

**IN THE TENTH JUDICIAL CIRCUIT
COURT FOR HARDEE, HIGHLANDS
AND POLK COUNTY, FLORIDA**

**County Case No.: CO01-02311A-XX
Appeal No.: DD-107**

DR. GAIL A. NICHOLS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

_____ /

OPINION OF THE COURT

This is an appeal from the county court of Polk County, Judge Ellen S. Masters presiding. Appellant, Dr. Gail Nichols, appeals her adjudication of guilt in an animal nuisance case. This court has jurisdiction. Fla. R. App. P. 9.030(c)(1). The ruling of the county court is REVERSED.

I.

On July 5, 2001, the Appellant received a copy of an animal nuisance citation pursuant to Polk County Ordinance 00-77 §11. The citation was a result of the two witness complaints and subsequent complaints regarding the Appellant submitted to Polk County Animal Services. A non-jury trial was conducted and the Appellant was found guilty of the violation.

II.

The Appellant raises several issues on appeal, however, only one issue merits discussion. The Appellant argues that the citation should have been dismissed for insufficiency because it lists two individual names but does not contain any affidavits. Appellant contends that since sworn signatures were not obtained from two witnesses, the affidavit should have been dismissed as insufficient on its face.

According to Polk County Ordinance 00-77§11(c), “Upon receipt of a sworn affidavit of two (2) citizens not residents of the same household...alleging a violation of this section, an Animal Services Division enforcement officer shall investigate...Said affidavits shall specify the address or location of the alleged violation; the nature, time and dates of the acts...”

III.

The court, having reviewed the file, the initial brief, the answer brief, as well as the applicable law, finds that the citation for which the appellant was charged violated the Appellant's due process rights since it did not contain two sworn affidavits as required by county ordinance. Therefore, the citation was insufficient on its face and should have been dismissed.

Accordingly, the conviction and sentence of the trial court are REVERSED.

ORDERED this January 30, 2003.

CHARLES B. CURRY, Chief Judge