Superior Court of New Jersey - Appellate Division

Letter Brief

Appellate Division Docket Number: A-001681-23-T1

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04/17/2024

Letter Brief on behalf of: Stephanie Tasin

State of New Jersey Plaintiff

V.

Stephanie Tasin Defendant

Case Type: Criminal
County/Agency: Morris
Trial Court/Agency Docket No: MA 23-004-F
Trial Court Judge/Agency Name: Claudia R. Jones,J.S.C.

Dear Judges:

Pursuant to R. 2:6-2(b), please accept this letter brief in support of my appeal in this matter.

TABLE OF CONTENTS

TABLE OF JUDGMENT(S), ORDER(S), RULING(S), AND DECISION(S) ON APPEAL

INDEX TO APPENDIX

TABLE OF AUTHORITIES

LIST OF PARTIES

Party Name	Appellate Party Designation	Trial Court/ Agency Party Role	Trial Court/Agency Party Status
Stephanie Tasin	Appellant	Defendant	Participated Below
State of N.J.	Respondent	Plaintiff	Participated Below

TABLE OF TRANSCRIPTS

Proceeding Type	Proceeding Date	Transcript Number
Motion	04/07/2022	1T
Motion	06/23/2022	2T
Other	07/07/2022	3T
Motion	07/28/2022	4T
Other	12/08/2022	5T
Trial	02/16/2023	6T
Municipal Court Appeal	12/14/2023	7T

PRELIMINARY STATEMENT

For thirteen (13) plus years, at the behest of the then management and governing association, Ms. Tasin volunteered her time and resources assisting with a feral cat situation at the Hanover Park Condominiums. She implemented a TNR (Trap, Neuter, Return) program which involved spaying/ neutering and vaccinating the cats that had been breeding on the premises. Ms. Tasin never brought cats to the premises. Ms. Tasin removed all adoptable cats/kittens and provided daily feeding of the remaining unadoptable cats. Due to her efforts the population of cats diminished over time from approximately 35 cats to approximately 3.Based solely on her efforts in caring for the cats as detailed above, the Superior Court, Law Division, in a trial de novo, convicted Ms. Tasin of abandonment of the remaining cats: it also convicted her of creating a nuisance. Finally, it convicted her of harboring, a mischaracterization of Summons Sc 009581 which did not charge harboring but rather charged allowing the cats to run at large.

The Superior Court, Law Division, failed to address any of the legal issues raised by Ms. Tasin but merely related the State's and Ms. Tasin's positions regarding same. Although it undertook no legal analysis of or otherwise addressed the legal issues, implicit in its judgment of conviction is its adoption of the State's position. Aside from the obvious error of this approach, it was rendered more problematic by the State's referencing of an Audit which was not part of the record.

Moreover, the Law Division made repeated references to the legal findings of the Municipal Judge. For example it referenced Judge Maenza's finding as to the intent of the enaction of chapter 44 of the municipal code, despite the record being devoid of any evidence with regard to intent. The legal issues are detailed herein. Ms. Tasin comes before this Court on appeal, requesting that it exercise plenary review of these issues and reverse the convictions.

TABLE OF PROCEDURAL HISTORY

Date	Event/ Proceeding	Filed By	Result	Appendix Page Number/ Transcript
10/28/2021	Summons/ Complaint00 9581-009586	Plaintiff		Da 15a,16a, 17a
06/23/2022	Motion to Dismiss	Defendant	Denied	Da18a, Da19a , 2T, 4T
02/16/2023	Trial		Convicted	6T
03/03/2023	Municipal Appeal	Defendant	Filed	Da 20a,
12/14/2023	Appeal Oral Argument			7T
01/17/2024	Decision	Court	Convicted	Da 1a
02/07/2024	Notice of Appeal	Defendant	Filed	Da 24a

STATEMENT OF FACTS

From 1998 to 2020 Mr. Thedore Tucker was employed by Taylor Management Company which managed the Hanover Park Condominium . 6T p. 51 L.2-5 During the early years of his tenure he fielded ongoing complaints about the 30-35 stray cats on the property,

many of whom had migrated from a neighboring farm. 6T p. 53 L. 22-25; 6T p. 54 L.11-13 Mr. Tucker sought guidance from Mr. Dilizia , the town Health officer and complainant in the matters sub judice. 6T p. 53 L. 3-8 Mr. Tucker implemented the removal techniques advocated by Mr. Dilizia to no avail. 6T p. 59 L. 1-5 In 2008 Mr. Tucker was referred to Stephanie Tasin, the defendant appellant. 6T p. 55 L.4 Ms. Tasin, a volunteer, active in rescue, implemented a Trap, Neuter and Release program which solved the problem. 6T p. 56 Complaints diminished as did the number of cats. 6T p. 59 L. 6-13

Ms. Tasin never placed cats on the premises. 6T p. 59 L. 14-18 At the behest of Mr. Tucker and with the approval of the Hanover Park Condominium Association she removed all kittens and adoptable cats and vaccinated, spayed/neutered the remaining cats and provided daily care. 6T p. 59 L. 21-25; p. 60 L. 1; p. 56 L. 20-25; p. 58 From approximately 35 cats in 2008 there were approximately 3 cats remaining when Mr. Tucker retired in 2020. 6T p. 59 L. 6-13

On September 14, 2021 Mr.Dilizia signed 6 summonses against Ms. Tasin for her action of feeding these remaining cats in the early morning hours of that day. 6T p. 22 L. 8-14; 6T p. 32 L. 15-25; 6Tp. 33 L. 1-4 That feeding consisted of placing food on paper plates, waiting approximately 15 minutes and removing the plates. 6T p. 32 L. 6-11; 6T p. 21 L. 15-17. East Hanover does not have an ordinance that prohibits the feeding of cats. In a trial de novo, the law division, Judge Claudia Jones, convicted

Ms. Tasin of 3 of the charges: abandonment,running at large (which she mischaracterized as a charge for harboring) and nuisance. Da 14a

LEGAL ARGUMENT

POINT 1

EACH OF THE FIVE SUMMONSES THE CONVICTIONS OF WHICH FORM THE BASIS OF THIS APPEAL ALLEGE A VIOLATION OF EITHER CHAPTER 173 OR CHAPTER 201 OF THE CODE OF THE TOWNSHIP OF EAST HANOVER AND CEASED TO BE VIABLE DUE TO THE SUNSET PROVISION CONTAINED IN CHAPTER 44 OF THE CODE. (RAISED BELOW DA 7A,8A)

By Ordinance 13-2004 , the Township of East Hanover abolished its Board of Health and transitioned to a Department of Health/Health Officer model. The pertinent language of the ordinance which is identical to that contained in Chapter 44 of the codified Code is as follows:

B. Chapters 173 through 213, inclusive, of the Code of the Township of East Hanover, as heretofore adopted by the Board of Health, are hereby readopted **for a period not to exceed one hundred twenty (120) days** to allow the same to be amended, revised and supplemented to reflect the change in status of the

public health agency. (emphasis added)

(1) During the 120-day period set forth above, the Chapters designated shall remain in full force and effect; provided, however, that where the phrase "Board of Health" appears in the text, it shall be read to mean the "Health Officer" or "the Township" as appropriate to the context.

No provision was made for the continuation of these Chapters subsequent to 120 days. After that 120 day period they ceased to be in force and effect. Each of the above docketed Complaints allege a violation of either Chapter 173 or Chapter 201. These Chapters ceased to be in force and effect subsequent to the 120 day sunset period.

Ordinances are to receive a reasonable construction, and primarily the intention expressed in an ordinance is to be gleaned from the language Where the language is unambiguous and clearly expresses the intent of the legislative body, there is no room for judicial construction. The rule is well settled and axiomatic. **Preziosi v.Buonaccorsi**, 16 N.J.Super.15, 21, 83A.2d 780 (App.Div.1951).... Where there is no ambiguity, we cannot impress the rule of construction.

First, the wording of the ordinance is plain, simple, clear and unambiguous, and this court is not free to indulge in a presumption, arising from a subsequent extrinsic exposition, that the local governing body intended something other than what was expressed. **Bass v. Allen Home Improvement Co.**, 8 N.J. 219, 226, 84 A.2d 720 (1951). The language must be given its ordinary

meaning...Aside from the fact that an exposition is considered only where the language of the municipal regulation is ambiguous, we emphasize it must be contemporaneous. Contemporaneous meaning of an ordinance is that which it possesses when enacted. **6 McQuillin, Municipal Corporations (3d Ed.** 1949), s 20.45, p. 107...As the court stated in **Keyport and Middletown Point Steamboat Co. v. Farmers Transportation Company of Keyport,** 18 N.J.Eq. 13, 24 (Ch.1866), affirmed 18 N.J.Eq. 511 (E. & A.1866):

'If the legislator who enacted the law should afterwards be the judge who expounds it, his own intention, which he had not skill to express, ought not to govern.'

Our courts will interpret and enforce the legislative will as written and not according to some supposed unexpressed intention. **City of Camden v. Local Government Board,** 127 N.J.L. 175, 178, 21 A.2d 292 (Sup.Ct.1941).

Petrangeli v. Barrett, 33 N.J. Super. 378, 385-86, 110 A.2d 313, 316-17 (App. Div.1954)

If the plain language leads to a clear and unambiguous result, then [the) interpretive process is over." *Young, supra,* 202 *N.J.* at 63, 995 A.2d 826 (internal citations omitted, alteration in original).

State v. Badr, 415 N.J. Super. 455,466, 2 A.3d 436,442 (App. Div. 2010)

Whether due to inartful drafting or the inadvertent failure to include a provision as to what would transpire after the 120

days, the ordinances in question all met their demise in 2004 - long before Mr. Dilizia issued the summonses now before the Court. As stated above where, as here, the language is clear and unambiguous the court must enforce the ordinance as written and not according to some supposed unexpressed intention.

POINT 2

SUMMONSE SC009581, 009582 AND 009583 EACH CHARGES A VIOLATION OF AN EAST HANOVER BOARD OF HEALTH ORDINANCE WHICH CONTAINS A PENALTY PROVISION WHICH IS VOID RENDERING THE ORDINANCE UNENFORCEABLE. (RAISED BELOW DA 8A,9A)

Summonses SC009581, 009582 and 009583 each charged Ms. Tasin with creating a nuisance in violation of Chapter 201 of the East Hanover Code. It was adopted by the Board of Health of the Township of East Hanover 9-1-1981 as part of Article III of Board of Health Ord. No. 1-1981.

N.J.S.A. 26:3-70 states:

The local board may prescribe a penalty for the violation of any provision of a health ordinance or code. Such penalty shall not be more than $500.00 nor less than $ 5.00.

The penalty provision applicable to the ordinance in question provides as follows:

201.7 Violations and Penalties

Any person who violates or neglects to comply with any provision of this chapter or any notice or order issued pursuant thereto shall, upon conviction, be subject to the penalties provided in § 164-14 of Chapter 164, General Provisions, Board of Health.

The referenced penalty provision provides:

164-14 **Violations of Code; penalties.**

A. Unless a specific penalty is provided elsewhere in Part III of this Code, in state law or in other ordinances of the Board of Health for a particular violation, any person, firm or corporation who shall violate any provision of Part III of this Code or any code or other regulation adopted by reference therein or any order promulgated under such provision, code or regulation, by doing any act prohibited or declared to be unlawful or a violation thereby, or shall engage in or exercise any business or occupation or do anything for which a license or permit is required thereby without having a license or permit therefor as required or who shall fail to do any act required by any such provision or when such provision declares such failure to be unlawful or a violation shall, upon conviction thereof, be

punishable by a fine of not less than $100 nor more than $1,000 for each violation.

[Amended 10-15-1990 by Board of Health Ord. No. 3-1990; 9-18-1995 by Board of Health Ord. No. 3-1995]Summons 009582 charging abandonment also references section 164-14 as the applicable penalty provision. The penalty for violation of Summons 009581, charging running at large is as follows:Any person who violates the provisions of § 173-23, 173-24, 173-26, 173-30, 173-31 or 173-30.1 shall, upon conviction thereof, be punished by a fine for each violation not less than $25 up to $2,500

The penalty provision for each provides for a maximum penalty at least twice that permissible by statute N.J.S.A. 26:3-70

The Court In **Borough of Verona v. Shalit** dealt with this very situation of a Board of Health ordinance that assessed a maximum penalty higher than that provided for by statute. That Court held that the penalty clause in the ordinance was totally void. It also held that **the invalidity of the excessive penalty clause could not be cured by the imposition of a penalty that did not exceed the statutory maximum. (emphasis added) Borough of Verona v. Shalit,** 96 N.J. Super. 20 (App. Div. 1967) See also: **State v. Laurel Mills Sewerage Corp.,** 46 N.J. Super. 331 (App. Div. 1957) The invalidity of the penalty clause rendered the ordinance unenforceable unless and until the clause is validly amended. Such an amendment to correct the defect,

however, would render the ordinances valid only as to their application to conduct following the amendment. **State v. De Louisa**, 89 N.J. Super. 596, 603, 215 A.2d 794, 799 (Co. 1965) At the time of the issuance of the summons and complaint referenced above the ordinance Ms. Tasin was charged with violating was invalid and unenforceable.

We cannot blue-pencil the unlawful provision to delete the offending overage and rescue the valid remainder… The penalty provision is wholly invalid, and cannot support an otherwise appropriate sentence. *Verona v. Shalit,* 96 *N.J.Super.* 20, 232 *A.*2d 431 (App.Div.1967); *State v. Laurel Mills Sewerage Corp.,* 46 *N.J.Super.* 331, 134 *A.*2d 720 (App.Div.1957).

Defendant's conviction cannot stand without a penalty, and therefore the judgment of the Law Division must be reversed..

State v. Capaci, 260 N.J. Super. 65, 69, 615 A.2d 275, 276 (App. Div. 1992)

POINT 3

A PERSON OF REASONABLE INTELLIGENCE WOULD NOT KNOW THAT SPAYING/NEUTERING AND PROVIDING DAILY FEEDING OF COLONY CATS CONSTITUTES CRIMINAL ABANDONMENT (RAISED BELOW DA 9A)

Ms. Tasin never placed cats on the Hanover Park Condominium premises. 6T p. 59 L. 14- From 2008 until September 14, 2021, at the behest of Mr. Tucker, an employee of the then Management Company, and with the approval of the Hanover Park Condominium Association, Ms. Tasin removed all kittens and adoptable cats from the premises, vaccinated, spayed/neutered the remaining cats and provided daily care. 6T p. 59 L. 21-25; p. 60 L. 1; p. 56 L. 20-25; p. 58 For her actions of providing care on September 14, 2021, the Court convicted Ms. Tasin of violating East Hanover ordinance 173-27 which reads as follows.

No person who shall own, keep or harbor an animal shall abandon such animal within the township.

"[A]n **ordinance violation**, commenced on municipal court summons and in which the State acknowledged its burden beyond a reasonable doubt, is a **quasi-criminal** matter." State v. Carlson, 344 N.J. Super. 521, 527 (App. Div. 2001), *certif. denied*, 171 *N.J.* 336, *cert. denied*, 536 *U.S.* 960, 122 *S. Ct.* 2665, 153 *L. Ed.* 2d 839 (2002).

"… because municipal court proceedings to prosecute violations of ordinances are essentially criminal in nature, penal ordinances must be strictly construed. *State, Tp. of Pennsauken v. Schad,* 160 *N.J.* 156, 171, 733 *A.*2d 1159 (1999); *Maplewood v. Tannenhaus,* 64 *N.J.Super.* 80, 89, 165 *A.*2d 300 (App.Div.1960), *certif. denied,* 34 *N.J.* 325, 168 *A.*2d 691

(1961). In interpreting a penal ordinance, a court must be guided by the rule of lenity, resolving any ambiguities in the ordinance in favor of a defendant charged with a violation. *State, Tp. of Pennsauken v. Schad, supra,* 160 *N.J.* at 171, 733 *A.*2d 1159; *Maplewood v. Tannenhaus, supra,* 64 *N.J.Super.* at 89, 165 *A.*2d 300. "Generally, under federal constitutional law, a `statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.' " *Betancourt v. Town of W. New York, supra,* 338 *N.J.Super.* at 422, 769 *A.*2d 1065 (quoting *Connally v. Gen. Constr. Co.,* 269 *U.S.* 385, 391, 46 *S.Ct.* 126, 127, 70 *L.Ed.* 322, 328 (1926)). A penal ordinance offends due process if it does not provide legally fixed standards and adequate guidelines for police and others who enforce the laws. *Betancourt v. Town of W. New York, supra,* 338 *N.J.Super.* at 422, 769 *A.*2d 1065 (citing **665 *Papachristou v. City of Jacksonville,* 405 *U.S.* 156, 170, 92 *S.Ct.* 839, 847, 31 *L. Ed.*2d 110, 120 (1972)); *Town Tobacconist v. Kimmelman,* 94 *N.J.* 85, 118, 462 *A.*2d 573 (1983)). "Vague language and inadequate standards permit the subjective and therefore impermissible enforcement of penal ordinances by the police." *Betancourt v. Town of W. New York, supra,* 338 *N.J.Super.* at 422, 769 *A.*2d 1065 (citing *Grayned v. City of Rockford,* 408 *U.S.* 104, 108 -09, 92 *S.Ct.* 2294, 2299, 33 *L. Ed.*2d 222, 227 -28 (1972)). To withstand a void-for-vagueness challenge, a penal ordinance

must *483 define the offense "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson,* 461 *U.S.* 352, 357, 103 *S.Ct.* 1855, 1858, 75 *L. Ed.*2d 903, 909 (1983).

State v. Golin, 363 N.J. Super. 474, 482 -83, 833 A.2d 660, 664 -65 (App. Div. 2003)

"… both the Federal and State Constitutions render vague laws unenforceable. See *U.S. Const.,* Amend. V; *N.J. Const.* (1947) Art. I, par. 1. The evils of vague laws were explained in *Grayned v. City of Rockford,* 408 *U.S.* 104, 108 -109, 92 *S.Ct.* 2294, 2298 -99, 33 *L.Ed.*2d 222, 227 -28 (1972) (footnotes omitted):

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

Thus, the constitutional ban on vague laws is intended to

invalidate regulatory enactments that fail to provide adequate notice of their scope and sufficient guidance for their application. *Papachristou v. City of Jacksonville,* 405 *U.S.* 156, 162, 92 *S.Ct.* 839, 843, 31 *L.Ed.*2d 110, 115 (1972). The requirement of statutory clarity "is essentially a due process concept grounded in notions of fair play." *State v. Lashinsky,* 81 *N.J.* 1, 17, 404 *A.*2d 1121 (1979); *accord State v. Lee,* 96 *N.J.* 156, 165, 475 *A.*2d 31 (1984).

123 To avoid the pitfall of vagueness, the terms of a … ordinance must enable a person of "common intelligence, in light of ordinary experience" to understand whether contemplated conduct is lawful. *Lashinsky, supra,* 81 *N.J.* at 18, 404 *A.*2d 1121.

State v. Cameron, 100 N.J. 586, 591, 498 A.2d 1217, 1219 (1985)

Penal laws must be clear enough so that `* * * all men subject to their penalties may know what acts it is their duty to avoid.

State v. Saunders, 302 N.J. Super. 509, 520 -21, 695 A.2d 722, 728 (App. Div. 1997)

The East Hanover ordinance in question does not define abandonment. A person of ordinary intelligence would not fathom that spaying/neutering and providing daily care for community cats over the course of 13 yrs. constitutes a criminal act of abandonment.

POINT 4

A PERSON OF REASONABLE INTELLIGENCE WOULD NOT KNOW THAT SPAYING/ NEUTERING AND REDUCING THE POPULATION OF FERAL (COMMUNITY) CATS ON CONDOMINIUM PROPERTY AT THE BEHEST OF THE CONDOMINIUM BOARD AND MANAGEMENT VIOLATED AN ORDINANCE PROHIBITING ALLOWING CATS TO RUN AT LARGE (RAISED BELOW DA 18A)

Summons SC 009581 charged Ms. Tasin with violating municipal ordinance 173-24 (A) That ordinance reads in pertinent part:

A. No person owning, keeping or harboring any animal shall suffer or permit it to run at large upon the public streets or in any public park or in any public building or in any other public place within the township.

Ms. Tasin never placed cats on the Hanover Park Condominium premises. 6T p. 59 L. 14- From 2008 until September 14, 2021, at the behest of Mr. Tucker, an employee of the then Management Company, and with the approval of the Hanover Park Condominium Association Ms. Tasin removed all kittens and adoptable cats,

vaccinated, spayed/neutered the remaining cats and provided daily care. 6T p. 59 L. 21-25; p. 60 L. 1; p. 56 L. 20-25; p. 58 As a result of her actions, the population of feral (community) cats on the condominium property diminished from approximately 35 cats to approximately 3. 6T p. 59 L. 6-13 It was these cats that the Health Officer charged her with allowing to run at large.

Defendant Appellant repeats and reiterates the law set forth in the immediately preceding as if same were set forth in its entirety. That law mandates that criminal (and quasi criminal municipal ordinances) be written in a manner which advises ordinary people that their actions constitute criminal conduct .

No person of reasonable intelligence would comprehend that their actions of spay/neutering and significantly reducing the population of community cats at the behest of a condominium board would subject them to criminal prosecution for violating the "leash laws" of the the municipality.

East Hanover Ordinance 173-24A is void for vagueness.

POINT 5

SUMMONSES SC009583 CHARGES A VIOLATION OF EAST HANOVER CODE 201-2A THE LANGUAGE OF WHICH HAS BEEN DECLARED VOID FOR VAGUENESS (RAISED BELOW DA 3A)

Summons SC 009583 charges a violation of East Hanover Code 201-2A which reads as follows:

No person shall create, commit or maintain, or allow to be created, committed or maintained, any nuisance within the Township of East Hanover, New Jersey.

In contrast to Section 201-2A , Section 201-2B of the East Hanover Ordinances delineates 16 specific nuisances.

The state initially charged Ms. Tasin with violating 201-2(B)(7) but prior to trial voluntarily dismissed same. **The summons referenced in this Point simply alleges that defendant created... a nuisance.**

Our Courts have declared nuisance language which lacks specificity as to the prohibited behavior void for vagueness.

As the Court in Golin stated:

In *Guidi,* we found that the language in§ 2.1(b) prohibiting "any matter, thing, condition or act which is or may become an annoyance or interfere with the comfort or general well-being of the inhabitants of this municipality" subjected defendants to an unascertainable standard. *Ibid.* Noting that the ordinance left citizens at the mercy of its enforcers, we held that the violation of an ordinance should not depend upon which enforcement officer or which judge happens to be considering the actor's conduct. *Id.* at 245-46, 668 A.2d 1098. We determined that the ordinance was overbroad because it did not permit an enforcement officer, acting in good faith, "to point to

objective facts that would lead a reasonable person to realize that his or her conduct was a violation of the ordinance." *Id.* at 246, 668 A.2d 1098. Although acknowledging that it would be impossible to draft an ordinance addressing all potential types of conduct posing a health hazard, we observed that the United States Supreme Court requires municipalities to enact ordinances "directed with reasonable specificity toward the conduct to be prohibited." *Ibid.* (quoting *484 *Coates v. Cincinnati,* 402 *U.S.* 611, 614, 91 *S.Ct.* 1686, 1688, 29 *L. Ed.2d* 214,217 (1971)). .. Applied to the case before us, *Guidi* requires a finding that East Windsor Ordinance 18-3.1 § 2.1(b) is unconstitutionally vague and unenforceable. Further, it is clear that *Guidi* requires a finding that East Windsor Ordinance 18-3.1 § 2.1(a) is unconstitutional as well. Sections 2.1(a) and 2.1(b) are of the same ilk. They both contain identical, vague language referring to "any matter, thing, condition or act." While

§ 2.1(b) pertains to things that are or may become "an annoyance, or interfere with the comfort or general well-being" of the community, § 2.1(a) pertains to things that are or may become "detrimental or a menace to the health" of the community. There is no discernable difference between these two provisions. Both set forth unascertainable standards that encourage arbitrary and discriminatory enforcement. Thus, both are unconstitutionally vague...

For the same reason, the language in the Ordinance 201 subsection 2A charged sub judice is un constitutionally vague.

Simply prohibiting the creation of a nuisance does not arm individuals with any knowledge as to the prohibited conduct.

The Golin court further held that neither prior warning nor knowledge by an individual that a municipality considers such a behavior to be a nuisance alters the outcome, stating:

We reject the Law Division's determination that due process is satisfied by the ordinance's requirement that offenders receive notice and an abatement period before a summons is issued. *See Guidi v. City of At/. City, supra,* 286 *N.J.Super.* at 245,668 A.2d 1098. Although knowledge that the municipality considers certain behavior to be a nuisance allows ordinary people to understand that their conduct is prohibited by the ordinance, it does not prevent arbitrary or discriminatory enforcement of the ordinance in the first place. *See Betancourt v. Town of W. New *485 York,supra,* 338 *N.J.Super.* at 423, 769 A.2d 1065 (setting forth the requirements for determining the constitutionality of penal ordinances). As the Supreme Court explained in *Lanzetta v. N.J.,* 306 *U.S.* 451,453, 59 *S.Ct.* 618, 619, 83 *L. Ed.* 888, 890 (1939):

If on its face the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it. It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. Emphasis added.**State v. Golin,** 363 N.J. Super. 474, 481-85, 833 A.2d 660, 664-66 (App. Div.2003)

For the reasons delineated above, Section 201A of the East Hanover code is unconstitutionally vague.

CONCLUSION

It bears repeating that Ms. Tasin never placed cats on the condominium premises. It boggles the mind, for lack of a more artful phrase, that based solely on her volunteer efforts of spaying/neutering, removing adoptable cats and providing daily care of the remaining cats for 13 yrs, the court convicted Ms. Tasin of abandonment and running at large, rationalizing that she should have removed the remaining cats. Finally, In a trifecta of inexplicable judicial outcomes the Court convicted Ms. Tasin of creating a nuisance despite the uncontested fact that solely as a result of her efforts the number of cats significantly diminished as did the complaints. Not only do these convictions contravene any lay sense of justice but as detailed above, the law dictates their reversal. Wherefore, Defendant appellant, Stephanie Tasin respectfully requests that this Court reverse each conviction.

Respectfully submitted,
S/ Isabelle R. Strauss

Dated: April 17, 2024

THE STATE OF NEW JERSEY, **(Township of East Hanover),** **Plaintiff/Respondent** **vs.** **STEPHANIE TASIN,** **Defendant/Appellant.**	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **DOCKET NO.: A-001681-23-T1** **Civil Action** **ON APPEAL FROM:** **SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: MORRIS COUNTY** **Municipal Appeal NO.:23-004-F** **SAT BELOW:** **HON. CLAUDIA R. JONES, J.S.C.**

APPELLATE BRIEF
OF PLAINTIFF/RESPONDENT,
TOWNSHIP OF EAST HANOVER, NJ

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **Page**

STATUTES, ADMINISTRATIVE CODE ORDIANCES AND COURT RULE

LEGAL TREATISES AND OTHER AUTHORITIES

PRELIMINARY STATEMENT

The within matter involves the appeal by the defendant, Stephanie Tasin(the "Defendant"), of the decision of the Honorable Claudia Jones, J.S.C ("Judge Jones") finding the Defendant guilty of violating §173-24, §173-27, and §201-2A of the Township of East Hanover's Municipal Code.

Specifically, §173-24 provides that "no person owning, keeping or harboring any animal shall suffer or permit it to run at large upon the public streets or in any public park or in any public building or in any other public place within the township." After reviewing the record on appeal, Judge Jones found that the Defendant was harboring stray cats by regularly feeding and caring for them. She further found that the Defendant permitted the stray cats to run at large in public after feeding them, thereby violating the provisions of §173-24.

§173-27 provides that "no person who shall own, keep or harbor an animal shall abandon such animal within the township." Similar to that set forth above, Judge Jones concluded that feeding the stray cats and then driving off, leaving the stray cats behind constituted abandonment.

Finally, §201-2A provides that "no person shall create, commit or maintain, or allow to be created, committed or maintained, any nuisance within the Township of East Hanover, New Jersey." Judge

Jones held that placing cardboard feeders around a parking lot thereby attracting and feeding stray cats created a nuisance.

Following the Court's finding of guilty to the above-referenced violations, the Court merged the convictions for the purposes of sentencing, imposing a fine of 1,500, plus $33 in costs.

It is respectfully submitted that, as set forth below, the evidence presented at trial clearly established, beyond a reasonable doubt, that the Defendant violated each of the charged ordinances. As such, it is respectfully submitted that the Defendant's appeal be denied, and the conviction be affirmed.

PROCEDURAL HISTORY

On October 1, 2021 Defendant was issued six (6) summons for violating various animal control and sanitation ordinances as a result of setting up cat feeders in East Hanover Township. The summons issued were as follows:

- SC-2021-9581 for violation of East Hanover Ordinance §173-24;
- SC-2021-9582 for violation of East Hanover Ordinance §173-27;
- SC-2021-9583 for violation of East Hanover Ordinance §201-2A;
- SC-2021-9584 for violation of East Hanover Ordinance §201- 2B(7);
- SC-2021-9585 for violation of East Hanover Ordinance §201-2C, and
- SC-2021-9586 for violation of East Hanover Ordinance §201-2D.

(Da. 15a – Da. 17a).

The Defendant entered a "Not Guilty" Plea to all charges.

Trial took place on February 16, 2023.[1] After considering all evidence, the court returned a conviction, finding the Defendant guilty under summons SC-2021-9581, SC-2021-9582, SC-2021-9583, SC-2021-9585, and SC-2021-9586. (6T Pg. 96, Ln. 22 - Pg. 101, Ln. 17). Summons SC-2021-009584 was voluntarily dismissed by the State. Defendant was ordered to pay a fine of $2,500.00 plus $33.00 costs. (6T Pg. 106, Ln. 17 – Pg. 106, Ln. 25).

On or about October March 3, 2023, the Defendant filed a Notice of Municipal Court Appeal to the New Jersey Superior Court, Morris County, Law Division. (Da.20a). On January 17, 2024, after reviewing the record and making an independent determination of the sufficiency of the evidence presented and after considering the submissions of counsel and hearing argument, Judge Jones found the Defendant guilty on summons nos. SC-2021-9581, SC-2021-9582, SC-2021-9583. Judge Jones dismissed summons nos. SC-2021-9585 and SC-2021-9586. Judge Jones merged the convictions for the purposes of sentencing, imposing a fine of $1,500, plus $33 in costs. (Da. 1a – Da. 14a).

The within appeal followed. (Da. 24a).

[1] For the sake of consistency, the transcripts of the municipal proceedings will be identified as 1T-7T as set forth in the Defendant's Table of Transcripts. (Def. Br. at Pg. vii)

STATEMENT OF FACTS

On September 14, 2021 at approximately 6:15 A.M the Defendant was observed by Carlo DiLizio ("DiLizio"), Director of the East Hanover Health Department, exiting a dark colored minivan and setting up several cat feeders at or near 11 Ruby Lane in the Hanover Park Condominiums (the "Development"). At the scene, Tasin was approached by DiLizio who advised her that she is not permitted to feed the cats. She nonetheless continued to set up cat food and carboard boxes in several locations. Multiple pictures of the scene were taken.

Accordingly, on October 1, 2021 Defendant Tasin was issued six (6) summons for violating various animal control and sanitation ordinances as a result of setting up cat feeders in East Hanover Township: (1) SC-2021-9581 for violation of East Hanover Ordinance §173-24; (2) SC-2021-9582 for violation of East Hanover Ordinance §173-27; (3) SC-2021-9583 for violation of East Hanover Ordinance §201-2A; (4) SC-2021-9584 for violation of East Hanover Ordinance §201- 2B(7); (5) SC-2021-9585 for violation of East Hanover Ordinance §201-2C, and (6) SC-2021-9586 for violation of East Hanover Ordinance §201-2D.

Trial took place on February 16, 2023. At trial, Mr. DiLizio testified as a witness for the Township. He testified that on September 14, 2021, he was surveying the area of the Development due to a series of complaints of people feeding stray cats and cats

running at large within that area. 6T Pg. 17, Ln. 5 – Pg. 17, Ln. 24. At around 6:15 a.m., he noticed approximately five stray cats in the area of Katie and Ruby Lanes, as well as a woman, the Defendant, who exited a minivan, placed what appeared to him to be cat food on cardboard trays, and placed those trays throughout the parking lots in the Development. 6T Pg. 17, Ln. 25 – Pg. 19, Ln. 19. The Defendant then noticed Mr. DiLizio based upon the fact that he was in his municipal vehicle and proceeded to tell him that she was allowed be at that location, which he denied. 6T Pg. 19, Ln. 9 – Pg. 19, Ln. 23. Mr. DiLizio then contacted his headquarters, requesting a patrolman to join him in the area, and he took some photographs of the area. 6T Pg. 19, Ln. 9 – Pg. 19, Ln. 23. The Defendant then picked up the cardboard with the food she had placed on the ground and drove away. 6T Pg. 20, Ln. 9 – Pg. 20, Ln. 17.

According to Mr. DiLizio, the Defendant had placed the cardboard with the cat food on the ground for approximately fifteen (15) minutes, and it was clear to Mr. DiLizio that the Defendant intended to feed the stray cats in the area. 6T Pg. 21, Ln. 1 – Pg. 21, Ln. 21. Once Mr. DiLizio identified the woman from the parking lot as the Defendant, as stipulated between the parties, he issued the above summons. 6T Pg. 22, Ln. 3 – Pg. 22, Ln. 12. Mr. DiLizio's testimony included the introduction of several photographs he took of the feeding areas and surrounding areas, including photographs

of the stray cats, further bolstering his testimony. 6T Pg. 22, Ln. 23 – Pg. 26, Ln. 20.

The Defendant relied upon the testimony of the Development's former property manager who was not employed with the Development on September 14, 2021, did not observe what transpired between the Defendant and Mr. DiLizio that day, and had zero authority to invite or permit the Defendant on the premises of the Development on its behalf that day. 6T Pg. 61, Ln. 11 – Pg. 61, Ln. 17. The Defendant also attempted to have a witness testify as an expert in the field of animal cruelty, but the Municipal Court sustained the Township's motion to bar his testimony, finding that the witness was not an expert in the field of cruelty and that any such testimony would have been irrelevant to this case. 6T Pg. 78, Ln. 11 – Pg. 78, Ln. 14.

After considering all of the evidence, the court returned a conviction, finding Ms. Tasin guilty under summons SC-2021-9581, SC-2021-9582, SC-2021-9583, SC-2021-9585, and SC-2021-9586 for violating East Hanover Ordinances §173-24, §173-27, §201-2A, §201-2C, and §201-2D respectively. 6T Pg. 96, Ln. 22- Pg. 101, Ln. 17. Summons SC-2021-009584 was voluntarily dismissed. Ms. Tasin was ordered to pay a fine of $2,500.00 plus $33.00 costs. 6T Pg. 106, Ln. 17 – Pg. 106, Ln. 25.

STANDARD OF REVIEW

An appeal of a municipal court conviction must first be addressed by the Law Division de novo. R. 3:23-8. The function of the Law Division on review of a municipal court ruling is to determine the case completely anew on the record made in the municipal court. State v. Avena, 281 NJ. Super. 327, 333 (App. Div. 1995). A Law Division judge conducting a trial *de novo* does not search the record for error, nor does the reviewing judge affirm or reverse what occurred in the Municipal court. Instead, the Superior Court judge determines the case completely anew by reviewing the record and making an independent determination of the sufficiency of the evidence presented, giving due although not necessarily controlling, regard to the Municipal Court judge's credibility findings. See State v. Johnson, 42 N.J. 146, 157 (1964).

The reviewing court should defer to the findings of the trial judge, which "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). Likewise, the reviewing court must give deference to the findings of the trial judge, which are substantially influenced by his or her opportunity to hear and see the witnesses and to have a "feel" of the case, which a reviewing

court cannot enjoy. State v. Cerefice, 335 N.J. Super. 374, 383 (App. Div. 2000). Matters of credibility that can be inferred from the record and are supported by the evidence presented need not be articulated by the municipal court on the record during its decisions. Locurto, *supra.* 157 N.J. at 474. Although due regard must be given to the credibility findings of the municipal court, a trial *de novo* by definition requires the Superior Court to make its own findings of fact. State vs. Ross, 189 N.J. Super. 67, 75 (App. Div. 1983).

During a trial *de novo*, the reviewing Court does not act in an appellate function, rather, the reviewing court is an independent fact-finder regarding the defendant's guilt or innocence. Id. As a result, the reviewing court may reach the same holding as the trial court based on the same or different reasoning. Johnson, *supra,* 42 N.J. at 157. If a defendant is found guilty after a *de novo* review, the Superior Court must impose a new sentence, which generally cannot be greater than the sentence imposed by the Municipal Court. See State v. Ciancaglini, 204 N.J. 597, 604 (2011); see also State v. Kashi, 180 N.J. 45, 49 (2004); State v. Pomo, 95 N.J. 13, 16 (1983).

Review of the Law Division's decision requires the Appellate Division to employ the "substantial evidence rule." State v. Heine, 424 N.J. Super. 48, 58 (App. Div. 2012). The Appellate Division's "review is limited to determining whether there is

sufficient credible evidence present in the record to support the findings of the Law Division judge not the municipal court." State v. Clarksburg Inn, 375 N.J. Super. 624, 639 (App. Div. 2005) (citing Johnson, 42 N.J. at 161-62). The Appellate Division owes no deference to the trial judge's legal conclusions. Manalapan Realty, L.P. v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995) (citing State v. Brown, 118 N.J. 595, 604 (1990)).

It is respectfully submitted that the decision of the Law Division is based upon substantial credible evidence present in the record and therefore, must be affirmed in its entirety. As such, it is respectfully requested that the Defendant's appeal be dismissed.

LEGAL ARGUMENT

POINT I

THE EVIDENCE IN THE RECORD CLEARLY ESTABLISHES THAT THE DEFENDANT VIOLATED EAST HANOVER TOWNSHIP ORDINANCES §173-24, §173-27 and §201-2A.

The Township proved, beyond a reasonable doubt, that the defendant violated East Hanover Township Ordinances §173-24, §173-27 and §201-2A.

As set forth above, §173-24 provides that "no person owning, keeping or harboring any animal shall suffer or permit it to run at large upon the public streets or in any public park or in any public building or in any other public place within the township." Finally, §173-27 provides that "no person who shall own, keep or harbor an

animal shall abandon such animal within the township." §201-2A provides that "no person shall create, commit or maintain, or allow to be created, committed or maintained, any nuisance within the Township of East Hanover

As set forth in the Statement of Facts, Mr. DiLizio testified at trial that on September 14, 2021 he observed the Defendant placing cat food on cardboard trays around a parking lot in the Development in order to feed stray cats in the area. 6T Pg. 21, Ln. 1 – Pg. 21, Ln. 21. No competent evidence to the contrary was provided.

The testimony of Mr. DiLizio was unrefuted, credible, and reliable. He testified that on September 14, 2021, he was surveying the area of the Development due to a series of complaints of people feeding stray cats and cats running at large within that area. 6T Pg. 17, Ln. 5 – Pg. 17, Ln. 24. At around 6:15 a.m., he noticed approximately five stray cats in the area of Katie and Ruby Lanes, as well as a woman, the Defendant, who exited a minivan, placed what appeared to him to be cat food on cardboard trays, and placed those trays throughout the parking lots in the Development. 6T Pg. 17, Ln. 25 – Pg. 19, Ln. 19.

The evidence and testimony clearly establish all the elements of the charges which the Defendant was convicted of. These actions certainly do not reflect an intent to take these stray cats home or deliver them to a local animal shelter so that they may be properly cared for. Instead, these actions reflect the intent of someone who

wanted to continuously feed these stray cats at the Development where they could run at large. In fact, the term harboring is defined by Merriam-Webster as "to give shelter or refuge." *Merriam-Webster.com Dictionary,* Merriam Webster, https://www.merriam-Webster.com/dictionary/harbor. Accessed 16 May. 2024. In light of the foregoing, Judge Jones properly found that by feeding the stray cats she was harboring them, and by not taking the cats with her, she abandoned them. (Da. 13a).

Furthermore, as it relates to the nuisance violations, nuisance is clearly defined under §201, in part, as leaving rubbish in a public place under §201-2C or placing any substance in a public place that could cause one to slip and fall under §201-2D. Again, it is undeniable that by placing the cat food throughout the parking lot in the Development, attracting stays cats and leaving them the Defendant created a nuisance pursuant to §201. Judge Jone properly so found.

Considering the foregoing, it is respectfully submitted that the decision of the Law Division is based upon substantial credible evidence present in the record and therefore, must be affirmed in its entirety. As such, it is respectfully requested that the Defendant's appeal be dismissed.

POINT II

CHAPTER 173 AND CHAPTER 201 WERE NOT SUNSET BY CHAPTER 44 OF THE TOWNSHIP'S CODE

Chapter 44 of the Township's Code does not sunset Chapters 173 through 213 as contended by the Defendant. While the Defendant cites various cases in support of this contention, it is respectfully submitted that the facts of this matter are entirely distinguishable.

It is true that "[o]ur courts will interpret and enforce the legislative will as written and not according to some supposed unexpressed intention." City of Camden v. Local Gov't Bd., 127 N.J.L. 175 (Sup. Ct. 1941). The language of Chapter 44 is clear, and it is the Defendant who attempts to rely on some supposed unexpressed intent.

Chapter 44 clearly reflects the intent of the Township to not sunset Chapters 173 through 213. Regarding the clause highlighted by the Defendant, it was included due to the impeding interdepartmental status charges at the time of enactment. In fact, in Ordinance 7-2004 the Board of Health requested its status be changed to an advisory role and its functions to be assumed as a department under the Governing Body. Similarly, in Ordinance 15-2004 the fee ordinance was updated to reflect the status change. The intent of the 120-day clause, as is reflected in the plain language of Chapter 44, was to allow the interdepartmental changes

to reflect such changes, never to nullify the Ordinance's prohibited conduct. Nonetheless, the Health Department has always followed N.J.A.C. 8:52 Public Health Practice Standards of Performance for Local Boards of Health and is in compliance as per the most recent audit.

Notwithstanding the foregoing, the Municipal Court, in considering this same argument made by the Defendant based upon her pre-trial Motion to Dismiss, found that the subject clause in Chapter 44 of the Township's Code expresses the intent of the Township to not sunset Chapters 173 through 213 but rather simply terminate the Board of Health. 2T Pg. 11, Ln. 6 – Pg. 11, Ln. 22.

In light of the above, it is respectfully submitted that Chapter 44 of the Township's Ordinance clearly reflects the Township's intent not to sunset Chapters 173 through 213. As such, the Defendant's appeal must be dismissed in its entirety.

POINT III

THE PENALTY PROVISION OF §201 IS CLEAR AND ENFORCEABLE AND MUST BE UPHELD

The penalty provision of §201 is clear and enforceable. Therefore, the Defendant's conviction for her violation of such must be upheld.

§ 201-7 entitled "Violations and Penalties" states "[a]ny person who violates or neglects to comply with any provision of this chapter or any notice or order issued pursuant thereto shall, upon

conviction, be subject to the penalties provided in § 164-14 of Chapter 164, General Provisions, Board of Health. §164-14 entitled "Violations of Code; Penalties" states:

> Unless a specified penalty is provided elsewhere in Part III of this Code, in state law or in other ordinances of the Board of Health for a particular violation, any person, firm or corporation who shall violate any provision of Part III of this Code or any code or other regulation adopted by reference therein or any order promulgated under such provision, code or regulation, by doing any act prohibited or declared to be unlawful or a violation thereby, or shall engage in or exercise any business or occupation or do anything for which a license or permit is required thereby without having a license or permit therefor as required or who shall fail to do any act required by any such provision or when such provision declares such failure to be unlawful or a violation shall, upon conviction thereof, be punishable by a fine of not less than $100 nor more than $1,000 for each violation. [Amended 10-15-1990 by Board of Health Ord. No. 3-1990; 9-18-1995 by Board of Health Ord. No. 3-1995]

By the plain text alone, the penalty section of the statute is clear and unambiguous. Moreover, the penalty is permissible and valid under the law. Accordingly, Defendant has failed to meet its burden and the statute must be upheld.

Lastly, even if the penalty section was deemed invalid, that part alone would be severable and not violative of the entire ordinance. In State v. McCormack Terminal, Inc., the court held that the invalid part of the ordinance providing for a minimum fine is severable and therefore its invalidity does not require striking down the whole ordinance. State v. McCormack Terminal, Inc., 191 N.J. Super. 48, 51 (App. Div. 1983).

In light of the above, it is respectfully submitted that §201 is clear and enforceable. As such, the Defendant's appeal must be dismissed in its entirety.

POINT IV

A PERSON OF REASONABLE INTELLIGENCE WOULD KNOW THAT THE DEFENDANT'S ACTIONS CONSTITUTE CRIMINAL ABANDONMENT AND VIOLATION OF AN ORDINANCE ON PERMITTING ANIMALS TO RUN AT LARGE

A person of reasonable intelligence would know that placing food around a parking lot to attract and feed stray cats constitutes criminal abandonment of animals and a violation of an ordinance on permitting animals to run at large. As such, the Defendant's convictions for violating §173-24 and §173-27 are enforceable.

As set forth above, §173-24 provides that "no person owning, keeping or harboring any animal shall suffer or permit it to run at large upon the public streets or in any public park or in any public building or in any other public place within the township." §173-27 provides that "no person who shall own, keep or harbor an animal shall abandon such animal within the township."

The Defendant's argument that a person of reasonable intelligence would not know that her actions would have violated §173-24 and §173-27 is without merit. She placed food around the Development so as to attract and feed stray cats. These actions certainly do not reflect an intent to take these stray cats home or deliver them to a local animal shelter so that they may be properly cared for. Instead they reflect the intent of somebody who wanted

to continuously feed these stray cats at the Development where they could run at large. In fact, the term harboring is defined by Merriam-Webster as "to give shelter or refuge." *Harbor*, Merriam-Webster (May 16, 2024). Judge Jones specifically found that by feeding the stray cats she was harboring them, and by not taking the cats with her, she abandoned them. 6T Pg. 98, Ln. 16 – Pg. 99, Ln. 1; 6T Pg. 100, Ln. 22 – Pg. 101, Ln. 15. The substantial record before the Court clearly supports this conclusion. Defendant's attempt to plead ignorance has no merit.

In light of the foregoing, it is respectfully submitted that the decision of the Law Division is based upon substantial credible evidence present in the record and therefore, must be affirmed in its entirety. As such, it is respectfully requested that the Defendant's appeal be dismissed.

POINT V

§201 IS CLEAR AND UNAMBIGUOUS AND MUST BE UPHELD

§201 is clear and unambiguous. Therefore, the Defendant's conviction for her violation of such must be upheld.

The courts have widely held that a presumption of validity applies broadly to all ordinances. 6 Mc Quillin, Municipal Corporations, § 20.07, p. 18 (3rd ed., 1969). In State v. Mundet Cork Corporation, 8 N.J. 359 (1952), the court stated, with regard to an attack on the validity of a municipal ordinance, that the exercise of the legislative judgment is not subject to judicial

superintendence unless it is plainly beyond the realm of the police power or palpably unreasonable * * * The burden of proof is upon those who attack the ordinance to show clearly that it is unreasonable. Kanter v. Passaic, 107 N.J. Super. 556, 369 (1969). Here the Defendant has failed to meet that burden.

The Defendant alleges that § 201-2A "Prohibited Nuisances," the Township's nuisance ordinance is void for vagueness. In support of such, the Defendant falsely alleges that the subsection is unconstitutional because it lacks specificity as to the prohibited behavior. The Defendant continues to state that the nuisance statute "does not arm individuals with any knowledge as to the prohibited conduct." The Defendant's argument is unworthy of any merit as § 201-2B specifically states "[f]or purposes of this chapter, the following specific things, conditions and acts, each and all of them, are hereby defined and declared to be nuisances:" and continues to enumerate sixteen (16) detailed definitions of conduct constituting a nuisance. Thus, the Defendant's argument that the statute does not provide notice of prohibited conduct is meritless.

In denying the Defendant's Motion to Dismiss in which she made these same arguments, the Municipal Court found that the ordinance is clear and unambiguous. 4T Page 12, Line 4 – Page 12, Line 9. Furthermore, the common legal definition of nuisance is "something (as an act, object, or practice) that invades or interferes with

another's rights or interests (as the use or enjoyment of property) by being offensive, annoying, dangerous, obstructive, or unhealthful." Giving the term nuisance it plain meaning in conjunction with the evidence in the record clearly establishes that the conduct of the Defendant violated the ordinance. *Merriam-Webster.com Dictionary*, Merriam Webster, https://www.merriam-Webster.com/dictionary/nuisance. Accessed 16 May. 2024.

In light of the above, it is respectfully submitted that §201 is clear, unambiguous and enforceable. As such, the Defendant's appeal must be dismissed in its entirety.

CONCLUSION

Based on that set forth herein above, it is respectfully submitted that there is more than sufficient credible evidence present in the record to support the findings of the Law Division. Therefore, it is respectfully requested that the Defendant's appeal be denied, and the January 17, 2024 Order of Judge Jones be affirmed.

DURKIN & DURKIN, LLC
Attorneys for the Plaintiff

By: /s/ *Gregory F. Kotchick*
Gregory F. Kotchick

Dated: May 20, 2024

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THE STATE OF NEW JERSEY, (Township of East Hanover), **Plaintiff/Respondent** **vs.** **STEPHANIE TASIN,** **Defendant/Appellant.**	**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION** **DOCKET NO.: A-001681-23-T1** **Civil Action** **ON APPEAL FROM:** **SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY** **Municipal Appeal No.: 23-004-F** **SAT BELOW:** **HON. CLAUDIA R. JONES, J.S.C.**

REQUEST FOR ORAL ARGUMENT

PLEASE TAKE NOTICE that Plaintiff/Respondent, State of New Jersey - Township of East Hanover, hereby requests oral argument.

DURKIN & DURKIN, LLC
Attorneys for Township of East Hanover

By: /s/ *Gregory F. Kotchick*
Gregory F. Kotchick

Dated: May 20, 2024

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THE STATE OF NEW JERSEY, (Township of East Hanover), **Plaintiff/Respondent** **vs.** **STEPHANIE TASIN,** **Defendant/Appellant.**	**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION** **DOCKET NO.: A-001681-23-T1** **Civil Action** **ON APPEAL FROM:** **SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY Municipal Appeal NO.:23-004-F** **SAT BELOW: HON. CLAUDIA R. JONES, J.S.C.**

CERTIFICATION OF SERVICE

Gregory F. Kotchick, of full age, hereby certifies as follows:

1. I am a Partner at the law firm of Durkin & Durkin, LLC, attorneys for the Plaintiff/Respondent, Township of East Hanover ("East Hanover"), in the within matter.

2. On May 20, 2024, I filed electronically with the Court, East Hanover's Appellate Brief, Request for Oral Argument and Certification of Service.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishments.

DURKIN & DURKIN, LLC

By: /s/ Gregory F. Kotchick
Gregory F. Kotchick

Dated: May 20, 2024

Superior Court of New Jersey – Appellate Division

Letter Brief

Appellate Division Docket Number: A – 001681-23-T1

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05/30/2024

Letter Reply Brief on behalf of Stephanie Tasin

State of New Jersey Plaintiff

v.

Stephanie Tasin Defendant

Case Type: Criminal

County/Agency: Morris

Trial Court/Agency Docket No: MA 23-004-F

Trial Court Judge/Agency Name: Claudia R. Jones, J.S.C.

Dear Judges:

Pursuant to R. 2:6-2(b), please accept this letter reply brief in support of my appeal in this matter.

TABLE OF CONTENTS

PROCEDURAL HISTORY

Defendant Appellant relies upon the Procedural History set forth in her initial brief.

STATEMENT OF FACTS

Defendant Appellant relies upon the State of Facts set forth in her initial brief.

LEGAL ARGUMENT

POINT 1

SEVERANCE OF INVALID PENALTY PROVISION DOES NOT ALTER MANDATED REVERSAL AS CONVICTIONS CANNOT STAND WITHOUT A PENALTY AND MUST BE REVERSED

(raised below DA 8A, 9A)

As set in detail in defendant's initial brief the penalty provisions applicable to each of the ordinances underlying her convictions violate N.J.S.A. 26:3-70. Respondent's reliance on the severability of the penalty provisions to "rescue" the convictions is misplaced. The provisions are severable and their invalidation does not affect the remainder of the ordinances. This Court has held, however, that:

"Defendant's conviction(s) cannot stand without a penalty, and therefore the judgment of the Law Division must be reversed."

State v. Capaci, 260 N.J. Super. 65, 69, 615 A.2d 275, 276 (App. Div. 1992)

POINT 2

RESPONDENT'S COUNSEL'S SELF SERVING STATEMENTS AS TO THE INTENT OF CHAPTER 44 OF THE EAST HANOVER CODE AND RESPONDENT'S REFERENCE TO AN AUDIT WHICH IS NOT IN EVIDENCE DO NOT ALTER THE UNAMBIGUOUS SUNSET LANGUAGE OF CHAPTER 44. (Raised below DA 7A, 8A)

As set forth in detail in Point 1 of Plaintiff Appellant's initial brief, each of the summonses the convictions of which form the basis of this appeal, allege a violation of either Chapter 173 or Chapter 201 of the Code of the Township of East Hanover and ceased to be viable due to the 120 day sunset provision contained in Chapter 44 of the Code.

As Respondent's counsel states the purpose of Chapter 44 was to facilitate a transition from a Board of Health model to a Department of Health model with a health services officer. The municipality, however, failed to utilize the 120 days provision to ensure that the remaining ordinances were aligned with a Department of Health model, instead leaving the ordinances to sunset after the 120 day period. Respondent counsel's statement to the contrary is unsupported, self serving and contravenes the unambiguous language of Chapter 44. The only support offered is a reference to an audit which was never produced not introduced into evidence at any level of the proceedings.

(Respondent's Brief p. 13)

Chapter 44 specifically provides for the 120 day period only, the Board of

Health language shall be read as health officer.

§ 44-1. Establishment; continuation of prior ordinances.
A. There is hereby created a Department of Health in and for the Township of East Hanover, the
Director of which Department shall be the duly appointed Health Officer of the Township.
B. Chapters 173 through 213, inclusive, of the Code of the Township of East Hanover, as heretofore
adopted by the Board of Health, are hereby readopted for a period not to exceed 120 days to
allow the same to be amended, revised and supplemented to reflect the change in status of the
public health agency.
**(1) During the one-hundred-twenty-day period set forth above, the chapters designated shall
remain in full force and effect; provided, however, that where the phrase "Board of Health"
appears in the text, it shall be read the health officer or the township as is appropriate to the context. (emphasis added)**

Yet the Chapter underlying the convictions continues to utilize the outdated

Board of Health language as follows:

§ 201.1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BOARD OF HEALTH, LOCAL BOARD OF HEALTH or BOARD — The Board of Health of
the Township of East Hanover.

HEALTH OFFICER — The Health Officer of the Township of East Hanover appointed by the Board of Health of the Township of East Hanover.

At best the ordinances are an exemplar of obfuscation and as such should not be utitilized as a basis of a criminal conviction.

POINT 3

RESPONDENT CANNOT RELY ON LANGUAGE OF 201-2B TO SUPPORT A CONVICTION OF 201-2A THE LANGUAGE OF WHICH HAS BEEN DECLARED VOID FOR VAGUENESS. (Raised below DA 3A)

As set forth in detail in defendant appellant's brief Point 5, summons SC 009583 charged defendant with violating an ordinance the language of which has been declared void for vagueness. Respondent's reliance on the 16 delineated nuisances in 201-2(b) supports rather than contravenes defendant's void for vagueness argument. Complainant could have charged defendant with any one or more of the specific nuisances delineated in 201-2B. It did not. Instead, it elected to charge defendant with violating 201-2A vague nuisance language. As such, the conviction must be reversed.

CONCLUSION

Defendant relies on the arguments set forth in her initial brief as supplemented by the responses set forth herein.

Respectfully submitted,
s/Isabelle R. Strauss
ISABELLE R. STRAUSS