

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio/City of Huron

Court of Appeals No. E-23-019

Appellant

Trial Court No. CRB02200137

v.

Michael Kisil

DECISION AND JUDGMENT

Appellee

Decided: April 12, 2024

* * * * *

Andrea F. Rocco, City of Huron Prosecuting
Attorney, and Jeffrey S. Moeller, for appellant.

Matthew A. Craig, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} Appellant, the city of Huron (“the City”), appeals the judgment of the Huron Municipal Court, granting appellee Michael Kisil’s motion to dismiss two counts of violations of Huron City Ordinances 1307.01, adopting the International Property Maintenance Code (“IPMC”) sections 301.3 and 302.1.¹ Because the IPMC sections are not unconstitutionally vague, the judgment is reversed.

¹The IPMC is a model code that has been adopted by many cities, villages, and townships across the United States.

I. Facts and Procedural History

{¶ 2} On July 19, 2022, the City filed an amended complaint against Kisil alleging four violations of the IPMC and two violations of Huron City Ordinances, case Nos. CRB-2200137-A through -F, with respect to Kisil's property located at 1250 Wheeler Drive, Erie County, Huron, Ohio. This appeal concerns two of the four IPMC violations. The City's amended complaint relevantly alleged:

Count A: International Property Maintenance Code 301.3 Vacant Structures and Land: the residence has been without water since 11/24/2010, break wall is falling into the river, the general exterior of the main house and garage is decaying, fence is deteriorating, holes in the roof. This being contrary to and in violation of Section 301.3 of the International Property Maintenance Code, the same being a Misdemeanor of the Fourth Degree.

Count B: International Property Maintenance Code 302.1 Sanitation: debris located throughout the parcel, consisting of barrels, lawn mowers, boats, trailers, propane tanks, and general vegetation. This being contrary to and in violation of 302.1 of the International Property Maintenance Code, the same being a Misdemeanor of the Fourth Degree.

Count C: International Property Maintenance Code 302.7 Accessory Structures: the garage has holes in the roof, decaying exterior, and broken windows. The being contrary to and in violation of section 302.7 of the

International Property Maintenance Code, the same being a Misdemeanor of the Fourth Degree.

* * *

Count E: International Property Maintenance Code 304.7 Roofs and drainage: roof drains and downspouts shall be maintained in good repair and free from obstructions. The gutters are missing off the house, holes in the roof on the main dwelling and accessory structure. This being contrary to and in violation of section 304.7 of the International Property Maintenance Code, the same being a Misdemeanor of the Fourth Degree.

In support of the alleged violations, the City attached photographs depicting the condition of Kisil's property.

{¶ 3} Kisil filed a motion to dismiss all four IPMC counts as void for unconstitutional vagueness. Relevantly, as to Count A, he argued that IPMC 301.3 was unconstitutional on its face because it failed to define “clean, safe, secure, and sanitary condition as provided herein,” and the lack of a uniform common definition outside of the IPMC, such as a dictionary, for “clean,” “safe,” “secure” and “sanitary” meant the criminal liability threshold is too speculative for an ordinary person to know what is prohibited criminal conduct. As to Count B, he posed a similar argument that IPMC 302.1 is essentially unconstitutionally vague on its face for failing to define the operative terms “clean, safe and sanitary condition” such that no person of ordinary intelligence would clearly know what constitutes criminal conduct, citing *State v. ACV Realty*, 7th Dist. Mahoning No. 15 MA 0072, 2016-Ohio-3247, ¶ 25, 35.

{¶ 4} The City’s opposed Kisil’s motion to dismiss arguing that despite multiple pretrials, he never expressed confusion over the nature of the charges. The City argued that *ACV Realty* had not been followed by any Ohio courts and was treated negatively in *Commonwealth v. Brandt*, Pa. Commw. No. 866 C.D. 2016, 2017 WL 3643006, *7 (Aug. 25, 2017), fn. 11. The City stressed the *Brandt* court’s observation that the Seventh Appellate District failed to apply the plain meaning of the terms “clean, safe and sanitary” The City argued that the constitutionality of the IPMC is presumed, and courts are to seek plain meaning of words, and to view the statute in context, to save statutes from vagueness which the Ohio Supreme Court and this court has repeatedly done, citing *State v. Carrick*, 131 Ohio St.3d 340, 2012-Ohio-608, 965 N.E.2d 264; *Kelleys Island v. Joyce*, 146 Ohio App.3d 92, 765 N.E.2d 387 (6th Dist.2001); *State v. Rober*, 2015-Ohio-5501, 55 N.E.3d 641 (6th Dist.); and *Toledo v. Thompson-Bean*, 173 Ohio App.3d 566, 2007-Ohio-4898, 879 N.E.2d 799 (6th Dist.)

{¶ 5} On January 18, 2023, the trial court held a hearing on Kisil’s motion to dismiss. As to the provisions at issue, Kisil argued there are numerous dictionary definitions of “clean,” “safe” and “sanitary.” For example, when applied to one of his violations, “general vegetation,” if using the “clean” definition that means “free from dirt,” and Kisil argued it is impossible that the City expect him to have no dirt on the property at all. Kisil further argued there is no clear point at which the lawn achieves “sanitation” in order to avoid the “general vegetation” violation. Kisil argued that the court follow *ACV Realty* with respect to the unconstitutional vagueness of IPMC 302.1.

{¶ 6} The City responded that the IPMC sections are not void for vagueness because Kisil knew what was necessary for compliance. The City argued the amended complaint specified the violations and provided him with photos that show the property looked like a junkyard. The City maintained that Ohio courts have repeatedly applied common-sense definitions to undefined terms, and the lack of caselaw interpreting the IPMC evidences that the terms are not unconstitutionally vague. The City noted that the trier of fact is always allowed to use common sense.

{¶ 7} On February 7, 2023, the trial court denied Kisil’s motion to dismiss as to Counts C and E and granted as to Counts A and B. As to the dismissed counts, the trial court found:

Defendant argues the phrase in section 301.3 of the IPMC “as provided herein” is introductory in nature, giving the expectation that further specific requirements are explained in the IPMC. Immediately preceding this phrase are the words “clean, safe, and sanitary condition.” The Defendant argues that the phrase “as provided herein” calls that the IPMC further define the words “clean, safe and sanitary condition.” It is correct that the IPMC does not define any of the words in the phrase “clean, safe, and sanitary condition.” As a result, the Defendant argues that section 301.3 causes confusion to the reader, and is therefore, vague. Section 302.1 of the IPMC similarly uses the phrase “clean, safe, and sanitary.” As listed in the Complaint for Count ‘A,’ the specific violations alleged are that “the residence has been without water since 11/24/2010, break wall is falling

into the river, the general exterior of the main house and garage is decaying, fence is deteriorating, holes in roof.” The Complaint for Count ‘B’ alleges the violations are: “debris located throughout the parcel, consisting of barrels, lawn mowers, boats, trailers, propane tanks, and general vegetation.” A case cited by the Defendant in support of this argument is *State v. ACV Realty*, 2016-Ohio-3247 (Ohio App. 7th Dist. 2016). In *ACV Realty*, the City of Youngstown, Ohio adopted the IPMC and a landowner challenged section 302.1 of the IPMC use of the words, “clean, safe, and sanitary” arguing that such words are unconstitutionally vague. As a result, the court dismissed the complaint. No other cases within Ohio are on point with this issue. The State/City of Huron’s Memorandum cited to several cases outside of the State of Ohio relative to the words “clean” or “sanitary,” but these cases are older and not from Ohio. The decision in *ACV Realty* is controlling in the instant case. Therefore, the Court finds that sections 301.3 and 302.1 are unconstitutionally vague.

II. Assignments of Error

{¶ 8} The City timely appealed pursuant to R.C. 2945.67 and sets forth two assignments of error:

Assignment of Error No. 1: The trial court erred in dismissing Counts A and B of the City of Huron’s charges against Mr. Kisil, on the ground that Huron Municipal Code 1307.01, which incorporates by

reference the International Property Maintenance Code's § 301.3 and 302.1's "clean, safe and sanitary" standard, was facially void for vagueness.

