

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

MICHAEL A. WELCH and TAMMY :
WELCH, :
Appellants : NO: 09-00765
vs. : 44 CD 2010
BOROUGH OF SOUTH WILLIAMSPORT :
Appellee :

OPINION
Issued Pursuant to Pa.R.A.P. 1925(a)

On January 12, 2009, the Borough of South Williamsport directed the Appellants to remove a house located on their real property at 395 Second Avenue, South Williamsport, within thirty (30) days. The Appellants filed an appeal, and on March 4, 2009 the South Williamsport Board of Appeals conducted a hearing. On April 3, 2009, the Board issued an order denying the Appellants' request for relief and affirming the Borough's order of demolition. On April 3, 2009, the Appellants filed a Petition for Review requesting that this Court vacate the Board's ruling and direct that they be granted a one-year construction permit so as to make repairs necessary to bring the property in compliance with the Borough's Construction and Property Maintenance Codes.

By Order dated December 10, 2009, this Court sustained the South Williamsport Board of Appeal's ruling to demolish the structure owned by the Petitioners. On January 11, 2010 a Notice of Appeal was filed. On January 12, 2010 this Court issued an Order pursuant to Pa.R.A.P. 1925(b) directing the Appellants to

file a Concise Statement of Errors Complained of on Appeal. The Order required submission within twenty (21) days. Pursuant to correspondence received from Appellants' former counsel, Mark C. Szybist, Esquire, this Court re-issued the Order of January 12, 2010 on January 28, 2010 to a different address. On March 3, 2010, thirty-four (34) days after the re-issuance of this Court's Order directing submission within twenty-one (21) days, this Court entered an Order respectfully urging dismissal of the Appellant's appeal for failure to timely file a statement of matters complained of pursuant to Pa.R.A.P. 1925(b)(4)(vii). A Concise Statement of Errors Complained of on Appeal was subsequently filed by Appellant.

In their Concise Statement, Appellants raise four (4) issues. The first three (3) issues relate to whether this Court abused its discretion or otherwise erred in finding that the structure at issue was "unstable and in danger of collapse," in declaring Appellants' efforts to repair the structure "lackadaisical at best" and in determining that demolition was necessary. As this Court thoroughly reviewed the condition of the structure and efforts taken by the Appellants to repair the structure, this Court incorporates and relies upon its findings as set forth in its December 10, 2009 Order and respectfully requests affirmance. The only additional issue raised by Appellants relates to the standard of review employed by this Court. Appellants argue that this Court should have applied a "clear and convincing evidence" standard, rather than the "substantial evidence" standard. This Court submits that the evidence, as presented, was clear and convincing. Moreover, in City of Erie v. Shelmack, 780 A.2d 824 (Pa.Commw. 2001), a property owner appealed the trial court's order which permitted

the City to demolish a structure located on the appellant's property. In reviewing the trial court's order, the Commonwealth Court held:

In light of the trial court's specific finding that the building was unsafe, which is supported by substantial evidence, we conclude that the trial court properly granted the City's demolition order. Id. at 828.

In this Court's Order of December 10, 2009 following a review of testimony regarding holes in the subject dwelling which exposed the interior to the outside, wires hanging from the building, the use of charred wood in ceiling joists, the use of charred wood to prop up roof rafters, evidence regarding the use of burned studs positioned next to burned studs within the structure, and the opinion of a structural engineer that the structure as it currently existed was "unsafe for human habitation, unstable and in danger of collapse," this Court held as follows:

This Court believes this is a public safety concern providing strong support for the Board's decision in which this Court concurs. 12/10/09 Order, p. 4.

As this Court found that the building was unsafe, and this finding was supported by substantial evidence, this Court properly upheld the Borough of South Williamsport's Order to demolish the structure, and this Court respectfully urges affirmance of its December 10, 2009 Order.

BY THE COURT,

Richard A. Gray, J.

cc: Marc Drier, Esquire
Joseph F. Orso, III, Esquire
Gary Weber, Esquire