

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Paula J. Wilkins,	:	
Plaintiff-Appellant,	:	
v.	:	No. 17AP-274
	:	(C.P.C. No. 12CV14070)
The Village of Harrisburg et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on November 2, 2017

On brief: *Paula J. Wilkins*, pro se. **Argued:** *Paula J. Wilkins*.

On brief: *Peterson, Conners, Swisher & Peer LLP* and *Istvan Gajary*, for all appellees except Larry Taylor. **Argued:** *Istvan Gajary*.

On brief: *Plank Law Firm, LPA*, and *David Watkins*, for appellee Larry Taylor. **Argued:** *David Watkins*.

APPEAL from the Franklin County Court of Common Pleas

TYACK, P.J.

{¶ 1} Plaintiff-appellant, Paula J. Wilkins, appeals pro se from the March 28, 2017 judgment of the Franklin County Court of Common Pleas dismissing her complaint against defendants-appellees, the Village of Harrisburg and various executive and legislative officers ("Harrisburg defendants"). She also appeals from the March 20, 2017 judgment of the court of common pleas dismissing defendant-appellee, Larry Taylor. For the reasons that follow, we affirm in part and reverse in part the judgment of the trial court.

I. FACTUAL AND PROCEDURAL HISTORY

{¶ 2} On November 9, 2012, Wilkins filed her complaint alleging irregularities related to the rezoning of Larry Taylor's property in Harrisburg, Ohio. Wilkins sought injunctive relief, declaratory judgment, mandamus, sanctions, and civil damages from the Harrisburg defendants including the mayor, members of the village council, its appointed fiscal officer, and the owner of the property, Larry Taylor. Wilkins' complaint contained three claims. The first claim was that the village unlawfully passed Ordinance 0-1-10 to rezone land owned by Larry Taylor. The second claim was that the village unlawfully adopted Ordinance 0-2-10 to create the Community Service II Zoning District. The third claim was that the village, through its officials, willfully, knowingly, and maliciously violated Wilkins' constitutional rights. (Compl. at ¶ 82-97.)

{¶ 3} Both the Harrisburg defendants and Taylor filed motions to dismiss that were converted to motions for summary judgment. The trial court granted summary judgment based on lack of standing, and Wilkins appealed to this court.

{¶ 4} On December 29, 2015, this court affirmed in part, finding that Wilkins had failed to establish that she was entitled to a writ of mandamus to order the Harrisburg defendants "to not adopt rezoning ordinances or zoning regulations." *Wilkins v. Village of Harrisburg*, 10th Dist. No. 14AP-1028, 2015-Ohio-5472, ¶ 16. This court also reversed the judgment of the trial court in part, remanding the matter for the trial court "to consider, pursuant to the Civ.R. 12(B)(6) standard, whether appellant has established standing by sufficiently pleading the elements of injury and causation." *Id.* at ¶ 42.

{¶ 5} After remand, the Harrisburg defendants and Taylor renewed their motions to dismiss based on lack of standing, and the trial court denied those motions on June 30, 2016.

{¶ 6} After the trial court's decision to deny the motions, and as the March 6, 2017 trial date approached, the Harrisburg defendants decided to rescind the ordinances at issue in the case. Larry Taylor filed a motion in limine on February 1, 2017, seeking dismissal on the basis that the ordinances had been or were being rescinded and that Wilkins had not alleged any wrongdoing by Taylor. The Harrisburg defendants filed a motion for summary judgment based on the affirmative defense of sovereign immunity on February 27, 2017. On March 1, 2017, the trial court denied the motion for summary

judgment as it was filed well past the September 16, 2016 dispositive motion cut-off date and shortly before the trial date of March 6, 2017. The motion in limine was not ruled on.

{¶ 7} The case was assigned to a visiting judge on the morning of trial. (Mar. 6, 2017 Order of Assignment of Visiting Judge.) On the day of trial, Taylor apparently renewed his motion to dismiss, and the trial court heard arguments from all the parties. "Counsel for Larry Taylor has filed a motion to dismiss." (Mar. 6, 2017 Tr. at 2.) At oral argument before this court, counsel for Larry Taylor represented that he sought reconsideration of his prior motion to dismiss.

{¶ 8} Taylor argued before the trial court that no claims were ever stated against him. Wilkins responded that she named Taylor as a necessary party because he was the property owner who was seeking the rezoning at issue in the case.

{¶ 9} The court asked Wilkins whether the case was now moot since the Village of Harrisburg had rescinded the zoning ordinances. Wilkins agreed that her first two claims were moot, but stated that her third claim survived. (Mar. 6, 2017 Tr. at 12.)

{¶ 10} The trial court granted Taylor's motion to dismiss and then turned to the pending claims against the Village of Harrisburg. (Tr. at 19.) The trial court indicated there was also a motion to dismiss from the village. "Now let's move on to the issue of The Village. We also have a motion to dismiss versus The Village." *Id.* Our review of the record does not indicate there was a pending motion to dismiss, but at oral argument before this court, counsel for the Harrisburg defendants represented there was an oral motion before the court.

{¶ 11} Counsel for the Harrisburg defendants argued that the Village of Harrisburg was immune from an action for damages pursuant to R.C. Chapter 2744 based on admissions in the complaint that the defendants were either elected officials or employees of the Village of Harrisburg, and that they passed the ordinances in their official capacities as elected officials of the village. Counsel directed the trial court's attention to *Elston v. Howland Local School*, 113 Ohio St.3d 314, 2007-Ohio-2070, a case that sets forth a three-tiered analysis in determining whether a political subdivision is immune from liability.

{¶ 12} Wilkins responded that:

I can prove with my evidence that I have here today that The Village of Harrisburg has operated since 2001 in a pattern of

maliciousness. They have done things in an arbitrary and capricious manner. And this latest enactment of those ordinances was deliberately done in a way to violate my due process.

(Tr. at 27.)

{¶ 13} The trial court then allowed Wilkins to give a history of the rezoning controversy. The trial court inquired as to whether there was any legal authority that would negate sovereign immunity. The trial court also inquired as to whether the action was moot given that the ordinances were rescinded. Wilkins responded that there was a deliberate violation of her right to due process.

{¶ 14} The trial court then dismissed the case based on sovereign immunity and mootness and ordered counsel for the defendants to prepare entries of dismissal. The trial court instructed counsel, in pertinent part, as follows:

I think, first and foremost, you have to put in there emphasis on, stress on the 2744 of the Ohio Revised Code governmental immunity. I mean, that's head on what this case is about. And I think it's important to point out that maybe they were inept. Maybe they did things somewhat improperly. But first of all, assuming they did, for the sake of argument, I don't know of any law that says that sidesteps governmental immunity. I don't think it does. In a complete sense, it's politics.

* * * I also wonder the propriety of continuing this lawsuit any further anyway because the remedy sought is now moot. The Village has rescinded the ordinance, so we're back to square one. Maybe Paula Wilkins won. Maybe she beat The Village officials over the head sufficiently to get them to do it right. I don't know. But I think Ms. Wilkins needs to understand that a cause of action in court is something totally different from an annoyance and irritation, a disagreement and so forth. I don't think you have a cause of action here.

(Tr. at 68-70.)

{¶ 15} The March 20, 2017 judgment entry dismissing Taylor stated that, prior to trial, the trial court was taking up Taylor's motion to dismiss filed on May 24, 2013, and a supplement filed on May 2, 2014, as well as Taylor's motion in limine filed on February 1, 2017, in which Taylor restated the arguments set forth in the earlier motion to dismiss.

The basis for dismissal of the complaint against Taylor was that Wilkins had not stated any claims against Taylor.

{¶ 16} The March 28, 2017 judgment entry stated that an oral motion to dismiss was before the trial court, and the trial court heard oral argument on the motion prior to the commencement of trial on March 6, 2017. The trial court dismissed the Village of Harrisburg and all the remaining defendants on the basis of sovereign immunity pursuant to R.C. Chapter 2744. The judgment entry stated:

The gravamen of Wilkins third claim is financial damages related to the Harrisburg Defendants passage of the Harrisburg Ordinances, which were detailed in in [sic] Wilkins' first and second claim. * * * [T]he passage and subsequent rescission of zoning ordinances is indisputably a legislative act.

(Mar. 28, 2017 Jgmt. Entry at 3.) The trial court also found that the rescission of the zoning ordinances rendered Wilkins' first and second claims moot.

{¶ 17} Wilkins filed a timely notice of appeal from the judgment of the trial court.

