

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
JACKSON COUNTY

ROGER WARD,	:	
	:	Case No. 23CA18
Plaintiff-Appellant,	:	
	:	
	:	
v.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
KERRY ROSS, et. al.,	:	
	:	
Defendants-Appellees.	:	<b>RELEASED: 09/12/2025</b>
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APPEARANCES:

Roger Ward, Jackson, Ohio, appellant pro se.

Dave Yost, Ohio Attorney General, and Stephen P. Tabatowski and Phillip Kelly Assistant Ohio Attorneys General for the State of Ohio.

Andrew N. Yosowitz, Teetor, Westfall, LLC, Columbus, Ohio, for Appellees, Jackson County Prosecutor Randy Dupree and Assistant Jackson County Prosecutor Jordan Waddell.

Steven T. Sloan and David J. Mott, Mollica, Gall, Sloan & Sillery Co., L.P.A. for appellees, the City of Jackson, Kerry Ross, and Brett Hinsch.

Lisa M. Zaring and Brian T. Smith, Montgomery Johnson, LLP, Attorneys for appellee, Judge Mark T. Musick.

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Wilkin, J.

{¶1} Appellant, Roger Ward (“Ward”), appeals a judgment entry from the Jackson County Court of Common Pleas that dismissed his complaint for failure to state a claim upon which relief could be granted under Civ.R. 12(B)(6). The judgment was entered on August 15, 2023, but it was not final until October 30, 2023, when the court awarded pending sanctions. Appellees include: The City of

Jackson, Jackson City Police Chief Brett Hinsch, Jackson City Police Officer Kerry Ross, Jackson County Prosecutor Randy Dupree, Jackson County Assistant Prosecutor Jordan Waddell, the State of Ohio, and Judge Mark T. Musick.

{¶2} Ward’s appeal asserts 19 assignments of error. After reviewing the parties’ arguments, the law, and the record, we overrule 17 of Ward’s 19 assignments of error. Therefore, we affirm in part and reverse in part, the trial court’s judgment of dismissal and remand the matter for further proceedings.

### BACKGROUND

{¶3} On January 2, 2023, Ward was driving a vehicle in the city of Jackson, Ohio. Ward’s vehicle was purportedly speeding, so Jackson City Police Officer Kerry Ross (“Officer Ross”) executed a traffic stop. During the traffic stop, Officer Ross issued various traffic citations to Ward. Because Ward would not identify himself, Officer Ross eventually arrested Ward for obstructing official business in violation of R.C. 2921.31(A), a second-degree misdemeanor. Officer Ross issued a summons for Ward to appear in the Jackson County Municipal Court before Judge Musick. Ward’s truck and trailer were impounded.

{¶4} On January 6, 2023, Ward claims that he paid the Jackson Police Department towing and impound fees to get his vehicle back. According to appellees, because of alleged problems with his license and registration, Ward’s trailer was released to him, but not his vehicle.

{¶5} At his arraignment, Judge Musick entered a plea of not guilty on Ward's behalf. However, at some point, the charges against him were eventually dismissed.

{¶6} On February 6, 2023, Ward filed a complaint against the appellees. The complaint seeks "5.5 - Million Dollars" in damages. It also prays for the court to revoke the judge and prosecutors' licenses to practice law. It claims that the municipal court - that heard Ward's underlying traffic case until it was dismissed - lacked jurisdiction over his case.

{¶7} The complaint asserts seven "claims[,]" alleging violations of the following: (1) 42 U.S.C. 1983, (2) the Administrative Procedures Act of 1946, (3) Ward's Due Process under the 5th Amendment, (4) the Tucker Act, (5) Ward's 4th Amendment rights, (6) Ward's right to know the nature and the cause of action against him pursuant to the 6th Amendment, and (7) 42 U.S.C. 1223. It also appears to make a blanket assertion that the appellees were negligent in their actions herein.

{¶8} The complaint also included a "short and plain statement of the facts" that essentially alleged the following: Officer Ross performed an illegal traffic stop, Officer Ross falsely accused Ward of obstruction, Officer Ross and Chief Hinsch violated his Fourth Amendment right by conducting a search of Ward's property without probable cause or a warrant, Officer Ross was trained to administer illegal traffic tickets, the prosecutors prosecuted this case even after it was apparent the charges were baseless, and Prosecutor Dupree prosecuted

Ward as retaliation for another case in which Dupree is a party against Ward's family in Gallia County.

{¶9} On June 22, 2023, Judge Cooper recused himself from the case after Ward filed suit against him. On June 30, 2023, the Supreme Court assigned Judge Ruehlman to preside over the case.

{¶10} On August 15, 2023, the trial court dismissed Ward's complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief could be granted. The court relied on various legal rationale, including but not limited to Ward's complaint was insufficiently pled, Ward failed to allege viable legal claims, and that the appellees were immune from suit.

{¶11} Ward appeals the August 15, 2023 judgment that dismissed his complaint that was made final by the trial court's October 30, 2023 judgment that awarded the attorney fees that were alluded to in the August judgment but were not awarded at that time.

#### ASSIGNMENTS OF ERROR

- I. THE TRIAL COURT ABUSED ITS DISCRETION BY ERRONOUSLY DISMISSING PLAINTIFF-APPELLANT'S COMPLAINT AS FRIVOLOUS AND ORDERING SANCTIONS
- II. THE COURT'S ERROR IN OVER-EMPHASIZING JUDICIAL IMMUNITY COMPROMISED WARD'S RIGHT TO DUE PROCESS: THE TRIAL COURT UNDULY STRESSED JUDICIAL IMMUNITY, THEREBY COMPROMISING WARD'S RIGHT TO A FAIR LEGAL PROCESS
- III. THE TRIAL COURT ERRED IN DISMISSAL OF CLAIMS AGAINST THE STATE OF OHIO: THE TRIAL COURT ERRED IN DISMISSING WARD'S CLAIMS AGAINST THE STATE OF OHIO WITHOUT PROPER ANALYSIS.

- IV. THE COURT'S ERROR IN DISREGARDING POTENTIAL ROLES OF STATE AGENTS IN CONSTITUTIONAL VIOLATIONS: THE TRIAL COURT FAILED TO CONSIDER THE POSSIBLE INVOLVEMENT OF STATE AGENTS IN VIOLATING CONSTITUTIONAL RIGHTS.
- V. THE TRIAL COURT ERRED IN ITS MISINTERPRETATION OF "PERSON" IN 42 U.S.C. 1983 CONSTRICTS AVENUES FOR LEGAL REDRESS: THE COURT'S NARROW INTERPRETATION OF THE TERM "PERSON" UNDER 42 U.S.C. 1983 RESTRICTED WARD'S AVENUES FOR LEGAL ACTION.
- VI. THE TRIAL COURT ERRED IN DISMISSAL OF CLAIMS AGAINST DUPREE AND WADDELE AND ERROR [SIC.] IN ADDRESSING MISCONDUCT AND CONFLICT OF INTEREST: THE COURT WRONGLY DISMISSED CLAIMS AGAINST DUPREE AND WADDELE AND DID NOT ADDRESS POTENTIAL MISCONDUCT OR CONFLICT OF INTEREST
- VII. THE TRIAL COURT ERRED IN DISMISSAL OF CLAIMS AGAINST THE CITY OF JACKSON, CHIEF HINSCH, AND OFFICER ROSS: THE COURT INCORRECTLY DISMISSED WARD'S CLAIMS AGAINST THESE DEFENDANTS OVER THEIR VIOLATIONS OF WARD'S CONSTITUTIONAL RIGHTS
- VIII. THE TRIAL COURT ERRED IN OVERLOOKING CONSTITUTIONAL ISSUES PRESENTED BY WARD: THE TRIAL COURT FAILED TO ADDRESS THE CONSTITUTIONAL ISSUES RAISED IN WARD'S COMPLAINTS
- IX. THE TRIAL COURT ERRED IN DISMISSING WARD'S OTHER MOTIONS: THE TRIAL COURT ERRONOUSLY DISMISSED OTHER PROCEDURAL MOTIONS FILED BY WARD.
- X. THE TRIAL COURT ERRED IN MANDATING WARD TO PAY ALL COSTS: THE COURT INCORRECTLY MANDATED THAT WARD BEAR ALL COSTS.
- XI. THE TRIAL COURT ERRED IN HANDLING CLAIMS OF ILLEGAL TRAFFIC STOP AND JURISDICTIONAL OVERREACH: THE TRIAL COURT DID NOT CORRECTLY HANDLE WARD'S ALLEGATIONS REGARDING AN ILLEGAL TRAFFIC STOP AND JURISDICTIONAL OVERREACH.
- XII. THE TRIAL COURT ERRED IN ADDRESSING ALLEGED FALSIFIED CHARGES AND REPORTS: THE COURT FAILED TO INVESTIGATE OR ADDRESS CLAIMS OF FALSIFIED CHARGES AND REPORTS.

- XIII. THE TRIAL COURT ERRED REGARDING CONSTITUTIONAL RIGHTS VIOLATIONS: THE COURT DID NOT PROPERLY CONSIDER OR ADDRESS ALLEGED VIOLATIONS OF WARD'S CONSTITUTIONAL RIGHTS
- XIV. THE TRIAL COURT ERRED IN NOT ADDRESSING SEPARATION OF POWERS CONCERN: THE COURT FAILED TO CONSIDER THE POTENTIAL VIOLATION OF THE SEPARATION OF POWERS PRINCIPLE IN ITS JUDGMENT
- XV. THE TRIAL COURT ERRED IN HANDLING OF WARD'S PROPERTY: THE TRIAL COURT MISHANDLED WARD'S CLAIMS REGARDING THE IMPROPER HANDLING OF HIS PROPERTY
- XVI. THE TRIAL COURT ERRED IN NOT ADDRESSING THE DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS: THE COURT DID NOT ADDRESS WARD'S CLAIMS ABOUT THE DEPRIVATION OF HIS PROPERTY WITHOUT DUE PROCESS
- XVII. ERROR IN THE COURT'S OVERSIGHT: THE TRIAL COURT MADE OVERSIGHTS THAT IMPACTED THE FAIRNESS OF THE PROCEEDINGS
- XVIII. ERROR IN FAILURE TO ADDRESS RETALIATORY ACTION: THE COURT DID NOT ADDRESS ALLEGATIONS OF RETALIATORY ACTIONS AGAINST WARD
- XIX. ERROR IN IGNORING WARD'S MOTION TO RECUSE FOR CONFLICT OF INTEREST AND DEMONSTRATED BIAS: THE TRIAL COURT DID NOT ADDRESS WARD'S MOTION TO RECUSE THE JUDGE FOR A CONFLICT OF INTEREST AND DEMONSTRATED BIAS.<sup>1</sup>

#### A. Law

##### 1. Standard of Review

{¶12} “Appellate courts conduct a de novo review of trial court decisions granting a Civ.R. 12(B)(6) motion to dismiss.” *Alexander Loc. Sch. Dist. Bd. of*

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<sup>1</sup> The assignments of error above here are taken from pages 2-5 of Ward's brief wherein he lists his assignments of error. However, many of them fail to correspond numerically and substantively to the assignments of error set out in the body his brief. In our analysis, we choose to review the assignments of error as they are set out in the body of his brief.

*Educ. v. Vill. of Albany*, 2017-Ohio-8704, ¶ 22 (4th Dist.), citing *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2016-Ohio-478, ¶ 12. Therefore, in reviewing a trial court's decision regarding a Civ.R. 12(B)(6) motion to dismiss, "we afford no deference to the trial court's decision and apply our own, independent review to determine if the requirements of Civ.R. 12(B)(6) were satisfied." *Estep v. State*, 2009-Ohio-4349, ¶ 5 (4th Dist.).

## 2. Civ.R. 12(B)(6) Motion to Dismiss

{¶13} "[A] Civ.R. 12(B)(6) motion to dismiss tests only the sufficiency of the allegations." (Brackets original.) *Student Doe v. Adkins*, 2021-Ohio-3389, ¶ 19 (4th Dist.), quoting *Volbers-Klarich v. Middletown Mgt., Inc.*, 2010-Ohio-2057, ¶ 9. This means that " 'courts cannot rely on evidence or allegations outside the complaint to determine a Civ.R. 12(B)(6) motion.' " *Billman v. Meintel*, 2023-Ohio-922, ¶ 15 (4th Dist.), citing *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207, (1997). "When a party presents evidence outside the pleadings, the trial court bears the 'responsibility either to disregard [the] extraneous material or to convert [the] motion to dismiss into a motion for summary judgment \* \* \*.' "

(Brackets original.) *Lang v. Enervest Energy Institutional Fund XI A LP*, 2016-Ohio-4844, ¶ 31 (4th Dist.), quoting *Keller v. Columbus*, 2003-Ohio-5599, ¶ 18.

{¶14} In reviewing a Civ.R. 12(B)(6) motion to dismiss, a "court must presume that all factual allegations contained in the complaint are true and must construe all reasonable inferences in favor of the nonmoving party." *Varney v. Allen*, 2017-Ohio-1409, ¶ 15 (4th Dist.), citing *State ex rel. Talwar v. State Med. Bd. of Ohio*, 2004-Ohio-6410, ¶ 5. " 'This standard is consistent with Civ.R. 8(A),

which provides for notice pleading and requires only (1) “a short and plain, statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled.” ’ ’ ”

*Alexander Loc. Sch. Dist. Bd. of Educ.*, 2017-Ohio-8704, at ¶ 24 (4th Dist.), quoting *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 549 (1992), quoting *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143, 144-145 (1991). “Accordingly, a complaint is not ‘fatally defective and subject to dismissal’ simply because it does not set forth each element of a cause of action ‘with crystalline specificity.’ ” *Id.*, quoting *Border City Sav. & Loan Ass’n. v. Moan*, 15 Ohio St.3d 65, 66 (1984).

{¶15} Nevertheless, to survive a motion to dismiss under Rule 12(B)(6), a plaintiff must allege facts that, if accepted as true, are sufficient “to raise a right to relief above the speculative level,” and to state a “claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). A complaint must “ ‘allege sufficient underlying facts that relate to and support the alleged claim, and may not simply state legal conclusions.’ ” *Evans v. Shapiro*, 2019-Ohio-3209, ¶ 18 (4th Dist.), quoting *Henderson v. State*, 2015-Ohio-1742, ¶ 10 (8th Dist.). “ [T]he complaint must contain either direct allegations on every material point necessary to sustain a recovery or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial.” *Evans v. Ohio Att’y Gen.*, 2021-Ohio-1146, ¶ 8 (4th Dist.), quoting *Strahler v. Vessels*, 2012-Ohio-4170, ¶ 10. “ ‘In other words, if there is no hint in the pleadings of proof of a particular point necessary to enable the pleader



to prevail, the pleader has failed to provide the notice required by the rule.’ ” *Id.*, quoting *Vessels*.

## B. Analysis

### 1. App.R. 16

{¶16} Before we begin our analysis of Ward’s assignments of error, we address his abject failure to comply with App.R. 16. We find that Ward’s brief fails to comply with App.R. 16(A)(3)(4) and (7). *None* of Ward’s assignment of errors are linked to any part of the record. His brief also contains no statement of issues or references to the assignment of error to which each statement relates. Finally, his brief lacks arguments containing contentions pertaining to each assignment of error, reasons for those contentions, or again, any citations to the record. Courts of appeals have dismissed or disregarded appeals for failing to comply with App.R. 16. See *Crow v. Fischer* 1986 WL 11409, \* 1 (12th Dist. Sept. 29, 1986) (Because of appellant’s failure to comply with App.R. 16, the court struck Crow’s appeal and affirmed the trial court’s judgment); *McQuaide v. McQuaide*, 2009-Ohio-5162 (9th Dist.) (Due to the App.R. 16 inadequacies of appellant’s brief, the court disregarded his brief and affirmed the trial court’s judgment). Unlike *Crow* and *McQuaide*, we do not dismiss Ward’s complaint based solely on his failure to comply with App.R. 16, but we do find it to be a factor in considering the Civ.R. 12(B)(6) dismissal.

{¶17} Prior to addressing Ward’s assignments of error, we address two jurisdictional matters that Ward has raised in his brief.

## 2. Practice of Law

{¶18} Ward seeks the revocation of the judge and prosecutors' licenses to practice law in this case. "[The Supreme Court] possesses the inherent, original, and exclusive jurisdiction to regulate all matters relating to the practice of law. Section 2(B)(1)(g), Article IV of the Ohio Constitution." *Dayton Bar Assn. v. Parisi*, 2012-Ohio-879, ¶ 23. This includes " '[d]isciplinary actions . . . to admit, disbar, or otherwise discipline attorneys admitted to practice law in the State of Ohio.' " *Disciplinary Couns. v. Lee*, 2016-Ohio-85, ¶ 21, citing *Mahoning Cty. Bar Assn. v. Franko*, 168 Ohio St. 17, (1958), paragraph three of the syllabus.

{¶19} Therefore, to the extent that Ward seeks to have the judge and prosecutors disbarred, his complaint fails to state a claim upon which relief can be granted by any court other than the Supreme Court of Ohio.

## 3. Municipal Court Jurisdiction

{¶20} Ward also asserts that the municipal court lacked jurisdiction over his case. " 'Subject-matter jurisdiction of a court connotes the power to hear and decide a case upon its merits' and 'defines the competency of a court to render a valid judgment in a particular action.' " *Cheap Escape Co. v. Haddox, LLC*, 2008-Ohio-6323, ¶ 6, quoting *Morrison v. Steiner*, 32 Ohio St.2d 86, 87 (1972). A Uniform Traffic Ticket serves as a complaint and summons and invokes the jurisdiction of a municipal court. Traf.R. 3(A); *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 12. Mere " '[e]rrors committed by [a] trial court in making [decisions in a criminal case] are reversible on appeal, but

do not deprive the trial court of its subject matter jurisdiction.’ ” *State v. Couturier*, 2001 WL 1045500, \*4 (10th Dist. Sept. 13, 2001).

{¶21} Ward was issued traffic ticket(s) herein. As we find in resolving Ward’s second assignment of error, his complaint does not assert any valid claims that would deprive the municipal court herein of its jurisdiction to hear his traffic violation(s). Therefore, to the extent that Ward alleges that the municipal court lacked jurisdiction over his case, he fails to state a claim upon which relief could be granted.

