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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY
LAW DIVISION, CRIMINAL PART
MUNICIPAL APPEAL NO. MA-13-2019

STATE OF NEW JERSEY,

Plaintiff,

v.

HINDRAJ L. BALANI,

Defendant.

APPROVED FOR PUBLICATION

July 19, 2022

COMMITTEE ON OPINIONS

Decided: December 29, 2020

Brian Bontempo for plaintiff (James P. Nolan & Associates, LLC,
attorneys).

Antonio Toto, attorney for defendant.

R. J. JONES, J.S.C.

Hindraj L. Balani (defendant) filed this appeal after Woodbridge Township's municipal court found him guilty of violating state regulations prohibiting unsafe structures. N.J.A.C. 5:23-2.32(a). In sentencing Balani, the municipal court ordered the building he owned demolished, ordered that a lien be placed on his property, and ordered him to pay court costs. This appeal followed. In deciding it, the court addresses several issues, most importantly,

whether the regulations dealing with unsafe structures allow a municipal court, and in turn this court, to order a building demolished. They do not, and this opinion explains why.

The issues, as framed by Balani, condense to three: 1) that Woodbridge Township's code enforcement officer failed to meet the notice requirements set out in the regulation, and thus, that he cannot be found guilty of violating it; 2) that the municipality's construction official lacked the expertise to testify about his building's structural integrity and should have been barred from doing so; and 3) that even if this court allows the testimony of the construction official, the court should accept the testimony of his expert, an engineer, over that of the construction official.

As explained below, the court need not reach each of these issues. While providing the de novo review required by this appeal, concerns arose about the procedures employed below—issues that go to the heart of this court's review. This opinion examines these issues, as well as whether the appeal should be dismissed as moot, something the State contends in its response.

Facts

Balani owns property in Woodbridge's Keasby section. Starting in 2007, municipal officials began issuing notices warning that a building on the property was an "unsafe structure" as that term is defined in the New Jersey

Administrative Code.¹ The first notice was issued in 2007. It indicated that the building lacked electrical power because water lines had ruptured. From the record, it appears that officials took no further action after issuing the notice.

As of 2011, Balani still had not fixed the problems, prompting the municipality to issue another notice. At this point, the roof and walls had begun to deteriorate. The next notice, issued in 2017, described similar problems: Holes plagued the roof, which was deteriorating, and the load-bearing walls were failing.

Based on these continuing problems, Woodbridge Township issued a municipal-court complaint charging Balani with maintaining an unsafe structure, which violates N.J.A.C. 5:23-2.32(a). The municipality issued the complaint in February 2019, and about two months later the case went to trial. The municipal judge heard two witnesses: Thomas Kelly, the municipality's construction official, and Md A. Huq, a civil engineer who testified for Balani. The experts disagreed about the extent of the damage and the work needed to repair it. Huq estimated the repairs at about \$12,000, while Kelly believed the building would need to be demolished.

¹ The State attached copies of the notices to its appellate filings even though they were not marked into evidence at the municipal-court hearing. Because de novo review is conducted on the record below, these documents will not be considered. See R. 3:23-8. The discussion in this opinion about the contents of the notices comes from the trial testimony.

The municipal court agreed with Kelly, finding that the scope of the repairs exceeded those in Huq's estimates. As a result, the court gave Balani a week to prove he could come up with \$50,000—the estimated cost to repair the building. In addition, the court ordered Balani to obtain estimates from a licensed contractor showing the scope and cost of the work. The judge warned Balani: If he did not provide these estimates and show that he had the money available, the court would order the building demolished.

When he returned to court, Balani could not prove he had the money to repair the building, so the municipal court judge ordered it demolished. In doing so, the court said the building was unsound and in imminent danger of collapse. The court found Balani guilty of violating N.J.A.C. 5:23-2.32(a). It did not impose a fine for the violation, just court costs. The judge then stayed the decision for twenty days to allow this appeal. After Balani filed it, this court dismissed the appeal because his attorney failed to submit a timely brief. It was then reinstated several months later, after the problem was cured. In the meantime, though, Woodbridge officials demolished the building, as ordered by the municipal court.

Analysis

Before getting to the substance of the appeal, it is important to understand the lens through which it must be viewed. When considering an appeal from a municipal court, the Law Division conducts a de novo review of the record below. R. 3:23-8(a)(2). In doing so, the judge must independently review the defendant's guilt or innocence. State v. Cerefice, 335 N.J. Super. 374, 382-83 (App. Div. 2000). The Law Division does not affirm or reverse the court below, but rather, decides the case anew. State v. Carlson, 344 N.J. Super. 521, 525 n.2 (App. Div. 2001). This includes resentencing the defendant "as provided by law." R. 3:23-8(e).

A. Mootness

The first issue is a threshold one: whether the building's demolition moots the appeal and requires its dismissal. The court need not reach any other issues if this is the case.

"An issue is 'moot' when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." Greenfield v. N.J. Dept. of Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006). According to the State, this appeal is moot because Woodbridge demolished Balani's building. In other words, according to the State, the building's demolition prevents this

court from rendering an order that has any practical effect on the parties and their controversy.

The court agrees with the State to a point: The demolition cannot be undone. But criminal convictions do not become moot simply because the defendant served the sentence. N.J. State Parole Bd. v. Boulden, 156 N.J. Super. 494, 496-97 (App. Div. 1978). This principle extends to quasi-criminal convictions. Ibid. For these types of convictions, “service of the sentence or the payment of the fine imposed on the conviction—or even the death of the defendant himself—pending appeal, does not moot appellate review and determination of the propriety of th[e] conviction.” Id. at 497. Courts recognize that the conviction itself can lead to “collateral legal disadvantages, civil disabilities or public stigma.” Ibid. “It seriously affects [a defendant’s] reputation and economic opportunities.” Ibid.

Courts also will hear otherwise moot appeals when they present issues of “significant public importance.” State v. McCabe, 201 N.J. 34, 44 (2010). And notably, courts hear otherwise moot appeals when the issues are “likely to recur.” State v. Gartland, 149 N.J. 456, 464 (1997).

There are multiple reasons to hear Balani’s appeal despite the building’s demolition. For starters, the matter is quasi-criminal. Balani faces a conviction that could easily bring collateral consequences, including legal, personal, and

business consequences. A conviction like the one here affects a defendant's business reputation and economic opportunities. So appellate review has a "real and meaningful purpose." Boulden, 156 N.J. Super. at 497.

The court also finds that because of the important issues raised—which deal with the municipal court's authority and the procedures used in Woodbridge—the situation here is likely to recur. If that is the case, the parties need guidance in how to follow the procedural requirements of N.J.A.C. 5:23-2.32(a). So, even if technically moot, the issues on appeal need to be addressed.

B. The Regulatory Scheme

Balani was charged with violating a regulation enacted under the State Uniform Construction Code Act (UCC), more specifically, N.J.A.C. 5:23-2.32(a). This regulation sets out procedural steps municipalities and property owners must follow when dealing with alleged unsafe structures. In providing de novo review, it is important to understand these procedural steps, so this opinion will set them out in detail.

When a building or structure is deemed unsafe, N.J.A.C. 5:23-2.32 requires the owner to remedy the problem: "All buildings or structures that shall become unsafe . . . shall be deemed unsafe buildings or structures, shall be taken

down and removed or made safe and secure.”² N.J.A.C. 5:23-2.32(a). This regulation requires subcode officials to examine buildings and structures reported to be unsafe and to render a report that is then filed with the municipality. N.J.A.C. 5:23-2.32(a)(1).

If deemed unsafe, the municipality must also notify the owner about the condition of the building or structure, about the required repairs, and about the time within which the required repairs (including possible demolition) must be completed:

Notice of unsafe structure: If an unsafe or unsanitary condition is found in a building or structure, the construction official shall serve a written notice describing the building or structure deemed unsafe and specifying the required repairs or improvements to be made to render the building or structure safe and secure, or requiring the unsafe building or structure or portion thereof to be vacated or demolished within a stipulated time. Such notice shall require the person thus notified to immediately declare to the construction official his or her acceptance or rejection of the terms of the order. Such person may seek review before the Construction Board of Appeals within 15 days of receipt of the notice.

[N.J.A.C. 5:23-2.32(a)(2).]

As the text explains, those receiving the notice (usually the owner) must either accept or reject its terms immediately. Ibid. In addition, appeals must be filed

² For ease of reference, this opinion refers to buildings that fall under this definition as “unsafe.”

within fifteen days. Ibid. The county's Construction Board of Appeals hears the appeal. Ibid.

The regulation also contains a provision that applies when an owner fails to comply. It allows the construction official to pursue the remedies contained in the remaining UCC regulations and to pursue relief through legal counsel:

Upon refusal or neglect of the person served with a notice of unsafe structure to comply with the requirements of the order to abate the unsafe condition, the construction official shall, in addition to any other remedies herein provided, forward the matter to the legal counsel of the jurisdiction for an action to compel compliance.

[N.J.A.C. 5:23-2.32(a)(5).]

While N.J.A.C. 5:23-2.32(a) does not contain a provision allowing for fines, the language quoted above incorporates all other remedies in the UCC's regulations. Ibid. These remedies are contained in N.J.A.C. 5:23-2.31, which (among other things) allows construction officials to assess monetary penalties against those who violate the UCC or its regulations. N.J.A.C. 5:23-2.31(b)(1)(iii). Penalties are collected under the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 to -12. N.J.A.C. 5:23-2.31(b)(6). Jurisdiction to enforce penalties levied by the construction official is lodged in both municipal courts and the Superior Court. Ibid.

C. Compliance with the Regulatory Scheme

With this regulatory scheme in mind, the court will turn to what happened here. For a variety of reasons related to the trial below, Balani claims that the municipal-court judge should not have found him guilty of violating N.J.A.C. 5:23-2.32(a). Yet the court need not go down that path. As the regulation makes clear, if Balani disagreed with the notices served upon him, he needed to do two things: 1) immediately notify the construction official, and 2) appeal within fifteen days to the County Construction Board of Appeals. He did neither. As a result, he forfeited his right to challenge the construction official's determination about the condition of his building. This precluded the need for a trial on this issue.

Balani disagrees. He says the construction official failed to meet the procedural requirements of N.J.A.C. 5:23-2.32 when filling out the Notices of Unsafe Structure. More specifically, he says the notices did not include information required by the regulation. He also says the official failed to file a report with the municipality detailing the condition of the structure, as required by N.J.A.C. 5:23-2.32(a)(1). So, according to Balani, he could bypass the Construction Board of Appeals.

This argument is unconvincing for two reasons. First, the record does not support Balani's allegations, as he never raised them below. He did not question

the sufficiency of the notices or any of the related issues he raises now. In fact, the notices are not even part of the record.

Second, if Balani took issue with the sufficiency of the notices or whether Woodbridge complied with the regulation in other ways, he could have raised these concerns with the Construction Board of Appeals—the agency the Legislature designated to hear appeals. It comes down to this: Balani failed to appeal to the Construction Board of Appeals, and that barred him from challenging the condition of his property and the need for demolition when he appeared before the municipal court.

But this does not end the inquiry. After receiving the notices, Balani did nothing to remedy the unsafe condition of his property. At that point, the construction official had two methods to enforce his decision. For starters, he could have assessed a monetary penalty under N.J.A.C. 5:23.2.31 and then sought to enforce the penalty in municipal court (or Superior Court). This requires several steps. First, the construction official would need to assess the fine.³ Then, if Balani failed to pay it, the official had the ability to file in

³ The Department of Community Affairs (DCA) publishes a manual that contains approved forms officials use when assessing monetary penalties under the UCC. DCA, Municipal Procedures Manual, 70, 112 (2018), www.nj.gov/dca/divisions/codes/publications/muni_proc_man.html (last visited Dec. 1, 2020). The manual is referenced in the regulations. See N.J.A.C. 5:23-1.4. The manual “detail[s] the steps to be followed in completing, processing, and filling the standard forms, logs and reports required for

municipal court using the special form of summons and complaint for penalty enforcement proceedings. R. 7:2-1(h). If this procedure had been followed, the municipal court would have had jurisdiction to enforce the penalty via the Penalty Enforcement Law. The regulations specifically provide for this.

The construction official also could have “forward[ed] the matter to the legal counsel of the jurisdiction for an action to compel compliance.” N.J.A.C. 5:23-2.32(a)(5). While the regulations do not say which courts have jurisdiction to hear this type of action, the proper venue would have been Superior Court. Municipal courts have limited jurisdiction. N.J.S.A. 2B:12-17. By statute, that jurisdiction is limited to

- a. Violations of county or municipal ordinances;
- b. Violations of the motor vehicle and traffic laws;
- c. Disorderly persons offenses, petty disorderly persons offenses and other non-indictable offenses except where exclusive jurisdiction is given to the Superior Court;
- d. Violations of the fish and game laws;
- e. Proceedings to collect a penalty where jurisdiction is granted by statute;
- f. Violations of laws regulating boating; and

administration and enforcement of the State Uniform Construction Code.” Ibid. The form for assessing penalties is entitled Notice and Order of Penalty (UCC-F212). Municipal Procedures Manual at 112.

g. Any other proceedings where jurisdiction is granted by statute.

[Ibid.]

An action to compel compliance with a Notice of Unsafe Structure—here, to order demolition of a building—does not fit into any of the first six categories. It also does not qualify under subsection (g), as no statute grants jurisdiction to municipal courts to compel compliance with a Notice of Unsafe Structure. By contrast, N.J.A.C. 5:23-2.31 and N.J.S.A. 52:27D-138 grant municipal courts jurisdiction to enforce penalties imposed by municipal construction officials.

So, while Woodbridge’s construction official could have issued a fine and then sought to enforce the fine in municipal court, the municipality could not compel compliance in municipal court. The municipal court lacked jurisdiction to order this relief, which would be available only in Superior Court. Cf., N.J.A.C. 5:23-2.31 (noting how a construction official can “request the legal counsel of the municipality . . . institute the appropriate proceedings at law or in equity to restrain, correct, or abate” when a notice of violation or order to terminate have not been complied with).

This raises the next question: How does the lack of jurisdiction affect this appeal? On de novo review, the Law Division must resentence a defendant using its “independent judgment,” not simply determine whether the defendant is

guilty or not guilty. State v. States, 44 N.J. 285, 293 (1965); R. 3:23-8(e). While Balani did not raise jurisdiction to order his building demolished as an issue in his appellate brief or below, the court would be imposing an illegal sentence—that is, one outside a municipal court’s jurisdiction—if it were to impose the same penalty as the municipal court. That being the case, and because municipal officials did not follow the procedures that would allow this court to impose a fine, the complaint must be dismissed. This is true even though Balani did not appeal the Notices of Unsafe Structure and was not in a position to contest their validity when he appeared in municipal court.

One final issue requires comment. N.J.A.C 5:23-2.32(b)(2) allows a construction official to, among other things, order a building’s demolition when “there is actual and immediate danger of failure or collapse of a building or structure . . . which would endanger life, or when any structure or part of a structure has fallen and life endangered by the occupation of the building or structure” This emergency order is effective immediately, but demolition may not begin for twenty-four hours. Ibid. After that, demolition work may begin “unless stayed by order of the Superior Court.” Ibid. The emergency order is appealable “to a court of competent jurisdiction.” N.J.A.C. 5:23-2.32(b)(6).

In its findings, the municipal court said Balani's property was in imminent danger of collapse and posed a danger to people and property if that were to happen. While the court's language, to some extent, tracks the required findings under subsection (b)(2), that provision does not apply for two reasons. First, Balani was cited and found guilty under subsection (a), not subsection (b). Second, the regulation delegates to the construction official, not the municipal court, the authority to order emergency demolition.

It boils down to this: Based on the facts presented, N.J.A.C. 5:23-2.32(b) did not allow the municipal court—and does not allow this court—to order demolition. This finding, though, has an important caveat: The court does not decide whether the construction official met the requirements of subsection (b)(2) and had the ability to order demolition on his own, in other words, as part of his statutorily imposed powers. That issue is beyond the scope of this appeal.

Conclusion

Based on lack of jurisdiction to order demolition, as well as the failure of Woodbridge's construction official to levy a fine that this court can enforce, the complaint is dismissed. The court will issue an order consistent with this opinion.