

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Stephanie Thomas, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 17AP-279
 : (C.P.C. No. 16CV-9037)
 Columbus City Police Department et al., : (REGULAR CALENDAR)
 :
 Defendants-Appellees. :

D E C I S I O N

Rendered on November 2, 2017

On brief: *Stephanie Thomas*, pro se. **Argued:** *Stephanie Thomas*.

On brief: *Richard C. Pfeiffer, Jr.*, City Attorney, and *Michael Halloran*, for appellee City of Columbus Police Department. **Argued:** *Michael Halloran*.

On brief: *Freund, Freeze & Arnold*, and *Carl A. Anthony*, for appellee Netcare Corporation. **Argued:** *Carl A. Anthony*.

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Plaintiff-appellant, Stephanie Thomas, filed suit in the Franklin County Court of Common Pleas against defendants-appellees, City of Columbus Police Department ("CPD") and Netcare, alleging that she was arrested and detained in a mental health facility without cause. The trial court sustained the motions to dismiss filed by CPD and Netcare, and Thomas appealed. For the following reasons, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

{¶ 2} Thomas filed a pro se complaint against CPD and Netcare on September 22, 2016 and filed an amended complaint four days later. She alleged that on October 26,

2015, at the request of CPD and Netcare, the Franklin County Sheriff's Department arrested her in her home and detained her for four days, pursuant to R.C. 5122.10 and 5122.11. Thomas alleged that both statutes were unconstitutional. (Sept. 26, 2016 Am. Compl. at ¶ 1.) She further alleged that she was released on October 29, 2015 from the Twin Valley Mental Health Facility after being "diagnosed with no mental illness" by a physician. (Am. Compl. at ¶ 2.) Thomas alleged that the arrest and detention caused her to suffer "humiliation, disgrace, mental anguish, and loss of reputation," as well as \$75,000 in pecuniary losses from missed work and unpaid bills. (Am. Compl. at ¶ 3.) She sought compensatory and punitive damages, attorneys' fees and costs, and a declaratory judgment that R.C. 5122.10 was unconstitutional when used to arrest a person for non-criminal conduct. (Am. Compl. at ¶ 4.)

{¶ 3} CPD filed a motion to dismiss under Civ.R. 12(b)(6) on October 13, 2016. Netcare filed a motion to dismiss on October 21, 2016.

{¶ 4} In a decision filed on April 5, 2017, the trial court sustained both motions and dismissed Thomas' case. The trial court ruled that Thomas had failed to allege "any fact to suggest that Defendants' request for her detention [was] in any way improper or unlawful." (Apr. 5, 2017 Decision and Entry at 5.) The trial court also found that because CPD cannot be sued as an entity apart from the city of Columbus, it was not a proper defendant, and dismissed it from the lawsuit. *Id.* Finally, the trial court ruled that it was precluded from rendering a declaratory judgment regarding the constitutionality of R.C. 5122.10 because Thomas had failed to serve the attorney general with a copy of the complaint challenging the statute, as required by R.C. 2721.12(A). *Id.*

{¶ 5} Thomas filed a timely notice of appeal and asserts the following assignment of error:

THE LOWER COURT ERRORED [sic.] IN NOT ALLOWING
SUIT WHEN RELIEF WAS STATED WITH ISSUE [sic.]

II. ANALYSIS

{¶ 6} We apply a de novo standard when reviewing a trial court's decision to dismiss for failure to state a claim on which relief can be granted under Civ.R. 12(B)(6). *Morrow v. Reminger & Reminger Co. LPA*, 183 Ohio App.3d 40, 2009-Ohio-2665 (10th Dist.). "In order for a complaint to be dismissed under Civ.R. 12(B)(6) for failure to state a

claim, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to relief." *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 418, 2002-Ohio-2480, citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975). A court reviewing the legal sufficiency of the plaintiff's claim must presume all factual allegations to be true and construe all reasonable inferences from those facts in the plaintiff's favor. *Id.*

{¶ 7} We are unable to apply the foregoing standard to a review of the trial court's decision. Thomas' brief contains no argument in support of the assignment of error. After the assignment of error, the only other statement in the brief is the "conclusion" that asks this court to reverse the decision of the trial court. (Appellant's Brief at 5.) We have previously held that "the burden of affirmatively demonstrating error on appeal rests with the party asserting error." *State ex rel. Petro v. Gold*, 166 Ohio App.3d 371, 392, 2006-Ohio-943 (10th Dist.). Under App.R. 16(A)(7), an appellant's brief must contain "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." Thomas has presented no argument to explain why the trial court's dismissal of her complaint was in error, and, as a consequence, she has failed to discharge her burden to affirmatively demonstrate error. As we noted in *Petro*, it is "not appropriate for this court to construct the legal arguments in support of an appellant's appeal." *Id.* at ¶ 94. *See also Stemple v. Dunina*, 2d Dist. No. 04CA40, 2005-Ohio-5590 ("When an appellant fails to include in her brief an argument in compliance with the requirements of App.R. 16(A)(7), a court of appeals properly disregards that assignment of error."). Accordingly, the assignment of error is overruled and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

TYACK, P.J. and DORRIAN, J., concur.