#### 4. Assignments of Error

{¶22} To comprehensively address Ward’s appeal, we review each of his assignments of error. However, some of his assignments address no discernable argument. Others are confusing or are not logically organized. Consequently, for ease of analysis, we considered some of Ward’s assignments of error out of order, and others we address as a group.

##### Assignment of Error I

{¶23} In Assignment of Error I, Ward asserts that the court’s dismissal “under Civ. R. 12(B)(6) for failure to state a claim and its concomitant determination that his complaint was frivolousness overlooks a crucial distinction that “failing to state a claim doesn’t necessarily equate to frivolous conduct.”

{¶24} We agree that failing to state a claim upon which relief can be granted, does not necessarily mean that the complaint is also frivolous. However, a complaint may be dismissed under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted because it is frivolous. *See State ex rel.*

*Dodson v. Phipps*, 2024-Ohio-4928, ¶ 12. Thus, the dismissal of a complaint under Civ.R. 12(B)(6) and a finding that a complaint is frivolous are not mutually exclusive actions.

{¶25} Therefore, we overrule Assignment of Error I.

#### Assignment of Error II

{¶26} In Assignment of Error II, Ward claims that “[i]f there are signs that Judge Musick may have acted beyond his judicial role, overemphasizing immunity to dismiss Ward’s claims undermines due process[.]” Ward claimed that Judge “Musick refused to provide Ward what the nature and cause of the actions were against him in violation of the 6th Amendment.” Ward claimed that Judge “Musick entered a not guilty plea on [his] behalf.”

{¶27} “It is a well settled rule that where a judge possesses jurisdiction over a controversy, he is not civilly liable for actions taken in his judicial capacity.” *Barstow v. Waller*, 2004-Ohio-5746, ¶ 15 (4th Dist.). “This is true even where the judge acts maliciously or in excess of his jurisdiction.” *Id.*, citing *Kelly v. Whiting*, 17 Ohio St.3d 91, 93 (1985). “A judge will only be subject to civil liability if (1) the judge’s actions were nonjudicial, or (2) the judge acted ‘in the clear absence of all jurisdiction.’ ” *Id.*, quoting *Mireles v. Waco*, 502 U.S. 9, 11–12 (1991).

{¶28} Judge Musick presided over Ward’s municipal court case until it was dismissed, which is an action taken within his judicial capacity for which he is protected by immunity. To the extent that Judge Musick entered a plea for Ward, Crim.R. 11 provides that “[i]f a defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.” *State v. Barlow*, 2019-Ohio-4384, ¶

12 (4th Dist.). Further, even if Judge Musick committed errors in conducting Ward's trial, and we see no evidence of that, it would not deprive Judge Musick to preside over Ward's case.

{¶29} Therefore, even accepting Ward's assertions are true, Judge Musick's actions or inactions were at most erroneous, and did not deprive him of having authority to preside over Ward's case. Accordingly, we overrule Assignment of Error II.

#### Assignment of Error III

{¶30} In Assignment of Error III, Ward claims that the court erred in dismissing his 42 U.S.C. 1983 claims against the State. He claims that *Hafner v. Melo*, 502 U.S. 21 (1991) "confirms that state officials can be held personally liable for damages in their individual capacities[.]" Ward further argues that State officials qualify as "persons" under 42 U.S.C. 1983 action. Thus, the court's dismissal of this claim must be reconsidered.

{¶31} While a person can act as an agent of the State, the State is not a "person" for purposes of 42 U.S.C. 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). Ward's complaint references the State of Ohio as a "party" on page 14. However, his complaint fails to expressly identify any person who acted as an agent for the State herein, and he cannot otherwise sue the State itself, but this is precisely what he did.

{¶32} Therefore, we find that the trial court did not err in dismissing Ward's claims against the State of Ohio. Accordingly, we overrule Assignment of Error III.

## Assignments of Error IV, V, and VI

{¶33} In Assignments of Error IV, V, and VI, Ward maintains that the trial court erred in dismissing his claims against prosecutors Dupree and Waddell finding them to be immune from suit. He maintains that the prosecutors were not immune from suit for two reasons. First, he claims that both Dupree and Waddell continued to prosecute the case in Municipal Court “after video evidence showed that the claim was baseless.” Second, Ward claims that Dupree violated his rights in retaliation for another case in which he is a party against Ward’s family.

{¶34} “Generally, an employee of a political subdivision has qualified immunity under R.C. 2744.03(A)(6).” *Waller*, 2004-Ohio-5746, ¶ 24 (4th Dist.). “However, R.C. 2744.03(A)(6) specifically provides that this qualified immunity is ‘[i]n addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division.’ ” *Id.* R.C. “2744.03(A)(7) preserves common law immunity for political subdivisions and certain political subdivision employees.” *Id.*

Specifically, R.C. 2744.03(A)(7) states: “The political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant to such person, or a judge of a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.”

*Id.* “Thus, R.C. 2744.03(A)(7) preserves the absolute immunity available to prosecutors at common law.” *Id.*, citing *Woodley v. Anderson*, 2004 WL 426190 (6th Dist. April 21, 2000).

{¶35} “Prosecutors are considered ‘quasi-judicial’ officers.” *Waller* at ¶ 25, quoting *Willitzer v. McCloud*, 6 Ohio St.3d 447, 449 (1983). Accordingly,

“prosecutors are entitled to absolute immunity when their activities are ‘intimately associated with the judicial phase of the criminal process.’ ” *Id.*, citing *Willitzer*, quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). “Thus, a prosecutor has absolute immunity in initiating a prosecution and in presenting the state's case.” *Id.*, citing *Willitzer*, quoting *Imbler*, 424 U.S. at 431. “However, a prosecutor does not have absolute immunity when engaged in investigative and administrative functions.” *Id.*, citing *Willitzer*, quoting *Dellums v. Powell*, 660 F.2d 802, 805 (D.C. Cir. 1981). Consequently, “[w]hen performing these functions, a prosecutor is only entitled to qualified immunity.” *Id.*, citing *Willitzer*.

{¶36} Ward first claims that Dupree and Waddell improperly continued to prosecute the case against him even after the evidence no longer supported the charges made against him. He also claims that Dupree continued to prosecute the case against him in retaliation for another case that he had prosecuted in Gallia County that involved one of Ward’s family members. In both instances, Ward is challenging the validity of the prosecutors’ decision to prosecute and/or continue to prosecute the case against Ward, which is “initiating a prosecution and presenting the state's case” for which prosecutors enjoy absolute immunity. *Waller*, 2004-Ohio-5746 at ¶ 25.

{¶37} Therefore, we find that both Dupree and Waddell are immune from Ward’s claims. Consequently, the trial court did not err in finding that Ward’s claims against the prosecutors failed to state a claim upon which relief could be granted. Accordingly, we overrule Assignment of Error IV, V, and VI.

## Assignment of Error of VII

{¶38} In Assignment of Error VII, Ward asserts that the “potential financial intertwining of the Municipal Court and its participants with a State corporation, may create an appearance of bias as highlighted in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).”

{¶39} In *Caperton*, the Supreme Court held that a judge must recuse himself or herself from a case if there is a significant risk of actual bias due to the influence of campaign contributions. It is unclear how Ward believes *Caperton* applies to this case. And aside from the municipal court it is unclear what party or parties this assignment of error is asserted against. Accordingly, we overrule Assignment of Error VII.

## Assignments of Error VIII, XII, XIII, and XV

{¶40} In Assignment of Error VIII, XII, XIII, and XV, Ward asserts that the court erred in finding that his complaint failed to state a claim against the City of Jackson and its police officers, Police Chief Hinsch and Officer Ross.

{¶41} Regarding Ward’s claims against the City of Jackson, we find immunity applies. “A municipality cannot be held liable under § 1983 simply because it employs a tortfeasor, nor can it be liable ‘for an injury inflicted solely by its employees or agents.’ ” *Kovalchuk v. City of Decherd, Tennessee*, 95 F.4th 1035, 1038 (6th Cir.), quoting *Monel v. Dept. of Soc. Servs. Of New York*, 436 U.S. 658, 694 (1978). “Instead, a municipality may be held liable ‘only for “[its] own illegal acts.” ’ ” (Emphasis original.) *Id.*, quoting *Connick v. Thompson*, 563



U.S. 51, 60 (2011), quoting *Pembaur v. Cincinnati*, 475 U.S. 469, 479 (1986). To properly allege a liability claim against a municipality

a plaintiff must demonstrate one of the following: (1) the existence of an illegal official policy or legislative enactment; (2) that an official with final decision making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom of tolerance or acquiescence federal rights violations.

*Burgess v. Fischer*, 735 F.3d 462, 478 (6th Cir.2013).

{¶42} In the instant case, Ward has not alleged any of these four situations that could justify holding the City of Jackson liable for the actions of its employees. That is, Ward has not alleged there was illegal official policy or legislative enactment to train officers to issue illegal tickets, that there was an official with authority to ratify training officers to give illegal tickets, that there was a policy of inadequate training or supervision to issue illegal tickets, or that the city had a custom of tolerance or acquiescence to issue illegal tickets.

{¶43} Therefore, we find Ward's complaint fails to state a claim against the City of Jackson upon which relief can be granted. Accordingly, we overrule Assignments of Error VIII, XII, XIII, and XV as they pertain to the City of Jackson.

{¶44} Regarding Ward's claims against Officer Ross and Police Chief Hinsch, as set forth in Assignments of Error VIII, XII, XIII, and XV, we find them insufficiently pled. While a complaint requires only a short and plain statement of the claim showing that the party is entitled to relief, it must still allege sufficient underlying facts that relate to and support the alleged claim, and may not simply state legal conclusions." *Shapiro*, 2019-Ohio-3209, ¶ 18 (4th Dist.).

{¶45} Ward’s complaint claimed that Officer Ross executed an illegal traffic stop. “An officer’s decision to stop a vehicle is reasonable when the officer has probable cause or reasonable suspicion to believe that a traffic violation has occurred.” *State v. Netter*, 2024-Ohio-1068, ¶ 14. However, Ward’s complaint fails to allege why Officer Ross lacked probable cause to stop him.<sup>2</sup> Rather, he merely asserts a legal conclusion that the stop was illegal. He similarly alleges mere legal conclusions regarding his other claims (false report, illegal search, and a violation of the separation of powers doctrine) against Officer Ross and Chief Hinsch. We do not accept these “unsupported and conclusory legal propositions” as true. *Sharkin*, 2022-Ohio-1949, ¶ 30 (8th Dist.). Ward has offered “no hint in the pleadings of proof of a particular point necessary to enable [him] to prevail[.]” *Id.*, quoting *Vessels*.

{¶46} Therefore, we find that Ward’s assertions against Officer Ross and Chief fail to state a claim upon which relief can be granted. Consequently, we overrule Assignments of Error VIII, XII, XIII, and XV.

#### Assignments of Error IX, X

{¶47} In Assignment of Error IX, Ward claims that the trial court neglected to address constitutional issues presented by him. In Assignment of Error X, Ward asserts that the trial court erred in dismissing Ward’s “other motions.” We have addressed Ward’s constitutional and other claims raised in his other

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<sup>2</sup> All the criminal law issues that underlie Ward’s civil actions herein would had to have been proven by the State in the criminal case. However, there is no evidence that any of these issues were ever addressed in the underlying criminal case. Consequently, in his civil action herein, Ward bore the burden of proving that the law enforcement officials acted wrongfully.

assignments of error. To the extent he is arguing that additional claims exist, he fails to identify them. Therefore, we overrule Assignments of Error IX and X.

#### Assignment of Error XI

{¶48} In dismissing Ward’s complaint pursuant to Civ.R. 12(B)(6), the trial court ordered Ward to “pay all costs for this frivolous complaint.” In Assignment of Error XI, Ward maintains that the trial court erred in making this order. Essentially, Ward claims that requiring him to pay the court costs is unfair. The only case that he cites is *Perdue v. Kenney A. ex. rel. Winn*, 559 U.S. 542 (2010). *Perdue* addresses the calculation of attorney fees pursuant to 42 U.S.C. 1988. However, 42 U.S.C. 1988(b) provides that a court “may allow the *prevailing* party . . . a reasonable attorney fee[.]” (Emphasis added.).

{¶49} Ward represented himself so he incurred no attorney’s fees. Further, Ward’s case was dismissed so he is not a successful 42 U.S.C. 1983 litigant. Therefore, *Perdue* offers no support for Ward to recover costs.

{¶50} Civ.R. 54(D) provides that “[e]xcept when express provision therefor is made either in a statute or in these rules, costs shall be allowed to the *prevailing party* unless the court otherwise directs.” (Emphasis added.). Courts of appeals review a trial court’s decision to impose costs only for an abuse of discretion. *Langaa v. Pauer*, 2005-Ohio-6295, ¶ 53 (11th Dist.), citing *Gnepper v. Beegle*, 84 Ohio App.3d 259, 263 (3rd Dist. 1992).

{¶51} The appellees were the prevailing party. Ward offers no reason why such an award would be an abuse of the trial court’s discretion, and we find

none. Therefore, we overrule Assignment of Error XI.

#### ASSIGNMENT OF ERROR XIV

{¶52} In Assignment of Error XIV, Ward sets out the law that provides a criminal defendant has a right to counsel, and to understand the charges against them. He also cites the takings clause from the 5th Amendment of the Constitution. Ward merely states that he was not properly informed of the charges that were filed against him in municipal court and that his truck has not been returned to him.

{¶53} Ward fails to elaborate how he was unaware of the charges that were filed against him, or how the takings clause applies to his truck which is merely impounded. Therefore, we overrule Assignment of Error XIV.

#### ASSIGNMENTS OF ERROR XVI and XVII<sup>3</sup>

{¶54} In assignments of error XVI and XVII Ward addresses his impounded truck. Ward asserts that despite paying a \$210 tow and impound fee, the City of Jackson failed to return his truck.

{¶55} The City of Jackson maintains that the \$210 fee was insufficient to release the truck, and Ward had no valid license.

{¶56}. “[A]n appellate court may properly take judicial notice of publicly accessible records, including court documents and dockets, in deciding appeals.” *State v. Kempton*, 2018-Ohio-928, ¶ 17 (4th Dist.); *State v. Estridge*, 2022-Ohio-208, fn. 1 (2d Dist.); *State v. Quinn*, 2024-Ohio-2194, ¶ 12 (8th Dist.). The

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<sup>3</sup> Assignment of error XII appears on page 18 of his brief, and again on page 25. It appears that the assignment of error on page 25 was misnumbered. It should in fact be assignment of error XVII.

docket in Ward's municipal court traffic case indicates that on June 5, 2023, the court dismissed the case and subsequently issued a judgment releasing Ward's vehicle. Thus, the dispute seems to be between Ward and, as Ward named in the complaint, Chief Hinsch, not the municipal court.

{¶57} Chief Hinsch has offered no authority that precludes an individual from filing suit to recover an impounded vehicle, and Ward has pleaded sufficient facts consistent with Civ.R. 8(A) that arguably set out a claim upon which relief could be granted, i.e., he claims that he paid the towing and impound fees. The Chief's claim that Ward had no valid license or registration might operate as a defense to Ward's claim, but it does not preclude Ward from filing suit.

{¶58} Therefore, we find that the court erred in dismissing Ward's claim seeking return of his vehicle. However, we caution that overcoming a Civ.R. 12(B)(6) motion does not necessarily mean that the complainant will prevail on the merits. Therefore, Assignments of Error XVI and XVII are sustained as they pertain to Chief Hinsch.<sup>4</sup>

#### Assignment of Error XVIII

{¶59} In Assignment of Error XVIII, Ward asserts that the trial court failed to address his retaliation claim against prosecutor Dupree for prosecuting Ward as retaliation for being involved in a lawsuit against Ward's family members, citing *Hartman v. Moore*, 547 U.S. 250. In *Hartman*, the plaintiff filed suit "claim[ing] that the prosecutor and the [postal] inspectors had engineered his

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<sup>4</sup> Ward's complaint specifically identified Chief Hinsch as refusing to return his vehicle. Even if Ward had named the city as well, we find it would be immune from suit for the same reasons we stated *infra*, i.e., the city never officially ratified a policy of refusing to release vehicles.

criminal prosecution in retaliation for criticism of the Postal Service, thus violating the First Amendment.” *Id.* at 255. The prosecutors were dismissed from the case because they were immune from suit, while the suit continued against the postal inspectors. This is because if a prosecutor’s “activities [are] intimately associated with the judicial phase of the criminal process[.]” the prosecutor enjoys absolute immunity. *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). Such activities include, when “initiating a prosecution and in presenting the State’s case, the prosecutor is immune from a civil suit for damages under [42 U.S.C.]1983.” *Id.*

{¶60} In the instant case, prosecutor Dupree was prosecuting Ward. Therefore, he is immune from Ward’s suit. Accordingly, we overrule Assignment of Error XVIII.

#### Assignment of Error XIX

{¶61} In Assignment of Error XIX, Ward maintains that the trial court’s denial of his motion for the judge to recuse himself has raised serious concerns about the fundamental tenants of fairness and the rule of law.

{¶62} “R.C. 2701.03 provides the exclusive means by which a litigant can assert that a common pleas judge is biased or prejudiced.” *Patel v Bellaire*, 2012-Ohio-4348, ¶ 43. R.C. 2701.03 states:

If a judge of the court of common pleas allegedly is interested in a proceeding pending before the court, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the court or a party’s counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the court, any party to the proceeding or the party’s counsel may file an

affidavit of disqualification with the clerk of the supreme court in accordance with division (B) of this section.

Thus, an appellate court lacks the authority to pass upon the disqualification of a common pleas court judge or to void the judgment of a trial court on that basis [of bias]. *Id.* at ¶ 44, citing *State v. Ramos*, 88 Ohio App.3d 394, 398 (9th Dist. 1993).

{¶63} Because we have no authority remove a judge from a case, we overrule Assignment of Error XIX.

#### CONCLUSION

{¶64} Therefore, we overrule Assignments of Error I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVIII, and XIX, and sustain assignments of error XVI and XVII. Accordingly, we affirm in part, and reverse in part, and remand the matter for further proceedings consistent with this decision.

**JUDGMENT AFFIRMED IN PART AND REVERSED IN PART AND  
REMANDED.**

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED IN PART AND REVERSED IN PART AND REMANDED FOR FURTHER PROCEEDINGS and the appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Jackson County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: \_\_\_\_\_  
Kristy S. Wilkin, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**