Assignment of Error No. 2: The trial court erred by dismissing Counts A and B of the City of Huron's charges against Mr. Kisil on the ground that Huron Municipal Code 1307.01, which incorporates by reference the International Property Maintenance Code's § 301.3 and 302.1's "clean, safe and sanitary" standard, was facially void for vagueness without first holding an evidentiary hearing to determine whether Mr. Kisil's conduct was such to give him standing.

III. Analysis

{¶ 9} The City's first assignment of error is dispositive. It contends that the trial court erred in finding the "clean, safe and sanitary" standard in IPMC sections 301.3 and 302.1 facially void for vagueness simply because there are "hypothetical corner cases" of doubtful application. Kisil maintains that the sections are unconstitutionally vague because the IPMC fails to define the terms and the requirement of keeping property in a "clean, safe, and sanitary condition" fails to put persons of normal intelligence on notice as to what must be done to comply with the law.

{¶ 10} The disputed sections provide:

301.3 Vacant structures and land

Vacant structures and *premises* thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein

so as to not cause a blighting problem or adversely affect the public health or safety.

302.1 Sanitation

Exterior property and *premises* shall be maintained in a clean, safe and sanitary condition. The *occupant* shall keep that part of the *exterior property* that such *occupant* occupies or controls in a clean and sanitary condition.²

{¶ 11} Determining the constitutionality of a statute or ordinance is a question of law that is reviewed de novo. *State v. Barber*, 6th Dist. Lucas No. L-22-1278, 2023-Ohio-2991, ¶ 25, citing *Cleveland v. State*, 157 Ohio St.3d 330, 2019-Ohio-3820, 136 N.E.3d 466, ¶ 15. “All enacted legislation enjoys a strong presumption of constitutionality.” *Rober*, 2015-Ohio-5501, 55 N.E.3d 641, at ¶ 17, citing *State v. Dorso*, 4 Ohio St.3d 60, 61, 446 N.E.2d 449 (1983). “This presumption of constitutionality remains unless it is proven beyond a reasonable doubt that the legislation is clearly unconstitutional.” *State v. Williams*, 88 Ohio St.3d 513, 521, 728 N.E.2d 342 (2000); *Rober* at ¶ 17; *Viviano v. Sandusky*, 2013-Ohio-2813, 991 N.E.2d 1263, ¶ 11 (6th Dist.).

²Definitions for the italicized words are provided in IPMC Section 202. “Premises” is defined as: “A lot, plot or parcel of land, *easement* or *public way*, including any structures thereon.” “Exterior property” is defined as: “The open space on the *premises* and on adjoining property under the control of *owners* or *operators* of *such* premises.” Finally, the IPMC defines “occupant” as: “Any individual living or sleeping in a building, or having possession of a space within a building.”

{¶ 12} “Under the vagueness doctrine, statutes which do not fairly inform a person of what is prohibited will be found unconstitutional as violative of due process.” *Carrick*, 131 Ohio St.3d 340, 2012-Ohio-608, 965 N.E.2d 264, at ¶ 14, quoting *State v. Reeder*, 18 Ohio St.3d 25, 26, 479 N.E.2d 280 (1985). “The void-for-vagueness doctrine is a component of the right to due process and is rooted in concerns that laws provide fair notice and prevent arbitrary enforcement.” *Compass Homes, Inc. v. Upper Arlington Bd. of Zoning*, 2023-Ohio-2744, 223 N.E.3d 49, ¶ 15 (10th Dist.), quoting *In re Columbus S. Power Co.*, 134 Ohio St.3d 392, 2012-Ohio-5690, 983 N.E.2d 276, ¶ 20. “A law that imposes criminal sanctions or covers ‘a substantial amount of constitutionally protected conduct’ requires a high level of definiteness to withstand a facial due process challenge.” *Stevens v. City of Columbus, Ohio*, 2022 WL 2966396, *5 (6th Cir.2022), quoting *Belle Maer Harbor v. Charter Twp. of Harrison*, 170 F.3d 553, 557 (6th Cir.1999); see also *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982). “However, ‘[i]mpossible standards of specificity are not required. * * * The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.” *Reeder* at ¶ 26; *Kinzel v. Ebner*, 2023-Ohio-164, 205 N.E.3d 1225, ¶ 59 (6th Dist.), quoting *Viviano* at ¶ 15; *Whites Landing Fisheries*, 2017-Ohio-4021, 91 N.E.3d 315, at ¶ 16.

