

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ararat Township :
 :
 v. : No. 1923 C.D. 2006
 : Submitted: December 28, 2007
 Raymond R. Fox, David L. Fox, :
 Appellants :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Judge
 HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
 SENIOR JUDGE FLAHERTY

FILED: March 7, 2008

David L. Fox, (Fox) pro se, appeals from an order of the Court of Common Pleas of Susquehanna County (trial court) which determined that Fox and his father, Raymond R. Fox, now deceased, were in violation of Ordinances No. 1-97 and No. 2-97 of Ararat Township (Township) which prohibit the accumulation of junk on property without a license. The trial court ordered the removal of the offending materials and ordered the Foxes to pay attorney's fees and costs incurred by the Township. We affirm.

Fox is the owner of property on May Road. The Code enforcement officer for the Township had previously notified Fox of his violation of Ordinances No. 1-97 and No. 2-97, due to the accumulation of junk on his premises without a license. On February 14, 2006, Township filed a petition with the trial court requesting that the court grant a rule to show cause why an order should not be issued directing Fox to abate and remove junk from the property and why Fox should not be liable for attorney's fees and costs. The trial court issued the rule.

The trial court conducted a hearing on the matter on March 23, 2006. Fox, appearing pro se, requested a continuance in order to retain counsel, which was granted by the trial court. The trial court also directed Fox to file an answer to the Township's petition. Fox thereafter filed an answer. At a hearing on June 26, 2006, Fox appeared accompanied by counsel, Patrick Kane. Prior to the commencement of the proceedings, Kane requested a continuance on his client's behalf and also requested to withdraw as counsel. Both requests were granted by the trial court and the matter was again rescheduled.

Thereafter, on August 4, 2006, Fox filed a petition with the trial court requesting a rule to show cause why the proceedings should not be dismissed because the ordinances at issue were not properly enacted. The trial court issued the rule. Township thereafter filed an answer to Fox's petition and a hearing was ultimately conducted on August 30, 2006. Township offered testimony from two witnesses. Fox testified on his own behalf and also introduced evidence.

The trial court issued an opinion and order concluding that the ordinances at issue were lawfully enacted and that in violation of the ordinances, Fox stored junk on his land. The trial court ordered Fox to remove all materials, unregistered vehicles and equipment from his property and also ordered the payment of attorney's fees and costs incurred by Township. The trial court issued a subsequent order denying Fox's request to reopen the record for further proceedings. This appeal followed.¹

¹ Township argues that Fox has waived all issues presented inasmuch as he did not file post trial motions in accordance with Pa. R.C.P. No. 227.1. However, the ordinances at issue provide that violations thereof are summary offenses under the Pennsylvania Rules of Criminal Procedure. In addition, both ordinances provide for imprisonment in lieu of payment of a fine. As stated in Town of McCandless v. Bellisario, 551 Pa. 83, 77 709 A.2d 379, 381 (1998), "the enforcement of municipal ordinances that provide for imprisonment upon conviction or failure to **(Footnote continued on next page...)**"

In his statement of questions presented, Fox raises four issues. The first issue listed is whether the trial court erred in allowing Township to file a late answer in response to a petition filed by Fox. Although listed as an issue, nowhere in the argument section does Fox address the late answer. In accordance with Pa. R.A.P. 2119(a), the argument section of a brief must separately address each claim presented. Issues raised in the statement of questions involved but not addressed in the argument section are waived. Commonwealth v. Jackson, 494 Pa. 457, 431 A.2d 944 (1981). Accordingly, the issue relating to Township’s late answer is waived as this court cannot provide meaningful review of an issue which is raised but not addressed in the argument section.

Next, in his second and fourth issues Fox claims that the trial court erred in refusing to examine the ordinances to determine whether they were properly signed and published. We first observe that the trial court, in its opinion, declared that “Ararat Township did lawfully enact its ordinances nos. 1-97 and 2-97, the first enacted on May 6, 1997 and the second enacted on November 4, 1997.” (Trial court opinion at 1.) In support of the determination that the ordinances were lawfully enacted, Township presented testimony from two witnesses. The Township secretary testified as to the contents of the 1997 minute book. According to the minutes, the ordinances were advertised, discussed, public comments were heard and the ordinances were thereafter adopted. Fox argues that an affidavit he obtained shows that the ordinances at issue do not bear the required signatures. However, the trial court accepted the testimony of Township’s

(continued...)

pay a fine must follow the Rules of Criminal Procedure. . . .” (Emphasis deleted.) Therefore, the rules governing civil procedure are inapplicable.

witnesses and “[i]t is the trial court, as the trier of fact passing upon the credibility of witnesses and the weight to be afforded the evidence produced, which is free to believe all, part or none of the evidence.” Commonwealth v. Spontarelli, 791 A.2d 1254, 1258 (Pa. Cmwlth. 2002).

Finally, Fox claims that it was a conflict of interest for the Susquehanna district attorney to represent Township. This issue, however, was not raised before the trial court. Issues not raised in the lower court are waived and cannot be raised for the first time on appeal. Pa. R.A.P. 302(a), Constantino v. Carbon County Tax Claim Bureau, 895 A.2d 72 (Pa. Cmwlth. 2006), petition for allowance of appeal denied, 588 Pa. 785, 906 A.2d 544 (2006). Moreover, this too is an issue which Fox raised in his statement of questions presented yet fails to address in his argument section.

In accordance with the above, the decision of the trial court is affirmed.

JIM FLAHERTY, Senior Judge

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	:	
Raymond R. Fox, David L. Fox,	:	
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ORDER

Now, March 7, 2008, the Order of the Court of Common Pleas of Susquehanna County, in the above-captioned matter, is affirmed.

JIM FLAHERTY, Senior Judge