

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. : No. 240 C.D. 2011
 :
 George Konevitch, : Argued: September 13, 2011
 Appellant :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
 HONORABLE DAN PELLEGRINI, Judge
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY SENIOR JUDGE KELLEY

FILED: October 25, 2011

George Konevitch appeals from the January 18, 2011, order of the Court of Common Pleas of Lebanon County (trial court) finding Konevitch guilty of seven citations and fining Konevitch \$500.00 on one citation and ordering him to pay the costs of all seven citations. We affirm.¹

¹ Also before this Court for disposition are: (1) North Cornwall Township's (Township) motion to strike Konevitch's reply brief; and (2) Konevitch's motion for sanctions and motion to strike the Township's motion to strike Konevitch's reply brief. The Township contends that Konevitch's reply brief should be stricken because it violates Pa.R.A.P. 2113(a). See Pa.R.A.P. 2113(a) ("[T]he appellant may file a brief in reply to matters raised by appellee's brief and not previously addressed in appellant's brief."). The Township contends that since it did not raise any new matters or issues on appeal not previously raised and/or addressed by Konevitch's principal brief, Konevitch's reply brief, which contains additional argument responding to the Township's

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On May 12, 2003, the Township enacted North Cornwall Township Ordinance No. 212 which establishes, *inter alia*, the minimum regulations governing the conditions and maintenance of all property, buildings and structures. Reproduced Record (R.R.) at 236a. Therein, the Township adopted the International Property Maintenance Code of 2000 (hereinafter referred to as the Property Maintenance Code). Id.

Konevitch owns property located at 2130 Colebrook Road, Lebanon, Pennsylvania (Property). Konevitch was initially cited by the Township on July 30, 2009, for violating Section 302.8 of the Property Maintenance Code which provides as follows:

302.8 Motor Vehicles. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly,

thorough analysis of Konevitch's meritless claims, the reply brief should be stricken. Konevitch denies that the Township did not raise any new matters not previously encompassed within and addressed by his principal brief.

Upon review of Konevitch's reply brief, we conclude that he does raise some new arguments therein; however, the inclusion of these arguments is not so egregious as to warrant striking the reply brief. Accordingly, the Township's motion to strike Konevitch's reply brief is denied.

Konevitch contends that the Township's motion to strike his reply brief constitutes conduct of counsel which is frivolous, arbitrary, obdurate, vexatious and done in bad faith. He contends that he has incurred substantial, but reasonable counsel fees in order to respond to the Township's motion. Konevitch requests that this Court strike the Township's motion and impose sanctions against the Township including attorney's fees and costs. In response, the Township contends that it had a reasonable and good faith basis to file the motion to strike as Konevitch's reply brief violates Pa.R.A.P. 2113.

Upon review, we conclude that the Township's conduct in filing the motion to strike Konevitch's reply brief does not warrant the striking of the motion or the imposition of sanctions, attorney's fees, or costs against the Township. Accordingly, Konevitch's motion for sanctions and motion to strike the Township's motion to strike Konevitch's reply brief is denied.

disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Exception: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

R.R. at 243a.²

An inspection of Konevitch's property revealed that he was storing unlicensed and/or unregistered motor vehicles on the Property. The July 30, 2009 notice of violation ordered the removal of said vehicles from his Property by August 24, 2009. Time extensions were granted and a re-inspection performed on November 20, 2009, revealed that Konevitch was not in compliance with the notice of violation. Several additional citations were issued to Konevitch between November 20, 2009 and May 13, 2010, for violating Section 302.8 of the Property Maintenance Code.

Konevitch was found guilty in absentia by a District Magistrate on March 17, 2010 with respect to the citations issued on November 20, 2009, November 25, 2009, December 2, 2009, December 9, 2009, and December 28, 2009. Konevitch was found guilty in absentia on May 19, 2010, with respect to a citation issued on April 13, 2010. The fine for the foregoing citations was set at \$2,361.50.

Konevitch filed a notice of appeal of summary criminal conviction³ with the trial court on August 5, 2010.⁴ A *de novo* hearing was held before the trial court

² The Township's Property Maintenance Code does not define the terms "inoperable" or "unlicensed." Section 201.4 of the Property Maintenance Code provides that "[w]here terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies." R.R. at 241a. Konevitch concedes that since vehicles are not "licensed" in the Commonwealth of Pennsylvania but rather "registered", the term "unlicensed", as used in Section 302.8 of the Property Maintenance Code, means "unregistered" within the meaning of the Vehicle Code - 75 Pa.C.S. §§101 - 9805.

on January 18, 2011, wherein the parties presented testimony and introduced evidence.⁵

Gary Ebersole, Konevitch's neighbor of forty years, testified that he filed a complaint after observing that Konevitch kept abandoned trucks by the creek on his Property, and two trucks and a van in his driveway. Ebersole revealed that he knew the vehicles were unlicensed and/or uninspected because he utilized a camera with a telescopic lens to inspect the vehicles.

Randy Maurer, a building code official for the Township, testified as an expert on the Property Maintenance Code. Maurer testified that after he received Ebersole's complaint, Bill Yeagley, another property inspector for the Township, performed an investigation of the Property. As part of this investigation, Yeagley visited the Property and took photographs of Konevitch's vehicles. Yeagley observed several vehicles that were not inspected or licensed. Consequently, Yeagley issued Konevitch seven non-traffic citations. Yeagley sent a notice of violation to Konevitch via certified mail and via first class mail; however, the green card was

³ "A summary case is one in which the only offense or offenses charged are summary in nature." Commonwealth v. Borriello, 696 A.2d 1215, 1217 n.4 (Pa. Cmwlth. 1997). "This includes all charged offenses as defined in the Crimes Code, 18 Pa. C.S. §106(c), or violations of ordinances for which imprisonment may be imposed upon conviction or upon failure to pay a fine or penalty." Id.

⁴ The Township filed a motion to dismiss based on the timeliness of Konevitch's notice of appeal. By order of August 25, 2010, the trial court dismissed the Township's motion on the basis that Konevitch did not receive notice of the convictions and sentences for each of citations until July 8, 2010, when sentence was imposed. Therefore, he had thirty days from July 8, 2010 to appeal and Konevitch filed his appeal within that timeframe.

⁵ After hearing arguments on this matter, this Court discovered that the certified record from the trial court did not include the transcript of the January 18, 2011 *de novo* hearing and the exhibits submitted into evidence during the hearing. Accordingly, as directed by this Court, the trial court filed a supplemental certified record including the missing documents on October 5, 2011.

never returned. Instead, Konevitch sent a handwritten response on the notice of violation dated July 30, 2009.

Maurer also visited the Property on two occasions to observe the vehicles that were in disrepair. Maurer testified that in his opinion, he believed that a vehicle violation of Section 302.8 of the Property Maintenance Code existed in this case. Maurer noted that several of the vehicles appeared to be inoperable because they had flat tires and were surrounded by trees or vegetation. Maurer testified that although he could not verify whether the vehicles could start, he opined that the vehicles had not been moved for a long period of time. Specifically, the blue van parked on Konevitch's Property was completely surrounded by trees and overgrown, with what looked like bamboo, growing completely around the vehicle. A bed spring was backed up against the van and the tires were flat. Maurer also testified that a service vehicle or bucket truck was completely surrounded by vegetation in February 2010.

Photographs taken of the vehicles by Maurer between October 2009 and November 2010 corroborated Ebersole's and Maurer's testimony. The photographs also revealed, *inter alia*, that one vehicle's tire was flat and vegetation completely surrounded several vehicles. See R.R. at 177a-198a.

Based on the evidence presented by the Township, the trial court found Konevitch guilty of seven citations and fined Konevitch with respect only to the citation issued on November 20, 2009 in the amount of \$500.00. However, Konevitch was ordered to pay the costs of all seven citations. Konevitch was further ordered to remove the remaining two vehicles from his Property before March 1, 2011. This appeal followed.⁶

⁶ Our scope of review of a trial court's summary conviction is limited to determining
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Herein, Konevitch argues that: (1) the trial court erred in finding that the Township submitted sufficient evidence to prove beyond a reasonable doubt that Konevitch violated the Township's Property Maintenance Code; (2) the trial court erred in finding that the Township's nuisance ordinance was inapplicable to the instant matter; (3) the trial court erred by not finding as *ultra vires*, the Township's Property Maintenance Code; (4) the trial court erred by not finding the Township's Property Maintenance Code unconstitutional as applied to Konevitch; and (5) the trial court erred in finding Konevitch guilty of multiple citations from a single criminal act.

These arguments were thoroughly and correctly analyzed and the matter ably disposed of in the comprehensive and well-reasoned opinion of the Honorable Charles T. Jones, Jr. and we affirm on the basis of his opinion in Commonwealth of Pennsylvania, North Cornwall Township v. George Konevitch (CP-38-SA-63-2010, CP-38-SA-65-2010, filed March 25, 2011).

JAMES R. KELLEY, Senior Judge

whether an error of law occurred or whether the trial court's findings are supported by substantial evidence. Commonwealth v. Snyder, 688 A.2d 230 (Pa. Cmwlth. 1996).

