[Cite as *State v. Lindenau*, 2015-Ohio-705.]

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

State of Ohio	Court of Appeals No. H-14-011
Appellee	Trial Court No. CRB1301687
v.	
Michelle M. Lindenau	**DECISION AND JUDGMENT**
Appellant	Decided: February 27, 2015

* * * * *

Richard R. Woodruff, New London Law Director, for appellee.

James Joel Sitterly, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Defendant-appellant, Michelle Lindenau, appeals the May 16, 2014 judgment of the Norwalk Municipal Court denying her request to contest the designation of her dog as a "dangerous dog." For the reasons that follow, we reverse.

{¶ 2} Lindenau was issued a complaint on September 26, 2013, charging her with a violation of New London Ordinance 505.01(c)(2), which provides that "[n]o owner, keeper, or harborer of any dog shall fail at any time to * * * [k]eep the dog under the reasonable control of some person." She entered a plea of not guilty on October 7, 2013. After a series of pretrials and continuances, the state dismissed its complaint on January 10, 2014.

{¶ 3} According to a handwritten letter from Lindenau filed with the court on April 17, 2014, Lindenau discovered on April 10, 2014, that her dog had been designated dangerous, as defined by R.C. 955.11(A)(1). She spoke with the Huron County prosecutor who informed her that Chief Michael Manko told him that he had personally handed to Lindenau a notice of the dangerous dog designation, as required by R.C. 955.222, on September 26, 2013. Under that statute, Lindenau had ten days to request a hearing to dispute the designation. Lindenau denied that she was served with the R.C. 955.222 notice. Along with her letter, she attached a copy of the notice and an envelope from the Huron County prosecutor's office dated April 11, 2014, sent to her via regular mail. She asked that the court allow her to belatedly contest the designation.

{¶ 4} In an order dated May 16, 2014, the trial court, on its own motion, denied Lindenau's request as untimely. It reasoned that "a review of the Court file reveals that a copy of the applicable notice was filed with the Court as part of the reports filed with the citation on September 30, 2013," and "the police report also specifically mentions the service of the form in question upon Michelle Lindenau."

{¶ 5} Lindenau timely appealed and assigns the following errors for our review:

> I. THE TRIAL COURT ERRED IN FINDING IN ITS JUDGMENT THAT APPELLANT'S DANGEROUS DOG DESIGNATION STATUTE STANDS DESPITE A FAILURE OF PERSONAL JURISDICTION OVER THE APPELLANT.
>
> II. THE TRIAL COURT ABUSED ITS DISCRETION BY AFFIRMING APPELLANT'S DANGEROUS DOG DESIGNATION BY DENYING HER A HEARING BASED ON MATTERS NOT FOUND ON THE RECORD.

She asks that we (1) void the purported dangerous dog designation, or (2) remand the matter to the trial court so that Lindenau can appeal the designation.

{¶ 6} R.C. 955.222(B) provides, in pertinent part, as follows:

> If a person who is authorized to enforce this chapter has reasonable cause to believe that a dog in the person's jurisdiction is a * * * dangerous dog * * *, the person shall notify the owner * * * of that dog, by certified mail or in person, of both of the following:
>
> (1) That the person has designated the dog a * * * dangerous dog * * *;
>
> (2) That the owner * * * of the dog may request a hearing regarding the designation in accordance with this section. The notice shall include

instructions for filing a request for a hearing in the county in which the dog's owner * * * resides.

Section (C) requires that a hearing be requested within ten days of receiving the required notice. It places the burden on the person making the designation to prove by clear and convincing evidence that the dog is dangerous.

{¶ 7} In her assignments of error, Lindenau claims that the trial court lacked personal jurisdiction over her because she was not properly served with the notice of dangerous dog designation and that the court abused its discretion in denying her a hearing based on information not contained in the record. We agree.

{¶ 8} R.C. 955.222(B) provides for service in one of two ways: certified mail or in-person notification. The complaint for violation of New London Ordinance 505.01(c)(2) is contained in the record and states that it was personally served. However, despite the trial court's reference to the court file and police report, the record transmitted on appeal contains no evidence that Lindenau was served either in person or by certified mail with the notice of dangerous dog designation. As such, the designation is invalid. *See State v. Maynard*, 3d Dist. Henry No. 7-14-11, 2015-Ohio-51, ¶ 15 (finding that absence in the record of compliance with R.C. 955.222 renders designation of dangerous dog invalid, but concluding that appellant lacked standing to raise such error).

{¶ 9} Accordingly, we find Lindenau's assignments of error well-taken and we conclude that her dog has not been validly designated as "dangerous." We reverse the May 16, 2014 judgment of the Norwalk Municipal Court. The costs of this appeal are assessed to the state pursuant to App.R. 24.

Judgment reversed.

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

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE