Superior Court of New Jersey - Appellate Division

Letter Brief

Appellate Division Docket Number: A-001896-23T2

Isabelle R. Strauss
2247 Old Church Rd., Toms River, N.J. 08753
732-255-4696
ANRTESQ@aol.com
Attorney Bar ID #:017661976 05/02/2024

Letter Brief on behalf of: Terri Baird

State of New Jersey

Plaintiff V.

Terri Baird ,

Defendant

Case Type: Criminal
County/Agency: Morris
Trial Court/Agency Docket No: MA 23-006
Trial Court Judge/Agency Name: Claudia R. Jones, JSC Dear

Judges:

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

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LIST OF PARTIES

Court/Agency Party Name	Appellate Party Role Party Status	Trial Court/ Designation	Trial Agency Party
Terri Baird	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	07/14/2022	2T
Trial	03/09/2023	3T
Municipal Court Appeal	01/04/2024	4T

PRELIMINARY STATEMENT

In a trial de novo on the record, the Court below convicted Ms. Baird of abandoning cats, permitting them to roam at large and creating a nuisance. The 2 cats in question were spotted on Murray Road and were admittedly strays ie. not placed there by Ms. Baird. The convictions were based solely on a trap spotted by the Complainant, Kathy Nugyen, East Hanover Environmental Health Specialist, which had a label with Terri and a phone no. on it later identified as Ms. Baird's and the fact that Ms. Baird later attempted to reclaim the trap (which the state claims not to have). The state conceded that Murray Road is heavily traversed by pedestrians. The lower courts acquitted Ms. Baird of complaints relating to the food in front of the trap, concluding any of the pedestrians could have placed the food seen in front of the trap. State offered no evidence as to initial placement of the trap, length of time there, removal or relationship or proximity of cats to the trap. When encountered by Ms. Nugyen, the trap was mostly on private property but allegedly partially on the public sidewalk of Murray Road. The convictions were constructed with speculative building blocks as to who placed the trap where.

Ms. Baird presented several legal arguments including that the penalty provisions of the ordinances in question rendered the ordinances unenforceable and that the ordinances had met their demise in 2004 and were not viable at the time the complaints were issued. Finally she alleged that the language of

the nuisance ordinance rendered it facially void for vagueness under established case law.

The Superior Court, Law Division, failed to address any of the legal issues raised by Ms. Baird but merely related the State's and Ms. Baird'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 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. Baird 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/Transcript
10-01-2021	Complaint	Plaintiff	Convicted	Da 13a
10-01-2021	Complaint	Plaintiff	Convicted	Da 14a

10-01-2021	Complaint	Plaintiff	Convicted	Da 15a
10-01-2021	Complaint	Plaintiff	Acquitted	Da 16a
10-01-2021	Complaint	Plaintiff	Acquitted	Da 17a
10-01-2021	Complaint	Plaintiff	Dismissed	Da 18a
05-06-2022	Motion	Defendant	Denied	Da 19a
03-24-2023	Municipal Appeal	Defendant	Filed	Da 21a
02-26-2024	Notice Appeal	Defendant	Filed	Da 25a

STATEMENT OF FACTS

Late morning on September 15, 2021, East Hanover Environmental Health Specialist, Kathy Nguyen, observed 2 admittedly stray cats on Murray Road. 3T10:19-11; 3T11:17-19; 3T12: 9-12; 3T13:13-15. Pulling over, she also observed a trap with an attached label which contained the information : Terri , a phone number and message "trapping Momma Cat and Kittens". 3T14; 3Tl5:13-15; 3T26: 9-11 Trap was partially under the guard rail on private property and partially on a sidewalk abutting the private property. 3T34:12-17 Pedestrians routinely traversed the sidewalk. 3T17: 4-6 Trap had food placed in it, was tied open and wrapped in plastic. 3T14:9-18 Ms. Nguyen also observed 4 piles of food on the sidewalk leading to the trap. 3T16:24-25; 3T17:1 Ms. Nguyen did not remove the trap. 3T 36: 6-8 On September 17, 2021 Ms. Baird came to Town Hall to ask for her trap which the town did not possess. 3T30:6-11 At no time did Ms. Nguyen

observe Ms. Baird place the trap on Murray Road. 3T33:5-12 At no time did Ms. Nguyen observe Ms. Baird place the food on Murray Road. 3T33:13-19

