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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4556-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ESTRELLA PIEMONTESE,

Defendant-Appellant.¹

Submitted May 31, 2017 – Decided November 17, 2017

Before Judges Suter and Grall.

On appeal from Superior Court of New Jersey,
Law Division, Passaic County, Municipal Appeal
No. 5095.

Estrella Piemontese, appellant pro se.

Domenick Stampone, Corporation Counsel,
attorney for respondent (Dawn Blakely-Harper,
Assistant Corporation Counsel, on the brief).

The opinion of the court was delivered by

SUTER, J.A.D.

¹ Defendant's papers reverse the caption. On appeal, the matter remains State of New Jersey v. Piemontese even though she is the appellant.

Defendant Estrella Piemontese appeals the April 28, 2015 judgment of conviction entered by the Law Division following a trial de novo on her appeal of a municipal court conviction for violating section A of City of Paterson Municipal Ordinance 271-26. The Law Division found defendant guilty of violating sections A and C of the ordinance. We reverse because the evidence does not support either conviction.

Defendant owns a vacant three family residence in the City of Paterson (City). On October 29, 2013, a housing inspector for the City inspected and photographed the property. He issued defendant a notice of violation under Ordinance 271-26A with the description "[c]lean or remove rubbish or garbage." Under actions required, the notice provided: "26A. MUST CUT HIGH WEEDS AND GRASS FROM RODENCE [SIC] AT ENTIRE PROPERTY IMMEDIATELY." Defendant was given to November 15, 2013, to remedy the violation. The inspector returned to the property on November 15, 2013, but the condition remained the same. He took additional photographs.

Defendant wrote to the City asking for two to three months to address the property. She alleged the property had been vandalized and that her insurance company was investigating the vandalism.

On February 4, 2014, a City of Paterson Municipal Court complaint-warrant was issued against defendant, which alleged that

on November 15, 2013, defendant "unlawfully commit[ed] the Code Violation of Housing Property Maintain[ence] Code . . . Chapter 271" by failing to "1. Clean or remove rubbish or garbage from, entire proper[t]y has to be completed 11/15/13 or complain[t] will result in court last and final notice. 271-26A."

City of Paterson Ordinance §271-26 addresses a myriad of exterior property issues.

§271-26 Exterior property areas

No person shall occupy as owner-occupant or let to another for occupancy any structure or premises which does not comply with the following requirements. The Building Official of the municipality shall cause periodic inspections to be made of all premises to secure compliance with these requirements.

A. Sanitation. All exterior property areas shall be maintained in a clean and sanitary condition free from any accumulations of rubbish or garbage.

B. Grading and drainage. All premises shall be graded and maintained so as to prevent the accumulation of stagnant water thereon or within any building or structure located thereon.

C. Noxious weeds. All exterior property areas shall be kept free from species of weeds or plant growth which are noxious or detrimental to the public health.

D. Insect and rodent harborage. Every owner of a structure or property shall be responsible for the extermination of insects, rodents, vermin or other pests in all exterior areas of the premises, except that the

occupant shall be responsible for such extermination in the exterior areas of the premises of a single-family dwelling. Whenever infestation exists in the shared or public parts of the premises of other than a single-family dwelling, extermination shall be the responsibility of the owner.

E. Accessory structures. All accessory structures, including detached garages, shall be maintained structurally sound and in good repair.

F. Motor vehicles. No motor vehicle in a residential district shall at any time be in a state of any major disassembly, disrepair or shall it be in the process of being stripped or dismantled. At no time shall any vehicle of any type undergo major overhaul, including body work, in a residential district.

G. Fences. All fences shall be of approved materials and kept in sound condition and repair.

The case was heard in municipal court on March 21, 2014. The inspector testified about his inspection and the photographs. He presented no evidence of rubbish or garbage and no evidence as to the species of the weeds. On that evidence, the municipal court judge found that there was an "overgrowth of vegetation of sorts" with weeds four to five feet high. He concluded it took a while for the weeds to grow because they were "very, very high." Defendant was found guilty of violating section A of Ordinance

271-26. She was ordered to pay a \$500 fine and costs. Defendant appealed the conviction to the Superior Court.