II. ASSIGNMENTS OF ERROR

{¶ 18} On appeal, Wilkins assigns the following errors for our review:

[I.] To the prejudice of Appellant, the Court presided over the march [sic] 6, 2017 trial while clearly demonstrating a lack of even minimal preparation and absent a reasonable level of knowledge as to the contents of the complaint, the parties involved, the causes of action, any previously filed motions, briefs, and subsequent decisions, previously presented evidence, etc.

[II.] To the prejudice of Appellant, the Court presided over the March 6, 2017 trial while exhibiting an extraordinary amount of confusion during the course of the trial of even basic information that had moments before been presented and/or stated. This included but was not limited to being unaware that the current proceeding was in fact the actual trial itself.

[III.] To the prejudice of Appellant, the Court demonstrated a bias and prejudice against the Plaintiff through various comments and statements, facial expressions and body language throughout the trial including the statement "We're not here to litigate hurt feelings. We're not here to litigate grudges or anything of the sort."

[IV.] To the prejudice of Appellant, the Court failed to allow sufficient weight to the evidence and testimony of the Plaintiff and discounted said evidence and testimony even though Defendants had failed to object, discount and/or provide any evidence or testimony to counter that of the Plaintiff being presented on March 6th as well a [sic] that of information and briefs previously filed with the Court throughout the process of the last four years.

[V.] To the prejudice of Appellant, the Court failed to retain for the permanent record the evidence Plaintiff provided to the Court and Defendants that substantiated her testimony during the trial.

[VI.] To the prejudice of Appellant, the Court failed to properly address or acknowledge that Plaintiff's third cause of action involved violations of Plaintiff's due process rights as afforded by ORC 713.12.

[VII.] To the prejudice of Appellant, the Court failed to properly address or acknowledge that Plaintiff's third cause of action involved violation of Plaintiff's rights afforded by ORC 731.29.

[VIII.] To the prejudice of Appellant, the Court failed to address or acknowledge that Plaintiff's complaint named all of the elected and/or appointed Village officials in both their official and individual capacity.

[IX.] To the prejudice of Appellant, the Court granted Defendant Taylor's dismissal as a defendant from the action based upon motions presented to the Court immediately prior to the start of the trial. The motion to dismiss was originally filed May 24, 2013, the supplement to said motion was originally filed May 2, 2014 and were converted to a summary judgment motion at a hearing before a Magistrate in 2014. And the motion in limine was originally filed on February 1, 2017 and is an inappropriate motion when used to seek dismissal of a party from an action.

[X.] To the prejudice of Appellant, the Court during the trial granted dismissal of Defendant Larry Taylor in contravention of ORC 2721.12, a statutory mandate that all necessary parties be named in Declaratory Judgment actions.

[XI.] To the prejudice of Appellant, the Court granted dismissal of Defendant Larry Taylor in contravention of Civil Rule 19.

[XII.] To the prejudice of Appellant, the Court during the trial, through comments and statements inappropriately and erroneously instigated possible future legal action against the Plaintiff by Defendant Taylor including but not limited to a statement "I think she (Plaintiff) violated Larry's (Defendant Taylor) due process by not putting him on notice of a cause of action."

[XIII.] To the prejudice of Appellant, the Court erroneously stated in the Judgment Entry of March 20, 2017 that the Plaintiff's complaint violated Civil Rule 8 (A).

[XIV.] To the prejudice of Appellant, the Court upon dismissing Defendant Larry Taylor, in essence froze the jurisdiction of the Court but the trial continued none the less.

[XV.] To the prejudice of Appellant, the Court during the trial and following dismissal of Defendant Taylor proceeded to dismiss Plaintiff's entire complaint against the Village of Harrisburg and elected and/or appointed officials by erroneously finding all of the elected and/or appointed officials had full immunity in contravention of ORC 2744.03 (6) (b).

[XVI.] To the prejudice of Appellant, the Court granted Defendant Village of Harrisburg, et al dismissal of the complaint based upon a motion presented to the Court immediately prior to the start of the trial. The Motion for Summary Judgment was originally filed on February 27, 2017 and had been subsequently denied by the Court on March 2, 2017.

[XVII.] To the prejudice of Appellant, the Court failed to acknowledge or address that Plaintiff's third cause of action was based on the willful, knowingly and malicious violation of Plaintiff's due process and civil rights and therefore were outside the scope of the legislative authority of the Village's elected and/or appointed officials. (ORC 2744.03 (6)(a)[]).

