

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

DOROTHY JANE LEE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO.: 2012-CV-000060-A-O

Lower Case No: 2012-CO-000381-A-O

Appeal from the County Court,
for Orange County, Florida
Janis Halker Simpson, Senior Judge.

Dorothy Jane Lee, Pro Se, Appellant.

P. Andrea De Loach, Assistant County Attorney,
for Appellee.

Before G. ADAMS, S. KEST, and BLACKWELL, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant, Dorothy Jane Lee (“Lee”), timely appeals the Trial Court’s “Order Finding Defendant Guilty” entered on July 31, 2012 finding her in violation of section 5-50(a)(10) of the Orange County Code by failing to control an animal, resulting in a bite. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Summary of Facts and Procedural History

This case arose from an incident involving a dog bite. The events leading up to the dog bite and thereafter are summarized as follows: On March 24, 2012, Rebecca Perkins, Sierra Sawyer, and Kassie Sawyer made contact with Lee at the gate of her property. A brief discussion between the girls and Lee ensued. At some point, the girls entered the property and Kassie, the youngest girl at the age of 6, began to play on a rope swing that was hanging from a tree on Lee's property. Shortly thereafter, Lee's dog, Riley, bit Kassie and pulled her from the rope swing. Rebecca then hit the dog to get the dog off of Kassie. Before the dog bit Kassie, Lee screamed "No, Kassie. No." After the attack, Lee took Kassie into her home and administered peroxide in an attempt to clean the wounds. Lee then drove the girls back to the home of Billy Sawyer, the father of Kassie and Sierra who then took Kassie to the hospital for further treatment. Thereafter, the incident was reported to Orange County Animal Services and an investigation ensued. Upon completion of the investigation, a citation was issued against Lee for violating section 5-50(a)(10) by failing to control an animal, resulting in a bite. On June 12, 2012, the non-jury trial was held where the Trial Court found Lee guilty of the violation as charged.

Standard of Review

The standard of review applicable to a trial court decision based upon a finding of fact is whether the decision is supported by competent substantial evidence. *Shaw v. Shaw*, 334 So. 2d 13, 16 (Fla. 1976); *Wekiva Springs Reserve Homeowners v. Binns*, 61 So. 3d 1190, 1191 (Fla. 5th DCA 2011). Also, it is well established that in appellate proceedings the decision of a trial court is presumed to be correct and the burden is on the appellant to demonstrate error.

Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979); *Wright v. Wright*, 431 So. 2d 177, 178 (Fla. 5th DCA 1983).

Arguments on Appeal

Lee argues that the Trial Court erred by finding her guilty of failing to keep her dog under control as it was the misbehavior and trespass of the children that created the situation leading to the dog bite. Conversely, Appellee, Orange County, argues that the Trial Court correctly found Lee in violation of section 5-50(a)(10) of the Orange County Code.¹

Analysis

Section 5-50(a)(10) of the Orange County Code, states that it is a violation “for any person to fail to control an animal, resulting in an animal biting a human being unless such animal is reacting to a person unlawfully on property or protecting its owner or keeper from an unjustified attack or assault.” From review of the trial transcript, both Sierra Sawyer and Rebecca Perkins testified at the trial that Lee invited them onto the property. Lee also testified that she did not invite them onto the property, but instead asked them to wait at the gate and that she was going to walk them down to the creek. However, also per Lee’s testimony, once the girls were on the property, she made no attempt to tell them to leave the property immediately. Nor, did she attempt to secure her dog before he could attack, although she knew he was a biter.

In the Order, the Trial Court included findings as follows:

Defendant contends the victim bitten by her dog was not invited on her property. The victim and her sister and cousin dispute this claim they had permission to be on the property. Whether or not the victim and other children were on Defendants property with permission, when Defendant became aware the children were on the property she had duty under the ordinance to control her dog.

¹ Although this appeal was brought against the State of Florida, the Appellee is actually Orange County, Florida.

This Court finds that the testimony presented at the trial provided competent substantial evidence in support of the Trial Court's findings and decision that Lee was in violation of section 5-50(a)(10) of the Orange County Code.

Accordingly, is hereby **ORDERED AND ADJUDGED** that the Trial Court's "Order Finding Defendant Guilty" entered on July 31, 2012" is **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 5th day of March, 2014.

/S/

GAIL A. ADAMS
Presiding Circuit Judge

S. KEST and BLACKWELL, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was furnished to: **Dorothy Jane Lee**, 1440 Saint Nicholas Avenue, Christmas, Florida 32709 and **P. Andrea DeLoach, Assistant County Attorney**, P.O. Box 1393, Orlando, Florida 32802-1393 on this 5th day of March, 2014.

/S/

Judicial Assistant