

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 2144 C.D. 2012
	:	
Harold Kemmerer,	:	
Appellant	:	
	:	
Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 2217 C.D. 2012
	:	Submitted: May 3, 2013
Nancy Kemmerer,	:	
Appellant	:	

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: June 10, 2013

In these consolidated cases, Harold Kemmerer and Nancy Kemmerer (Owners) appeal from convictions and fines imposed by the Court of Common Pleas of Lehigh County (trial court) for violations of Whitehall Township's (Township) Property Maintenance Code (Code). Owners, representing themselves, contend the trial court erred in finding them guilty of (1) failing to maintain the exterior of their property in a clean, safe and sanitary condition; and (2) storing an unregistered and unlicensed vehicle, not completely covered by a tarpaulin, on their property. Upon review, we affirm.

I. Background

Owners, husband and wife, own residential property located at 711 Maryland Street in the Township. In April 2011, the Township's Building Inspector (Inspector) viewed Owners' property in response to a complaint. On April 26, 2011, Inspector photographed the property. He observed various items of debris and garbage around the property, a red pick-up truck with a flat tire, and a black pick-up truck that appeared inoperable. Thereafter, Inspector mailed Owners a notice of violation, which advised them that they had 15 days to bring the property into compliance.

Owners failed to bring the property into compliance. In August 2011, Inspector returned to the property and took additional photographs. Inspector then issued Owners citations for failing to keep their property in a clean, safe and sanitary manner, a violation of 302.1 of the Code. Inspector also issued Owners citations for having more than one unregistered and unlicensed vehicle on the property, a violation of Section 302.8 of the Code. The Township cited each Owner for the violations. A magisterial district judge (MDJ) found Owners guilty of these violations and fined them \$400 per citation for a total fine of \$1,600.

Owners filed appeals from the summary convictions. Following a *de novo* evidentiary hearing, the trial court found Owners guilty of the same violations and ordered them to pay a fine of \$200 per violation for a total fine of \$800. Owners appealed to the Superior Court, which transferred the cases here.

In an opinion in support of its order, the trial court discussed the reasons for finding Owners guilty of the violations. Section 302.1 of the Code (Sanitation) provides:

All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

Supplemental Reproduced Record (S.R.R.) at 72b.

Section 302.8 of the Code (Motor Vehicles) provides:

Except as provided for in other regulations, not more than one currently unregistered or uninspected motor vehicle shall be parked, kept or stored on any premises provided that said vehicle shall be completely covered with an opaque tarpaulin, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth. (All other provisions of this section remain unchanged).^[1]

S.R.R. at 79b-80b (footnote added).

¹ Prior to its 2003 amendment, Section 302.8 of the Code provided that “no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises” Supplemental Reproduced Record (S.R.R.) at 73b-74b. The notice of violation issued to Owners, which alleged there were two inoperable and unlicensed vehicles on the property, states in part: “Not more than one (1) unlicensed/uninspected vehicle may be parked, kept or stored on premises provided that said vehicle be completely covered an opaque tarpaulin” Id. at 64b.

The trial court observed that Inspector's April 2011 photographs show various items of debris on Owners' property. See S.R.R. at 57b-63b. The items include multiple trash bags, buckets, trash bins, and garden tools. Also on the property were two pick-up trucks: a red truck with what appeared to be a flat tire and a black truck with a bed full of debris. Inspector's August 2011 photographs still showed Owners failed to properly maintain the property. The photos showed multiple black trash bags along the driveway that appeared to be full. See id. at 65b. The photos also showed a pile of shingles on the side of the home, and the same two vehicles. Id. at 66b-68b. The black truck was parked in the same spot and appeared to have additional debris loaded on it. Id. at 67b-68b.

Based on the evidence presented, namely the photographs, the trial court concluded Owners were guilty of failing to keep their property in a clean, safe and sanitary condition. To that end, the trial court reasoned, even though some or all of the items may be related to Owners' contracting business or home improvements, this would not relieve Owners of their duty to maintain their property in accord with Section 302.1 of the Code.

Further, under Section 302.8 of the Code, Owners may store one unregistered or uninspected motor vehicle on the premises "provided that said vehicle shall be completely covered with an opaque tarpaulin" S.R.R. at 79b (emphasis added). Here, Owners admitted the black pick-up truck was neither licensed nor inspected. In addition, Inspector's photographs clearly showed Owners did not cover the black truck in a tarpaulin. Therefore, the trial court concluded Owners were guilty of violating Section 302.8 of the Code.

II. Issues

On appeal,² Owners contend the trial court erred in finding they violated Section 302.1 of the Code because they removed the bags of shingles on their property in April 2011. The bags of stones on the property in August 2011 were used for repairing storm damage to the property. Owners also contend the trial court erred in finding they violated Section 302.8 of the Code because the red truck was licensed, inspected and moved on a regular basis.

III. Discussion

A. Clean, Safe and Sanitary Condition

Owners first argue the trial court erred in finding them guilty of violating Section 302.1 of the Code where they removed the garbage bags filled with roof shingles located near the back of the property the day after Inspector photographed them in April 2011. Further, Owners contend the August 2011 photographs show garbage bags filled with stones located near the front of the property. Owners intended to use these stones to level the landscape and fill in large holes in the driveway that were washed out by a series of severe rain storms. Essentially, Owners assert the trial court mistakenly confused the bags of shingles, which were removed, with the bags of stones intended for storm damage repair. Owners further assert they were not allotted enough time to repair the storm damage. Therefore, Owners argue, the trial court erred in finding they failed to keep their property in a clean, safe and sanitary condition.

² Our review of a trial court's determination on appeal from a summary conviction is limited to determining whether the trial court's findings of fact are supported by competent evidence or whether the trial court erred as a matter of law. Commonwealth v. Whiteford, 884 A.2d 364 (Pa. Cmwlth. 2005).

Before the trial court, Owner Harold Kemmerer (Mr. Kemmerer) testified he lived on the property for 26 years. Notes of Testimony (N.T.), 5/22/12, at 19; S.R.R. at 19b. During that period, he worked as a licensed contractor. Id. Further, he is a licensed roofing and siding mechanic. Id. As indicated by the August 2011 photographs, Mr. Kemmerer stored a bag of shingles on a pallet near the side of his house. Id. at 22-23; S.R.R. at 22a-23a. These shingles are used for caps and are very expensive. Id.

Mr. Kemmerer further testified that in August 2011, he had bags of stones that he collected from different jobs. Id. at 24; S.R.R. at 24a. He used these stones to fill in ruts on his property. Id. In particular, Mr. Kemmerer used these stones to repair his driveway. Id.

Nonetheless, we agree with the trial court that even if some or all of the items on Owners' property in August 2011 were different from the items on the property in April 2011, and were related to Mr. Kemmerer's contracting business, this would not relieve Owners of their duty under Section 302.1 of the Code to maintain their property in a clean, safe and sanitary condition. See Tr. Ct., Slip. Op., 8/17/12, at 4. In finding Owners guilty of this violation, the trial court indicated it primarily relied on the August 2011 photographs. At hearing, the court stated (with emphasis added):

THE COURT: Let's cut to the chase here, though. The attorney for the township offered into evidence Commonwealth's exhibit number 3, which is a series of photographs. His witness testified that ... these photographs were taken on August 22nd, 2011. Is there any question as to whether your property looked this way on August 22nd, 2011?

Mr. KEMMERER: Is there any question?

THE COURT: Yeah. I mean –.

MR. KEMMERER: No, there is no question.

MRS. KEMMERER: No.

THE COURT: All right. So these photographs fairly and accurately depict the condition of your property on August 22nd, 2011; is that correct?

MR. KEMMERER: Yes.

THE COURT: All right. I don't think I need to see anything beyond that

N.T. at 32-33; S.R.R. at 32a-33a.

Based on our review of Commonwealth's Exhibit 3 (S.R.R. at 65b-69b), and Owners' testimony that their property indeed looked like that in August 2011, we discern no error in the trial court's determination that the Commonwealth proved beyond a reasonable doubt that they violated Section 302.1 of the Code by failing to maintain their property in a clean, safe and sanitary condition. Although some of the items on the property in August 2011 may be different from some of the items shown in the April 2011 photographs, the general condition of the property remained the same.

B. Unregistered or Uninspected Motor Vehicles

Similarly, with regard to Section 302.8 of the Code, Mr. Kemmerer testified that the dark colored pick-up truck, which he intended to restore, had no plates or stickers. N.T. at 34; S.R.R. at 34b. In response to Owners' appeal, the trial court recognized the 2003 amendment to Section 302.8, obviously in effect at all relevant times here, permits the storage of one unregistered vehicle provided it is completely covered by a tarpaulin. Tr. Ct., Slip. Op., at 4-5. Nevertheless, the trial court observed, "It is clear from the photographs that the black pick-up truck,

which Mr. Kemmerer admitted was not licensed, not inspected, and likely inoperable, was not covered in a tarpaulin.” *Id.* at 5 (emphasis added). Therefore, the trial court reasoned, it did not err in finding Owners guilty of violating Section 302.8 of the Code.

We agree. Reviewing Commonwealth’s Exhibit 3 (S.R.R. at 67b-68b), we conclude Owners violated Section 302.8 of the Code. As discussed above, Owners admitted the photographs in Commonwealth’s Exhibit 3 fairly and accurately depicted the condition of their property in August 2011. *See* N.T. at 32-33; S.R.R. at 32a-33a. As indicated by the photographs, the black truck was not completely covered by a tarpaulin. Rather, it appears there is a tarpaulin in the bed of the truck that is covered by debris. S.R.R. at 67b-68b.

IV. Conclusion

For the above reasons, we discern no error in the trial court’s determination that the Commonwealth proved beyond a reasonable doubt that Owners violated Section 302.1 and 302.8 of the Code. Accordingly, we affirm.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 2144 C.D. 2012
	:	
Harold Kemmerer,	:	
	:	
Appellant	:	
	:	
Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 2217 C.D. 2012
	:	
Nancy Kemmerer,	:	
	:	
Appellant	:	

ORDER

AND NOW, this 10th day of June, 2013, for the reasons stated in the foregoing opinion, the orders of the Court of Common Pleas of Lehigh County are **AFFIRMED**.

ROBERT SIMPSON, Judge