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**IN THE  
COURT OF APPEALS OF INDIANA**

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NANCILACY, )

Appellant-Defendant, )

vs. )

STATE OF INDIANA, )

Appellee-Plaintiff. )

No. 49A02-1005-OV-528

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APPEAL FROM THE MARION SUPERIOR COURT - ENVIRONMENTAL DIVISION  
The Honorable Albert Serrano, Judge Pro-Tempore  
Cause No. 49F12-0908-OV-037531

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**January 14, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Chief Judge**

### Case Summary and Issue

Nanci Lacy appeals the trial court's permanent injunction order impounding any animals she owned and prohibiting her from owning or keeping an animal in Marion County. On appeal she raises the sole issue of whether sufficient evidence supports the trial court's finding that she violated a county ordinance. Concluding that sufficient evidence supported the trial court's finding, we affirm.

### Facts and Procedural History

In 2009, Lacy was issued at least four citations for violating the Revised Code of the Consolidated City of Indianapolis and Marion County regarding her pet dogs' care and treatment, and accordingly was subject to the additional restrictions found in section 531-728 of the Revised Code, including a limitation from owning or keeping in Indianapolis more than two dogs at a time or any that have not been spayed or neutered by a veterinarian or have not been implanted with an identifying microchip. On July 23, 2009, the City of Indianapolis (the "City") cited Lacy for failure to maintain those additional restrictions, specifically, alleging she owned or kept at least three dogs at her home. Lacy signed an acknowledgment of receipt of the citation and the City petitioned on September 18, 2009 for impoundment and disposition of Lacy's animals. Lacy failed to appear at the scheduled hearing. The trial court entered default judgment on the City's petition against Lacy and ordered her to appear in court in November 2009 to provide proof of compliance. Lacy failed to appear, but appeared at a subsequently scheduled compliance hearing on April 16, 2010.

At the April 16, 2010 hearing, the trial court heard evidence and argument from both Lacy and the City, including Lacy's verbal admission that she has at least three dogs. See Transcript at 9, 12. The trial court found that Lacy had violated section 531-728 and granted the City's petition for impoundment of her current dogs and a permanent injunction of her future ownership or keeping of animals, but did not enter written findings of fact or conclusions of law. Lacy now appeals.

### Discussion and Decision

#### I. Standard of Review

Lacy argues insufficient evidence supports the trial court's findings; therefore, the trial court's order granting the injunction amounts to an abuse of discretion. The grant or denial of an injunction is within the sound discretion of the trial court, and will not be overturned unless it is arbitrary or constitutes an abuse of discretion. Gaskin v. Beier, 622 N.E.2d 524, 527 (Ind. Ct. App. 1993), trans. denied. A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances or if the trial court misinterprets the law. Indiana High Sch. Athletic Ass'n, Inc. v. Durham, 748 N.E.2d 404, 412 (Ind. Ct. App. 2001).

When an appellant challenges the sufficiency of the evidence and, as in this case, a general judgment has been entered with no findings of fact, "we presume the judgment is based on findings supported by the evidence." Plesha v. Edmonds ex rel. Edmonds, 717 N.E.2d 981, 986 (Ind. Ct. App. 1999), trans. denied. "Our standard of review in such cases is limited, and we must affirm the trial court's judgment if it can be sustained on any legal

theory supported by the evidence.” Id. We do not reweigh the evidence or judge the credibility of witnesses, and consider only the evidence and all reasonable inferences therefrom in support of the judgment. Id. at 985.

## II. Sufficiency of the Evidence

Violation of a county ordinance must be proved by a preponderance of the evidence. Ind. Code § 34-28-5-1(e). Lacy first argues insufficient evidence supports the trial court’s judgment because her violation was secured through a default judgment and no evidence of a factual basis was presented to the trial court. We note that the petition filed in September 2009 for impoundment and disposition of animals, upon which the default judgment was later entered, stated that Lacy owned or kept “at least three (3) black mixed breed dogs which are currently in the possession of [Lacy].” Appellant’s Appendix at 8. This allegation is in violation of section 531-728’s limitation to two dogs.<sup>1</sup> Further, it is dispositive that Lacy did not raise this specific argument to the trial court at the April 16, 2010 hearing or otherwise seek to set aside the default judgment. Lacy raises this argument for the first time on appeal, and therefore has waived the issue for purposes of appellate review. See Breneman v. Slusher, 768 N.E.2d 451, 463 (Ind. Ct. App. 2002) (holding that an appellant who argues for

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<sup>1</sup> Section 531-728 provides:

(a) It shall be unlawful for any person who has been found in violation of sections 531-102 (at large), 531-103 (animals in heat), 531-109 (animal attacks), 531-204 (nuisance), 531-206 (unlawful use), 531-401 (care and treatment), 531-402 (abandonment), 531-404 (animal fights) or article V of this chapter, to own or keep more than two (2) dogs in the city or to own or keep any dog:

(1) That has not been spayed or neutered by a veterinarian; or

(2) That has not been implanted with a microchip with a registered identification number.

(b) A person who has been found in violation of sections 531-102(c) (at large), 531-109 (animal attacks), 531-206 (unlawful use), 531-404 (animal fights) or article V of this chapter commits a violation of the code if any dog owned or kept by that person is outside a structural enclosure sufficient to confine the dog without means of escape, unless the dog is on a leash and under the control of a competent adult.

the first time on appeal that a default judgment must be set aside because the trial court did not conduct a hearing prior to granting default has waived the issue for purposes of appellate review), trans. denied.

Second, Lacy argues insufficient evidence supports the trial court's judgment of her non-compliance following the default judgment against her. Following the default judgment in September 2009 and trial court order for compliance within thirty days, Lacy failed to appear at a compliance hearing on November 13, 2009. Lacy did not directly dispute the City's contention that she had about ten dogs as of March 2010, see tr. at 10-11, and admitted to having three dogs on the date of the hearing in April 2010. Id. at 9, 12. While evidence regarding her spaying, neutering, and other care for the dogs pursuant to the restrictions of section 531-728 is less clear in the record, it is clear that Lacy violated section 531-728 at least by owning or keeping more than two dogs at a time. Accordingly, the veterinary and other care and maintenance Lacy sought or was receiving from Friends of Indianapolis Dogs Outside ("FIDO") is irrelevant on appeal because she still owned or kept more than her legal limit of dogs.

Lacy also argues the trial court's imposition of a permanent injunction is punitive and excessive, and the proper remedy would have been to place one of her three remaining dogs in another home. Lacy provides no legal support for this argument, and section 531-728 does not articulate the appropriate remedy for a violation. Section 531-507 describes the remedy for this violation, and refers to section 103-3, which concerns penalties for violations of a county code generally (regardless of whether animal related). Section 103-3 authorizes fines

and injunctions where a penalty is not otherwise specifically prescribed by the code. In short, Lacy cites no legal authority for the proposition that a permanent injunction is so inappropriate to be an abuse of the trial court's discretion or an error of law, and we find none.

Further, evaluating whether a permanent injunction is excessive based on the facts and circumstances of the case necessarily involves reweighing the evidence. Cf. Bob Layne Contractor, Inc. v. Buennagel, 158 Ind. App. 43, 58-59, 301 N.E.2d 671, 680-81 (1973) (declining to consider whether an award created an excessive loss, but ordering an injunction to be limited where both parties agreed to the proper scope); see also Highland v. Williams, 166 Ind. App. 492, 495, 336 N.E.2d 846, 847-48 (1975) (omitting discussion of whether an imposed injunction was excessive under the facts of the case, and concluding that it was not excessive as a matter of law). We cannot reweigh the evidence, Plesha, 717 N.E.2d at 985, and have no basis to conclude the trial court's decision is clearly against the logic and effect of the facts and circumstances before it.

#### Conclusion

Sufficient evidence supported the trial court's finding that Lacy violated the Revised Code of the Consolidated City of Indianapolis and Marion County, section 531-728, and we therefore affirm.

Affirmed.

RILEY, J., and BROWN, J., concur.