[XVIII.] To the prejudice of Appellant, the Court in the judgment entries erroneously stated the Court's decisions were made "having reviewed the pleadings, motion, and oral arguments" when in fact without benefit of said information,

the Court made and announced the Court's decisions during the trial and directed the respective parties to prepare the judgment entries.

[XIX.] To the prejudice of Appellant, Plaintiff was not provided notification the March 6th trial had been assigned to a visiting Judge. Entry of the assignment to a visiting Judge was filed several hours after completion of the trial.

[XX.] To the prejudice of the Appellant, the Court had Plaintiff's case terminated effective on March 20, 2017 but did not enter the Judgment entry dismissing Defendant Village of Harrisburg, et al until March 28, 2017 and failed to retain jurisdiction to make said judgment post termination [sic] of the case.

{¶ 19} Wilkins has proceeded pro se throughout the pendency of her case and appeal. In several instances, Wilkins has failed to cite any legal authority or provide any argument or reasoning for her contentions. We will not comb through the record to make Wilkins' arguments for her. *Murra v. Farrauto*, 10th Dist. No. 16AP-347, 2017-Ohio-842, ¶ 13. If an appellant fails to construct legal arguments supporting the assignments of error, this court may disregard the unsupported assignments of error. *Long v. Mt. Carmel Health Sys.*, 10th Dist. No. 16AP-511, 2017-Ohio-5522, ¶ 32; App.R. 12(A)(2). In the interest of justice, we will combine related issues in the assignments of error to address the arguments we can discern from her brief.

III. STANDARD OF REVIEW

{¶ 20} A trial court properly dismisses a complaint for failure to state a claim when it appears, beyond doubt, that the plaintiff can prove no set of facts entitling him or her to relief. *State ex rel. Withers v. State Teachers Ret. Sys.*, 10th Dist. No. 17AP-124, 2017-Ohio-7906, ¶ 34. An appellate court reviews a decision on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim on which relief can be granted under a de novo standard of review. *Id.*

IV. ANALYSIS

A. General allegations against the trial court

{¶ 21} In assignments of error one through five, sixteen, eighteen, and nineteen, Wilkins contends the trial court was unprepared, confused, biased, and lacking information. Wilkins takes issue with the fact that a visiting judge was assigned to the case without her receiving prior notification. Wilkins argues that the trial court failed to credit her testimony and evidence, and returned her exhibits after dismissing the case. Wilkins also argues that the Village of Harrisburg was dismissed based on a motion presented immediately prior to the start of the trial, and a motion for summary judgment had previously been denied by the trial court.

{¶ 22} Wilkins mistakenly asserts in her second assignment of error that the March 6, 2017 proceeding was "the actual trial itself." There was no trial on March 6, 2017. The prior decision denying summary judgment was interlocutory and subject to revision. Civ.R. 54(B). The trial court dismissed the action prior to trial either based on an oral motion made the day of trial or by reconsidering the prior motion to dismiss or motion for summary judgment. The trial court heard extensive argument from the parties. There was no trial, there was no testimony, and there were no exhibits admitted into evidence.

{¶ 23} Our review of the record indicates that the visiting judge asked appropriate questions and gave all the parties ample time to make their arguments on the record. Assignments of error one through five, sixteen, eighteen, and nineteen are overruled.

B. Dismissal of Larry Taylor

{¶ 24} Assignments of error nine through fourteen and twenty all relate to the dismissal of Larry Taylor. The trial court dismissed Taylor by judgment entry dated March 20, 2017 because Wilkins' complaint did not state a claim against Taylor. Taylor owns the property across the street from Wilkins that was the subject of the zoning ordinances at issue. Wilkins conceded before the trial court and before this court that she had not stated a claim against Taylor. She asserts that Taylor should not be dismissed because he is a necessary party to her declaratory judgment action. However, Wilkins has also conceded that her first two claims relating to the rezoning of Taylor's property are moot. Thus, the declaratory judgment action is moot. The rezoning of Taylor's property

is no longer an issue because the zoning ordinances have been rescinded. Thus, Taylor is no longer a necessary party, and his dismissal was proper.

{¶ 25} Assignments of error nine through fourteen and twenty are overruled.

C. Wilkins' Third Claim

{¶ 26} Assignments of error six, seven, eight, fifteen, and seventeen all appear to relate to Wilkins' third claim that the village, through its officials, willfully, knowingly, and maliciously violated Wilkins' constitutional rights. In her sixth assignment of error, Wilkins argues that the trial court failed to address that her third claim involved violations of her due process rights under R.C. 713.12. In her seventh assignment of error, Wilkins asserts that her third claim involved a violation of her rights afforded by R.C. 731.29. In her eighth assignment of error, Wilkins states that she named the officials in her complaint in both their individual and official capacities.

{¶ 27} R.C. 713.12 is a notice provision for municipal zoning regulations. R.C. 731.29 is a statute setting forth notice requirements and procedures for referendum on an ordinance passed by a municipal corporation. Wilkins has not stated what the alleged violations were, she has not given any reasoning in support of her assignment of error, and she has not cited any legal authority. Wilkins appears to argue that the trial court failed to acknowledge or address that her third claim involved a violation of her rights under these statutes because she was not given notice in accordance with these provisions. Wilkins, however, acknowledged at oral argument before the trial court that the ordinances have been rescinded.

{¶ 28} It is not the responsibility of the court of appeals to search the record to make arguments on an appellant's behalf. *Cook v. Wilson*, 165 Ohio App.3d 202, 2006-Ohio-234, ¶ 15 (10th Dist.). *See also* App.R. 16(A)(7) ("The appellant shall include in its brief: * * * (7) An 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.").

{¶ 29} We are unable to ascertain Wilkins' arguments with respect to these assignments of error. Her brief consists of one-sentence conclusory statements under these assignments of error. Assignments of error six, seven, and eight are overruled.

{¶ 30} In assignment of error fifteen, Wilkins claims there was a trial in which the trial court found "all of the elected and appointed officials had full immunity in contravention of ORC 2744.03 (6) (b) [sic]." As discussed previously, there was no trial in this matter. The trial court did, however, dismiss the action against the Harrisburg defendants on the basis that they were immune from liability pursuant to R.C. Chapter 2744.

{¶ 31} Wilkins further contends in her seventeenth assignment of error that her third claim was based on a willful, knowing, and malicious violation of her due process and civil rights, and therefore the Harrisburg defendants were acting outside the scope of their legislative authority. Wilkins contends that "[v]iolating Appellants [sic] due process in a direct attempt to deny her the right of filing a referendum petition is outside the scope of their authority that excepts indemnity." (Appellant's Brief at 25.)

{¶ 32} R.C. Chapter 2744, the Political Subdivision Tort Liability Act, governs political subdivision immunity and sets forth a three-tiered analysis for determining whether a political subdivision is immune from liability. *Elston* at ¶ 10; *Supportive Solutions, L.L.C. v. Elec. Classroom of Tomorrow*, 137 Ohio St.3d 23, 2013-Ohio-2410, ¶ 11.

{¶ 33} The first tier, R.C. 2744.02(A), provides broad immunity to political subdivisions. *Campbell v. Youngstown*, 7th Dist. No. 06 MA 184, 2007-Ohio-7219, ¶ 13; *Elston* at ¶ 11. In the second tier, R.C. 2744.02(B) provides five exceptions to the general rule of immunity. *Id.* In the third tier, the political subdivision or employee can revive the affirmative defense of immunity by demonstrating one of the defenses set forth in R.C. 2744.03. *Id.* We presume Wilkins, in her fifteenth and seventeenth assignments of error, is referring to R.C. 2744.03(A)(6)(a) and (b) which provides as follows:

(A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

* * *

(6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of

the Revised Code, the employee is immune from liability unless one of the following applies:

(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner [.]

{¶ 34} Here, it appears that Wilkins is claiming that the Harrisburg defendants should not be entitled to immunity because their conduct was outside the scope of their employment or official responsibilities or was done with malicious purpose, in bad faith, or in a wanton or reckless manner pursuant to R.C. 2744.03(A)(6)(a) and (b).

{¶ 35} Another exception to immunity is found in R.C. 2744.09, which states, in pertinent part:

This chapter does not apply to, and shall not be construed to apply to, the following:

* * *

(E) Civil claims based upon alleged violations of the constitution or statutes of the United States.

{¶ 36} "By its express terms, the immunity granted by R.C. Chapter 2744 does not apply to claims based upon alleged violations of the United States Constitution." *Miller v. Leesburg*, 10th Dist. No. 97APE10-1379 (Dec. 1, 1998); *Accord, Campbell* at ¶ 14. Ohio courts have refused to apply R.C. Chapter 2744 to actions alleging violations of federal rights that were brought pursuant to 42 U.S.C. 1983. *Summerville v. Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, ¶ 22.