LEGAL ARGUMENT POINT 1

THE STATE FAILED TO PROVE THAT TERRI BAIRD PLACED A TRAP ON MURRAY ROAD - A REQUIRED ELEMENT OF THE EACH OF THE VIOLA TIONS OF WHICH THE COURT CONVICTED HER (RAISED BELOW DA 7A)

Upon traveling on Murray Road on September 15, 2021, Complainant, Ms. Nguyen, spotted a trap, mostly on private property and partially on Murray Road sidewalk and further spotted four piles of food on the sidewalk. 3Tl6:24-25; 3T34:12-17 Trap was covered and tied open. 3T14:9-18 Trap had a note with Terri and a phone number written on it saying :"trapping Mom cat and Kittens". 3T26: 9-11 Ms.Nguyen did not remove the trap from Murray road. 3T36 : 6-8 Ms. Nguyen later determined that the phone number belonged to Ms. Baird. 3T27:7-14 Two days later Ms. Baird. sought to retrieve the trap from City Hall but they denied possessing it. 3T30:4-11

Each of the 3 charges of which the trial court convicted Ms. Baird requires as a crucial element that Ms. Baird placed the trap on Murray Road. Ms. Baird's 3 convictions were based on a leap over a chasm of speculation with a trap partially on Murray Road sidewalk on one side and

her attempt to reclaim a trap at city hall on the other. Ms. Nguyen did not observe Ms. Baird place the trap on Murray Road. 3T33:5-12 The municipal Court rightly concluded that someone other than Ms. Baird could have placed the 4 piles of cat food found on the sidewalk and acquitted Ms. Baird of the 2 charges related to that food. 3T46:4-5 The same "someone" could have moved the trap over a few inches from private property abutting Murray Road, to the sidewalk where the state claimed it violated East Hanover municipal ordinances. The same "someone" could have tied the trap open, covered it and placed food inside. Indeed, "Someone" other than Ms. Baird could have placed the trap on Murray road. Ms. Baird could have loaned a trap to a fellow rescuer who placed it there or a stranger could have decided to avail themselves of the trap placed elsewhere and move it there. There are a multitude of explanations for the presence of the trap partially on the sidewalk of Murray road which do not implicate Ms. Baird.

This action is quasi-criminal in nature. Accordingly, defendant can be found guilty only if proven guilty beyond a reasonable doubt. Belleville v. Parrillo's, Inc., 83 N.J. 309, 416 A.2d 388 (1980); Trenton v. Calvary Apostolic Temple, Inc., 166 N.J.Super. 145, 399 A.2d 311 (App. Div. 1979) **State v. Weir,** 183 N.J. Super. 237,242,443 A.2d 773, 776 (App. Div. 1982)

The state failed to meet its burden of proving beyond a reasonable doubt that Ms.Baird placed the trap on Murray Road. Having failed to establish that fact beyond a reasonable doubt these convictions cannot stand.

POINT 2

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 6A)

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)

(I) 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 Complaints which underly this appeal, allege a violation of either Chapter 173 or Chapter 201. These Chapters ceased to be in force and effect in 2004 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 employed. 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, 83 A.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 ...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, 110A.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). (emphasis added)

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 Ms. Nguyen 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 3

COMPLAINTS S SC0095612, SC009562 AND SC009563 EACH CHARGES A VIOLATION OF AN EAST HANOVER BOARD OF HEALTH ORDINANCE WHICH CONTAINS A PENALTY PROVISION WHICH IS VOID THUS RENDERING THE ORDINANCE UNENFORCEABLE (RAISED BELOW DA 6A,7A)

Complaint SC009563 charged Ms. Baird 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 (emphasis added)**

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 section 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 the Board of Health for a particular violation, any person, firm or corporation who shall violate any provision of Part III of this Code...shall, **upon conviction thereof, be punishable by a fine of not less than $100 nor more than $1,000 for each violation.** (emphasis added) (Amended 10-15-1990 by

Board of Health Ord. 3 1990; 9-18-1995 by Board of Health Ord. No. 3-1995) Complaint 009562 charging abandonment also references section 164-14 as the applicable penalty provision. The penalty provision for Complaint 009561, charging running at large is as follows: Any person who violates the provisions of section ...173-24...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 of the three complaints provides for a maximum penalty at least twice that permissible by statute N.J.S.A. 26:3-70 (quoted above) 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 permitted 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 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 ordinance valid only as to its application to conduct following the amendment. **State v. DeLouisa,** 89

N.J. Super 596, 603; 215 A.2d 794, 799 (Co. 1965) At the time of the issuance of the complaints of which Ms. Baird was convicted, each of the ordinances Ms. Baird 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 convictions 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 4

SUMMONS SC009563 CHARGES A VIOLATION OF EAST HANOVER CODE 201-21 THE LANGUAGE OF WHICH HAS BEEN DECLARED VOID FOR VAGUENESS (RAISED BELOW DA 7A)

Summons SC 009563 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 charged Ms. Baird with violating 201-2(B)(7) but prior to trial voluntarily dismissed same.

The summons referenced in this Point simply charges that defendant created... a nuisance. Our Courts have declared void for vagueness, nuisance language which lacks specificity as to the prohibited behavior. As the Court in Golin stated:

In *Guidi,* we found that the language in§ 2.l(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)). We concluded that "[t]he feeding of pigeons and other birds in a seaside community is a common enough problem that this conduct, if undesirable, should be specifically prohibited by ordinance." 286 *N.J.Super.* at 246, 668 A.2d 1098. 1112 Applied to the case before us, *Guidi* requires a finding that East Windsor Ordinance 18-3.1 § 2.l(b) is unconstitutionally vague and unenforceable. Further, it is clear that *Guidi* requires a finding that East Windsor Ordinance 18-3.1 § 2.l(a) is unconstitutional as well. Sections 2.l(a) and 2.l(b) are of the same ilk. They both contain identical, vague language referring to "any matter, thing, condition or act." While § 2.l(b) pertains to things that are or may become "an annoyance, or interfere with the comfort or general well-being" of the community, § 2.l(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 unconstitutionally 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)

SC 009563 charges Ms. Baird with the violation of an ordinance the language of which our Courts have ruled to be unconstitutionally vague on its face.

Wherefore Defendant Appellant, Terri Baird requests that this Court reverse the judgment of conviction entered below as to SC 009563.

POINT 5

EAST HANOVER ORDINANCE 173-24(A) AND 173-27 ARE VOID FOR VAGUENESS AS A PERSON OF REASONABLE INTELLIGENCE WOULD NOT FATHOM THAT TRAPPING, FEEDING OR SHELTERING STRAY CATS CONSTITUTES CRIMINAL ABANDONMENT OR VIOLATES A LAW PROHIBITING THE PERMITTING OF CATS TO ROAM AT LARGE. (RAISED BELOW DA 7A)

On the morning of September 15, 2021, complainant, East Hanover Environmental Health Specialist, Kathy Nguyen, randomly came across a

trap partially on Murray Road. She also spotted two cats on that road. The state never established the cats relationship nor proximity to the trap and never established the length of time the trap was present. The state readily admitted, however, that these were stray cats - not cats put there by Ms. Baird. 3T13:13 The Court acquitted Ms. Baird of violations relating to the placement of the food in front of the trap having concluded that anyone could have placed that food there. Based solely on the presence of the trap and cats on the same road, however, the Court convicted Ms. Baird of violating East Hanover ordinances 173-24(A) and 173-27. (Da lla)

Ordinance 173-24(A) 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.

Ordinance 173-27 reads: 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,*

N.J. *Super.* 521,527 (App. Div. 2001), *cert denied,* ill N.J. 336, *cert. denied,* 536 *U.S.* 960, 122 S. Ct. 2665, 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. Kimme Iman 1* 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." *Ko/ender 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 ... 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. As set forth Point I the state did not establish that Ms. Baird placed the trap on the public roadway. Assuming arguendo that it had, however, a person of ordinary intelligence would not fathom that attempting to trap, feed, or shelter stray cats constitutes animal abandonment or that the mere placement of a trap violates a running at large law ordinance as applied to "pre existing" stray cats.

CONCLUSION

This Court's review of the factual record is ... limited to determining whether there is sufficient credible evidence in the record to support the Law

Division judge's findings. Id. at 161-62, 199 A.2d 809; State v. Clarksburg Inn, 375 N.J.Super. 624, 639, 868 A.2d 1120 (App. Div. 2005).

Accordingly, this Court defers to those findings made in the Law Division that are supported by credible evidence, but we owes no deference to the legal conclusions drawn from those findings. State v. Handy, 206 N.J. 39, 45, 18 A.3d 179 (2011).

State v. Powers, 448 N.J. Super. 69, 72, 150 A.3d 951, 952 (App. Div. 2016)

As detailed Point I, above the record is devoid of sufficient credible evidence to support a finding that Ms. Barid placed a trap partially on the public portion of Murray Road. As detailed Points II to V, inclusive the law dictates reversal.

Wherefore Terri Baird respectfully requests that this Court reverse the convictions entered below.

Respectfully submitted,
S/Isabelle R. Strauss

Dated:May 02, 2024

THE STATE OF NEW JERSEY, Plaintiff/Respondent vs. TERRI BAIRD, Defendant/Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001896-23T2 Civil Action ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY Municipal Appeal NO.: 23-006 SAT BELOW: HON. CLAUDIA R. JONES, J.S.C.

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

DURKIN & DURKIN, LLC
(NJ State Bar No.: 027971999)
1120 Bloomfield Avenue
P.O. Box 1289
West Caldwell, NJ 07007

Of Counsel and on the Brief: Gregory F. Kotchick, Esq.

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PRELIMINARY STATEMENT

The within matter involves the appeal by the defendant, Terri Baird(the "Defendant"), of the decision of the Honorable Claudia Jones, J.S.C ("Judge Jones") finding the Defendant guilty of violating §173-24A, §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. §173-27 provides that "no person who shall own, keep or harbor an animal shall abandon such animal within the township". Finally, §201-2 provides that "no personal shall create, commit or maintain, or allow to be created, committed or maintained, any nuisance within the Township of East Hanover, New Jersey".

As will be further set forth herein, after reviewing the record on appeal, Judge Jones found that the State provided sufficient evidence to link the trap placed on Murray Street in East Hanover Township to the Defendant and that the State proved beyond a reasonable doubt that the Defendant placed the trap. The Court further found that by placing a trap, placing plastic wrap around it to prevent it from operating as a trap, the Defendant was harboring stray cats within a public place in the Township. Finally, the Court found that by altering the trap to not capture the cats,

as previously set forth, allowing the cats to run at large is a form of abandonment.

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) summonses for violating various animal control and sanitation ordinances because of setting up animal traps in East Hanover Township. The summons issued were as follows:

- SC-2021-9561 for violation of East Hanover Ordinance §173-24;
- SC-2021-9562 for violation of East Hanover Ordinance §173-27;
- SC-2021-9563 for violation of East Hanover Ordinance §201-2;
- SC-2021-9564 for violation of East Hanover Ordinance §201-2,
- SC-2021-9566 for violation of East Hanover Ordinance §201-2; and
- SC-2021-9567 for violation of East Hanover Ordinance §201-2.

(Da. 13a – Da. 18a).

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

The Defendant filed a motion to recuse and transfer the matter based on a conflict of interest.[1] (1T Pg. 11, Ln. 11-14). The Municipal Court denied the motion on April 7, 2022 finding there was no conflict of interest. (1T Pg. 18, Ln. 18). The Defendant also filed a motion to dismiss. (2T Pg. 6, Ln. 12-17). First, the Defendant argued that all of the summonses should be dismissed because the ordinances were not in effect at the time of issuance. (2T Pg. 6, Ln. 12-17). The second issue was regarding summonses SC-2021-9668 and SC-2021-9563. (2T Pg. 7, Ln. 12-16). The Defendant argued that the penalty provision in all six summonses has a maximum penalty of $1,000.00. (2T Pg. 8, Ln. 4). The Defendant argued that the Board of Health was limited to a maximum penalty of $500.00. (2T Pg. 8, Ln. 4-6). The Defendant also argued that the ordinances were vague. The Municipal Court denied the motion to dismiss on July 14, 2022. (2T Pg. 12, Ln. 24).

On March 9, 2023, the State moved to dismiss summons SC-2021-9567, which the Municipal Court granted. (3T Pg. 6, Ln. 15-24).

Trial took place on March 9, 2023. After considering all evidence, the Municipal Court returned a conviction, finding the Defendant guilty under summons SC-2021-9561, SC-2021-9562 and SC-2021-9563 for violation East Hanover Ordinances §173-24, §173-27,

[1] For the sake of consistency, the transcripts of the municipal proceedings will be identified as 1T-4T as set forth in the Defendants Table of Transcripts. (Def. Br. At Pg. vii).

and §201-2. (3T Pg. 46, Ln. 19 - Pg. 47, Ln. 3). The Municipal Count found the Defendant not guilty on Summonses SC-2021-009564 and SC-2021-009566. (3T Pg. 46, Ln. 3-14). Defendant was ordered to pay a fine of $2,500.00 plus $33.00 costs after merging the convictions and ordering the fines to run concurrently. (3T Pg. 49, Ln. 18 – Pg. 50, Ln. 3).

On or about October March 24, 2023, the Defendant filed a Notice of Municipal Court Appeal to the New Jersey Superior Court, Morris County, Law Division. (Da.21a). On January 23, 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-2021-9561, SC-2021-9562, SC-2021-9563. 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 $1,500.00, plus $33 in costs. (Da. 11a – Da. 12a).

The within appeal followed. (Da. 25a).

STATEMENT OF FACTS

On September 15, 2021, an onsite inspection on Murray Road in the Township by the East Hanover Township Department of Health led to the discovery of multiple cat feeding and trapping contraptions placed on public property in violation of town ordinances. Two stray cats and traps and various containers and piles of cat food

were observed on a public sidewalk. (3T Pg. 13, Ln. 20-25, 3T Pg. 16, Ln. 24-25, 3T. 17, Ln. 1). The trap was improperly set up because the door was tied open and therefore could not close, there was food placed in the trap and there was plastic wrapped around the trap to protect against inclement weather. (3T Pg. 14, Ln. 7-23, 3T Pg. 15, Ln. 4-7. One trap contained a taped handwritten note stating "Trapping momma cat + kittens – Please call Terri 973-714-7861." Multiple pictures of the scene were taken. (3T Pg. 26, Ln. 7-11).

Further investigation revealed an Open Public Records Act Request ("OPRA") seeking August 2021 Animal Control Reports and Invoices that was filed on September 13, 2021 by "Terri L. Baird." The OPRA request contained a phone number of "973-714-7861." The first name and phone number contained in the OPRA request was identical to the information contained on the handwritten note taped to one of the traps discovered on Murray Road. (3T Pg. 27, Ln. 9-14).

Thereafter, on September 17, 2021, the Defendant appeared at the East Hanover Township Hall to request the return of her trap. (3T Pg. Ln. 5-11). Accordingly, on October 1, 2021, the Defendant was issued six (6) summonses for violations of various animal control and sanitation ordinances as a result of setting up cat traps and food on Murray Road in East Hanover Township: (1) SC2021-009561 for violation of East Hanover Ordinance §173-24; (2) SC-

2021-009562 for violation of East Hanover Ordinance §173-27; (3) SC-2021-009563 for violation of East Hanover Ordinance §201-2; (4) SC-2021-009564 for violation of East Hanover Ordinance §201-2; (5) SC-2021-009566 for violation of East Hanover Ordinance §201-2, and (6) SC-2021-009567 for violation of East Hanover Ordinance §201-2.

(Da. 13a – 18a).

Trial took place on March 9, 2023. At trial, Kathy Nguyen, Registered Environmental Health Specialist/Registrar, testified as a witness for the Township. Ms. Nguyen, identifying her role as to protect the health and safety of the residents of the Township and to enforce the public health laws of the Township and the State of New Jersey, testified as to what she observed on the public sidewalk on Murray Road within the jurisdiction of the Township on September 15, 2021. (3T Pg. 8, Ln. 25 – Pg. 12, Ln. 8). She stated that she saw two stray cats on the sidewalk and a trap that was improperly set up in a manner that would render it unable to actually act as a trap with the front door tied up and food placed at the front of the trap rather than the back. (3T Pg. 12, Ln. 9 – Pg. 14, Ln. 15). Not only that, she observed that there were containers with cat food placed around the trap, and the trap was wrapped in plastic wrapping so that it could act as a shelter from inclement weather. (3T Pg. 14, Ln. 6- Pg. 15, Ln. 10). There was also a container several feet away from the trap on its side that

could also serve as a means of shelter. (3T Pg. 16, Ln. 13 - Pg. 17, Ln. 6).

At trial, Ms. Nguyen confirmed the trap displayed the above-referenced note stating "Trapping momma cat + kittens – Please call Terri 973-714-7861" and how that name and number matched an OPRA request she reviewed. (3T Pg. 26, Ln. 9- Pg. 27, Ln. 18).

Ms. Nguyen's testimony included the introduction of several photographs she took of the trap and its surroundings on September 15, 2021, as well as the Defendant's OPRA request with her name and phone number matching that which was written on the trap, further bolstering her testimony. (3T Pg. 19, Ln. 1 – Pg. 30, Ln. 3). She also identified Defendant at trial based upon the fact that on September 17, 2023, the Defendant arrived at Ms. Nguyen's office to retrieve the trap. (3T Pg. 30, Ln. 4 – Pg. 30, Ln. 25).

Ms. Nguyen testified at trial that the trap was on a sidewalk where the public had the right of pedestrian travel and that rodents could feed on the exposed food. (3T Pg. 24, Ln. 4- Pg. 25, Ln. 7). She determined that the Defendant's actions were in violation of Ordinances 173 and 201, which is why she issued all of the above-referenced summons on October 1, 2021.(3T Pg. 26, Ln. 22- Pg. 27, Ln. 14).

After considering all of the evidence, the court returned a conviction, finding Ms. Baird guilty under summons SC2021-009561, SC-2021-009562, and SC-2021-009563 for violating East Hanover

Ordinances §173-24, 173-27, and 201-2 respectively.)3T Pg. 46, Ln. 19- Pg. 47, Ln. 17). Summons SC-2021-009564, SC-2021-009566, and SC-2021-009567 were dismissed. Ms. Baird was ordered to pay a fine of $2,500.00 plus $33.00 costs. (3T Pg. 49, Ln. 2 – Pg. 50, Ln. 10).

On Appeal to the Superior to the Court, Judge Jones agreed with the decision of the Municipal Court but imposed a fine of $1,500.00 plus $33.00 in court costs.

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 factfinder 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, Ms. Nguyen, identifying her role as to protect the health and safety of the residents of the Township and to enforce the public health laws of the Township and the State of New Jersey, testified as to what she observed on the public sidewalk on Murray Road within the jurisdiction of the Township on September 15, 2021. (3T Pg. 8, Ln. 25 – Pg. 12, Ln. 8). She stated that she saw two stray cats on the sidewalk and a trap that was improperly set up in a manner that would render it

unable to actually act as a trap with the front door tied up and food placed at the front of the trap rather than the back. (3T Pg. 12, Ln. 9 – Pg. 14, Ln. 15). Not only that, she observed that there were containers with cat food placed around the trap, and the trap was wrapped in plastic wrapping so that it could act as a shelter from inclement weather. (3T Pg. 14, Ln. 6- Pg. 15, Ln. 10). There was also a container several feet away from the trap on its side that could also serve as a means of shelter. (3T Pg. 16, Ln. 13 - Pg. 17, Ln. 6).

Ms. Nguyen confirmed the trap displayed a note stating "Trapping momma cat + kittens – Please call Terri 973-714-7861" and how that name and number matched an OPRA request she reviewed. (3T Pg. 26, Ln. 9- Pg. 27, Ln. 18).

Ms. Nguyen's testimony included the introduction of several photographs she took of the trap and its surroundings on September 15, 2021, as well as the Defendant's OPRA request with her name and phone number matching that which was written on the trap, further bolstering her testimony. (3T Pg. 19, Ln. 1 – Pg. 30, Ln. 3). She also identified Defendant at trial based upon the fact that on September 17, 2023, the Defendant arrived at Ms. Nguyen's office to retrieve the trap. (3T Pg. 30, Ln. 4 – Pg. 30, Ln. 25).

Ms. Nguyen testified that the trap was on a sidewalk where the public had the right of pedestrian travel and that rodents could feed on the exposed food. (3T Pg. 24, Ln. 4- Pg. 25, Ln. 7).

No competent evidence to the contrary was provided and the testimony of Ms. Nguyen's testimony was unrefuted, credible and reliable.

The evidence and testimony clearly establish all the elements of the charges which the Defendant was convicted of. As set forth above, the Defendant harbored and abandoned stray cats on the public sidewalk on Murray Avenue within the jurisdiction of the Township, creating a nuisance in doing so. It is undeniable that the conduct of the Defendant established each element. The Defendant placed the trap on the sidewalk on Murray Avenue and altered the trap so it could not function as a trap by tying the door open. She wrapped the trap in plastic so as to harbor and protect any animals inside from inclement weather. Clearly, she had no intention of removing these animals but rather wanted to construct a makeshift home for these stray cats on public property where the cats were to remain, abandoned and able to run at large as strays. In leaving the stray animals to remain on the sidewalk on Murray Avenue, rather than taking the cats in to care for them herself or taking them to a local animal shelter, she abandoned them.

In fact, the term harboring is defined by Merriam-Webster as "to give shelter or refuge." *Merriam-Webster Dictionary-Harbor. Accessed 16 May 2024.*

In light of the foregoing, Judge Jones properly found that that by placing a trap, placing plastic wrap around it to prevent it from operating as a trap, the Defendant was harboring stray cats within a public place in the Township. Judge Jones also properly concluded that by altering the trap to not capture the cats, as previously set forth, allowing the cats to run at large is a form of abandonment. Finally, Judge Jones also properly found that the State provided sufficient evidence to link the trap placed on Murray Street in the Township to the Defendant and that the State proved beyond a reasonable doubt that the Defendant placed the trap.

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 placing the traps on a public sidewalk in the Township, 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. 12, Ln. 14 – Pg. 19).

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

§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. (2T Pg. 12, Line 4 – 13). 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 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.

POINT V

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 covering, tying open a trap, providing refuge and protection from the elements 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. Defendant altered the trap so it could not function as a trap by tying the door open, and as the Municipal Court took specific notice of, wrapped the trap in plastic so as to protect any animals inside from inclement weather. (3T Pg. 8, Ln. 25 – Pg. 25, Ln. 7). These actions certainly do not reflect an intent to trap the cats and either take them 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 construct a makeshift home for these stray cats on public property where the cats were to remain, abandoned and able to run at large as strays. The Defendant's actions show she knew exactly what she was doing in her placement and alteration of the trap. Her attempt to now 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.

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 23, 2024 Order of Judge Jones be affirmed.

DURKIN & DURKIN, LLC
Attorneys for the Plaintiff

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

Dated: June 20, 2024

DURKIN & DURKIN, LLC
By: Gregory F. Kotchick, Esq.
(NJ State Bar No.: 027971999)
1120 BLOOMFIELD AVENUE
P.O. BOX 1289
WEST CALDWELL, NJ 07007

(973) 244-9969 - Our File No.: 4058-39

Attorneys for the Township of East Hanover

	SUPERIOR COURT OF NEW JERSEY **APPELLATE DIVISION**
THE STATE OF NEW JERSEY, **Plaintiff/Respondent** **vs.** **TERRI BAIRD,** **Defendant/Appellant.**	**DOCKET NO.: A-001896-23-T2** **Civil Action** **ON APPEAL FROM:** **SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: MORRIS COUNTY** **Municipal Appeal NO.: 23-006** **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 June 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
Attorneys for Plaintiff/Respondent
Township of East Hanover

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

Dated: June 20, 2024

Superior Court of New Jersey – Appellate Division

Letter Brief

Appellate Division Docket Number: A – 001896-23T2

Isabelle R. Strauss, Esq.

2247 Old Church Rd., Toms River, N.J.

908-910-2522

Anrtesq@aol.com

Attorney Bar ID #: 017661976

05/30/2024

Letter Reply Brief on behalf of Terri Baird

State of New Jersey Plaintiff

v.

Terri Baird Defendant

Case Type: Criminal

County/Agency: Morris

Trial Court/Agency Docket No: MA 23-006

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 6A, 7A)

The State's contention that the penalty provision at issue is clear and unambiguous is not responsive. Defendant did not allege ambiguity but rather stated that the penalty provisions are improper and illegal. 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. It is true that the provisions are severable and their invalidation does not affect the remainder of the ordinances. With the

penalty provisions severed, however, the ordinances lack a penalty and this Court has held 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 6A)

As set forth in detail in Point 2 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. 16)

Chapter 44 specifically provides for the ordinances to remain in effect only for 120 day during which 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 utilized 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 7A)

As set forth in detail in defendant appellant's brief Point 4, summons SC 009563 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