SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0224-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ERIC FREDERICKSDORF,

Defendant-Appellant.

Argued February 27, 2023 – Decided March 9, 2023

Before Judges Mawla and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Municipal Appeal No. A-03-21.

Richard F. Klineburger, III, argued the cause for appellant (Klineburger & Nussey, attorneys; Richard F. Klineburger, III, on the brief).

Law Office of Gary H. Lomanno, LLC, attorney for respondent (Gary H. Lomanno, on the brief).

PER CURIAM

Defendant Eric Fredericksdorf appeals from the August 17, 2021 Law Division order finding him guilty of violating the Township of Harrison Municipal Code § 79-9(D), "Injury to Person," following a de novo review of the record pursuant to Rule 3:23-8. Having reviewed the record and the applicable legal principles, we affirm.

I.

On April 2, 2020, around 8:00 p.m., Johanna McMillian[1] was walking her dog near her home in Harrison. She saw a man walking towards her with a "rather large [p]it [b]ull." As she got closer to the man and his pit bull, the pit bull started lurching towards Johanna's dog. Since the man holding the pit bull's leash appeared to be able to control the dog, Johanna was not concerned about the pit bull's behavior. However, shortly thereafter, Johanna heard someone yell from behind her: "Get your dog. Get your dog." By the time Johanna turned around, the pit bull had jumped onto her dog and dragged it across a yard. Johanna intervened to separate the two dogs, but she was bitten by the pit bull. After she managed to free her dog, Johanna continued to hold on to the pit bull so that it would not go after her dog. Soon thereafter, the man who had been

[1] To avoid confusion, we use the first names of members of the McMillian family throughout this opinion. We intend no disrespect by this informality.

holding the pit bull's leash arrived at the scene, and Johanna let go of the pit bull once she confirmed he had a hold of it.

Johanna stood up and looked at her hand which was seriously injured.[2] As a result of Johanna's screams for help, her father, Quaddii, and neighbors came to assist. Quaddii approached the pit bull's owner and asked for the man's identity and address. While the man did not give his name, he told Quaddii he lived on Clems Run. The neighbors decided they should call for an ambulance and the police. Once he realized the police were coming, the pit bull's owner took his dog and left the scene. Defendant was subsequently identified as the owner of the pit bull involved in the incident.

Defendant was charged with violating Harrison Municipal Code § 79-9(D), "Injury to Person," § 79-9(B), "Running at Large," and N.J.S.A. 4:19-23(a)(1) regarding potentially dangerous dogs. The municipal court found defendant not guilty of § 79-9(B) because it determined defendant had not "permitted" his dog to run at large under the ordinance. The court dismissed the charge regarding N.J.S.A. 4:19-23(a)(1) as moot because defendant's dog passed

[2] Johanna testified her hand was mangled and bloody, with bones coming out of her fingers.

away prior to trial and would no longer pose a threat to the community. The municipal court ultimately found defendant guilty of violating § 79-9(D).

Defendant appealed his municipal court conviction to the Law Division, which conducted a trial de novo. The issue before the Law Division was whether the State had proven beyond a reasonable doubt defendant had violated § 79-9(D). More particularly, defendant argued since he was acquitted under § 79-9(B) because he did not permit his dog to run at large, he should also have been acquitted under § 79-9(D) because the term "suffer," as used in § 79-9(D), "implies a willingness of the mind." Finally, defendant argued, at best, the incident could be described as negligence, which would not fit the statute.

The Law Division noted the language in § 79-9(B) only used the words "permit[,]" whereas § 79-9(D) used the words "suffer, allow, or permit." The court noted:

> [§ 79-9(B)] seems to be more of an intentional action by the owner, by permitting and when I looked at the two [ordinances] and read them in conjunction with one another, I find that the framers had an intent to specifically delineate additional responsibility. . . to the dog owner.
>
> . . . .
>
> I think in this particular case the way the framers enacted this legislation, the way it's defined in the West Encyclopedia of American Law, acquiescence,

> passivity, indifference or abstention from the preventative action as opposed to taking an affirmative step, to me that is how I read it because I think if the State and . . . the legislative body who enacted this ordinance would have specifically [meant] for it to be an intentional act, they would have just used the word, "[s]hall permit," like they did in [§ 79-9(B)].
>
> [T]he fact that they added ["suffer"] to [§ 79-9(D)] showed that they had an intent to find and impose penalties upon individuals who fall within that definition of suffer.

