

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :  
 :  
 v. :  
 :  
 Dominic Villani, : No. 1133 C.D. 2010  
 Appellant : Submitted: October 8, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
 HONORABLE PATRICIA A. McCULLOUGH, Judge  
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
 BY JUDGE McGINLEY

FILED: November 8, 2010

Domenic Villani (Villani) appeals the order of the Court of Common Pleas of Lehigh County (trial court) which found Villani guilty of leasing an apartment without an occupancy permit and fined him \$50 plus the costs of prosecution.

On August 31, 2006, Villani submitted an application for a permit with the City of Bethlehem (City) seeking authorization to make interior alterations in a basement area for a sixth apartment in a building located at 730 West Union Boulevard, Bethlehem, Pennsylvania. On September 7, 2006, Villani's application was denied by Craig B. Hynes (Hynes), the Chief of the Bureau of Code Enforcement for the City. Villani revised the application and resubmitted it. Hynes again denied the application on October 3, 2006, and listed the following deficiencies: "1. Zoning approval required for additional apartment. 2. Indicate all materials for wall and ceiling construction. 3. Complete planning requirements for parking lot." Permit Denial, October 3, 2006, at 1. Villani met with Hynes to

discuss the denial. Villani then sought a permit to install a utility room and laundry area in the basement. On October 9, 2006, a permit was granted for Villani to make “interior alterations in basement area to create laundry and utility room only.” Permit No. 06100133, October 9, 2006, at 1.

In April 2007, Hynes became aware that a sixth unit was occupied as an apartment at 730 West Union Boulevard without a certificate of occupancy. Ordinance 1420, Section 403.46(a) of Codified Ordinances of the City provides: “A building, structure or facility may not be used or occupied without a certificate of occupancy issued by a building code official.” Hynes issued a citation to Villani on April 7, 2008. On March 6, 2009, the magisterial district judge found Villani guilty and fined him \$50 plus costs of \$58 for a total fine of \$108.00.

Villani appealed to the trial court. On March 9, 2010, the trial court held a hearing. Hynes testified regarding the applications made by Villani, his reviews of the applications, and the issuance of the citation. Villani’s counsel, Kevin Kelleher (Attorney Kelleher), planned to introduce evidence:

that will show that there is a decision made on the part of the city, based on inspection reports and prior certificates of occupancy, that it was permitted, in the broad use of that term, to be used for five apartments. [W]hy it was five, is arbitrary, compared to six because the . . . building is large enough in its square footage to accommodate six units.

Notes of Testimony, March 9, 2010, (N.T.) at 16; Reproduced Record (R.R.) at 18.

The trial court did not permit Attorney Kelleher to introduce this evidence: “That was not ripe for criminal court, as far as I’m concerned. . . . What I’m dealing with is, was there a certificate of occupancy? Yes or no. And if there was not, then, at the time there was not was it occupied?” N.T. at 18; R.R. at 20. Attorney Kelleher objected. N.T. at 19; R.R. at 21. The parties stipulated that the unit was occupied and used as an apartment. N.T. at 20; R.R. at 22.<sup>1</sup>

The trial court found Villani guilty and ordered him to pay the original \$50.00 fine plus the costs of prosecution:

In the instant case, the thrust of the dispute centers around whether the actions of the Code Enforcement Bureau of the City of Bethlehem were arbitrary and capricious in denying the Defendant’s [Villani] Application for Permit. In fact, the testimony clearly establishes that the Defendant [Villani] is not challenging that the sixth unit was occupied and used as an apartment, despite not acquiring a certificate of occupancy. However, the Defendant’s [Villani] challenge to the application of the Bethlehem Zoning Ordinance is misplaced. Such zoning challenges are for Civil Court and are not properly addressed at a summary appeal trial. This Court’s task was limited to determining whether a certificate of occupancy had been issued for the sixth apartment at the subject property; whether the sixth apartment located at the subject property was occupied; and ultimately, whether a violation had occurred. In light of the testimony recounted above, this Court found that there was a violation of the Zoning Ordinance of the City of Bethlehem § 403.46(a). Consequently, the Defendant’s [Villani] appeal lacks merit and must be dismissed.

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<sup>1</sup> Villani testified regarding his conversations with Hynes and disputed that he ever applied for a permit. N.T. at 22; R.R. at 24.

Trial Court Opinion, May 10, 2010, at 3.

Villani contends that in reaching its decision the trial court violated Villani's constitutional rights, abused its discretion, or committed an error of law when it refused his request to present evidence concerning the City's alleged prior actions related to the subject property, including the alleged acknowledgment of and permission for the creation of the sixth dwelling unit. As a result, Villani asserts that his constitutional right to due process was violated.<sup>2</sup>

In Commonwealth v. Collins, 585 Pa. 45, 67, 888 A.2d 564, 577 (2005), our Pennsylvania Supreme Court described the standard for admissibility of evidence:

It is well settled that the admission of evidence is within the sound discretion of the trial court. . . . The threshold inquiry with admission of evidence is whether the evidence is relevant. 'Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable, or supports a reasonable inference or presumption regarding the existence of a material fact.' . . . (Citations omitted).

Here, what was relevant to the controversy before the trial court was whether there was a certificate of occupancy for the sixth unit in the basement and whether the unit was occupied. Evidence concerning whether the City was aware of the sixth unit or whether there was some land use action such as a variance, special exception, or conditional use to permit the creation of the unit did not affect

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<sup>2</sup> This Court's review is limited to whether the trial court violated constitutional rights, abused its discretion, or committed an error of law. McGriff v. Vidovich, 699 A.2d 797 (Pa. Cmwlth. 1997).

whether the City met its burden of proving a violation of Ordinance 1420, Section 403.46(a) of Codified Ordinances of the City. In his brief, Villani asserts that a consideration of the evidence he sought to introduce could have led to a determination that no certificate of occupancy was required for the unit. He does not explain how this would be the case, given the plain language of Section 403.46(a).<sup>3</sup> The fact remains that no City official ever issued an occupancy permit for the unit. The trial court did not abuse its discretion or commit an error of law when it refused to permit Villani to introduce the proffered evidence.<sup>4</sup>

Accordingly, this Court affirms.

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BERNARD L. MCGINLEY, Judge

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<sup>3</sup> Perhaps this evidence could have gone to the severity of the sentence imposed. However, the fine assessed was a de minimis fine of \$50 when the maximum fine could have been \$1,000. Because the fine imposed was so small relative to the maximum, it is unlikely that this evidence would be persuasive. It was revealed at the hearing that Villani lost a zoning appeal related to this property and appealed that decision. Perhaps this evidence was relevant in that appeal.

<sup>4</sup> Villani argues that because the trial court did not allow him to present this evidence, the trial court violated his constitutional right to due process. “Due process requires a person be provided notice and an opportunity to be heard prior to an adjudication affecting that person’s rights . . . [i]t does not, however, confer an absolute right to be heard.” Fountain Capital Fund, Inc. v. Pennsylvania Securities Commission, 948 A.2d 208, 214 (Pa. Cmwlth. 2008). Villani received a full and fair opportunity to litigate the controversy. Villani was represented by counsel. He was given the opportunity to present relevant evidence to the trial court. Villani also took advantage of the appeal process. Accordingly, there was no denial of due process.

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**ORDER**

AND NOW, this 8th day of November, 2010, the order of the Court of  
Common Pleas of Lehigh County in the above-captioned matter is affirmed.

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BERNARD L. MCGINLEY, Judge