IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502015AP900003AXXXMB
L.T. NO.: 502014MO000569AXXXSB

KIMBERLEY E. MALCHUSKI,
Appellant,

v.

TOWN OF OCEAN RIDGE,
Appellee.
_____/

Opinion filed: DEC 19 2016

Appeal from the County Court in and for Palm Beach County,
Judge Daliah Weiss

For Appellant: Kimberley Malchuski, *pro se*
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For Appellee: Glen J. Torcivia, Esq.
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PER CURIAM.

Appellant Kimberley Malchuski appeals her violation of section 10-31, Code of Ordinances, Town of Ocean Ridge, Florida, for failing to keep her service dog on a leash while at a beach in Ocean Ridge, Florida. We summarily affirm the lower court's decision in accordance with Florida Rule of Appellate Procedure 9.315(a), but write to stress the importance of parties abiding by the rules of procedure to ensure an adequate record on appeal.

While most criminal proceedings are electronically recorded as a matter of course, the recordings of such proceedings are not automatically transcribed. Florida Rule of Appellate

Procedure 9.200(b)(2) provides that "[w]ithin 10 days of filing the notice [of appeal], the appellant shall designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record." To the extent a proceeding is not recorded, or a transcript is otherwise unavailable, Rule 9.200(b)(4) provides that "a party may prepare a statement of the evidence or proceedings from the best available means, including the party's recollection," which once "settled and approved" by the lower tribunal, will be included in the record on appeal. But unless an appellant completes a designation to the court reporter or a statement of the evidence, the record on appeal will consist of only those items otherwise described in Rule 9.200(b)(1).

Failure to file a designation to the court reporter or a statement of the evidence thus often produces a record on appeal that is inadequate for an appellate court to conduct a meaningful review and can be fatal to the appellant's claims. As the Florida Supreme Court has stated:

> Where there are issues of fact the appellant necessarily asks the reviewing court to draw conclusions about the evidence. Without a record of the trial proceedings, the appellate court can not properly resolve the underlying factual issues so as to conclude that the trial court's judgment is not supported by the evidence or by an alternative theory. Without knowing the factual context, neither can an appellate court reasonably conclude that the trial judge so misconceived the law as to require reversal.

Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (1979).

Appellant filed her Notice of Appeal on January 14, 2015. She did not, however, file a designation to the court reporter or a statement of the evidence. Although Appellee filed a motion to strike the Initial Brief and dismiss this appeal due to Appellant's failure to provide an adequate record, this Court instead provided Appellant a second opportunity to file a designation to the court reporter so that any missing trial transcripts could be produced and supplemented to the record on appeal. *See, e.g.*, *Hill v. Hill*, 778 So. 2d 967, 968-70 (Fla. 2001) (Pariente, J.,

specially concurring); *Gregory v. Gregory*, 289 So. 2d 468, 468-69 (Fla. 2d DCA 1974). Appellant, however, failed to take advantage of that opportunity.[1]

We recognize the unique position of *pro se* litigants in Florida's trial and appellate courts, and how difficult it can be for these parties to navigate the rules of procedure. But Appellant's failure to comply with the Florida Rules of Appellate Procedure has left this Court with an inadequate record on appeal that effectively precludes us from conducting any meaningful review of her claims. We hope future litigants will heed our advice and utilize the rules of procedure to ensure they receive the meaningful appellate review to which they are entitled. But as for this case, we have no choice but to defer to the rulings and final judgment of the lower court. *Applegate*, 377 So. 2d at 1152; *see also Moncelli v. Gonzalez*, 883 So. 2d 361, 362 (Fla. 4th DCA 2004) (citing *Whelan v. Whelan*, 736 So. 2d 732, 733 (Fla. 4th DCA 1999)).

AFFIRMED.

FEUER, COX, and KEEVER, JJ., concur.

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[1] When Appellant again failed to file a designation to the court reporter, this Court granted Appellee's motion to strike Appellant's handwritten Initial Brief, providing Appellant an opportunity to file an amended brief that satisfied the requirements of Florida Rule of Appellate Procedure 9.210. While Appellant's amended Initial Brief is typed, it still fails to comport to the basic requirements of Rule 9.210.

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Opinion/Decision filed: DEC 19 2016

Appeal from County Court in and for Palm Beach County, Florida;
Judge Daliah Weiss

Appealed: January 14, 2015

DATE OF PANEL: September 26, 2016

PANEL JUDGES: FEUER, COX, AND KEEVER

AFFIRMED/REVERSED/OTHER: AFFIRMED

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:	DISSENTING: With Opinion	CONCURRING SPECIALLY: With/Without Opinion
12/16/16 J.	J.	J.
12/19/16 J.	J.	J.
DKeever 12/16/16 J.	J.	J.