

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

STEPHANIE L. LINDENMAYER

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 15-CA-1

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Licking County Municipal
Court, Case No. 14-CRB-2248

JUDGMENT:

Vacated and Remanded

DATE OF JUDGMENT ENTRY:

May 5, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Stephanie Lindenmayer appeals her conviction entered by the Licking County Municipal Court on one count of animals at large, in violation of R.C. 951.02, a fourth degree misdemeanor. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE.¹

{¶2} On December 2, 2014, Appellant Stephanie Lindenmayer appeared in Licking County Municipal Court for arraignment on one count of animals at large, in violation of R.C. 951.02, a fourth degree misdemeanor.

{¶3} At arraignment the State alleged, on October 29, 2014 Appellant did own or keep horses and/or goats, recklessly permitting them to run large in the public road, highway, street, lane or alley or upon unenclosed land, contrary to R.C. 951.02, a misdemeanor of the fourth degree.

{¶4} R.C. 951.02 reads,

No person, who is the owner or keeper of horses, mules, cattle, bison, sheep, goats, swine, llamas, alpacas, or geese, shall permit them to run at large in the public road, highway, street, lane, or alley, or upon unenclosed land, or cause the animals to be herded, kept, or detained for the purpose of grazing on premises other than those owned or lawfully occupied by the owner or keeper of the animals.

{¶5} Pursuant to R.C. 951.99, whoever recklessly violates section 951.02 of the Revised Code is guilty of a misdemeanor of the fourth degree.

¹ A rendition of the underlying facts is unnecessary for our resolution of the appeal.

{¶16} Appellant entered a plea of no contest to the charge.

{¶17} The trial court accepted the plea and found Appellant guilty of the offense.

The court imposed a fine in accordance therewith.

{¶18} Appellant appeals, assigning as error:

{¶19} "I. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY NOT ORALLY AND/OR IN WRITING EXPLAINING TO APPELLANT THE MEANING OF A NO CONTEST PLEA UNDER O CRIM R 11(B)(2) AS REQUIRED BY O CRIM R 11(E).

{¶10} "II. THE 'FACTS' DO NOT WARRANT A FINDING OF GUILTY HEREIN."

I.

{¶11} In the first assignment of error, Appellant maintains her plea was not knowingly, intelligently or voluntarily made as the trial court failed to explain the consequences of a no contest plea pursuant to Ohio Criminal Rule 11.

{¶12} The following colloquy occurred at arraignment on the record,

A. Well I thought I had fixed the fence. I got five acres and at the last...

COURT: Okay I know it is very important that you tell me what happened.

A. I will just say no contest.

COURT: But I can't get there yet.

A. I will just say no contest because I don't even know what day it was or...I am pretty sure that it got out again because the fence has another hole in it somewhere that we did not see. I only have three goats

left. Four of them were stolen two weeks ago and the ones that wondered [sic] are gone so it definitely won't happen again. So I am just going to say no contest. You decide.

COURT: No contest plea will be accepted give me just a moment.

Tr. at 3-4

{¶13} Appellant continued explaining to the trial court her boyfriend had attempted to fix the fence, and they thought the fence was mended. She thought the problem was taken care of due to his maintenance of the fence. The trial court accepted Appellant's plea without an explanation of the consequences associated with the entry of a no contest plea.

{¶14} Criminal Rule 11 provides, in pertinent part,

{¶15} (D) Misdemeanor cases involving serious offenses

In misdemeanor cases involving serious offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first addressing the defendant personally and informing the defendant of the effect of the pleas of guilty, no contest, and not guilty and determining that the defendant is making the plea voluntarily. Where the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim. R. 44 by appointed counsel, waives this right.

{¶16} The record does not demonstrate the trial court addressed Appellant of the effect of the plea of no contest.

{¶17} Accordingly, Appellant's first assignment of error is sustained.

II.

{¶18} In light of our analysis and disposition of Appellant's first assigned error, we find Appellant's second assignment of error premature.

{¶19} Appellant's conviction in the Licking County Municipal Court is vacated, and the matter remanded for further proceedings in accordance with the law and our Opinion.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur