

STATE OF MICHIGAN
COURT OF APPEALS

ANNIE FAILS,

Plaintiff-Appellee,

v

S. POPP,

Defendant-Appellant,

and

CITY OF DEARBORN HEIGHTS and
DEARBORN HEIGHTS POLICE
DEPARTMENT,

Defendants.

UNPUBLISHED

October 5, 2004

No. 247743

Wayne Circuit Court

LC No. 02-210654-NO

Before: Saad, P.J., and Talbot and Borrello, JJ.

BORRELLO, J. (*concurring in part and dissenting in part*).

I concur with my brother jurists that plaintiff has not pleaded a sufficient cause of action against defendant Popp to create a question of fact, and as such, summary disposition should have been granted.

Because we are able to unanimously find that the trial court erred in denying defendant's motion for summary disposition, it is irrelevant whether the trial court's ruling is a final order as that term is described by Judge Talbot in *Walsh v Taylor*, ___ Mich App ___; ___ NW2d ___ (Docket No. 246059, issued need date). Therefore, because we need not reach any of the issues raised in footnote 2 of the majority's opinion, I respectfully dissent.

/s/ Stephen L. Borrello