The Law Division found defendant guilty of violating § 79-9(D).

Defendant raises the following points on appeal:

> POINT ONE
>
> THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT [DEFENDANT] WAS GUILTY OF VIOLATING THE HARRISON TOWNSHIP CODE § 79-9D "INJURY TO PERSON."
>
> POINT TWO
>
> THE [MUNICIPAL] JUDGE ABUSED HIS DISCRETION AND ERRED BY CONSIDERING EXHIBITS NOT MOVED INTO EVIDENCE TO MAKE HIS RULING AND THEREBY IMPROPERLY FINDING IN FAVOR OF PLAINTIFF DURING TRIAL.

II.

When a defendant appeals from a municipal court conviction, the Law Division judge reviews the matter de novo on the record. R. 3:23-8(a)(2). The

Law Division judge must make independent "findings of fact and conclusions of law but defers to the municipal court's credibility findings." State v. Robertson, 228 N.J. 138, 147 (2017).

Our review of a de novo conviction in the Law Division following a municipal court appeal is "exceedingly narrow." State v. Locurto, 157 N.J. 463, 470 (1999). Unlike the Law Division, we do not independently assess the evidence. Id. at 471-72. The "standard of review of a de novo verdict after a municipal court trial is to 'determine whether the findings made could reasonably have been reached on sufficient credible evidence present in the record,' considering the proofs as a whole." State v. Ebert, 377 N.J. Super. 1, 8 (App. Div. 2005) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). The rule of deference is more compelling where, as here, the municipal and Law Division judges made concurrent findings. Locurto, 157 N.J. at 474. "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. However, our review of a trial court's legal determination is plenary. See State v. Kuropchak, 221 N.J. 368, 383 (2015).

"[We] utilize[] the established rules of statutory construction to interpret a municipal ordinance." Paff v. Byrnes, 385 N.J. Super. 574, 579 (App. Div. 2006) (citing Twp. of Pennsauken v. Schad, 160 N.J. 156, 170, (1999)). Therefore, in interpreting a municipal ordinance, we strive to "effectuate the legislative intent in light of the language used and the objects sought to be achieved." Twp. of Pennsauken, 160 N.J. at 170 (citing Merin v. Maglaki, 126 N.J. 430, 435 (1992)). This means we must first examine the language of the ordinance. Paff, 385 N.J. Super. at 579 (citing Twp. of Pennsauken, 160 N.J. at 170). If the language reveals a clear and unambiguous meaning, then that language controls. Ibid. (citing Twp. of Pennsauken, 160 N.J. at 170). "Alternatively, if the language is amenable to multiple interpretations, then [we] 'consider[] extrinsic factors, such as the statute's purpose, legislative history, and statutory context to ascertain the [L]egislature's intent.'" Ibid. (citing Twp. of Pennsauken, 160 N.J. at 170).

Guided by these principles we affirm substantially for the reasons expressed by the Law Division. We add the following comments.

The Harrison Township Code, § 79-9(B), provides:

> Running at large: . . . . No person owning a dog shall permit it to run at large upon the public streets, public parks, public buildings or in any other public place within the Township nor permit a dog to run at large

> upon private property without the permission of the owner.
>
> [(Emphasis added).]

On the other hand, §79-9(D), which deals with damage or injury to persons and other things such as property and pets, states:

> It shall be a violation of this chapter for an owner of a dog or cat to suffer, allow or permit the following prohibited acts: . . . Bite, chase, jump upon, interfere with, or otherwise impede pedestrian traffic or the mobility of any person on public property or within a public sidewalk or right-of-way.
>
> [(Emphasis added).]

The language in §79-9(D) is similar to § 79-9(B) in that it uses the word "permit." However, the two provisions do not mirror each other. In comparing the two provisions, we assume the municipality understood when to add or omit a word and intentionally did not use the word "suffer" in § 79-9(B). Moreover, if § 79-9(D) was only meant to cover intentional acts, the drafters would have only utilized the term "permit" as they did in § 79-9(B). Instead, the municipality used more expansive language—"suffer, allow or permit"—in crafting the bodily injury ordinance. To accept defendant's argument, we would have to ignore the plain language of the ordinance. However, "[w]e must presume that every word in a statute has meaning and is not mere surplusage,"

In re Att'y Gen.'s "Directive on Exit Polling: Media & Non-Partisan Pub. Int. Grps.", 200 N.J. 283, 297-98 (2009), and we "give effect to every word" so that we do not "construe the statute to render part of it superfluous," Med. Soc'y of N.J. v. N.J. Dep't of L. & Pub. Safety, 120 N.J. 18, 26-27 (1990); see also Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 587 (2013) (in reviewing the Legislature's words, we follow the "bedrock assumption that the Legislature did not use 'any unnecessary or meaningless language'" (quoting Patel v. N.J. Motor Vehicle Comm'n, 200 N.J. 413, 418-19 (2009))).

Relying on the definition in the West's Encyclopedia of American Law, the Law Division determined "suffer" as used in § 79-9(D) meant "acquiescence, passivity, indifference, or abstention from preventative action, as opposed to the taking of an affirmative step." By using the word "suffer"—a term that means something less than the intentional conduct required by the term "permit"—the ordinance, by its own terms, addressed situations in which one's inaction or failure to take preventative action resulted in injury to a person. Our caselaw is in accord. In Greenbrier, Inc. v. Hock, a matter involving violation of a local ordinance that used the words "permit," "allow," and "suffer," we noted, "the word 'suffer' . . . imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct . . . ." 14 N.J. Super.

39, 43 (App. Div. 1951) (emphasis added). In short, the Law Division's interpretation of the ordinance was sound. Applying this definition to the current case, the Law Division correctly determined it was incumbent upon defendant to ensure the leash on his dog was strong enough to hold back a pit bull that weighs fifty pounds or more so that it does not break loose. Since defendant failed to do that here, defendant's actions met the definition of "suffer" as used in the ordinance.

Defendant further argues the municipal court erred by relying on a photograph of the pit bull not placed into evidence in making its ruling in favor of plaintiff. Defendant's argument is unpersuasive. Our focus is whether the Law Division, not the municipal court, based its de novo ruling on sufficient credible evidence in the record. As we have emphasized, we review decisions of the Law Division, not the municipal court. State v. Robertson, 438 N.J. Super. 47, 64 (App. Div. 2014). Additionally, the Law Division did not rely on the photograph in finding for the State. Instead, the Law Division focused on the credibility findings of the municipal court and accepted them for several reasons.

First, the Law Division noted, in reading Johanna's testimony, "she testified in a clear and composed manner . . . . She was not evasive. She did

not avoid questions. She provided direct answers to the questions. Her answers seemed to be clear, concise, and to the point." Second, the Law Division noted Johanna also indicated she came within a foot of defendant, made visual observations, and, when confronted with defendant at trial, made a positive identification. Furthermore, because of Johanna's close proximity to the dog, she had knowledge of what the dog looked like. Third, with regard to Quaddii and the neighbors, the Law Division noted they were all able to provide a description of the pit bull and increased their credibility when they did not try to embellish the fact that they could not clearly make out defendant's face on the night of the incident as they were too focused on the dog. Ultimately, the ruling of the Law Division was not based on the photograph of the dog, but Johanna's testimony and that of her father and neighbors, which the Law Division accepted as credible. Finally, it was the identification of defendant—not the dog—that was important for the purposes of the ordinance.

The Law Division conducted a comprehensive de novo review of the municipal court proceeding and made appropriate findings in support of defendant's culpability. We are satisfied there was ample evidence in the record to establish defendant's guilt beyond a reasonable doubt, and there is no basis on which to disturb defendant's conviction.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION