, the failure to grant him a hearing on his motion to dismiss, and the applicable rules of procedure. Lucabaugh also requested declaratory judgment as to his rights in these proceedings and the effect of law granted a municipal ordinance.

The trial court conducted a *de novo* hearing on November 23, 2009. At this hearing, the trial court also addressed Lucabaugh's motion to dismiss and request for clarification. The trial court denied the former, acknowledged Lucabaugh's continuing objection to the proceedings, and clarified that the proceedings were criminal in nature. The trial court then proceeded to the merits, with the City presenting the testimony of Chescavage.

Chescavage testified that he conducted an initial inspection of the property in 2007 following the complaint of a neighboring property owner. (N.T., November 23, 2009, p. 7.) At that time, Lucabaugh was identified as the owner of the property. Chescavage visited the property a second time on May 6, 2009. During both visits, Chescavage took photos of the property. Chescavage described the continued dilapidated condition of the property and presented the aforementioned photographs in support of his testimony.⁴ (N.T., November 23, 2009, pp. 9-13.)

The photographs reveal a front porch in a state of disrepair, deteriorated side and rear porches, extensive missing shingles, decayed wood, and open holes in

⁴ The photographs of the property were admitted into evidence without objection.

exterior walls. Id. Chescavage testified that he asked PPL to shut off the electricity to the property due to the exposure of wiring and electrical outlets to the weather. (N.T., November 23, 2009, p. 11.) Chescavage indicated that the condition of the property was clearly in violation of section 110.1 of the Code. (N.T., November 23, 2009, p. 12.) Chescavage further indicated that Lucabaugh has made no effort since 2007 to repair or maintain the property.

By order dated November 23, 2009, the trial court specifically denied Lucabaugh's motion to dismiss and request for clarification. The trial court found Lucabaugh guilty of violating section 110.1 of the Code and sentenced him to pay a fine of \$500.00 plus costs.

Lucabaugh filed a notice of appeal with the trial court, and a statement of matters complained of setting forth thirty-seven allegations of error. Lucabaugh alleges the trial court abused its discretion by, inter alia, failing to provide him with a separate hearing regarding his motion to dismiss and neglecting to advise him what rules of court apply or what protections apply to criminal proceedings in relation to enforcement of ordinances. Lucabaugh characterizes these same allegations as errors of law. Lucabaugh further raises vague allegations of procedural violations, fraud, and prejudice on the part of the trial court.

The trial court issued an opinion dated February 12, 2010, concluding that the testimony and photographic evidence established Lucabaugh's violation of section 110.1 of the Code beyond a reasonable doubt. The trial court characterized Lucabaugh's numerous allegations of error as frivolous and non-meritorious in nature.

In his *pro se* appeal to this Court,⁵ Lucabaugh raises the following issues in his Statement of the Questions Involved:

1. Did the underlying courts lack jurisdiction to adjudicate CITY OF POTTSVILLE's subject matter where CITY OF POTTSVILLE had not exhausted statutory remedy pursuant to Local Agency Law, Sec. 553?
2. Did CITY OF POTTSVILLE follow Third Class City Code, Sec. 36017, instruction for bring [sic] action for penalty in Pennsylvania Magisterial District Court?
3. Does fraud vitiate legal proceedings?
4. Has the principle of "due process of law" been violated in this case?

A. Is the court required to take judicial notice of [the Code] in order to rule on a violation of it?

(Brief of Lucabaugh at 4.)

Lucabaugh first argues that the City's failure to hold an administrative hearing deprived the lower tribunals of subject matter jurisdiction. We disagree.

In a letter dated December 15, 2008, Chescavage provided Lucabaugh with the necessary forms and instructions for requesting an appeals hearing with respect to the purported violation. These instructions stated that the fee for such a hearing was \$600.00. In a letter to the mayor of the City dated December 19, 2008, Lucabaugh acknowledged receipt of Chescavage's December 15, 2008, letter with

⁵ This Court's scope of review of a common pleas court order is limited to a determination of whether constitutional rights were violated and whether the common pleas court abused its discretion or committed an error of law. Mann v. City of Philadelphia, 563 A.2d 1284 (Pa. Cmwlth. 1989), appeal denied, 525 Pa. 622, 577 A.2d 892 (1990).

the accompanying forms and instructions regarding an appeal. Lucabaugh admits that he chose to forego an administrative appeal because it was “cheaper to take the case directly to court than to present an appeal.”⁶ Lucabaugh’s voluntary decision not to appeal the repair/demolish order does not divest the lower tribunals of jurisdiction over his citation for failing to demolish the structure or remedy the unsafe conditions. Hence, this argument must fail.

Lucabaugh next asserts that the City failed to follow the procedures for enforcement of ordinances as set forth in section 1017 of The Third Class City Code, Act of June 23, 1931, P.L. 932, as amended, 53 P.S. §36017. We disagree.

Section 1017 provides, in pertinent part, as follows:

All actions, prosecutions, complaints, and proceedings for the violation of the ordinances of the city, and for fines, penalties, and forfeitures imposed thereby, shall be instituted in the corporate name of the city, and be conducted in the manner prescribed by law.

53 P.S. §36017. Lucabaugh appears to take issue with the fact that the filings before the trial court reference the Commonwealth of Pennsylvania, rather than the City, as the plaintiff. However, the original citation was issued by Chescavage as the code enforcement officer for the City and the City’s solicitor acted as counsel at all stages of the proceedings. Lucabaugh was certainly aware that the City was the moving party. Moreover, it was Lucabaugh himself who named the Commonwealth of Pennsylvania as the plaintiff when he filed his notice of appeal of the district magistrate’s decision with the trial court. The record reflects that the City complied with section 1017, and, hence, Lucabaugh’s argument is without merit.

⁶ A copy of Lucabaugh’s December 19, 2008, letter is included in the original record as “Exhibit F” to Item No. 3.

Next, Lucabaugh argues that fraud vitiates the underlying proceedings. In support of this contention, Lucabaugh cites the City's failure to demolish the structure at 317 North George Street despite prior proceedings against a previous owner of the property. Again, we see no merit to this argument.

Lucabaugh is correct that the City had initiated similar proceedings against the prior owner of the property in 2005, including issuance of an order for demolition. For whatever reason, the City never proceeded to demolish the property, which it could have done as a result of the prior owner's lack of compliance. Instead, the property was exposed to an upset sale and was purchased by a third party, who in turn sold the property to Lucabaugh. Nevertheless, we fail to see the relevance of these prior events or comprehend how the City's failure to demolish the property prior to the upset sale evidences fraud so as to vitiate the underlying proceedings. Lucabaugh was the lawful owner of the property at all relevant times herein.

Finally, Lucabaugh argues that the principle of "due process of law" was violated in this case. However, Lucabaugh received due process at all stages of the underlying proceedings. Lucabaugh was provided with an opportunity to present evidence at every stage, but simply failed to do so. Lucabaugh again cites the lack of administrative hearing on the repair/demolition order; however, as noted above, Lucabaugh himself chose to forego said hearing. Lucabaugh was advised by the trial court that the proceedings before it were criminal in nature, and Lucabaugh failed to demonstrate any prejudice in regard to his lack of knowledge regarding the nature of the proceedings.⁷ Indeed, Lucabaugh has been on notice of the dilapidated condition

⁷ As we have previously indicated, a layperson who represents himself in legal matters must to an extent assume the risk that his lack of expertise in legal training will prove his undoing. Barber v. Tax Review Board, 850 A.2d 866 (Pa. Cmwlth. 2004), appeal denied, 583 Pa. 697, 879 A.2d 783 (2005).

of his property since 2007 and has apparently failed to take any action to correct the same.

Lucabaugh also complains that the trial court refused to take judicial notice of the Code at the November 23, 2009, hearing. Lucabaugh seems to assert a partiality or bias on the part of the trial court for failing to take such notice. However, Lucabaugh cites no authority requiring the trial court to take judicial notice of the Code. Furthermore, the relevant section of the Code was read into evidence at this hearing by Chescavage. The trial court even permitted Lucabaugh to ask Chescavage to read other, non-relevant sections of the Code, evidencing the trial court's lack of partiality or bias. Thus, Lucabaugh's due process argument must likewise fail.

Accordingly, the order of the trial court is affirmed.

