

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Paradise Township	:	
	:	
v.	:	No. 1599 C.D. 2008
	:	SUBMITTED: January 16, 2009
Joel King, Christian L. King and	:	
Mary S. King,	:	
Appellants	:	

OPINION NOT REPORTED

**MEMORANDUM OPINION
PER CURIAM**

FILED: February 17, 2010

Joel King, Christian L. King and Mary S. King (collectively, the Kings), appeal *pro se* from the July 25, 2008 order of the Court of Common Pleas of Lancaster County dismissing their praecipe for a writ of certiorari from the March 27, 2008 judgment entered in Lancaster County Magisterial District Court 02-3-05. For the reasons set forth below, we affirm.

As reflected in the certified record, the background of this matter is as follows. On November 30, 2007, Paradise Township filed a civil complaint against the Kings seeking a judgment in the amount of \$8000 with costs. Zoning officer Dominick J. Lopez signed the complaint as the Township's authorized agent and indicated that he had attached thereto a civil enforcement action narrative.¹ The Kings failed to appeal to the zoning hearing board.² In such cases,

¹ There is no narrative in the certified record. Both parties, however, assert in their briefs that the underlying matter involved an August 2007 notice of violation and enforcement issued to the Kings as owners and operators of a business at 105 Rohrer Mill Road, Paradise Township, Lancaster County.

a township's charge of an ordinance violation is rendered binding and the role of a Magisterial District Judge (MDJ) is limited to imposing a fine for an existing violation. *Johnston v. Upper Macungie Twp.*, 638 A.2d 408 (Pa. Cmwlth. 1994). Accordingly, without holding a hearing, MDJ Isaac H. Stoltzfus entered judgment in favor of the Township and against the Kings in the amount of \$8,772.66 on March 27, 2008.

On April 23, 2008, the Kings filed a praecipe for a writ of certiorari with the common pleas court's prothonotary pursuant to the Pennsylvania Rules of Civil Procedure for Magisterial District Judges (PRCPMDJ, or simply Rule[s]), checking all four boxes provided on the form, thereby claiming all four bases for aggrievement set forth in Rule 1009A: lack of jurisdiction over the parties and subject matter; improper venue; and such gross irregularity of procedure as to make the judgment void. A party filing such a praecipe seeks "certiorari," defined as "an examination by the court of common pleas of the record of proceedings before a magisterial district judge to determine questions raised under Rule 1009A." Rule 1001(3).³ Subsequently, the prothonotary issued a writ of certiorari

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² The Kings contend that Joel King objected to the notice via a timely September 2007 appeal letter, which is attached as an exhibit to his reply brief in this court. This Court may not consider evidence that is *dehors* the record, including documents appended to a brief that are not part of the certified record and representations made in briefs without record support. *See Tennyson v. Zoning Hearing Bd. of West Bradford Twp.*, 952 A.2d 739 (Pa. Cmwlth. 2008). In any case, even if we consider the letter attached to the brief, it is a letter to the Township Supervisors explaining why the Kings have recently been out of compliance with the outdoor storage requirement, and stating that the project which caused them to be in violation should be finished "sometime in the fall (as time and weather permits), but likely not in the timeframe you suggested" and that they "consider the matter closed." (Exhibit C-2 to Reply Brief). Plainly, this is not an appeal to the zoning hearing board.

³ The writ of certiorari procedure, which the Kings invoked in this case, is an alternative to an appeal under PRCMDJ 1002. In a Rule 1002 appeal, a new complaint is filed and the parties **(Footnote continued on next page...)**

to the MDJ directing him to transmit “a certified true copy of the record of the proceedings” to the prothonotary within ten days. Certified Record (C.R.), Item No. 3 at 1. See Rule 1012. The MDJ complied with the order two days later.

On May 5, 2008, the Township filed a praecipe for assignment of the writ with the common pleas court, requesting that it also schedule a conference to address a time frame for briefing, if necessary. In response, the common pleas court filed a May 22, 2008 order, in pertinent part, directing the Kings to file within twenty days “(1) [a] concise statement of the irregularities complained of including specific factual allegations that support the claimed irregularities; and (2) a legal brief containing legal arguments and supporting legal authorities.” *Id.*, Item No. 6 at 1.

The Kings did not file such a statement, but instead, on June 5, 2008, filed a motion for reconsideration of the May 22 order, outlining the case’s procedural history and noting that the common pleas court issued the subject order “without any conference, hearing or other procedure and/or discussion.” *Id.* at 2. In addition, the Kings took exception to the court’s issuing its order without addressing the jurisdictional challenges checked off on the praecipe, claiming a deprivation of their constitutional rights. Finally, the Kings requested that the court conduct a trial by jury in order to consider both the facts and law with respect to all four of their challenges.

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proceed to a trial *de novo*. Rules 1004, 1007. Given the limited grounds for relief under the certiorari procedure and the extreme difficulty of establishing any of them, it is unclear why the Kings chose to pursue this route.

On June 10, 2008, the court denied the Kings' motion for reconsideration.⁴ On July 1, 2008, the court issued an order noting the Kings' failure to comply with its May 22 order, directing them to file a concise statement of irregularities complained of by July 21, 2008, and advising them that their failure to do so would result in a dismissal of their appeal. Despite being given a second opportunity to explain what "irregularities" they believed had occurred, the Kings did not file anything in response to the July 1 order. On July 25, 2008, the court filed the order at issue, dismissing the Kings' appeal. The Kings' timely appeal to this Court followed.

The Kings have raised three issues: 1) whether it is constitutional to apply Section 1303.4 of the Revised Zoning Ordinance of Paradise Township (1982) to the Kings as private individuals and to their private property and private business; 2) whether the Township and the MDJ had subject matter and personal jurisdiction over the Kings, their private property and private business; and 3) whether the common pleas court erred in failing to address the Kings' jurisdictional issues and in dismissing their writ of certiorari.

First, where litigants fail to comply with a common pleas court order that they give substance to their appeal, even after being afforded a second chance to do so, the court does not err in dismissing their appeal on that basis.⁵ *See Means*

⁴ The Kings filed an appeal to this Court from the common pleas court's June 10, 2008 order, which was docketed at 1101 C.D. 2008. They also filed an emergency petition for writ of supersedeas. On July 16, 2008, this Court granted the Township's motion to quash their appeal and dismissed as moot the supersedeas request. We entered the order without prejudice to the Kings to file an appeal from the common pleas court's final order if they were aggrieved by it. That appeal is now before us.

⁵ It is well-established that common pleas courts are free to develop local rules and orders of court. (Local rules can include an order of general application, such as the trial court's May 22 order. Pa. R.C.P. No. 239(a)). Indeed, in *McCarthy v. City of Bethlehem*, 962 A.2d 1276, 1280 (Footnote continued on next page...)

v. Housing Auth. of Pittsburgh, 747 A.2d 1286, 1289 (Pa. Cmwlth. 2000) (noting that it was “generally inclined to construe *pro se* filings liberally,” but ultimately granting appellee’s motion to quash appellant’s appeal for “repeated and substantial noncompliance with the [Pennsylvania] Rules of Appellate Procedure.) In the present case, the common pleas court’s rule requiring a concise statement of irregularities afforded the Kings the opportunity to explain their assertions, thereby providing the court with some basis for reviewing their claims. Such a rule clearly promotes the interest of justice and facilitates the business of the court.

Failure to comply with lawful orders aside, despite being given two opportunities, the Kings failed to apprise the court of what “gross irregularities” had occurred before the MDJ, or why they believed venue was improper or personal jurisdiction lacking. Instead, they complained about the procedures employed by the court of common pleas. Even in their brief to this Court, they have not pointed to any particular errors by the MDJ, or any basis for their personal jurisdiction and venue claims. Accordingly, we must conclude that they have waived all such issues.⁶

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(Pa. Cmwlth. 2008), *appeal denied*, ___ Pa. ___, 983 A.2d 1250 (2009), this Court acknowledged that “Section 323 of the Judicial Code, 42 Pa. C.S. § 323, provides that ‘*except as otherwise prescribed by general rules*, every court shall have power to make such rules and orders of court as the interest of justice or the business of the court may require.’” (Emphasis in original).

⁶ Even if we were to consider such claims, there is no indication of improper venue under the rules applicable to MDJs, any failure of service or other defect relating to personal jurisdiction, nor any error by the MDJ, let alone any “gross irregularity of procedure as to make the judgment void.” Rule 1009A. As noted above, the Kings’ failure to appeal the notice of violation to the zoning hearing board constituted a conclusive determination of guilt, *Johnston*, such that the MDJ was limited to determining the appropriate civil penalty to be imposed pursuant to Section 617.2 of the Pennsylvania Municipalities Planning Code (MPC), Act of July **(Footnote continued on next page...)**

Moreover, even if it were error for the common pleas court to have refused to consider the Kings' non-waivable claim that the MDJ lacked subject matter jurisdiction, there is no merit to this assertion. Pursuant to Section 617.1 of the MPC, "[d]istrict justices shall have initial jurisdiction over proceedings brought under section 617.2." 53 P.S. § 10617.1.⁷ Further, we note that the gist of the King's jurisdictional argument appears to be that the municipality has no power to regulate what they do on or with their own land, and/or that the ordinance under which they were cited is not a valid exercise of the police power, and so the courts have no authority to enforce the local ordinance. This is simply incorrect as a matter of law. As our Supreme Court noted long ago, "[I]t 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 provided such regulation or prohibition is clearly or reasonably necessary to preserve or protect the health or safety or morals and general welfare of the people." *Cleaver v. Bd. of Adjustment*, 414 Pa. 367, 372, 200 A.2d 408, 412 (1964). Additionally, even where a property owner asserts a validity challenge in response to a violation notice—which was never properly preserved or presented in this case—the prosecution of the matter falls within the *jurisdiction* of the local authorities and the courts.

Because all non-jurisdictional issues were waived and there is no merit to Kings' jurisdictional argument, we affirm the order of the court of common pleas.

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31, 1968, P.L. 805, *as amended*, added by Section 62 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 10617.2.

⁷ This section was added by Section 62 of the Act of December 21, 1988, P.L. 1329.

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Mary S. King,	:	
Appellants	:	

ORDER

PER CURIAM

AND NOW, this 17th day of February, 2010, the order of the Court of Common Pleas of Lancaster County in the above-captioned matter is hereby AFFIRMED.