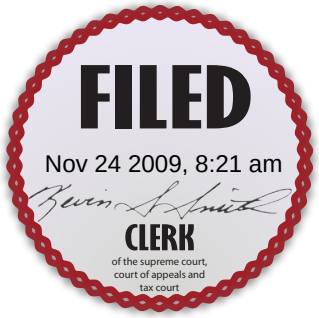

ATTORNEY FOR APPELLANTS:

DARREN WILLIAMS
Logansport, Indiana

ATTORNEY FOR APPELLEES:

KELLY LEEMAN
Logansport, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DARREN D. WILLIAMS and TONYA WILLIAMS,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 09A02-0905-CV-414
CITY OF LOGANSPORT, LOGANSPORT PLAN COMM'N, CASS COUNTY SHERIFF'S DEP'T, LARRY FREY, ANDREW D. EMMONS, TAMARA P. EMMONS, RICHARD BRIGGS, JANICE BRIGGS and CASS COUNTY BD. OF COMM'RS,	)	
Appellees-Defendants.	)	

APPEAL FROM THE CASS SUPERIOR COURT
The Honorable Thomas C. Perrone, Judge
Cause No. 09D01-0509-PL-21

November 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Darren and Tonya Williams, pro se,[1] appeal the trial court's order declining to award damages in their action against the City of Logansport and the Cass County Sheriff's Department (the "Department") to quiet title and for slander of title.

We affirm.

ISSUE

Whether the trial court erred in not awarding damages to the Williamses.

FACTS

In December of 1999, the Logansport/Cass County Plan Commission (the "Commission") preliminarily approved Jerry and Maria McCoy's proposed subdivision in Cass County, to be known as Pinto Point. Subsequently, the McCoys requested permission to complete the subdivision in two phases.

For the first phase ("Phase 1"), the McCoys proposed a paved north-south street, called Jerry Way Court, with two lots, Lot 1 and Lot 2, on the east side of the street. These two lots and the street were to be located in the southeast corner of the McCoys' property. The proposal for Phase 1 also included Lot 12, which consisted of one and one-

[1] We note that the Williamses' brief fails to comply with Indiana Appellate Rule 46(A)(4)-(8). Furthermore, they have failed to file an appendix. Thus, they have not provided this Court with the trial court's chronological case summary or any pleadings. *See* Ind. Appellate Rule 50. "It is well settled that pro se litigants are held to the same standard as are licensed lawyers." *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005).

quarter acres, located in the southwest corner of the McCoys' property; and Lot 11, which consisted of the McCoys' existing residence and approximately six acres, located between Jerry Way Court on the east and Lot 12 on the west.

For the second phase ("Phase 2"), the McCoys proposed an additional eight lots, located north of Phase 1. Phase 2 therefore would encompass the north half of the McCoys' property. This proposal would require the eventual extension of Jerry Way Court to the north, ending in a permanent cul-de-sac.

In 2000, the Commission agreed to allow the phased development of the subdivision. They conditioned the approval upon the construction of "a satisfactory temporary turnaround," at the north end of Jerry Way Court, as required by the Subdivision Control Ordinance (the "Ordinance") for the City of Logansport and its fringe area. (Ex. B). Specifically, section 511.08 of the Ordinance provided as follows:

> If an adjacent property is undeveloped and a street must be a dead-end temporarily, the right-of-way shall be extended to the property lines . . . . A temporary cul-de-sac shall be provided on all temporary dead-end streets, with the notation on the subdivision plat that land outside the normal street right-of-way shall revert to abutters whenever the street is continued. Temporary dead-end streets shall also meet the following additional standards.
>
> A. The minimum right-of-way diameter of a temporary turnaround shall be 80 feet, and the minimum travel surface diameter shall be 60 feet.
>
> B. A temporary turnaround shall be constructed of at least 6 inches stone.
>
> C. A temporary turnaround shall not exceed 1000 feet in length . . . .

(Ex. C). Furthermore, section 605 of the Ordinance provided that "[f]ailure, by any person, to abide by any provision of this Ordinance shall be deemed a violation of this Ordinance and shall be guilty of a Class C Infraction." *Id.*

The McCoys eventually completed Phase 1 of the development but never started Phase 2. Thus, Jerry Way Court only extended as far north as necessary to serve Lots 1 and 2. As the property to the north remained undeveloped, the McCoys included a gravel turnaround at the north end of Jerry Way Court, per section 511.08 of the Ordinance. The turnaround extended onto the adjacent property.

At some point, the McCoys sold Lot 12. On or about April 26, 2005, they sold their remaining property (the "Property"), consisting of approximately sixteen acres, to the Williamses. The Property included Lot 11 as well as the ten acres to the north of Phase 1; these ten additional acres would have been Phase 2 had it been developed.

Jerry McCoy informed the Williamses that the Property included the gravel turnaround located at the north end of Jerry Way Court. Before purchasing the Property, the Williamses reviewed the recorded plat for Phase 1 of Pinto Point. Although the recorded plat referred to a cul-de-sac to be maintained by the subdivision's homeowners' association, it did not depict a cul-de-sac or turnaround on Jerry Way Court. Rather, it depicted a straight boundary line, running east to west at the north end of Jerry Way Court.

The Williamses used the turnaround as a parking area for their farm equipment and horse trailer. They also rented portions of it for trailer parking. On or about August

23, 2005, however, the Williamses received a letter from Gary Scagnoli, the zoning administrator for the Commission. The letter informed the Williamses that parking vehicles in the turnaround was prohibited pursuant to the city ordinance, which provides that "[a] temporary cul-de-sac shall be provided on all temporary dead-end streets[.]" (Ex. 6). He further notified the Williamses that the "turnaround must remain open just as a county road." *Id.* Scagnoli also sent a copy of the letter to the Department. Subsequently, the Department began ticketing the vehicles parked in the turnaround.

At some point, the Williamses filed a complaint against, among others, the City of Logansport and the Department, to quiet title and for slander of title; however, the McCoys were not a party to the lawsuit. The trial court commenced a bench trial on March 5, 2008, which it continued to July 23, 2008, and again to January 7, 2009. Tonya Williams testified that a deputy from the Department had threatened her with arrest if she and her husband refused to move the vehicles parked in the turnaround. Darren Williams testified that they had been collecting approximately thirty-five dollars per month in rent in exchange for allowing neighbors to park horse trailers in the turnaround.

On April 6, 2009, the trial court entered its order. Finding the Williamses to be "bona fide purchasers for value of that real estate without actual or constructive notice of a permanent or temporary public right of way or right of easement to a portion" of the Property, the trial court quieted title in the Williamses. Williamses' Br. at 13. The trial court also found and ordered, in pertinent part, as follows:

> The complaint asserts actions by the . . . Department with respect to vehicles that were parked on the disputed property. The complaint asserts that the [Commission] should be responsible to plaintiffs for slander of title. The complaint alleges that an officer of the . . . Department threatened plaintiff Tonya Williams with arrest for parking vehicles on the disputed property. With respect to the tort claims against the City of Logansport and Cass County, the Court determines that the governmental entities are immune as set out in I.C. 34-13-3-3 for the matters set out in plaintiffs' complaint.

Williamses' Br. at 13-14.

DECISION

The Williamses assert that the trial court erred in not awarding damages to them.[2]

> [W]e will affirm a general judgment upon any legal theory consistent with the evidence. In making that determination, we will neither reweigh the evidence nor judge the credibility of the witnesses. When reviewing a general judgment, we presume that the trial court correctly followed the law, and this presumption is one of the strongest presumptions applicable to our consideration of a case on appeal.

Lynn v. Windridge Co-Owners Ass'n, Inc., 830 N.E.2d 950, 954-55 (Ind. Ct. App. 2005).

1. Immunity

The Williamses assert that the trial court erred in finding that the Department is entitled to governmental immunity under the Indiana Tort Claims Act (the "Act"). *See* Ind. Code § 34-13-3-1 *et seq*. They contend that they "would have been arrested" had

[2] The Williamses have failed to set forth a cogent argument. Failure to put forth a cogent argument acts as a waiver of the issue on appeal. *Lasater v. Lasater*, 809 N.E.2d 380, 389 (Ind. Ct. App. 2004). We will not become an advocate for a party, and we will not address arguments that are too poorly developed or improperly expressed to be understood. *Id.* Waiver notwithstanding, we shall address the Williamses' arguments to the extent possible.

they not ceased parking on the turnaround and were "humiliated" by the Department. Williamses' Br. at 9, 10.

The Act governs tort claims against governmental entities and public employees. *Gary Cmty. Sch. Corp. v. Boyd*, 890 N.E.2d 794, 799 (Ind. Ct. App. 2008), *trans. denied*. Pursuant to the Act, governmental entities and public employees are liable for tortuous conduct unless the conduct is granted immunity under Section 3 of the Act. *Id.* "The party claiming immunity bears the burden of establishing that its conduct comes within the [Act]." *Id.* at 800. Whether the party is immune from liability under the Act is a question of law. *Madden v. Indiana Dep't of Transp.*, 832 N.E.2d 1122, 1126 (Ind. Ct. App. 2005). "We review questions of law de novo, such that we give no deference to the trial court's determination of the issue." *Id.*

The Act provides that a governmental entity or its employee, acting within the scope of his or her employment, is not liable for the "adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment." I.C. § 34-13-3-3(8). "For purposes of Indiana Code Section 34-13-3-3(8), 'enforcement' has been defined as 'those activities in which a government entity or its employees compel or attempt to compel the obedience of another to laws, rules or regulations, or sanction or attempt to sanction a violation thereof.'" *Savieo v. City of New Haven*, 824 N.E.2d 1272, 1275 (Ind. Ct. App. 2005) (quoting *Miller v. City of Anderson*, 777 N.E.2d 1100, 1104 (Ind. Ct. App. 2002), *trans. denied*), *trans. denied*.

In this case, the Department received notice from the Commission that the Williamses were violating the Ordinance by blocking the turnaround. It therefore began ticketing vehicles parked in the turnaround; at no time did its deputies arrest or imprison the Williamses. Given that the Department was enforcing the Ordinance and attempting to compel compliance, we find no error in determining that the Department is entitled to immunity under the Act.

2. Slander of Title

The Williamses also assert that the trial court erred in not awarding damages against the City of Logansport for slander of title pursuant to Indiana Code section 32-20-5-2. We disagree.

As the Williamses had the burden of proof on the slander of title issue, they are appealing from a negative judgment. *See Hossler v. Hammel*, 587 N.E.2d 133, 134 (Ind. Ct. App. 1992). "Therefore, to be successful, they must establish that the judgment is contrary to law." *Id.*

Indiana Code section 32-20-5-2 provides that "[i]n any action to quiet title to land, if the court finds that a person has filed a claim only to slander title to the land, the court shall" award the plaintiff costs, attorney's fees, and "damages that the plaintiff may have sustained as the result of the notice of claims having been filed for record."

> To succeed on a claim for slander of title, the plaintiff must prove that false statements were made, with malice, and that the plaintiff sustained pecuniary loss as a necessary and proximate result of the slanderous statements. The essence of slander of title is the making of an unfounded claim concerning the ownership or security interest in property of another

> that results in financial loss to the rightful owner. Malicious statements are those made with knowledge of their falsity or with reckless disregard for whether they are false.

Isanogel Ctr., Inc. v. Father Flanagan's Boys' Home, Inc., 839 N.E.2d 237, 245 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied*.

Here, Scagnoli testified that under section 511.08 of the Ordinance, the City of Logansport required the McCoys to install a turnaround "to the north of lots 1 and 2 at the end of the plated street." (Tr. 188). He further testified that the turnaround was necessary to give emergency vehicles and school buses room to turn around on Jerry Way Court and that the Department ticketed the Williamses' vehicles for blocking the turnaround. He also testified that in the event no further development of the Property took place, a permanent cul-de-sac would be required under the Ordinance, unless the Williamses received a variance.

The Williamses did not present evidence that the City of Logansport, by its employees, made statements concerning ownership of the Property with the knowledge, or in reckless disregard, of their falsity. As the Williamses failed to meet their burden of proving the elements necessary to prevail on their slander of title claim, we find no error in failing to award damages pursuant to Indiana Code section 32-20-5-2.

Affirmed.

ROBB, J., and MATHIAS, J., concur.