IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

ROSETTE SMITH HEDGES,

Appellant,

v.

CASE NO.: CVA1 08-35
Lower Court Case No.: 2008-TR-041248-O
2008-TR-041245-O

STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,

Appellee.
_____/

Appeal from the County Court,
for Orange County,
Jerry Brewer, Judge.

Robert L. Sirianni, Jr., Esquire,
for Appellant.

Heather Rose Cramer, Assistant General Counsel,
for Appellee.

Before THORPE, GRINCEWICZ, KIRKWOOD, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant Rosette Smith Hedges (Hedges) was cited for improper change of lane or course and appeals the Infraction Disposition rendered by the county court on April 30, 2008. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A).

On February 20, 2008, Hedges was issued a Florida Uniform Traffic Citation for improper change of lane or course, in violation of section 316.085(2), Florida Statutes. At the infraction hearing on April 30, 2008, Hedges was present and entered a plea of not guilty. The

trial court found Hedges guilty of having committed the infraction and ordered her to pay the Clerk of Courts $151.50 on or before June 30, 2008. This appeal followed.

Section 316.085(2), Florida Statutes, states that:

> No vehicle shall be driven from a direct course in any lane on any highway until the driver has determined that the vehicle is not being approached or passed by any other vehicle in the lane or on the side to which the driver desires to move and that the move can be completely made with safety and without interfering with the safe operation of any vehicle approaching from the same direction.

A violation of this statute is a noncriminal traffic infraction which must be proved beyond a reasonable doubt and is punishable as a moving violation as provided in chapter 318, Florida Statutes. §§316.085(3), 318.14(6), Fla. Stat. Chapter 318, Florida Statutes, decriminalizes certain violations of various motor vehicle and traffic statutes in order to facilitate a more uniform and expeditious system for the disposition of traffic infractions. §318.12, Fla. Stat. These proceedings are civil in nature and are dealt with informally in an administrative manner by a judge without a jury. State v. Johnson, 345 So. 2d 1069, 1070 (Fla. 1977).

Hedges argues that the disposition should be reversed because the evidence presented at the hearing did not prove beyond a reasonable doubt that she violated section 316.085(2), Florida Statutes. The State counters that the disposition should be affirmed because Hedges has failed to demonstrate any error by the trial court.

"It is an elemental principle of appellate procedure that every judgment, order or decree of a trial court brought up for review is clothed with the presumption of correctness and that the burden is upon the appellant in all of such proceedings to make error clearly appear." State v. Town of Sweetwater, 112 So. 2d 852, 854 (Fla. 1959). Along with the burden of demonstrating error, the appellant also bears the burden of furnishing an adequate appellate record in accordance with the Florida Rules of Appellate Procedure. Fla. R. App. P. 9.200(e); see Maslow

v. Edwards, 886 So. 2d 1027, 1028 (Fla. 5th DCA 2004).

Pursuant to rule 9.200(b)(4), Florida Rules of Appellate Procedure, if there is no transcript or report of the proceedings available, "the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection." After the statement is served on the appellee, the statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval. Fla. R. App. P. 9.200(b)(4). Once approved, the statement shall be included in the record. Id. An appellate court must reject a statement of evidence for failure to comply with rule 9.200(b)(4), Florida Statutes, where it was not agreed to by the parties nor approved of by the trial court. Burke v. Burke, 864 So. 2d 1284 (Fla. 1st DCA 2004). Without a transcript of the proceedings below or an approved statement of the evidence, appellate review is limited to errors of law that are apparent on the face of the record. Maslow v. Edwards, 886 So. 2d 1027, 1028 (Fla. 5th DCA 2004).

The trial court's disposition came to this Court with a presumption of correctness and this Court finds that Hedges has failed to establish clear error by the trial court due to an insufficient record. Hedges submitted a statement of the evidence in lieu of a transcript; however, the statement was not agreed to by the State nor approved by the trial court. Accordingly, this Court finds that Hedges failed to furnish an adequate record in accordance with the rules and the trial court's decision adjudicating Hedges guilty of having committed the infraction should be affirmed as there is no error apparent on the face of the record.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court's order from April 30, 2008, is **AFFIRMED.**

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this the _6___ day of ____April_____, 2009.

__/S/_____
JANET C. THORPE
Circuit Judge

_/S/_____
DONALD E. GRINCEWICZ
Circuit Judge

_/S/_____
LAWRENCE R. KIRKWOOD
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to: **Robert L. Sirianni, Esquire,** 400 North New York Avenue, Suite 215, Winter Park, Florida 32789 and **Heather Rose Cramer, Assistant General Counsel, Department of highway Safety and Motor Vehicles,** Post Office Box 540609, Lake Worth, Florida 33454, on the ____6_____ day of __April_____, 2009.

___/S/_____
Judicial Assistant