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This opinion shall not "constitute precedent or be binding upon any court."
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-1671-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARK HUTCHINSON,

Defendant-Appellant.

Argued December 13, 2017 — Decided January 29, 2018

Before Judges Nugent and Currier.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Municipal Appeal
No. 16-04.

Fred J. Gelb argued the cause for appellant.

Kevin B. Riordan argued the cause for
respondent Borough of Point Pleasant Beach
(Kevin B. Riordan, attorney; Dina R.
Khajezadeh, on the brief).

PER CURIAM

Defendant Mark Hutchinson appeals from the Law Division's
order entered after a de novo trial on the record. The Law

Division found him guilty of § 19-11.16 of the Ordinances of the Borough of Point Pleasant Beach. We affirm.

Defendant's neighbor reported to the municipal zoning code official that defendant was operating a business out of his driveway and home.¹ The Borough advised defendant by letter that if he intended to operate a business from his home, he had to register as a home occupation and apply for a mercantile license. The letter listed the pertinent governing statutes. Defendant received a second notice that continued violation of the statutes would trigger mandatory court appearance summonses.

After defendant failed to comply with both the registration and licensing requirements, a zoning official went to defendant's residence to investigate the neighbor's allegations. The official observed a company-owned truck parked less than half-a-block away from defendant's home. The driver got out and later returned to the truck with some "equipment or material for a job." Based on the neighbor's complaints and her observations, the official signed two complaints against defendant for violations of Ordinance § 19-17.1,² operating a business from a residence-single

¹ It is not disputed that defendant owns a heating and air-conditioning company.

² The complaint was later amended to list a violation of Ordinance § 19.9, rather than § 19-17.1.

family zone, and Ordinance § 19-11.16, failing to register as a home occupation.

Several days later defendant applied for a mercantile license. The application listed his business and gave his home address as its location.

Prior to trial, defendant requested the zoning official provide "copies of all discovery including any photographs, statements[,] and names and addresses of all witnesses." The official provided a witness list. One month later, defendant sent a second discovery request seeking "a record of statements, signed or unsigned, by the persons on the witness list within your possession, custody[,] or control, and any relevant record of prior conviction of these persons." The zoning officer advised defendant that she did "not have any written statements from [her] witnesses . . . [or] any information of their records."

Defendant filed a motion to dismiss the two complaints, arguing that the zoning officer "ha[d] not furnished a copy of any statement[,] written or oral, nor stated that the witnesses did or did not have a relevant criminal record." The municipal court judge adjourned the matter for forty-five days so that defendant or an investigator on his behalf could take statements from the State's witnesses. Defendant did not retain an investigator or procure statements from the proffered witnesses.

The matter proceeded to trial in municipal court on February 1, 2016. The State presented evidence, through photographs and the testimony of the zoning official and the neighbor, that defendant was running his business from his residence. Defendant also testified, disputing that he conducted any business out of his home and stating that the people observed coming and going from the premises were his friends. In his oral decision, the judge found defendant not credible, noting, "I don't think he has the capability of telling me the truth." Defendant was found guilty of violating both ordinances, fined \$500 and assessed \$33 court costs on each complaint.

Defendant appealed to the Law Division, and on October 20, 2016, Judge Rochelle Gizinski conducted a de novo trial on the record and issued an oral decision. In her ruling, she addressed defendant's arguments of discovery violations and evidentiary errors incurred during the municipal court proceedings. Defendant contended that he had not received the witness statements that he had requested from the State in discovery, the photos and evidence of the neighbor should not have been admitted because they were not relevant, and only one summons should have been issued.

The judge found no merit to the argument concerning witness statements, noting that "[w]hat counsel has consistently ignored throughout the litigation is that no statements were taken and the

borough maintained they never existed. [The zoning officer] consistently maintained that no statements were ever taken from [the neighbor.]" She also stated that defendant was given the opportunity to take the statements of the neighbor and zoning official, and he chose not to do so. Under those circumstances, there was no error in permitting the testimony of the neighbor. Judge Gizinski further determined that the photographs were demonstrative evidence of what the neighbor had observed and were relevant as evidence of "defendant conducting a business out of his home."

In addressing the validity of the summonses, the judge noted that defense counsel did not specify which of the two summonses should not have been issued. Nevertheless, she found that Ordinance § 19.9 was too "broad" and "illogical" and, therefore, it would be unfair to find defendant guilty of a violation of that provision.

Turning to Ordinance § 19-11.16, the judge noted the testimony of the neighbor who had "observed trucks coming in and out of the driveway, people cleaning air filters and carrying duct work . . . , employees hanging out on the property, parking on side streets and . . . taking parts in and out of trucks." The neighbor described people leaving defendant's home with mechanical

equipment and provided a series of photographs depicting these events over the span of several months.

Judge Gizinski found defendant "guilty of violating [§] 19-11.16 because he operated a business from a residence in a single family home zone and failed to register as a home occupation." She, therefore, affirmed the municipal finding on this ordinance and upheld the fine, but reversed the finding of guilt on § 19.9 and vacated the associated penalty.

In this appeal, defendant reiterates the arguments made to the Law Division, contending that the State did not comply with his discovery requests regarding witness statements, the neighbor should not have been permitted to testify, the photographs were not relevant, and therefore inadmissible, and the home occupation ordinance cannot be violated unless the resident registers. We are unpersuaded by these arguments.

Our scope of review is limited to whether the conclusions of the Law Division judge "could reasonably have been reached on sufficient credible evidence present in the record." State v. Johnson, 42 N.J. 146, 162 (1964). We do "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." State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Locurto, 157 N.J. 463, 474 (1999)).

Appellate courts give substantial deference to a trial judge's findings of fact. Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (citing Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). These findings should only be disturbed when there is no doubt that they are inconsistent with the relevant, credible evidence presented below, such that a manifest denial of justice would result from their preservation. Id. at 412. We owe no deference to the trial judge's legal conclusions. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).


Judge Gizinski properly conducted a de novo trial by reviewing the transcript and considering the written briefs and oral arguments of counsel. In giving due regard to the municipal court judge's credibility findings, Judge Gizinski found that defendant had violated Ordinance § 19-11.16. She determined that the State had provided ample evidence through testimony and photographs that defendant was conducting his business out of his home.

We discern no basis to disturb the trial judge's decision. She thoroughly reviewed the facts and we are satisfied there is sufficient credible evidence in the record to substantiate her findings. We conclude that defendant's arguments are without sufficient merit to warrant discussion in a written opinion, R.

2:11-3(e)(2), and affirm substantially for the thoughtful reasons expressed by Judge Gizinski.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION