

ORIGINAL

IN THE SUPREME COURT OF OHIO
CASE NUMBER 2009-0866

STATE, EX REL. ELIZABETH A. KOBLY, ET AL.

RELATORS

vs.

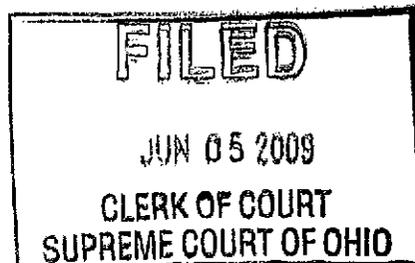
YOUNGSTOWN CITY COUNCIL, ET AL.

RESPONDENTS

RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS

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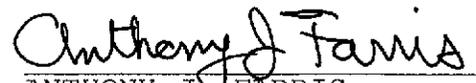
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Relators)	
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)	<u>JUDGMENT ON THE PLEADINGS</u>
YOUNGSTOWN CITY COUNCIL, ET AL.)	
)	
Respondents)	

Now come Respondents Youngstown City Council, City of Youngstown and Mayor Jay Williams, pursuant to Rule 12(C) of the Ohio Rules of Civil Procedure and Rule X, Section 5 of the Rules of Practice of the Supreme Court of Ohio, by and through counsel, and move this Court for judgment on the pleadings in Respondents' favor and against Relators, on the ground that it appears from the face of the pleadings that Respondents are entitled to a judgment dismissing the above-entitled action, based on the pleadings. A memorandum of points of authorities in support of this motion is attached and incorporated into the motion.

For all the reasons set forth in Respondents' Motion for Judgment on the Pleadings, Respondents respectfully request that this Honorable Court enter a judgment of dismissal, on all of Relators' causes of action.

Respectfully submitted,



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MEMORANDUM

In order for a court to grant a motion for judgment on the pleadings, it must appear after considering all the pleadings as they stand that there remains only a question of law. Rheinheimer v. Aetna Life Ins. Co. (1907), 77 Ohio St. 360, 372, 83 N.E. 491. The motion should only be granted where it is clear that all facts stated and expected to be proved do not constitute a cause of action. Ellis v. Victor Elec. Products, 85 Ohio App. 170 at Syllabus 1, 40 Ohio Op. 122, 55 Ohio L. Abs. 445, 88 N.E. 2d 275 (1st Dist. Hamilton County 1949). A right to judgment on the pleadings must arise from consideration of all the pleadings, including the Answer, not just the Complaint. Rheinheimer at 372.

A review of the pleadings reflects that the facts do not constitute any of the causes of action for mandamus asserted by Relators. "In order to be entitled to a writ of mandamus, relators must show (1) that they have a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relators have no plain and adequate remedy in the ordinary course of the law." State, ex rel. National City Bank v. Bd. of Edn. (1977), 52 Ohio St. 2d 81 at 84, 480 N.E. 2d 77. See State, ex rel. Long v. Bettman (1970), 24 Ohio St. 2d 16, 17, 262 N.E. 2d 859; State, ex rel. Pressley v. Indus. Comm. (1967), 11 Ohio St. 2d 141, 228 N.E. 2d 631.

In regard to Relators' First Cause of Action, the facts cannot support the issuance of a mandamus. It should first be noted that there is no basis on which this Court could conclude that a clear legal right to the relief requested exists on the part of Relators.

While Section 1901.36 of the Ohio Revised Code imposes a duty on the part of Respondent Youngstown City Council, there is no indication that said statute invests municipal court judges with a statutory right to relief regardless of the unreasonableness of their request. While judges do have a right to demand that other branches of government not impede the administration of justice as described in Paragraphs 1 and 2 of the syllabus in State, ex rel. Foster v. Bd. of County Commrs. (1973), 16 Ohio St. 2d 89, 242 N.E. 2d 884, Relators' Complaint does not allege that the administration of justice has been impeded by Respondents nor do the pleadings support such a conclusion.

Relators have also failed to establish that Respondents are under a clear legal duty to perform the acts which Relators seek to compel in their First Cause of Action. Ohio Revised Code, Section 1901.36, requires the legislative authority of a municipal court to provide suitable accommodations. No similar duty exists on the part of Respondent Mayor Jay Williams or Respondent City of Youngstown. Respondent Mayor Jay Williams does not have any authority to appropriate funds or provide accommodations. There is no basis in the pleadings to conclude that he has any such duty. Any claims against Respondent Mayor Jay Williams should, therefore, be dismissed and he should be removed as a party to the Complaint. Respondent Youngstown City Council does not have a statutory duty to comply with unreasonable requests nor an inherent duty to allocate all funds requested by a municipal court without regard to the limited funds available for disbursement to all departments and divisions of City government and the ability of the court to

properly exercise its judicial function. State ex rel. Cleveland Mun. Court v. Cleveland City Council (1973), 34 Ohio St. 2d 120, 124-125, 63 Ohio St. 2d 120, 63 O. O. 2d 199, 296 N. E. 2d 544.

A relator seeking extraordinary relief in mandamus must generally prove the lack of an adequate remedy in the ordinary course of law to be entitled to the writ. State ex rel. Gaydosh v. City of Twinsburg (2001), 93 Ohio St. 3d 576, 580, 757 N.E. 2d 357, 2001-Ohio-1613. Mandamus is not appropriate if there is a plain and adequate remedy in the ordinary course of law. State ex rel. Beane v. City of Dayton, 112 Ohio St. 3d 553, 558-559, 2007-Ohio-811, 862 N.E. 2d 97, at ¶5.

Relators clearly do have at least one plain and adequate remedy in the ordinary course of law. Relators possess the power to issue findings of contempt if valid orders they enter are ignored. Relators reference this obviously available plain and adequate remedy in their Complaint, but then argue that it is not adequate because the subject of the Order may choose to ignore it. Contempt powers, however, carry with them the power to enforce orders. "In any action or proceeding of which a municipal court has jurisdiction, the court or any judge of the court has power to . . . punish contempts . . . and to exercise any other powers that are necessary to give effect to the jurisdiction of the court and to enforce its judgments, orders, or decrees." Ohio Revised Code, Section 1901.13(A)(1), See State, ex rel. Wellington v. Kobly, 112 Ohio St. 3d 195, 198, 2006-Ohio-6571, 85 N.E. 2d 798, at ¶16. The exercise of their contempt powers was obviously a plain and adequate remedy in the ordinary course of law.

Another plain and adequate remedy available to Relators is to follow the recommendations of the Office of the Administrative Director of the Ohio Supreme Court and engage in direct negotiations and possible mediation with Respondents. After meeting with the parties in the fall of 2008, Administrative Director Steven C. Hollon communicated with the municipal judges by a letter dated January 20, 2009, in which he stated:

"At this stage it is our strongest recommendation that you and the city enter into direct negotiations to determine how a suitable facility might be secured and put into operation. If you believe that the use of an expert in design or renovation and restoration will be helpful, we will work to locate and secure such an expert.

Likewise, if you believe a professional mediator will be helpful to initiate these conversations, then we will help secure such a professional.

Finally, we are well aware of the difficulties nearly all cities and courts in Ohio face in trying to maintain adequate funding for projects such as this in challenging economic times, and the delay in this project has certainly hurt you in this regard. But it is also important for you and the city to work now to develop not only facility plans but also financial plans so that when the state's economy does improve, you and the city will be ready to act to open the facility that you, the city, and the citizens of Youngstown deserve." Less than one week after this offer was made, Relators issued an Order requiring Respondents to provide them "now" with new or renovated facilities. Shortly thereafter, Relators ordered that Youngstown City Council

appropriate funds for Relators to hire private counsel.

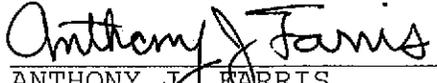
When Dr. David Sweet provided a Memorandum recommending the proper course of action as requested by the Ohio Supreme Court, Relators again failed to take advantage of this option. He recommended that the parties engage in direct negotiations to resolve the differences between the facility plans favored by the respective parties, that final architectural plans be ordered using the funds available in the Youngstown Municipal Court's Special Project Fund, and that federal or state funding for the project be sought during the time period while those actions were completed. In response, Relator Elizabeth A. Kobly and Relators' counsel had one meeting with Respondent Mayor Jay Williams and the Youngstown Law Director. Relators' counsel subsequently informed Respondents by letter that Relators were unwilling to negotiate to resolve the differences between the two facility plans and would only meet to discuss how Respondents were going to finance Relators' preferred plan. Relators' plan is far more expensive than Respondents' and includes many features, luxuries and amenities that are not reflected in the court facility and security standards set forth by the Ohio Supreme Court. Mandamus exists to protect the rights of those who are suffering because others have failed to exercise a duty owed to them and possess no other means of redress. It is not appropriate when an entity with enforcement powers demands accommodations beyond those that the law requires be provided and refuses to participate in a process that would result in the satisfaction of the duty in question. The pleadings demonstrate that Relators are not entitled to an alternative or peremptory writ

on this first cause of action. Relators' First Cause of Action should be dismissed.

Relators' Second Cause of Action should also be dismissed. It is based on the alleged failure to appropriate funds for private counsel. Respondent Mayor Jay Williams should, therefore, obviously be dismissed as a party since he has no duty or authority to appropriate funds. Respondent Youngstown City Council has subsequently appropriated funds for this purpose and the Ordinance in which they did so is attached as Exhibit C to Respondents' Answer. The only basis for delay was Relators' opposition to using funds from its special projects fund for this purpose. This issue is now moot and the facts set forth in the pleadings do not constitute the basis for a mandamus action.

Based on all the foregoing and the contents of all pleadings, Respondents move that Relators' Complaint be dismissed in its entirety, and for such other relief as this Honorable Court deems appropriate.

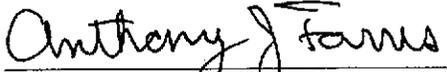
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS was mailed by regular mail on this 4th day of June, 2009, to JOHN B. JUHASZ (0023777), 7081 WEST BOULEVARD, SUITE 4, YOUNGSTOWN, OHIO, 44512-4362, ATTORNEY FOR RELATORS.



ANTHONY J. FARRIS
DEPUTY LAW DIRECTOR