{¶ 13} “A statute will not be declared void, however, merely because it could have been worded more precisely.” *Rober* at ¶ 18. Likewise, words in a statute must be read “in their context and with a view to their place in the overall statutory scheme.” *King v.*

9.

Burwell, 576 U.S. 473, 486, 135 S.Ct. 2480, 192 L.Ed.2d 483 (2015), quoting *FDA v. Brown and Williamson Tobacco Corp.*, 529 U.S. 120, 133, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000).

{¶ 14} A party may challenge a statute as being unconstitutionally vague on its face or as applied. “A facial challenge requires that ‘the challenging party * * * show that the statute is vague ‘not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all.’” *Carrick* at ¶ 15, quoting *State v. Anderson*, 57 Ohio St.3d 168, 171, 566 N.E.2d 1224 (1991), quoting *Coates v. Cincinnati*, 402 U.S. 611, 614, 91 S.Ct. 1686, 29 L.Ed.2d 214 (1971). “Stated another way, ‘the challenger must show that upon examining the statute, an individual of ordinary intelligence would not understand what he is required to do under the law.’” *Id.*, quoting *Anderson* at 171. A challenge to the constitutionality of a statute on its face must, by clear and convincing evidence, show beyond a reasonable doubt that the statute is unconstitutional. *Whites Landing Fisheries* at ¶ 16, citing *State ex rel. Ohio Cong. of Parents & Teachers v. State Bd. of Educ.*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148, ¶ 34.

{¶ 15} In contrast, “[i]n an as-applied challenge, the challenger ‘contends that application of the statute in the particular context in which he has acted, or in which he proposes to act, [is] unconstitutional.’” *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶ 17, quoting *Ada v. Guam Soc. Of Obstetricians & Gynecologists*, 506 U.S. 1011, 113 S.Ct. 633, 121 L.Ed.2d 564 (1992) (Scalia, J., dissenting). “Thus, an as-applied challenge focuses on the particular application of the statute.” *Carrick* at ¶ 16.

10.

{¶ 16} In the present matter, although both parties discussed the specific condition of Kisil’s property, the City’s appeal and the arguments below centered on the specific language used in the IPMC sections. Kisil himself maintains that his obligation in the trial court was “to show that the language used in the[] sections fail[ed] to sufficiently notify a person of ordinary intelligence what he must do to comply with the law.” Thus, at issue before this court is a facial, void-for-vagueness challenge.

{¶ 17} As set forth above, Kisil challenged as unconstitutionally vague sections IPMC sections 301.3 and 302.1, and the terms clean, safe and sanitary set forth therein. It is undisputed that the terms are not defined under the IPMC which directs that “[w]here terms are not defined through the methods authorized by this section, such terms have ordinarily accepted meanings such as the context implies.” IPMC 201.4

{¶ 18} The trial court’s judgment granting the dismissal of counts A and B relied on *State v. ACV Realty*, 7th Dist. Mahoning No. 15 MA 0072, 2016-Ohio-3247. In *ACV Realty*, the court held that IPMC section 302.1 was unconstitutionally vague because the terms “clean,” “safe,” and “sanitary” “fail to put a person of normal intelligence on notice as to what constitutes criminal conduct” and therefore create a risk of arbitrary enforcement. *Id.* at ¶ 35.

{¶ 19} The *ACV Realty* court followed *State v. Bielski*, 2013-Ohio-5771, 5 N.E.3d 1037 (7th Dist.), which found a similar IPMC provision unconstitutional. The *Bielski* court determined that an ordinance prohibiting the “accumulation of rubbish or garbage” was vague and provided no guidance as to the definition of rubbish or garbage or what an accumulation means. *Id.* at ¶ 17.

