

[Cite as *Coleman v. Cleveland School Dist. Bd. of Edn.*, 2004-Ohio-5854.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NOS. 84274, 84505

KATHY W. COLEMAN :
 :
 Plaintiff-Appellant : JOURNAL ENTRY
 :
 -vs- : AND
 :
 CLEVELAND SCHOOL DISTRICT : OPINION
 BOARD OF EDUCATION, ET AL. :
 :
 Defendants-Appellees :

Date of Announcement
of Decision: NOVEMBER 4, 2004

Character of Proceeding: Civil appeals from
Court of Common Pleas
Case No. 457657

Judgment: Affirmed

Date of Journalization:

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JAMES J. SWEENEY, J.:

{¶ 1} In this appeal, plaintiff-appellant Kathy W. Coleman (“Coleman”) appeals pro se from the judgment of the Cuyahoga County Court of Common Pleas which granted the motions for summary judgment of the defendants-appellees, the Cleveland School District Board of Education (“Cleveland Board”), East Cleveland City School District Board of Education (“East Cleveland Board”), Superintendent Elvin Jones, Director Richard Jenkins, Treasurer Barbara Henry, Alvin Fulton, Sandra Brown, Jill Gaines, Michael Tuttle, Kirk Mack, and Gregg Mossberger (collectively “the defendants”). For the following reasons, we affirm the decision of the trial court.

{¶ 2} On December 27, 2001, Coleman filed a complaint in the Cuyahoga County Court of Common Pleas alleging racial and sexual discrimination, sexual harassment, retaliation, defamation, and interference with business contract.

{¶ 3} Coleman, who is a black female, was hired by the East Cleveland Board in 1998 as a science teacher for Shaw High School. She alleged that she was the target of racially discriminatory treatment when she was relegated to a home economics classroom and a “white female substitute teacher” was given a science classroom. She also alleged that Alvin Fulton, the principal of Shaw High School, sexually harassed her and caused a hostile working environment when he propositioned her for sex and unduly monitored her. Next, she alleged that she was retaliated against by the East Cleveland Board after she complained about Fulton’s advances. Specifically, she alleged that she

was suspended and her teaching contract not renewed by the East Cleveland Board for the 2000-2001 school year. Finally, Coleman alleged that she was defamed by the defendants and that the non-renewal by the East Cleveland Board was the result of tortious interference with contract by the Cleveland Board, for whom she had previously worked and had engaged in litigation with. On February 19, 2002, defendants filed a joint motion for a more definite statement, which was granted by the trial court on May 28, 2002. Coleman was given until June 11, 2002 to file her more definite statement.

{¶ 4} On May 29, 2002, Coleman requested additional time to file her more definite statement, which was granted by the trial court on June 27, 2002. Coleman was given until July 5, 2002 to file her more definite statement.

{¶ 5} On July 5, 2002, Coleman requested an additional extension of time to file her more definite statement, which was denied by the trial court on July 22, 2002. The trial court also dismissed Coleman's complaint at this time.

{¶ 6} On February 27, 2003, this Court reversed the trial court's dismissal and remanded the case for further proceedings, since it was not clear whether Coleman had "received notice, actual or otherwise, that her case was to be dismissed if she failed to file a more definite statement by a date certain."

{¶ 7} On May 29, 2003, the trial court set forth the following deadlines: (1) Coleman to file her more definite statement by June 23, 2003; (2) discovery to be completed by September 27, 2003; and (3) dispositive motions to be filed by October 27, 2003.

{¶ 8} On September 27, 2003, Coleman filed her more definite statement.

{¶ 9} On August 5, 2003, defendants sent their first set of discovery requests to Coleman.

{¶ 10} On August 27, 2003, defendants requested a status conference to address discovery issues because Coleman had allegedly refused to respond to the admissions and interrogatories sent to her. On September 2, 2003, Coleman filed a motion for protective order seeking protection from defendants' discovery requests.

{¶ 11} On October 22, 2003, defendants filed a motion to stay the filing of dispositive motions, since Coleman had failed to respond to their discovery requests, which was denied by the trial court on October 29, 2003.

{¶ 12} On October 31, 2003, defendants filed their motions for leave to file summary judgment instantane in which they maintained that Coleman was suspended and not re-hired as a result of her insubordination at work, and not the sexual harassment complaint filed against Fulton. In addition, defendants maintained that the "white blonde female" that Coleman referred to as receiving preferential treatment was only a temporary employee and not permanently employed at Shaw High School. On December 18, 2003, the trial court ordered Coleman to file her briefs in opposition by January 23, 2004.

{¶ 13} On January 23, 2004, Coleman requested an additional extension of time to file her brief in opposition to defendants' motion for summary judgment.

{¶ 14} On January 29, 2004, the trial court granted defendants' motions for summary judgment.

{¶ 15} On March 3, 2004, Coleman filed an amended motion for relief from judgment pursuant to Civ.R. 61, which was denied by the trial court on March 15, 2004.

{¶ 16} It is from these decisions that Coleman now appeals and raises four assignments of error for our review.

{¶ 17} “I. The lower common pleas court abused its discretion and erred in dismissing plaintiff’s case without prior or proper notice as required per Civ.R. 41(B) and in denying plaintiff’s motion for an extension of time to respond to all defendant’s [sic] motions for summary judgement.”

{¶ 18} In her first assignment of error, Coleman raises two issues with regard to the trial court’s rulings. First, she argues that the trial court erred in dismissing her complaint without notice as required under Civ.R. 41(B).¹ Civ.R. 41(B) is inapplicable here. Coleman’s complaint was dismissed under Civ.R. 56(B) after the trial court considered all of the pleadings and affidavits.

{¶ 19} Next, Coleman argues that the trial court abused its discretion in denying her motion for an extension of time to file her brief in opposition to defendants’ motions for summary judgment.

{¶ 20} Pursuant to Civ.R. 56(F), a party opposing a motion for summary judgment may obtain a continuance pursuant to Civ.R. 56(F) by submitting affidavits which state a factual basis and which provide sufficient reasons for the lack of supporting affidavits and the need for additional time to permit affidavits to be obtained or further discovery to be had. *Gates Mills Investment Co. v. Pepper Pike* (1978), 59 Ohio App.2d 155, 168-169. A trial court has discretion to grant or deny a request for a continuance pursuant to Civ.R. 56(F), and its decision will not be overruled absent an abuse of discretion. *Id.*

{¶ 21} Here, Coleman requested, and was granted, numerous extensions of time since the filing of her complaint on December 27, 2001.² She failed to comply with the trial court’s discovery deadline of September 27, 2003. She also failed to respond to the defendants’ motions for summary

¹Civ.R. 41(B) permits a trial court to dismiss a case with prejudice as long as the affected party has been given notice of the court’s intention.

²For example, Coleman was granted an extension of time in which to file her more definitive statement (see Journal Entry of June 27, 2002) and granted an extension of time in which to respond to the Board’s motion for summary judgment (see Journal Entry of

judgment by the January 23, 2004 deadline. Instead, on that date, she requested an extension of time in which to respond, which was denied by the trial court.

{¶ 22} Under the circumstances presented in this case, we find that Coleman has failed to establish that the trial court abused its discretion by denying her request for an extension. First, her request was filed on the day her motion was due. Second, the request was one of many motions filed by her that demonstrated a pattern of missing established deadlines and intentionally causing delay.³ And, third, her motion was not accompanied by a Civ.R. 56(F) affidavit. See *State ex rel. Coulverson v. Ohio Adult Parole Auth.* (1991), 62 Ohio St.3d 12, 14 (a court can not act pursuant to Civ.R. 56(F) where no affidavit is presented to support the request for an extension). Based on all of these factors, we cannot say the trial court's decision was arbitrary, unreasonable or unconscionable.

{¶ 23} Coleman's first assignment of error is overruled.

{¶ 24} "II. The lower common pleas court abused its discretion and erred in permitting defendants to file motions for summary judgement and in granting summary judgement to all defendants prior to ensuring or permitting adequate discovery particularly wherein the lower court refused to address plaintiff's motion for a discovery protective order as well as defendant's motion for a status conference on discovery prior to summary judgement."

{¶ 25} In her second assignment of error, Coleman raises two other issues with regard to the trial court's rulings. First, she argues that the trial court abused its discretion in allowing the defendants' to file their motions for summary judgment after the court's deadline had passed.

December 18, 2003).

³Indeed, this Court noted that Coleman's conduct "appears to be dilatory and contumacious." See *Coleman v. Cleveland School District Board of Education* (Feb. 27, 2003), Cuyahoga App. Nos. 81674, 81811.

{¶ 26} The granting of leave to file an untimely motion for summary judgment is discretionary with the trial court. *Brinkman v. City of Toledo* (1992), 81 Ohio App.3d 429, 432. Here, the motions were filed four days after the court's deadline. However, on October 22, 2003, five days prior to the deadline, the defendants had filed a motion to stay the filing of the dispositive motions because of Coleman's failure to comply with discovery. Under these circumstances, we perceive no abuse of discretion in allowing the untimely motions to be filed, nor do we perceive that the timing of the motions caused any prejudice to Coleman.

{¶ 27} Next, Coleman argues that the trial court improperly granted summary judgment to the defendants prior to resolving the discovery issues.

{¶ 28} Where discovery proceedings would not, if allowed to proceed, aid in the establishment or negation of facts relating to the issue to be resolved, it is not an abuse of discretion for a court to grant a motion for summary judgment before such proceedings are completed. *Kupczyk v. Kuschnir* (July 27, 2000), Cuyahoga App. No. 76614.

{¶ 29} Here, the trial court set a discovery deadline of September 27, 2003. Coleman did not respond to the defendants' discovery requests by this time. More importantly, she did not serve any discovery requests upon the defendants either. Indeed, she did not request any additional time to obtain discovery until nearly three months later, on January 23, 2004, when she filed her motion for extension of time to respond to defendants' motions for summary judgment and requested additional time to complete discovery. Based on the procedural history of this case, we cannot say that the trial court abused its discretion in granting defendants' motions for summary judgment prior to resolving the discovery issues.

{¶ 30} Coleman's second assignment of error is overruled.

{¶ 31} “III. The lower common pleas court abused its discretion and erred in granting summary judgement to all defendants in violation of Civ.R. 56 and otherwise, particularly wherein genuine issues of material fact upon which relief can be granted to plaintiff exists, wherein defendant East Cleveland City School District waived any opportunity to raise res judicata or other affirmative defenses by failing to file an answer to plaintiff’s more definite statement and wherein defendant East Cleveland City School District Board of Education and the individual East Cleveland defendants filed double motions for summary judgement with non-original and fraudulent affidavits and fraudulent exhibits attached.”

{¶ 32} In this assignment of error, Coleman claims that the trial court erred in granting summary judgment in favor of defendants because genuine issues of material fact existed concerning her claims for race discrimination, sexual harassment, retaliation, defamation, and negligent/intentional interference with contract. She also claims that the defendants attached fraudulent affidavits and exhibits to their motions for summary judgment.

{¶ 33} An appellate court reviews a trial court's grant of summary judgment de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. "De novo review means that this court uses the same standard that the trial court should have used, and we examine the evidence to determine if as a matter of law no genuine issues exist for trial." *Brewer v. Cleveland City Schools* (1997), 122 Ohio App.3d 378, citing *Dupler v. Mansfield Journal* (1980), 64 Ohio St.2d 116, 119-120.

{¶ 34} Summary judgment is appropriate where it appears that: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed

most strongly in his favor. *Harless v. Willis Day Warehousing Co., Inc.* (1978), 54 Ohio St.2d 64, 66; Civ.R. 56(C).

{¶ 35} The burden is on the movant to show that no genuine issue of material fact exists. *Id.* Conclusory assertions that the nonmovant has no evidence to prove its case are insufficient; the movant must specifically point to evidence contained within the pleadings, depositions, answers to interrogatories, written admissions, affidavits, etc. which affirmatively demonstrate that the nonmovant has no evidence to support his claims. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293; Civ.R. 56(C). Unless the nonmovant then sets forth specific facts showing there is a genuine issue of material fact for trial, summary judgment will be granted to the movant.

{¶ 36} With these principles in mind, we proceed to consider whether the trial court's grant of summary judgment in defendants' favor was appropriate.

A. Race and Sex Discrimination

{¶ 37} To set forth a prima facie case of race and/or sex discrimination, Coleman must show: (1) she is a woman and a member of a racial minority; (2) she was discharged and/or not hired for positions; (3) she was qualified for the positions; and (4) that the non-hiring of plaintiff enabled defendants to hire men and/or white people. *Brewer v. Cleveland Bd. of Ed.* (1997), 122 Ohio App.3d 378.

{¶ 38} Once a prima facie case of discrimination is established, the employer may overcome the presumption by coming forward with a legitimate, nondiscriminatory reason for the discharge. *Kohmescher v. Kroger Co.* (1991), 61 Ohio St.3d 501. The employee must then present evidence that the employer's proffered reason was a mere pretext for unlawful discrimination. *Manofsky v. Goodyear Tire & Rubber Co.* (1990), 69 Ohio App.3d 663, 668. The employee's burden is to prove that the employer's reason was false and that discrimination was the real reason for the discharge.

Wagner v. Allied Steel & Tractor Co. (1995), 105 Ohio App.3d 611, 617. Mere conjecture that the employer's stated reason is a pretext for intentional discrimination is an insufficient basis for the denial of a summary judgment motion made by the employer. To meet his or her burden in response to such a summary judgment motion, the plaintiff must produce some evidence that the employer's proffered reasons were factually untrue. *Powers v. Pinkerton, Inc.* (Jan. 18, 2001), Cuyahoga App. No. 76333.

{¶ 39} Here, Coleman has failed to demonstrate a prima facie case of race and sex discrimination. While she arguably has established the first, second and third element, *i.e.*, she is a woman, she is black, was suspended and ultimately not re-hired, and was qualified for the position, she has failed to demonstrate that the position held by her was given to a male or a white person. A review of the record reveals that the “white blonde female substitute teacher” only received a substitute teaching contract and was not permanently assigned a “better” classroom than Coleman.

{¶ 40} Moreover, Coleman’s allegations that the “white substitute teacher” was: (1) allowed to report to school mid-day at full salary (2) received a computer and telephone and (3) taught upper level course assignments even though she only had a bachelor’s degree, are completely unsupported.

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of her pleadings, but her response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. *State, ex rel. Garfield Heights, v. Nadratowski* (1976), 46 Ohio St.2d 441, 442-443. Unsupported allegations in opposition to a motion for summary judgment are insufficient to require denial of the motion. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶ 41} Here, Coleman failed to present any specific facts, beyond the allegations in her pleadings, to support her allegations that male teachers and white teachers received preferential treatment. Absent some factual response, by affidavit or as otherwise provided by Civ.R. 56, there is no issue to determine and the conclusion that Coleman was not racially or sexually discriminated against was proper.

{¶ 42} Moreover, both the disciplinary hearings and suspensions were conducted and implemented by two black females and the East Cleveland School Board, which ultimately decided not to renew Coleman's contract, is comprised of five black females. Clearly, Coleman has not raised an inference that defendants treated her differently and that she was subject to adverse action because she is a woman and black.

{¶ 43} Even assuming arguendo that Coleman could establish a prima facie case, defendants have established legitimate non-discriminatory reasons for its actions, which she cannot show to be pretextual. Specifically, defendants have presented substantial evidence that Coleman was disciplined on numerous occasions because her attitude was disruptive and inappropriate. She refused to allow school administrators to conduct visitations in her classrooms, she argued with and threatened other staff members, and disobeyed administrative orders. Defendants have presented substantial evidence that Coleman's suspension and non-renewal was based on her hostile attitude towards her co-workers and supervisors, her insubordination at work, and her numerous disciplinary problems including several suspensions. Accordingly, the trial court did not err in granting defendants' motions for summary judgment on Coleman's claim for race and sex discrimination.

{¶ 44} Sexual Harassment

{¶ 45} R.C. 4112.02(A) makes it an unlawful discriminatory practice for any employer, because of the sex of any person, to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or

{¶ 46} indirectly related to employment. This includes subjecting the employee to sexual harassment. *Peterson v. Buckeye Steel Casings* (1999), 133 Ohio App.3d 715, 723.⁴

{¶ 47} In order to establish a claim of hostile-environment sexual harassment, Coleman must show “(1) that the harassment was unwelcome, (2) that the harassment was based on sex, (3) that the harassing conduct was sufficiently severe or pervasive to affect the ‘terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment,’ and (4) that either (a) the harassment was committed by a supervisor, or (b) the employer, through its agents or supervisory personnel, knew or should have known of the harassment and failed to take immediate and appropriate corrective action.” *Hampel v. Food Ingredients Specialties, Inc.* (2000), 89 Ohio St.3d 169, 176-77.

{¶ 48} Not all workplace conduct that can be construed as having sexual overtones can be characterized as harassment forbidden by the statute. *Mentor Savings Bank v. Vinson* (1986), 477 U.S. 57, 67. Rather, the conduct complained of must be severe or pervasive enough to create an environment that not only the victim subjectively regards as abusive but also a reasonable person would find hostile or abusive. *Harris v. Forklift Systems, Inc.* (1993), 510 U.S. 17, 21-22. Pursuant to this standard, conduct that is merely offensive is not actionable. *Id.* at 21.

⁴In Ohio, "federal case law interpreting Title VII of the Civil Rights Act of 1964, Section 2000(e) et seq., Title 42, U.S.Code, is generally applicable to cases involving alleged violations of R.C. Chapter 4112." *Little Forest Med. Ctr. v. Ohio Civ. Rights Comm.* (1991), 61 Ohio St.3d 607, 609-610.

{¶ 49} The court must examine the circumstances surrounding the conduct and must consider them within the framework of several factors to determine if the conduct is actionable.

These factors include the following:

{¶ 50} “(1) the conduct's frequency;

{¶ 51} “(2) the conduct's severity;

{¶ 52} “(3) whether the conduct is physically threatening or humiliating; and

{¶ 53} “(4) whether the conduct unreasonably interferes with the victim's work performance.” *Id.* at 23.

{¶ 54} With these factors in mind, we conclude that Principal Fulton’s behavior, if believed, was not severe or pervasive and did not unreasonably interfere with Coleman’s work performance.

{¶ 55} In her amended complaint, Coleman complains of approximately five instances of Fulton’s conduct toward her: (1) undue monitoring of her classes; (2) demands for sex; (3) constant requests for private meetings; (4) an unsolicited and rejected offer to “get ahead if you would just lay low;” and (5) a request to take a “professional out of town trip” with him under the guise of an educational junket.

{¶ 56} A review of the record reveals that Coleman failed to present any evidence, beyond the allegations in her pleadings, to support her claim that any of these events occurred. In contrast, defendants have supplied proof that both the Director of Personnel, a male, and the Assistant Superintendent, a woman, investigated Coleman’s sexual harassment claims and found them to be without merit. Absent some factual response, by affidavit or as otherwise provided by Civ. R. 56, there is no issue to determine and the conclusion that Coleman was not sexually harassed by Fulton was proper.

{¶ 57} Retaliation

{¶ 58} To prove a claim of retaliation, Coleman must establish three elements: (1) that she engaged in protected activity, (2) that she was subjected to an adverse employment action, and (3) that a causal link exists between a protected activity and the adverse action. *Peterson v. Buckeye Steel Casings* (1999), 133 Ohio App.3d 715, 727.

{¶ 59} Once an employee successfully establishes a prima facie case, it is the employer's burden to articulate a legitimate reason for its action. *Id.* If the employer meets its burden, the burden shifts back to the employee to show that the articulated reason was a pretext. *Id.*

{¶ 60} Here, Coleman's pursuit of her discrimination claims⁵ against the defendants and her sexual harassment claim⁶ against Fulton constituted protected activity. See *Collins v. Rizkana* (1995), 73 Ohio St.3d 65. Coleman claims the following conduct was retaliatory: she received numerous suspensions and her teaching contract was not renewed.

{¶ 61} Assuming arguendo that Coleman has established a prima facie case of retaliation, defendants have articulated several legitimate business reasons for suspending Coleman and not renewing her teaching contract.

{¶ 62} First, defendants submit evidence that each of Coleman's suspensions were a result of her insubordination. In January 1999, she was counseled with regard to her improper conduct and attitude at work. In November 1999, she refused to allow the assistant principal to conduct a classroom visitation. In December 1999, she made threatening comments to that same assistant principal which resulted in a police complaint being filed against her. Also, in December 1999, she got into an argument with the associate principal, and refused to leave her office. As a result of these

⁵The Complaint and the EEOC charge filed on May 23, 2000.

⁶The EEOC charge filed in January 1999.

incidents, she was suspended in February 2000 for three days. In January 2000, plaintiff refused to allow another school administrator to conduct a classroom visitation. In February 2000, she got into an argument with that same school administrator after he conducted a formal observation of her. In March 2000, she was counseled by the principal with regard to this incident. Also, in March 2000, she changed her room assignment for proficiency testing despite being told by the administration that she could not do so. As a result of these incidents, she was suspended in March 2000 for five days without pay and for the rest of the school term with pay. Next, defendants offer evidence that the Superintendent recommended to the School Board that it not re-employ Coleman upon the expiration of her limited teaching contract because of her improper and disruptive behavior over the previous two school terms.

{¶ 63} Faced with summary judgment, Coleman failed to offer any evidence that any of these justifications for her suspension and non-renewal were pretext and, moreover, failed to even raise an inference that retaliation actually motivated these decisions. *Powers v. Pinkerton*, supra. Accordingly, the trial court did not err in granting defendants' motions for summary judgment on the claim for retaliation.

{¶ 64} Intentional Torts (Defamation and Intentional Interference with Contract)

{¶ 65} In counts five and six of her amended complaint, Coleman alleges that the defendants intentionally/negligently interfered with her teaching contract when it failed to renew her contract and defamed her when it placed the instances of her alleged insubordination into her file and into the briefs before the courts.

{¶ 66} A public school is a political subdivision and the operation of a public school is a governmental function. See R.C. 2744.01(C)(2)(c) and (F). Except as provided in R.C. 2744.02(B), a political subdivision is not liable for civil damages. R.C. 2744.02(A)(1). Of the five exceptions

found in R.C. 2744.02(B), only one could be applicable here. Specifically, R.C. 2744.02(B)(2) establishes liability of political subdivisions for injuries caused by negligent acts performed by employees with respect to proprietary functions. However, there is no such general exception for governmental functions. Thus, except as specifically provided in R.C. 2744.02(B)(1), (3), (4), and (5), with respect to governmental functions, political subdivisions retain their cloak of immunity from lawsuits stemming from employees' negligent or reckless acts. *Wilson v. Stark Cty. Dept. of Human Serv.* (1994), 70 Ohio St.3d 450. Coleman's claims of defamation and interference with business contract are both intentional torts and her allegations do not fall within any of the exceptions to immunity set forth in R.C. 2744.02(B). Accordingly, the East Cleveland School Board and the Cleveland School Board are entitled to immunity from Coleman's tort claims and the trial court did not err in granting their motions for summary judgment on the claims for defamation and interference with contract.

{¶ 67} The other defendants, the School employees and School Board members, are also immune from tort liability. Under R.C. 2744.03(A)(6), political subdivision employees acting within the scope of their employment are immune from tort liability as long as they do not act "with malicious purpose, in bad faith, or in a wanton or reckless manner."

{¶ 68} Here, the defendants asserted that Coleman did not have any evidence that any employee or Board member acted with malicious purpose, in bad faith, or in a reckless manner. Defendants maintain that all of the actions taken by its employees and Board members were in good faith and within the scope of their employment. Because Coleman failed to support her allegations with any evidence of improper motive on the part of the employees or Board members, we cannot conclude that she raised an inference of malicious purpose, bad faith, or recklessness. Accordingly, the employees and Board members are immune from tort liability and the trial court properly granted

summary judgment on Coleman's tort claims because R.C. 2744 grants immunity to political subdivisions and their employees against such claims. See *LRL Properties v. Portage Metropolitan Housing Authority* (Dec. 17, 1999), Portgage App. No. 98-P-0070.

{¶ 69} Fraudulent Affidavits

{¶ 70} Coleman alleges that summary judgment was improperly granted because the defendants' filed non-original, fraudulent affidavits and exhibits. There is no evidence to support this allegation. Attached to the defendants' motions for summary judgment are affidavits sworn to by a notary public and based on first-hand knowledge of the affiants. The trial court properly considered all of the pleadings, affidavits and exhibits before granting summary judgment pursuant to Civ.R. 56.

{¶ 71} The third assignment of error is overruled.

{¶ 72} "IV. The lower common pleas court abused its discretion and erred in denying plaintiff's motions/amended motions for correction of record and relief from judgement, particularly in the absence of a hearing on plaintiff's Civ.R. 60(B)(1-5) motion/amended motion for relief from judgement."

{¶ 73} In this assignment of error, Coleman argues that she is entitled to a correction of the record pursuant to Civ.R. 60(A) because the trial court made clerical errors in three of its journal entries. Specifically: (1) the journal entry dated December 18, 2003 erroneously states that the defendant's motion for summary judgment was filed on September 3, 2003 instead of the actual filing date of July 28, 2003; (2) the journal entry dated December 18, 2003 erroneously names the "City of Cleveland" rather than the "Cleveland School District Board of Education" as a party; and (3) the journal entry dated January 30, 2004 erroneously states that the "Motion of Cleveland School District Board of Education-et al. (filed 7/28/03) for summary judgment in unopposed and granted"

when the motion was filed solely by the Cleveland Board and not “et al.” We find that Coleman is unable to show any prejudice resulting from these clerical errors. Quite simply, Coleman cannot show how these errors prohibited her from complying with the discovery schedule or filing a timely brief in opposition to the defendants’ motion for summary judgment. The record is clear that Coleman was aware that discovery was to be completed by September 27, 2003 and that her response to the defendants’ motions for summary judgment were due on January 23, 2004. Indeed, she requested additional time to respond to these motions on January 23, 2004, the very day that her responses were due. Accordingly, the trial court did not err in denying her request for correction of the record pursuant to Civ.R. 60(A).

{¶ 74} Next, Coleman claims that it was error for the trial court to not conduct a hearing on her motion to vacate and further that it was error for the trial court to deny her motion to vacate.

{¶ 75} In order to prevail on a Civ.R. 60(B) motion for relief from judgment, the moving party bears the burden to demonstrate that (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146. The failure to demonstrate all of the above requirements will result in a denial of his request for relief. The decision whether to grant relief from judgment lies within the discretion of the trial court. *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 20.

{¶ 76} In order to merit a hearing and prevail, a motion under Civ.R. 60(B) must be accompanied by a memorandum of facts and law and evidentiary materials containing operative facts which would warrant relief under the rule. *Adomeit v. Baltimore* (1974), 39 Ohio App.2d 97. The allegation of operative facts must be of such evidentiary quality as affidavits, depositions, answers to

interrogatories, written admissions, written stipulations, or other sworn testimony. *East Ohio Gas Co. v. Walker* (1978), 59 Ohio App.2d 216. Unsworn allegations of operative facts contained in a motion for relief from judgment filed under Civ.R. 60(B) or in a brief attached to the motion are not sufficient evidence upon which to grant a motion to vacate judgment. *Id.*

{¶ 77} Here, Coleman failed to put forth sufficient substantive evidence demonstrating that she is entitled to relief. Other than her allegations that defendants engaged in racial and sexual discrimination, sexual harassment, retaliation, defamation, or interference with business contracts, she has produced no evidence, and no sworn statements to substantiate her allegations. Broad conclusory statements do not satisfy the requirement that a Civ.R. 60(B) motion must be supported by operative facts that would warrant relief from judgment. *Spivey v. Spivey* (Dec. 19, 1991), Cuyahoga App. No. 61865. Accordingly, we find that the first prong of the *GTE* test is not satisfied.

{¶ 78} Coleman also fails to satisfy the second prong of *GTE*. She claims she is entitled to relief under the excusable neglect provision of section (1). However, we find that her conduct throughout these proceedings demonstrates a “complete disregard for the judicial system” and is not the type intended covered by this provision. She was provided with numerous opportunities by the trial court to comply with the established deadlines and consistently failed to do so. Since Coleman failed to provide evidence of operative facts, which demonstrate a meritorious claim, and also failed to provide a sufficient basis for excusable neglect within the meaning of Civ.R. 60(B)(1), we find that the trial court did not err in denying her motion for relief from judgment.

{¶ 79} Finally, with regard to the trial court's failure to conduct a hearing on Coleman's motion, we again find no error. If the motion for relief fails to allege operative facts that would warrant relief, the court need not conduct a hearing. *Weiss, Inc. v. Pascal*, Cuyahoga App. No.

82565, 2003-Ohio-5824. Inasmuch as we have found that Coleman failed to present such facts, the trial court did not abuse its discretion in failing to hold a hearing.

{¶ 80} The fourth assignment of error is overruled.

Judgment affirmed.

It is ordered that appellees recover of appellant their costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

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

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

MICHAEL J. CORRIGAN, A.J., and

FRANK D. CELEBREZZE, JR., J., CONCUR.

JAMES J. SWEENEY
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. 112, Section 2(A)(1).