# IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**FILED**
**November 10, 2026**
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

**CONSTANCE LEA DOBBS,**
**Plaintiff Below, Petitioner**

**v.) No. 25-ICA-454** (Cir. Ct. Lincoln Cnty. Case No. CC-22-2023-C-42)

**LINCOLN COUNTY COMMISSION,**
**Defendant Below, Respondent**

## MEMORANDUM DECISION

Petitioner Constance Lea Dobbs appeals the Circuit Court of Lincoln County's October 20, 2025, order granting summary judgment to Respondent Lincoln County Commission ("Lincoln County"). Lincoln County filed a response.[1] Ms. Dobbs filed a reply. Lincoln County, having obtained leave of this Court, filed a sur-reply.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds that there is error in the circuit court's decision but no substantial question of law. This case satisfies the "limited circumstances" requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure for reversal in a memorandum decision. For the reasons set forth below, the circuit court's order is reversed, and the matter is remanded to the circuit court for further proceedings consistent with this decision.

Ms. Dobbs worked for approximately twenty-five years in the Lincoln County Assessor's Office without disciplinary history and, at the time of her discharge, served as chief deputy assessor. As chief deputy, Ms. Dobbs' duties included assisting with property valuations, signing exonerations, supervising tax deputies, and managing budget and payroll records.

In 2022, Ms. Dobbs publicly supported the incumbent Lincoln County assessor, Angel Barclay, in her re-election bid. Ms. Barclay lost the election to Jamie Linville. Mr. Linville terminated Ms. Dobbs on the first morning she returned to work following the election. Mr. Linville provided no contemporaneous explanation for the termination. He

[1] Ms. Dobbs is represented by Mark A. Atkinson, Esq., and Natalie R. Atkinson, Esq. Lincoln County is represented by Jacob D. Layne, Esq., and Benjamin B. Vanston, Esq.

later sent an undated letter alleging "insubordination," stemming from Ms. Dobbs' refusal to meet with him on the morning she returned to work and was terminated.

On July 21, 2023, Ms. Dobbs filed the underlying action asserting (1) a constitutional tort under West Virginia Constitution article III, section 7 and (2) a wrongful discharge claim under *Harless v. First Nat'l Bank in Fairmont*, 162 W. Va. 116, 246 S.E.2d 270 (1978), both allegedly arising from her termination for her support of Mr. Linville's political opponent.[2]

Following discovery, defendants moved for summary judgment. At the August 19, 2025, hearing, the circuit court found genuine issues of material fact concerning Mr. Linville's motivation for the termination and whether Ms. Dobbs occupied a policymaking or confidential position under the *Elrod-Branti* exception. The circuit court also questioned whether monetary relief was available under article III, section 7. It subsequently dismissed the Assessor's Office and Mr. Linville in all capacities, substituting the Lincoln County Commission as the proper defendant.

On October 20, 2025, the circuit court granted summary judgment to Lincoln County. It concluded that article III, section 7, of the West Virginia Constitution does not permit monetary damages and dismissed the constitutional tort claim because Ms. Dobbs sought no injunctive relief. The court further concluded that her *Harless* claim failed as a matter of law because Ms. Dobbs had an adequate statutory remedy under 42 U.S.C. § 1983. This appeal followed.

Our review of the circuit court's October 20, 2025, summary judgment order is de novo. *See* Syl. Pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994) ("A circuit court's entry of summary judgment is reviewed *de novo*.").

Although Ms. Dobbs raises three assignments of error, the issue presented in Ms. Dobbs' first assignment is dispositive.[3] She argues that the circuit court erred in concluding

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[2] Ms. Dobbs initially named the Lincoln County Assessor's Office and Jamie Linville, individually and in his official capacity as Lincoln County Assessor as defendants. In an October 16, 2025, order, the circuit court dismissed the assessor's office and Mr. Linville from the action and substituted the Lincoln County Commission as defendant.

[3] Ms. Dobbs asserted the following assignments of error: (1) the circuit court erred in holding that article III, section 7 cannot supply the public policy necessary for a *Harless* retaliatory discharge claim; (2) in the alternative, the court erred in concluding that article III, section 7 does not support a damages remedy; and (3) the court overlooked her equitable claim for reinstatement. Ms. Dobbs concedes in her reply brief that, to the extent the Court reverses the circuit court on her *Harless* claim, it is unnecessary for the Court to address her remaining assignments of error. In its cross-assignment of error, Lincoln

that her free speech and political association claims under *Harless* are barred because she possessed adequate alternative statutory remedies under 42 U.S.C. § 1983. Lincoln County acknowledges in its briefing to this Court that under the Supreme Court of Appeals of West Virginia's ("SCAWV") decision in *Longerbeam v. Shepherd Univ.*, 252 W. Va. 264, 922 S.E.2d 264 (2024), a *Harless* claim may coexist with a duplicative statutory claim grounded in the same public policy. We agree.

In *Longerbeam*, the SCAWV rejected the notion that the existence of a statutory remedy displaces a common law retaliatory discharge claim grounded in West Virginia public policy. Where, as here, the asserted public policy arises from West Virginia Constitution article III, section 7, we conclude that the availability of a statutory action under 42 U.S.C. § 1983 does not bar a *Harless* action. Therefore, the circuit court erroneously granted summary judgment on that basis.

Because we find error on this ground, the remaining assignments of error raised by Ms. Dobbs are moot. We express no opinion on those issues.

Despite conceding that the circuit court erred in granting summary judgment for the reasons it relied on in the October 20, 2025, order, Lincoln County argues in its cross-assignment of error that this Court should affirm on other grounds. *See Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 59 n.8, 459 S.E.2d 329, 336 n.8 (1995) (explaining that an appellate court "may affirm a circuit court's decision on any adequate ground even if it is other than the one on which the circuit court actually relied"). Specifically, Lincoln County argues that the circuit court erred in finding that an issue of material fact precluded the court from determining whether the position of chief deputy assessor was a policymaking or confidential position for purposes of the *Elrod-Branti* exception. The *Elrod-Branti* exception permits political association dismissals for public employees whose positions involve policymaking or confidential duties. *See Elrod v. Burns*, 427 U.S. 347 (1976); *Branti v. Finkel*, 445 U.S. 507 (1980). Lincoln County argues that the undisputed record demonstrates that chief deputy assessor was a policymaking or confidential position, and that Ms. Dobbs' claims that she was fired for her political association therefore fail as a matter of law. Ms. Dobbs contends that the record shows that her position did not qualify for the *Elrod-Branti* exception and that the Court's decision to deny summary judgment on this basis should be left undisturbed.

In denying summary judgment on this basis, the circuit court simply concluded that "there are genuine issues of material fact regarding the motivation underlying motivation for Plaintiff's the [sic] termination, and whether Plaintiff is a 'policymaking' or 'confidential' employee subject to the *Elrod-Branti* exception." From the limited findings,

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County contends that the circuit court erred in finding a factual dispute as to whether Ms. Dobbs was a policymaking or confidential employee exempt from constitutional protection under *Elrod-Branti*.

it appears that the circuit court treated this question as a purely factual issue. We find that this was error.

As both parties recognize, in determining whether a position is subject to the *Elrod-Branti* exception, West Virginia courts apply the two-part test articulated by the Fourth Circuit in *Stott v. Haworth*, 916 F.2d 134 (4th Cir. 1990):

> A threshold inquiry, which derives from *Branti*, involves examining whether the position at issue, no matter how policy-influencing or confidential it may be, relates to "partisan political interests . . . [or] concerns." 445 U.S. at 519, 100 S.Ct. at 1295. That is, does the position involve government decisionmaking on issues where there is room for political disagreement on goals or their implementation? Otherwise stated, do party goals or programs affect the direction, pace, or quality of governance?
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> If this first inquiry is satisfied, the next step is to examine the particular responsibilities of the position to determine whether it resembles a policymaker, a privy to confidential information, a communicator, or some other office holder whose function is such that party affiliation is an equally appropriate requirement. We would note that in conducting this inquiry, courts focus on the powers inherent in a given office, as opposed to the functions performed by a particular occupant of that office.

*Stott v. Haworth*, 916 F.2d 134, 141-42 (4th Cir. 1990); *see Akers v. W. Va. Dep't of Highways*, 188 W. Va. 698, 702, 425 S.E.2d 840, 844 (1992) (adopting the *Stott* test). As the SCAWV has recognized, "[t]he matter is a question of law to be ultimately decided by the courts." *Adkins v. Miller*, 187 W. Va. 774, 780, 421 S.E.2d 682, 688 (1992) (quoting *Stott*, 916 F.2d at 143). Therefore, the circuit court erred in treating the applicability of the *Elrod-Branti* exception as a factual issue. On remand, we direct the circuit court to address the applicability of the *Elrod-Branti* exception under the *Stott* analysis.

Accordingly, we reverse the circuit court's October 20, 2025, order and remand the case to the circuit court for further proceedings consistent with this decision. On remand, the circuit court is directed to address Lincoln County's argument that the position of chief deputy county assessor is a policymaking position under *Stott*.

Reversed and Remanded.

**ISSUED:** November 10, 2026

**CONCURRED IN BY:**

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen
Judge S. Ryan White