The Superior Court judge found that defendant violated sections A and C of the Ordinance that address the exterior property areas. That judge determined the photographs showed weeds four to five feet high. The notice told defendant to cut the weeds and grass. Relying on Pope v. Houston, 559 S.W.2d 905 (Tex. Civ. App. 1977), the court found it was common knowledge that "a vacant lot that is allowed to accumulate weeds, brush and/or rubbish may well constitute a health hazard" It found that the "accumulation of these weeds and other plant growth" created "a health hazard" because "they could create a fire hazard when dried out, harbor insects and rodents which might be rabid." The court found defendant violated both sections A and C of the Ordinance: as to section A, titled "Sanitation," "[t]he overgrowth of weeds violate[ed] this section"; as to section C, titled "Noxious weeds," "[t]he growth of weeds on defendants [sic] property are detrimental to public health."

On appeal, defendant contends that she did not receive the mailed copies of the notices of violation and complains about the procedures at the de novo hearing, where she wanted to testify. She alleges that the Ordinance did not apply to her. In addition, she alleges that the Ordinance was vague and overbroad.

We agree that defendant's conviction should be reversed, but on grounds other than cited by defendant. The evidence does not permit us to conclude that findings of violations of sections A and C "could reasonably have been reached on sufficient credible evidence present in the record." State v. L.S., 444 N.J. Super. 241, 247-48 (App. Div. 2016) (quoting State v. Kuropchak, 221 N.J. 368, 382-83 (2015)). Additionally, with respect to section C, the judge applied a mistaken interpretation of the ordinance. "The aim of courts in construing ordinances, like statutes, is to determine legislative intent," and the first step is to consider the "plain meaning." City Council v. Brown, 249 N.J. Super. 185, 191 (App. Div. 1991). Interpretation of legislation is subject to de novo review. In re Liquidation of Integrity Ins. Co., 193 N.J. 86, 94 (2007).

The trial court's finding that defendant violated section A was not supported by the record. Our review showed no testimony about rubbish or garbage. The trial court relied on Pope, supra, a case that we cited in an earlier appeal involving the same defendant. See State v. Piemontese, 282 N.J. Super. 307, 309 (App. Div. 1995). There, however, we expressly "disagree[d] with Pope to the extent that it is inconsistent with our ruling in [that] case." Id. at 309. We did not adopt as common knowledge any parts of that decision. In the absence of evidence about

rubbish or garbage at the property, the trial court erred in finding a violation of section A.

Section C required the City to prove that defendant failed to keep the exterior of her property "free from species of weeds or plant growth which are noxious or detrimental to the public health." (emphasis added). The plain focus of this section is on a harmful characteristic of the "species," that is, the type of weed or plant, not the height of the vegetation. The first meaning of "noxious" provided in the Webster's II New College Dictionary (1995) is "injurious to physical health."

The court's interpretation stretched the terms of the ordinance's mandate on weeds by finding a violation based on an "accumulation" of weeds and other plant growth that could create a risk of health threatening fire or an influx of insects and disease carrying rodents. In our view, that was an improper extension of the plain language of section C. The ordinance was adopted after this court's decision in Piemontese invalidating a prior ordinance for vagueness. Courts generally construe statutes and ordinances to avoid constitutional defect, Gilman v. Newark, 73 N.J. Super. 562, 598-99 (Law Div. 1962), not to enhance the risk of unconstitutional application. Moreover, even if section C could be read as broadly as the trial court read it, the record did not include any evidence supporting a finding that this

vegetation posed a fire hazard or had become the home of insects and rodents.

Given our holding, we have no occasion to reach any other issues raised by defendant about service of process, the conduct of the de novo hearing, whether the Ordinance applied to her as a non-resident owner, or whether sections A and C are vague or overbroad. There was no proof of rubbish or garbage at this property, and the judge mistakenly applied section C of the Ordinance. Defendant's conviction under sections A and C, therefore, must be reversed and the fine vacated.

Reversed; the fine is vacated.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION