SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1178-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RATTAN NATH,

Defendant-Appellant.

Submitted January 30, 2018 – Decided April 26, 2018

Before Judges Leone and Mawla.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Municipal Appeal No. 2016-029.

Rattan Nath, appellant pro se.

Trenk, DiPasquale, Della Fera & Sodono, PC, attorneys for respondent (Richard D. Trenk, of counsel; Robert S. Roglieri, on the brief).

PER CURIAM

Defendant Rattan Nath appeals an October 5, 2016 Law Division order finding him guilty in a trial de novo. Defendant was found guilty of violating provisions of the Municipal Code of West

Orange, N.J. (Code) pertaining to the maintenance of his property. The order imposed two $1,250 fines for the violations.

I.

We first set forth the ordinances defendant was found to have violated. Code § 14-8.1, entitled "Maintenance of Exterior of Premises," states:

> a. Hazards and Unsanitary Conditions. The exterior of the premises and all structures thereon shall be kept free of all nuisances, and any hazards to the safety of occupants, pedestrians and other persons utilizing the premises, and free of unsanitary conditions; and any of the foregoing shall be promptly removed and abated by the owner or operator. It shall be the duty of the owner or operator to keep the premises free of hazards which include but are not limited to the following:
>
> 1. Refuse, garbage and rubbish as defined in subsection 14-2.1 contained herein.[1]
>
> 2. Natural Growth. Dead and dying trees and limbs or other natural growth which, by reason of rotting or deteriorating conditions or storm damage, constitute a hazard to persons in the vicinity thereof. Trees shall be kept pruned and trimmed to prevent such conditions. All weeds shall be

[1] Code § 14-2.1 defines "Refuse" as "all putrescible and nonputrescible solid wastes," "Garbage" as "putrescible animal and vegetable waste," and "Rubbish" as "nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials." Ibid. (emphasis added).

removed from the vicinity of any public sidewalk or roadway.

[Ibid. (emphasis added).]

Code § 14-8.2, entitled "Appearance of Exterior of Premises and Structures," states:

> a. Residential and Nonresidential. The exterior of the premises, the exterior of dwelling structures and the condition of accessory structures shall be maintained so that the appearance of the premises and all buildings thereon shall reflect a level of maintenance in keeping with the residential standards of the neighborhood or such higher standards as may be adopted as part of a plan of urban renewal by the Township, and it shall be the duty of the owner or operator to maintain the premises in the manner set forth herein, including, but not limited to the following:
>
> . . . .
>
> 2. Landscaping. Premises shall be kept landscaped and lawns, hedges and bushes shall be kept trimmed where exposed to public view, and shall be maintained so as not to obstruct public access to sidewalks and roadways. All trees shall be kept trimmed so that they do not encroach onto the sidewalk or roadway from the ground to a height of seven (7) feet. Hedges and bushes shall be maintained so that they do not encroach onto the sidewalk. Lawns shall be trimmed and maintained and shall not exceed a height of eight (8) inches from the ground. All lawns, trees, hedges and bushes in violation of any and all provisions of this Ordinance shall be removed, trimmed, or cut to conform to the requirements set forth herein.

[Ibid. (emphasis added).][2]

On November 20, 2015, West Orange Township code enforcement officer William Ordonez, visited defendant's property and observed "the hedges were overgrown, [and] the bushes, . . . lawn, [and] grass [were] high." Ordonez issued a Notice of Violation, which stated defendant should "landscape [the] entire property by November 30, 2015," and cited Code §14-8.2(a)(2)'s requirements that trees must not encroach onto the sidewalk below seven feet, and that lawns must not be more than eight-inches tall.

Starting December 1, 2015, Ordonez repeatedly returned to the property and took photographs of the conditions. On January 8, 2016, defendant received a citation for an ongoing violation for "failure to landscape property." Code § 14-8.2(a)(2). Defendant also received a citation for an ongoing violation for "failure to maintain exterior of property" regarding "refuse, garbage, rubbish, [and] material growth." Code § 14-8.1(a)(1) and § 14-8.1(a)(2).

At the June 22, 2016 trial in the Municipal Court, Ordonez testified that between December 1 and January 8, he observed the following, which was also depicted in his photographs. The grass

[2] Township Code Sections 14-8.1 and 14-8.2 (Apr. 11, 2018), http://www.westorange.org/AgendaCenter/ViewFile/Item/70?fileID=282.

and weeds were taller than the eight-inch limit, reaching as high as eighteen inches. There were piles of leaves extending from about eleven feet inside the property to beyond the curb, obstructing the sidewalk. Defendant had wire-mesh fencing strung between two trees that created "a dam" trapping mounds of leaves. Near the neighbor's driveway, there was a very large pile of wood, including cut limbs, branches, and stumps, at least two feet high. There was a twenty-inch-high mound of wood chips near the street. There were tree branches below the seven-foot limit on both the north and south sides of the property, hanging over and obstructing the ability to walk on the sidewalks. There was a tree that was uprooted and leaning less than forty-five degrees above the ground. There were loose cinderblocks piled against a retaining wall. Lying around the property were a crate, a brick paver, several plastic containers, and plastic wrapping.

Ordonez testified that he continued to photograph the property from January 8 until April 11, 2016. The conditions persisted: the tall grass and weeds; the wire mesh trapping the leaves; the piles of leaves, branches, wood chips, and tree stumps; the leaning tree; the brick paver, the plastic wrapping, and other rubbish. Ordonez visited the property and found it was still in violation of the ordinances on the date of trial, six months after defendant received the citations. The Municipal Court also heard

testimony from defendant, his children, and his neighbor. The court found that defendant violated both ordinances. Prior to the sentencing hearing, defendant appealed to the Law Division.

On September 30, 2016, the Law Division heard argument and rendered an oral opinion affirming the Municipal Court's ruling as to both ordinances. The Law Division found "ample evidence that the defendant, indeed, violated the Township ordinances." The court found "defendant has not denied that the property was in the condition as testified to by the inspector and depicted by the photographs." The court found defendant did some remedial work but failed to abate the violations, and there "really seems to be a defiance by the defendant on abatement." The court then required defendant to pay a $1,250 fine for each violation, plus $30 in court costs.

On appeal, defendant presents the following arguments:

> POINT I. THE LAW DIVISION COMMITTED HARMFUL ERROR BY IGNORING THE DENIAL OF DUE PROCESS.
>
> 1. Failure to Prove Each Element.
>
> 2. Shielding Hypocrisy.
>
> 3. Undermining Constitutional Protections.
>
> 4. Allowing Prosecutor to Testify.
>
> 5. Defendant Testimony Disrupted.

6. Irrebuttable Presumption of no Racism.

7. Speculative Factual Findings.

8. Ignoring Legislative and Federal Policy.

POINT II. THE LAW DIVISION COMMITTED HARMFUL ERROR BY IGNORING THAT THE UNDERLYING ORDINANCES ARE VOID FOR VAGUENESS.

POINT III. THE LAW DIVISION COMMITTED HARMFUL ERROR BY NOT REJECTING SYSTEMATIC MALFEASANCE BY STATE ACTORS AS AN IMPROPER PURPOSE FOR STATE'S RACIST ENFORCEMENT OF THESE ORDINANCES.

We have reviewed defendant's arguments in POINT I's subpoints 2, 3, 4, 5, 7, and 8, and find they lack sufficient merit to warrant discussion. R. 2:11-3(e)(2). We address his other points.

II.

We first address whether the State proved each element of the violations. We must hew to our "deferential standard" of review. State v. Stas, 212 N.J. 37, 48 (2012). The findings of trial courts in non-jury cases "must be upheld, provided they '"could reasonably have been reached on sufficient credible evidence present in the record."' Deference is warranted because the '"findings of the trial judge . . . are substantially influenced by his opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy."'" State v. Reece, 222 N.J. 154, 166 (2015) (citations omitted).

The need for "'deference is more compelling where'" the Municipal Court and Law Division "'have entered concurrent judgments on purely factual issues. Under the two-court rule, appellate courts ordinarily should not undertake to alter concurrent findings of facts and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error.'" Ibid. (citation omitted). "Therefore, appellate review of the factual and credibility findings of the municipal court and the Law Division 'is exceedingly narrow.'" Ibid. (citation omitted).

Here, both the Municipal Court and the Law Division credited Ordonez's testimony, and the Law Division "adopt[ed]" the Municipal Court's findings of fact. The State supported Ordonez's testimony with seventy-nine photographs depicting the violations. The facts constituting the violations were essentially uncontested by defendant and his witnesses. Accordingly, we uphold the findings of fact.

We also agree with the Law Division that the evidence showed defendant violated the ordinances. The Law Division's greatest concern was "the tree leaning in a 45 degree angle which was pictured to be in the same position from January 7th, 2016 to April 11, 2016." The court found the roots were out of the ground, the tree was not stable, and it "definitely constitute[d] a

hazardous condition" for both the occupants and pedestrians in violation of Code § 14-8.1(a)(2). We agree.

The court properly found the weeds higher than eight inches, and the tree branches hanging over the sidewalk at a height less than seven feet, were both violations of Code § 14-8.2(a)(2). We need not address the court's finding that the large pile of leaves behind the wire mesh also violated that subsection.

Finally, the court found the piles of leaves on the sidewalks, the plastic wrapping, plastic containers, and crates on the lawn, and the cinderblocks were all refuse, garbage, or rubbish in violation of Code § 14-8.1(a)(1). "Refuse, garbage and rubbish" is defined in Code § 14-2.1 to include "wrappings, . . . yard clippings, leaves, wood, . . . and similar materials." The piles of leaves on the sidewalk were sufficient to show a violation, as they were "rubbish," and they also posed "hazards to the safety of . . . pedestrians." Code § 14-8.1(a) & (a)(1). We need not address whether the cinderblocks, paver, crate, or plastic containers were "rubbish," or whether they and the wrapping had to be "hazards" in order to violate this subsection. See Code § 14-2.1, -8.1(a).[3]

[3] The State has not argued they were "unsanitary" or "nuisances" as defined in the Code. See ibid. The State did not charge defendant under Code § 14-8.2(a)(1) regarding commercial or industrial material.

III.

Defendant contends the ordinances were void for vagueness. "A law is void if it is so vague that '"persons of common intelligence must necessarily guess at its meaning and differ as to its application."'" Twp. of Pennsauken v. Schad, 160 N.J. 156, 181 (1999) (citations omitted). "To withstand a void-for-vagueness challenge, a penal ordinance must 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.'" State v. Clarksburg Inn, 375 N.J. Super. 624, 633 (App. Div. 2005) (quoting State v. Golin, 363 N.J. Super. 474, 482-83 (App. Div. 2003)).

That said, "[a] municipal ordinance under review [for vagueness] enjoys a presumption of validity and reasonableness." Id. at 632. "Municipal ordinances are liberally construed in favor of the municipality and are presumed valid." Ibid. "However, because municipal court proceedings to prosecute violations of ordinances are essentially criminal in nature, penal ordinances must be strictly construed." Ibid. (quoting Golin, 363 N.J. Super. at 482).

"In determining whether an ordinance is vague, 'a common sense approach is appropriate in construing the enactment'" in terms of the persons who may be subjected to it and in context

with its intended purpose. Heyert v. Taddese, 431 N.J. Super. 388, 424 (App. Div. 2013) (citations omitted). "The language of the ordinance 'should be given its ordinary meaning absent specific intent to the contrary.'" Ibid. Where, as here, the provision itself defines its terms, courts look to that definition. See Schad, 160 N.J. at 168, 182; State v. Stafford, 365 N.J. Super. 6, 14-15 (App. Div. 2003). "When terms are defined, however, a vagueness argument generally fails." Chez Sez VIII, Inc. v. Poritz, 297 N.J. Super. 331, 352 (App. Div. 1997).

We reject defendant's claim that the specific aspects of the ordinances under which we have sustained his convictions are void for vagueness. Code § 14-8.1(a)(1) specifically incorporates the definition of "rubbish" in Code, which makes clear "rubbish" includes "yard clippings, leaves, [and] wood." Code § 14-8.1(a)(2) is clear in requiring that "[d]ead or dying trees" must be kept pruned to prevent hazard, as plainly posed by the leaning tree. Code § 14-8.2(a)(2) is precise in requiring that "trees shall be kept trimmed so they do not encroach onto the sidewalk . . . to a height of seven (7) feet," and that "[l]awns shall be trimmed" to not "exceed a height of eight (8) inches from the ground."

"'A statute may be challenged as being either facially vague or vague "as-applied."'" State v. Lenihan, 219 N.J. 251, 267 (2014) (citations omitted). "'[I]f a statute is not vague as

applied to a particular party, it may be enforced even though it might be too vague as applied to others.'" Ibid. (citation omitted). Because the ordinances were not vague as applied to the conduct supporting defendant's convictions, we need not consider whether the ordinances might be vague in other applications.

Defendant relies upon Golin to argue the ordinances are void for vagueness. However, Golin voided an ordinance that prohibited "[a]ny matter, thing, condition or act" that "may become an annoyance." 363 N.J. Super at 480, 483-84. We ruled the ordinance was overbroad because it did not allow the enforcing officer "'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 483 (citation omitted). Here, unlike the subjective and undefined criteria in Golin, the ordinances set forth objective facts which defendant could realize he was violating, such as the definition of rubbish, dead or dying trees, and tree branch height requirements.

Assessing whether there was a hazard required a qualitative assessment, but that does not render an ordinance vague. See Clarksburg Inn, 375 N.J. Super. at 634-39 (finding "clearly audible" was not vague). Like statutes, ordinances "need not be meticulous in specificity, but should be afforded 'flexibility and reasonable breadth,' given the nature of the problem and wide

range of human conduct." Poritz, 297 N.J. Super. at 352 (citation omitted). Therefore, in our de novo review, we find the ordinances were not void for vagueness. Clarksburg Inn, 375 N.J. Super. at 631. In any event, the leaning tree, like the piles of leaves on the sidewalk, met the definition of a "hazard" as "a source of danger[.]" Merriam-Webster's Collegiate Dictionary, 572 (11th ed. 2014).

Defendant argues "zoning provisions were void for vagueness because [the] State had diametrically opposite interpretations in 2011 and 2016 for them." Defendant adds no details. He may be referring to his conviction for failing to trim his lawn in 2011, in violation of Code § 14-8.2(a)(2) (2000), which we previously upheld. State v. Nath, No. A-4659-11 (App. Div. Apr. 29, 2013), certif. denied, 216 N.J. 365 (2013), cert. denied, 134 S. Ct. 2736 (2014). In 2011, that section required "lawns, hedges and bushes shall be kept trimmed and from becoming overgrown and unsightly where exposed to public view and where the same constitute a b[l]ighting factor depreciating adjoining property and impairing the good residential character of the neighborhood." Ibid. (slip op. at *2 (quoting Code § 14-8.2(a)(2) (2000)). However, in 2012, the ordinance was amended to its current form. Code § 14-8.2(a)(2) (citing West Orange, N.J. Ord. No. 2352-12). The State properly applied the new language to defendant's 2016 violations.

Further, defendant argues that because the ordinances are vague, the rule of lenity applies. However, "the rule of lenity is applied only if a statute is ambiguous, and that ambiguity is not resolved by a review of 'all sources of legislative intent.'" State v. Regis, 208 N.J. 439, 452 (2011) (citation omitted). Here, the rule of lenity does not apply because the ordinances are not ambiguous as applied to the conduct on which we have sustained defendant's convictions.

IV.

Defendant also argues the Law Division ignored the denial of due process because the State did not prove other "required elements," namely "intent and the presences of a legitimate State interest in interfering with private property."

However, the ordinances do not make defendant's intent an element. Rather, the ordinances provide the property owner "shall" keep the premises free of hazards and "shall" maintain the premises, including that dead or dying trees "shall be kept pruned," and tree branches and lawns "shall be trimmed." Code §§ 14-8.1(a), -8.2(a).

Moreover, "criminal intent is not necessary to support a finding of guilt in regulatory or public welfare criminal statutes." State, Dep't of Law & Pub. Safety, Div. of Gaming Enf't v. Boardwalk Regency Corp., 227 N.J. Super. 549, 556 n.2

(App. Div. 1988). Strict liability is "an unexceptionable and appropriate legislative option where employed to implement a regulatory scheme designed to deal with a serious social problem." United Prop. Owners Ass'n of Belmar v. Borough of Belmar, 343 N.J. Super. 1, 27 (App. Div. 2001) (quoting State v. Kiejdan, 181 N.J. Super. 254, 258 (App. Div. 1981)).

A legitimate State interest is also not an element of the offense that must be proven at trial. In any event, it is a legitimate State interest to require a property owner "to keep the premises free" of "hazards to the safety of occupants, pedestrians and other persons utilizing the premises," such as the leaning tree and piles of leaves on the sidewalk. Code § 14-8.1(a)(1), (2). It is also a legitimate State interest to require owners to keep sidewalks free of low branches. Code § 14-8.2(a)(2).

There is also a legitimate State interest in requiring grass and weeds to be no higher than eight inches. Ibid. The purpose of the housing Chapter in the Code is "to protect the public health, safety, morals and welfare by establishing minimum standards governing the maintenance, appearance, [and] condition" of residential premises. Code § 14-1.3. In addition, the Township found that "lack of maintenance" and deterioration of the "appearance of exterior of [such] premises" also have the "effect of creating blighting conditions and initiating slums," which

"will necessitate in time the expenditure of large amounts of public funds to correct and eliminate the same." Code 14-1.2. "[P]reservation of aesthetics and property values is a legitimate end for a municipal zoning ordinance." State v. Miller, 83 N.J. 402, 415 (1980). Thus, the ordinances address serious social problems, namely safety and blight. Therefore, there is no due process violation.

V.

Defendant also claims that other properties, including those owned by the State, violate these ordinances and that the ordinances are enforced only against South Asians.

"Two elements must be established to succeed on a claim of unconstitutional enforcement of an ordinance — 'a discriminatory effect and a motivating discriminatory purpose.'" United Prop. Owners Ass'n, 343 N.J. Super. at 25 (quoting Schad, 160 N.J. at 183). "'"To prevail on a claim of selective prosecution, [the] defendant must provide 'clear evidence' to overcome the presumption that the prosecutor has not acted unconstitutionally, given the general deference to which prosecutorial decisions are entitled."'" State v. Heine, 424 N.J. Super. 48, 66 (App. Div. 2012) (citations omitted).

In the Municipal Court, defendant claimed discriminatory enforcement against South Asians. He proffered his neighbor, also

a South Asian, to testify he had been prosecuted, but that would not show a pattern of ethnic discrimination. Defendant asserted other properties in the neighborhood looked like theirs but the owners were not prosecuted. The court allowed defendant to present photographs of nearby properties, but they had no sidewalks being encroached or violations comparable to those we have upheld. The court properly found defendant's "anecdotal references to enforcement regarding certain properties falls far short of establishing a pattern of discrimination" against South Asians. See United Prop. Owners Ass'n, 343 N.J. Super. at 26.

In the Law Division, defendant again argued South Asians were being targeted. He contended there were low hanging branches outside the courthouse, but offered no evidence they obstructed sidewalks. He also asserted that enforcement limited his ability to worship as a Hindu by engaging in organic landscaping. The court noted there was no evidence how the conditions on his property were relevant to his religious beliefs, and properly rejected his claim of selective enforcement. See State v. Cameron, 100 N.J. 586, 616 (1985) (finding the defendant made "no showing that the Ordinance in fact infringes upon the . . . right to free exercise of religion").

Lastly, we have considered the numerous other arguments presented in defendant's submissions and conclude that they "are

without sufficient merit to warrant discussions." R. 2:11-3(e)(2). We "decline to consider arguments raised for the first time in [defendant's] reply brief." Bacon v. N.J. State Dep't of Educ., 443 N.J. Super. 24, 38 (App. Div. 2015).

Affirmed.