{¶ 37} Wilkins alleged in her complaint that the Village of Harrisburg, by and through the actions of the Village's elected and/or appointed officials willfully, knowingly and maliciously violated her constitutional rights. (Compl. at ¶ 82.) She also alleged in her complaint that the Harrisburg defendants "knowingly, willfully and with malice chose to violate and deny Plaintiff her constitutional rights while at the same time affording LARRY TAYLOR unfettered access and input in the adoption of zoning amendments that benefitted him at the expense of the Plaintiff." (Compl. at ¶ 84.) She alleged that these "actions were done knowingly, intentionally and maliciously in a manner to deny Plaintiff

the opportunity to oppose Ordinance 0-1-10 and Ordinance 0-2-10," and to deny her the opportunity to counter the adoption of those ordinances by means of the referendum process, and to deny her information. (Compl. at ¶ 90, 91, 92.)

{¶ 38} Before the trial court she argued: "I can prove with my evidence that I have here today that The Village of Harrisburg has operated since 2001 in a pattern of maliciousness. They have done things in an arbitrary and capricious manner. And this latest enactment of those ordinances was deliberately done in a way to violate my due process." (Tr. at 27.) Wilkins has consistently argued that her third claim in her complaint survived even though the ordinances were rescinded because the Harrisburg defendants acted in a deliberate and malicious manner to deny her procedural and substantive rights of due process.

{¶ 39} Civ.R. 8(A) provides for notice pleading and requires only "(1) a short and plain statement of the claim showing that the party is entitled to relief, and (2) a demand for judgment for the relief to which the party claims to be entitled." "Ohio law does not ordinarily require a plaintiff to plead operative facts with particularity." *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, ¶ 29. Notice pleading under Civ.R. 8(A)(1) and (E) requires that a claim concisely set forth only those operative facts sufficient to give "fair notice of the nature of the action." *Ford v. Brooks*, 10th Dist. No. 11AP-664, 2012-Ohio-943, ¶ 13. (Internal quotations omitted.) "Nevertheless, to constitute fair notice, the complaint must allege sufficient underlying facts that relate to and support the alleged claim; the complaint may not simply state legal conclusions." *Montgomery v. Ohio State Univ.*, 10th Dist. No. 11AP-1024, 2012-Ohio-5489, ¶ 20.

{¶ 40} This case was dismissed by the trial court prior to trial on an oral motion to dismiss. Pursuant to our governing standard of review, we must presume that all factual allegations of the complaint are true, and we must make all reasonable inferences in favor of Wilkins. In so doing, we cannot conclude that Wilkins can prove no set of facts in support of her third claim that would entitle her to relief. The fifteenth and seventeenth assignments of error are sustained to the extent Wilkins' third claim should not be dismissed for failure to state a claim based on the affirmative defense of political subdivision immunity.

V. CONCLUSION

{¶ 41} Based on the foregoing, Wilkins' assignments of error one through fourteen, sixteen, eighteen, nineteen, and twenty are overruled. Assignments of error fifteen and seventeen are sustained to the extent that Wilkins has stated a claim against the Harrisburg defendants for alleged willful, knowing, and malicious violations of her constitutional rights.

{¶ 42} Also pending before this court is the Harrisburg defendants' motion for sanctions for filing a frivolous appeal. Having found merit to some assignments of error, we deny the motion for sanctions.

{¶ 43} The judgment of the Franklin County Court of Common Pleas is affirmed in part and reversed in part. We affirm the judgment of the trial court with respect to the dismissal of Larry Taylor, but we reverse the judgment of the trial court with respect to the dismissal of the Harrisburg defendants. The matter is remanded for further proceedings in accordance with law and this decision.

*Judgment affirmed in part,
reversed in part; case remanded.
Motion for sanctions denied.*

SADLER, J., concurs
LUPER SCHUSTER J., concurs in part and dissents in part.

LUPER SCHUSTER, J., concurring in part and dissenting in part.

{¶ 44} I concur with the majority's resolution of assignments of error 1 through 5, 9 through 14, 16, and 18 through 20. However, because I believe the government appellees are entitled to immunity, I dissent as to the remaining assignments of error and I would affirm the decision of the trial court in its entirety.