{¶ 20} The City relies upon *Carlisle v. Martz Concrete Co.*, 12th Dist. Warren No. CA2006-06-067, 2007-Ohio-4362, where the court concluded that the appellant's conviction under PM 303.1, identical to IPMC 303.1 and requiring that property be "maintained in a clean, safe, and sanitary manner," and additional IPMC provisions, was not void for vagueness because "[e]ach provision of the ordinance notifies ordinary citizens what is prohibited." *Id.* at ¶ 36. The court further noted that the standards and definitions were sufficient to prevent inspectors from enforcing them arbitrarily. *Id.*

{¶ 21} The City also cites *Commonwealth v. Brandt*, Pa. Commw. No. 866 C.D. 2016, 2017 WL 3643006 (Aug. 15, 2017), where a Pennsylvania court employing the plain meaning of the words "clean," "safe," and "sanitary" in IPMC 302.1, determined that the ordinance was not unconstitutionally vague. In *Brandt*, the defendant was either found guilty of or pled guilty to the offenses in a lower court and the trial court, on appeal, conducted a de novo hearing with witness testimony. Rejecting *ACV Realty* and *Bieleski*, the court stated that the analysis in those cases "did not consult the dictionary definitions of the terms, or dismissed them without any meaningful analysis, and failed to consider the provisions of the IPMC as a whole." *Id.* at *7, fn. 11. The *Brandt* court found that terms at issue are within anyone's comprehension. *Id.* at *6-7. The court ultimately concluded that the evidence presented at the hearing was sufficient to sustain the defendant's convictions. *Id.* at *11.

{¶ 22} Reviewing the relevant IPMC sections on its face, The terms "clean," "safe," and "sanitary" are not defined in the IPMC; therefore, they must be given their ordinary meaning. "Clean" means "free from dirt or pollution." "Safe" means "free from

12.

harm or risk.” And “sanitary” means “of or relating to health.” *See Merriam-Webster’s Collegiate Dictionary* (11th Ed.2003).

{¶ 23} As in *Brandt*, the terms at issue are ““within the comprehension of any one”” and ““so generally understood that [it] can be safely submitted to a jury on an issue of fact.”” (Citations omitted.) *Id.* at *6. *See State v. Gilbert*, N.J. Sup.Ct. A.D. 06-067, 2008 WL 2788065 (July 21,2008) (the terms clean, safe and sanitary are not vague in all applications); *Jesmer v. Town of Denton*, Md.App. No. 05-C-14-017458, 2019 WL 327970 (Jan. 24, 2019) (local rubbish ordinances have generally been constitutionally upheld.); *McCafferty v. New Castle Cty. Bd. of License, Inspection and Rev.*, Sup.Ct. Del. No. CA No. N20A-10-001-JRJ, 2021 WL 1611527, *5 (July 12, 2021) (the definition of debris is neither vague nor ambiguous on its face). *See also Stevens v. City of Columbus*, 6th Cir. 2022 WL 2966396 (upholding as not unconstitutionally vague the historic preservation code’s requirement that the landscaping be “compatible” with each other and the neighboring properties).

{¶ 24} Because these provisions of the IPMC convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices, Kisil did not demonstrate that the sections at issue are unconstitutionally vague beyond a reasonable doubt. *Whites Landing Fisheries*, 2017-Ohio-4021, 91 N.E.3d 315, at ¶ 16. Further, at this stage in the proceedings, testimony has not been presented to establish whether the sections, as applied to the condition of Kisil’s property, are either unconstitutionally vague or simply do not establish violations of the sections at issue. The City’s first assignment of error is well-taken.

{¶ 25} Based on our disposition of the City’s first assignment of error, we find its second assignment of error moot and not well-taken.

{¶ 26} Because our conclusion and analysis with respect to the City’s first assignment of error directly conflict with the Seventh Appellate District’s opinion in *ACV Realty*, supra, we sua sponte certify a conflict to the Supreme Court of Ohio on the following question: “Under the IPMC, are the terms “clean,” “safe” and “sanitary” relating to property maintenance unconstitutionally void for vagueness in that they fail to apprise an ordinary property owner or occupant as to what is prohibited.” The parties are directed to S.Ct.Prac.R. 5.03 and S.Ct.Prac.R. 8.01 for guidance.

IV. Conclusion

{¶ 27} Based on the foregoing, the judgment of the Huron Municipal Court is reversed, and the matter is remanded for further proceedings. Pursuant to App.R. 24, Kisil is ordered to pay the costs of this appeal.

Judgment reversed
and remanded.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

Christine E. Mayle, J.

JUDGE

Charles E. Sulek, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.supremecourt.ohio.gov/ROD/docs/>.