IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Township of Cranberry, Appellant	:	
v.	:	No. 2289 C.D. 2011
	:	Argued: November 16, 2012
Randy J. Spencer	:	

BEFORE: HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED: December 19, 2012**

Appellant Township of Cranberry (Township), a second-class township, appeals from the final judgment of the Court of Common Pleas of Venango County (trial court) in favor of Appellee Randy J. Spencer (Owner) on the Township's complaint. We now affirm the trial court's judgment.

On July 22, 2009, the Township's Code Enforcement Officer notified Owner that his two adjoining properties (Property) violated Sections 4.3, 4.4, and 4.8 of the Township's Nuisance Ordinance No. 231 (Ordinance). (Reproduced Record (R.R.) at 16a.) By letter dated August 12, 2009, Owner denied that the condition of the Property violated the Ordinance. (R.R. at 25a.) On July 1, 2010, the Township filed a complaint against Owner in the trial court, demanding equitable relief and recovery of costs and expenses associated with abating or removing violative conditions on the Property. (*Id.* at 4a-9a.) In the complaint, the Township raised two counts: (1) violation of the Ordinance and (2) common-law public nuisance. (*Id.*) On August 30, 2011, the trial court held a hearing.

At the hearing, Chad Findlay, the Township's Zoning and Code Enforcement Officer, testified for the Township. (*Id.* at 66a.) Mr. Findlay testified that he was responsible for enforcing the Ordinance. (*Id.* at 67a.) He further testified that on July 23, 2009, he served a notice upon Owner that alerted Owner of conditions on the Property that violated the Ordinance. (*Id.* at 72a.) Describing the conditions on the Property at the time he issued the notice, Mr. Findlay testified:

> There would have been multiple vehicles, [which] appeared to be inoperable. There would have been some trailers, maybe some scrap metals, body parts that had been maybe piled up from disassembling a vehicle, snowplowing equipment, other Jeeps and vehicles, [and] maybe some equipment or machinery that had been sitting there for some time.[1]

(*Id.* at 73a.) Despite the notice, Owner failed to address the violative conditions on the Property. (*Id.* at 74a.) According to his testimony, Mr. Findlay was familiar with the Property. (*Id.* at 68a, 87a, 89a.) Indeed, Mr. Findlay testified that "[t]o the right or to the east there [are] five or six homes and to the left or to the west there [are] two or three residential homes as well. There's also a residential home behind [the Property]. All around there are residential[,] single[-]family homes." (*Id.*) Finally, Mr. Findlay testified about the changes on the Property since the issuance of the notice:

> Well at this time, in addition to the items that were originally seen there [are] more trailers, there [have] been several vehicles in addition placed on the property including within the last few weeks a couple of old police cars. Um, it's- - -there may have been a trailer also

[1] The parties stipulated that none of the vehicles at issue on the Property are currently registered. (R.R. at 86a.)

> parked there, a flat car trailer aside from the box trailers, but in general there [are] more items there now than there [were] at the time of this notice.

(*Id.* at 74a-75a.)

> On cross-examination, Mr. Findlay testified:
>
> Q. What impact does this condition on [the Property] have outside the boundaries of [the Property]?
>
> A. Well the impact would be that, simply *the view*, I mean of anything- - -
>
> Q. *The aesthetic nature of it*?
>
> A. *The aesthetic nature of it*. Any condition that may arise of vermin or anything that may be living in or around that area that could harm the neighbors and things as well.
>
> Q. Alright, you have no evidence of [] vermin there inhabiting the premises or emanating from the premises correct?
>
> A. I have nothing with me today, no I do not.

(*Id.* at 78a. (emphasis added).)

After Mr. Findlay's testimony, the trial court viewed the Property. Following the view, Owner testified that he stores items on the Property for purposes of restoration. (*Id.* at 98a-99a.) The items on the Property are not abandoned. (*Id.* at 99a.) Specifically, Owner testified that he restores rare Jeep vehicles and has been storing his Jeep collection on the Property since 2000. (*Id.* 99a-100a.) He further testified that to restore the Jeep vehicles, he uses some of the automobile parts on the Property. (*Id.* at 100a.) Finally, Owner testified that "my backhoe is there and there's another backhoe there for parts. I don't have any farm equipment [on the Property]." (*Id.* at 104a.) On cross-examination, Owner acknowledged that in addition to the Jeep vehicles, he also stores a red S-10 Chevy and two police cars on the Property. (*Id.* at 101a.)

On October 21, 2011, the trial court issued its findings of fact and conclusions of law (Opinion). In the Opinion, the trial court found:

> As evidenced by the photographs, and as the court directly observed in its viewing of the property, the property has accumulated in excess of thirty (30) abandoned motor vehicles which can be observed from U.S. Route 322; the property has accumulated significant vegetation and plants not considered edible by humans; the property has accumulated significant junk material including a variety of broken or damaged vehicle components, broken glass; and the conditions of the property create significant opportunities for rodent or other vermin harborage. None of these conditions extend beyond the property owned by Defendant, or cause any danger to persons not present on the property.

(Certified Record (C.R.), Opinion at 4.) The trial court concluded that the salient purpose of the Ordinance is "the regulation and abatement of nuisances" and not the maintenance of property. (*Id.* at 7.) In fact, the trial court determined that the language contained in the Ordinance's preamble "mirrors almost exactly the language defining common law nuisances." (*Id.*) It also concluded that the Township was required to prove nuisance in fact. (*Id.* at 8.) Ultimately, the trial court held that the Township failed to meet its burden of proving that the violations on the Property constituted nuisance in fact. (*Id.*)

On November 3, 2011, the trial court denied the Township's motion for post-trial relief and entered judgment in Owner's favor on November 9, 2011. The Township now appeals to this Court.

On appeal,[2] the Township claims that the trial court erred in concluding that the Township could not enforce the Ordinance as a property maintenance ordinance, and the Township advances three arguments in support of that position. First, the Township argues that the trial court erred in concluding that the Ordinance was not a property maintenance ordinance. Second, the Township argues that the trial court erred in concluding that the Township is not authorized to enact property maintenance ordinances under the Second Class Township Code (Code).[3] Third, the Township argues that, because it properly enacted the Ordinance as a property maintenance ordinance (and not as a nuisance ordinance), it was not required to establish a nuisance in fact before enforcing the Ordinance.[4] Finally, the Township argues that the trial court erred in concluding that the Township could not enforce the Ordinance as a nuisance ordinance, because the conditions on the Property did not constitute a nuisance in fact.

First, we will address whether the Ordinance is a property maintenance ordinance or contains any property maintenance provisions.

ORDINANCE NO. 231

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF CRANBERRY TOWNSHIP, VENANGO COUNTY, PENNSYLVANIA, *DEFINING AND PROHIBITING CERTAIN NUISANCES*,

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[2] Our standard of review of a non-jury trial is to determine whether competent evidence supports the trial court's findings and whether the trial court committed an error of law. *Swift v. Dep't of Transp.*, 937 A.2d 1162, 1167 n.5 (Pa. Cmwlth. 2007), *appeal denied*, 597 Pa. 68, 950 A.2d 270 (2008). This Court cannot reweigh evidence or substitute its own judgment for that of the fact-finder. *Id.*

[3] Act of May 1, 1933, P.L. 103, *reenacted and amended* by Act of July 10, 1947, P.L. 1481, *as amended*, 53 P.S. §§ 65101-68701.

[4] For clarity, we have re-ordered the Township's arguments.

> INCLUDING BUT NOT LIMITED TO: THE STORAGE OR ACCUMULATION OF "GARBAGE", "REFUSE OR RUBBISH", "JUNK MATERIAL" AND "ABANDONED OR JUNKED MOTOR VEHICLES"; . . . MAINTENANCE OR EXISTENCE OF ANY "VEGETATION"; AND THE MAINTENANCE OR EXISTENCE OF ANY UNCOVERED WELL OR CISTERN; PROVIDING DEFINITION*; PROVIDING FOR THE REMOVAL OF NUISANCES* AND FOR THE COLLECTION OF COSTS OF SUCH REMOVAL BY THE TOWNSHIP. . . .
>
> WHEREAS, the Board of Supervisors of Cranberry Township, Venango County, Pennsylvania (the "Township") deems it to be in the best interest, general welfare and safety of the citizens and the residents of the Township to prohibit certain specified *unreasonable, unwarranted or unlawful uses of private or public property which can cause injury, damage, hurt, inconvenience, annoyance or discomfort to others in the legitimate enjoyment of their rights of person or property and/or which can create a public nuisance*.[5]
>
> Now, therefore, be it enacted and ordained by the Board of Supervisors of the Township, and the same is hereby enacted and ordained by the authority of the same, as follows:
>
> Section 1. TITLE: This Ordinance shall be known as the "*Cranberry Township Nuisance Ordinance*".

[5] We note that the term "nuisance" is often defined as "the unreasonable, unwarrantable, or unlawful use of public or private which causes injury, damage, hurt, inconvenience, annoyance or discomfort to any person or resident in the legitimate enjoyment of his reasonable rights of person or property." *Saint Thomas Twp. Bd. of Supervisors v. Wycko*, 758 A.2d 755, 759 (Pa. Cmwlth. 2000), *appeal denied*, 567 Pa. 718, 785 A.2d 92 (2001); *see also Borough of New Bloomfield v. Wagner (New Bloomfield)*, 35 A.3d 839, 842 n.2 (Pa. Cmwlth. 2012). Public nuisance is "an unreasonable interference with a right common to the general public." *Wycko*, 758 A.2d at 759. "The definition of public nuisance is, at best, imprecise," and it likely encompasses the definition of nuisance noted above. *Wycko*, 758 A.2d at 759. As a result, we conclude that the Township's cause of action for public nuisance also would have required the showing of nuisance in fact.

. . . .

SECTION 3. DEFINITIONS: The following words and phrases, when used in this Ordinance, will have, unless the context clearly indicates otherwise, the meanings given to them in this Section.

. . . .

3.4. "Vegetation" means any grass, weeds or vegetation whatsoever which is not customarily considered to be edible by humans or that is not planted for some customary ornamental purpose.

3.5. "Abandoned or Junked Motor Vehicles" means any Motor Vehicle that: (a) is not in operable condition; and/or (b) does not have properly affixed thereto both a current Pennsylvania inspection sticker (if required in order to be legally operated on a public street or highway) and a current license plate or registration sticker.

3.6. "Motor Vehicle" means any device or combination of devices used for, or capable of being used for, transporting persons or property that would be required to be licensed and/or registered by the Commonwealth of Pennsylvania in order to be legally operated on any public street or highway. Motor Vehicles include, but are not limited to: automobiles, trucks, buses, motorcycles, motorized bicycles, scooters, trailers, semi-trailers and recreational vehicles.

Section 4. PROHIBITED ACTIVITIES AND CONDITIONS: No owner of any premises located in the Township shall, directly or indirectly, engage in, allow or permit any of the following activities or conditions to occur or exist in or on such premises:

. . . .

4.3. The storage or accumulation of *any Junk Material that can be seen from any public highway, road, street, avenue, lane or alley which is maintained by the Township or by the Commonwealth of Pennsylvania* unless a license has been obtained and is in force with respect to such material and the area where such material is located under the [Township's Junkyard Ordinance]. For purposes of this Ordinance, "Junk Material" means

and includes any unused, unusable or abandoned machinery, equipment, appliance, device, mobile home, scrap metal, glass, industrial waste and materials and items similar to any of the foregoing and parts and components of any of the foregoing.

4.4. The storage or accumulation of *more than one (1) Abandoned or Junked Motor Vehicle that can be seen from any public highway, road, street, lane or alley which is maintained by the Township or by the Commonwealth of Pennsylvania* unless a license has been obtained and is in force with respect to such vehicles and the area where such vehicles are located under the [Township's Junkyard Ordinance].

. . . .

4.8 *The maintenance or existence of any Vegetation* or other plants which *conceal, or tend to conceal, in whole or in part, any Garbage, Refuse or Rubbish, Junk Material or Abandoned or Junked Motor Vehicle* or any other activity or condition that violates this Ordinance.

SECTION 5. ENFORCEMENT PROCEDURES:

. . . .

5.5. Nothing in this Ordinance will be construed to impair any cause of action or legal or equitable remedy (including, but not limited to, *for a private or public nuisance*) of any Person or the public for injury or damage arising from any activity or condition proscribed by this Ordinance.

SECTION 6. PENALTIES:

. . . .

(d) The Township may also enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Venango County, Pennsylvania, as an alternative to, or in addition to, any other enforcement actions or proceedings. Such action in equity may be for, though not necessarily limited to, *abatement and/or removal of a public nuisance*. *All costs and expenses incurred by the Township for abatement or removal of a public nuisance* will be recoverable by the Township from the Owner(s) of the subject premises and will

> constitute a municipal lien in favor of the Township against the subject premises pursuant to, inter alia, 53 P.S. § 7107 [, Act of May 16, 1923, P.L. 207, *as amended*, 53 P.S. § 7107].

(R.R. at 11a-15a (emphasis added).)

The Township argues that Sections 4.3, 4.4, and 4.8 of the Ordinance regulate property maintenance. We disagree. Our reading of the Ordinance confirms the trial court's conclusion that the "dominant purpose of the [Ordinance] is the regulation and abatement of nuisances." (C.R., the trial court's opinion at 7.) The entire Ordinance, from its preamble to its individual sections, focuses on the concept of nuisance. In fact, the Township instituted this action in equity against Owner on the basis of nuisance. In its complaint, the Township sought the recovery of costs and expenses associated with an eventual "abatement and/or removal of a public nuisance" and a municipal lien against the Property. (R.R. at 7a, 15a.) Under Section 6(d) of the Ordinance, recovery of costs and municipal liens can be requested only when abatement or removal relates to nuisance. In addition to the enumerated claims for nuisance that the Ordinance authorizes, the Township, through Section 5.5 of the Ordinance—"nothing in this Ordinance will be construed to impair any cause of action . . . for a private or public nuisance"—also expressly reserves a right to pursue common law causes of action for nuisance against private property owners. Given the plain language of the Ordinance, we agree with the trial court that the Ordinance does not regulate property maintenance, but rather nuisances.

Next, we will address the Township's argument that the conditions on the Property constitute nuisance in fact. In support of that argument, the Township points to the trial court's factual findings. In particular, the Township argues that the large number of abandoned vehicles on the Property, the inedible vegetation,

the accumulation of significant junk material and broken glass, and the conditions creating significant opportunities for rodent or other vermin harborage are sufficient to show nuisance in fact.

In *Commonwealth of Pennsylvania v. Hanzlik*, 400 Pa. 134, 161 A.2d 340 (1960), our Supreme Court held that second-class townships are not permitted under the Code to declare the storage of abandoned or junked vehicles on a private property a nuisance *per se*.[6] *Hanzlik*, 400 Pa. at 137, 161 A.2d at 342. An ordinance must be phrased in a manner as to require a township to establish the existence of a nuisance in fact. *New Bloomfield*, 35 A.3d at 844. A court may save the constitutionality of an ordinance declaring junked or abandoned vehicles as nuisance per se by reasonably interpreting the statute. *Teal v. Twp. of Haverford*, 578 A.2d 80, 82 (Pa. Cmwlth. 1990). We, therefore, can read an ordinance prohibiting junked or abandoned vehicles as requiring a township to prove a nuisance in fact. *Id.*

"It is well settled that there must be sufficient evidence of a nuisance in fact before permitting a [township] to enforce an ordinance abating the storage of vehicles on private property." *New Bloomfield*, 35 A.3d at 846. The township bears the burden of proving a nuisance in fact. *See Talley v. Borough of Trainer*, 394 A.2d 645, 645-46 (Pa. Cmwlth. 1978.) In *Talley*, we concluded that nuisance in fact existed under the ordinance when, *inter alia*, there was broken glass strewn about the private property and many abandoned vehicles on the property "closely *abutted and partially impinged* upon a public sidewalk frequently used by children

[6] The parties do not raise the issue of whether the Ordinance declares the storage of abandoned or junked vehicles as nuisance *per se*.

going to and from school." *Id.* (emphasis added). In *Hanzlik*, we held that there was no nuisance in fact when there was no evidence of loud noises, offensive odors, attraction of vermin, or injuries to the public. *Hanzlik*, 400 Pa. at 136, 161 A.2d at 341. Vehicles sitting in plain view of other "residences do not create an inconvenience, annoyance, or discomfort to adjacent homeowners" for purposes of proving nuisance in fact. *New Bloomfield*, 35 A.3d 848. Finally, in *Teal* we concluded that, although the township produced evidence that Teal's vehicles lacked current registration plates and inspection stickers, it did not establish that the vehicles posed any public danger, inconvenience, or distraction. *Teal*, 578 A.2d at 83.

Here, the Ordinance declares and deems the storage or accumulation of any junk material, more than one junked or abandoned vehicle and the existence of any vegetation, concealing or tending to conceal rubbish, junk material, or abandoned vehicles on private property as nuisance *per se*. Consequently, the law requires the Township to prove nuisance in fact. The Township has failed to prove nuisance in fact. What the Township proved was that the Property contains a large number of unregistered vehicles in various states of disrepair. We agree with the trial court that the Township's evidence did not indicate whether the cited conditions extended beyond the Property or presented any danger to the public. The Township presented no evidence from which we reasonably could infer threats to surrounding residences, children, or the environment. As Owner argues, the Township's basis for bringing this action against him is rooted in the Property's aesthetics. To highlight this point, Owner cites to Mr. Findlay's testimony that the impact of the Property's condition extends outside of the Property's boundaries insofar as it affects the public's view. (R.R. at 78a.) We held in *New Bloomfield*,

however, that nuisance in fact cannot be based solely on the public's view of a property. *New Bloomfield*, 35 A.3d at 848. We, therefore, conclude that the Township did not present sufficient evidence to establish that the conditions on the Property constituted nuisance in fact.

Accordingly, we affirm the trial court's judgment.[7]

P. KEVIN BROBSON, Judge

[7] Based on our analysis, we need not address the Township's other arguments on appeal.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Township of Cranberry, Appellant	:	
v.	:	No. 2289 C.D. 2011
Randy J. Spencer	:	

O R D E R

AND NOW, this 19th day of December, 2012 the judgment of the Court of Common Pleas of Venango County is hereby AFFIRMED.

P. KEVIN BROBSON, Judge