
IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Bradley A. Reed
Plaintiff Below, Petitioner

v.

P. Todd Phillips
Defendant Below, Respondent

On Appeal from the Circuit Court of
Monongalia County, West Virginia
The Honorable Perri Jo DeChristopher
(Civil Action No. 22-C-124)

REPLY BRIEF IN SUPPORT OF PETITION FOR APPEAL

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TABLE OF CONTENTS

SUMMARY OF ARGUMENT	3
CONCLUSION.....	5

**TO: THE HONORABLE JUSTICES OF THE INTERMEDIATE COURT OF
APPEALS OF WEST VIRGINIA**

ARGUMENT

This Reply is filed in response to Respondent’s memorandum and will briefly address a couple issues raised therein. Respondent notes that the trial court concluded that the “grandfather clause” was not a valid defense to the 2018 *Notice of Violation* for which he was retained to represent Petitioner. Petitioner acknowledges the trial court’s finding in this regard and maintains that it was erroneous for the reasons set forth in his original memorandum as further supported herein.

First, the trial court failed to recognize that Petitioner’s “grandfather” rights were provided by the Town of Beverly’s 1988 *Litter Ordinance* that was in effect when he purchased the property at issue herein in 2003. Petitioner maintains that once he lawfully acquired the right to keep and maintain inoperable and unlicensed vehicles on his auto repair property, he was grandfathered into such use. *See, Appendix at p. 0316-0317*. The Court conceded that whether Petitioner’s use of his property was lawful based on the 1988 *Litter Ordinance* created a question of fact. *See, Appendix at p. 0317*. Petitioner contends that the trial court committed reversible error when it failed to follow established law in granting summary judgment in favor of Respondent when it had conceded that there was a factual issue as to whether the Petitioner’s use of his property based on the 1988 *Litter Ordinance* was lawful.

Second, Petitioner asserts that the trial court committed reversible error when it concluded that Petitioner had violated ordinances prior to the Town of Beverly’s 2017 adoption of the 2015 *IPMC* despite the fact that there was no evidence presented to substantiate any such

violation. The Town of Beverly's *Ordinance* adopting the 2015 *International Property Maintenance Code* provided a specific "grandfather clause" as follows:

(d) Nothing in this legislation or in the International Property Maintenance Code shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed of this law. **Nor shall any just or legal right or remedy of any character be lost, impaired, or altered by this legislation** (Emphasis added).

The trial court recognized the Town of Beverly's 2017 *Ordinance* (*See, Appendix p.0253*) (*Finding No. 5*), but failed to properly apply the "grandfathering" provisions of the ordinance to the facts and circumstances of this case. Namely, the trial court made the determination that Petitioner's use of his property prior to the adoption of the *IPMC* was not lawful based on two (2) letters sent on behalf of the Town of Beverly suggesting that Petitioner was in violation of a prior litter ordinance. *See, Appendix at p. 0258 (Conclusion No. 8)*. The Court made this finding, without any evidence that Petitioner was in fact in violation of a prior ordinance. During the August 12, 2024, hearing, the trial court reasoned as follows:

I think that the *IPMC* does not allow him to keep vehicles on his property that would've caused him to be in violation of the ordinances that existed prior. And so it would seem that the facts support that city officials pursued him as violating those littering ordinances because of those vehicles. And so I don't think that the *IPMC* preclude – allow him. He does not have a legal right to keep junked cars that would be defined as littering on his property. I don't think that's what the code is for. I don't think that's what the *IPMC* is for. . . I think that's my factual determination. Now whether the facts support this car or that car, like, I'm not going to make that decision.

See, Appendix at p. 0309.

The Respondent questioned the trial court's reasoning and determination that Petitioner was in violation of prior ordinances, specifically noting that Petitioner was never found to have being in violation of a prior ordinance. The trial court responded as follows:

But that doesn't mean anything. We have people who commit crimes all the time. Doesn't mean you don't commit crime just because you didn't get caught . . . And people don't pursue charges, cases get resolved, agreements are made for various - - it doesn't - - just because you get the plea agreement doesn't mean you didn't commit the crime . . . But you can't say people didn't have it on their radar. You can't say that people didn't make allegations . . . Yeah. I mean, people drop things, and - - I mean, maybe he's obnoxious and they don't want to be sitting in the courtroom with him . . . I mean, maybe that's why they didn't pursue it. So, you know, I mean, I can't - - you can't - - there's different reasons. Things are resolved in different ways for different reasons.

See, Appendix at p. 0311-0312.

Petitioner further contends that the trial court committed reversible error in granting summary judgment in favor of Respondent based on its legal conclusion that Petitioner was in violation of prior ordinances enacted by the Town of Beverly. *See, Appendix at p. 0258 (Conclusion No. 8).* The trial court reached this conclusion despite the fact that there was no evidence that Petitioner had ever been determined to be in violation of a city ordinance, a fact admitted by Respondent in his deposition. *See, Appendix at p. 0165.* At a minimum, the trial court committed reversible error when it granted summary judgment in favor of the Respondent when there were genuine and material factual issues as to whether Petitioner had been in violation of any ordinance prior to the Town of Beverly's 2017 adoption of the 2015 IPMC.

CONCLUSION

For the reasons set forth in Petitioner's original memorandum, as further explained and analyzed herein, Petitioner requests that this Honorable Court reverse the ruling of the trial court and remand the case with instruction to proceed consistent with its ruling.

Respectfully submitted this 7th day of March, 2025.

Petitioner, by Counsel:

/s/ Michael D. Crim

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CERTIFICATE OF SERVICE

This is to certify that on this 7th day of March, 2025, the undersigned counsel filed and served the foregoing ***Reply Brief in Support of Petition for Appeal*** upon the following via File & Serve Express, to the following:

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/s/ Michael D. Crim

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