

In the Supreme Court of Ohio

STATE OF OHIO, EX REL.
ELIZABETH A. KOBLY
ROBERT A. DOUGLAS, JR.
ROBERT P. MILICH
Judges of Youngstown
Municipal Court

Relators

-vs-

YOUNGSTOWN CITY COUNCIL,
et al.,
Respondents

Case No. 2009-0866

**RELATORS' MOTION AND MEMORANDUM
OPPOSING RESPONDENTS' MOTION
FOR JUDGMENT ON THE PLEADINGS**

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COME NOW THE RELATORS, through the undersigned counsel, and, in the event that this Court does not strike in its entirety the Respondents' motion for judgment on the pleadings, move for an order overruling Respondents' motion for judgment on the pleadings. Construing all material allegations in the Complaint in favor of the Relators, together with all reasonable inferences to be drawn therefrom, Respondents' motion utterly fails to demonstrate beyond doubt that the Relators can prove no set of facts in support of their claim that would entitle them to relief. The reasons are more fully described in the attached memorandum, made a part hereof by this reference.

WHEREFORE, the Relators pray for an order of this Court overruling Respondents' Motion for Judgment on the Pleadings, and for an order issuing an alternative or a peremptory writ, if a writ has not already been issued.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing [] sent by regular United States Mail, postage prepaid, [] hand delivered to counsel or counsel's office; [] sent by telecopier this 12th day of June, 2009 to Iris T. Gugliucello, Esq., and Anthony Farris, Esq., Counsel for Respondents, 26 South Phelps Street, Youngstown, Ohio 44503.



JOHN B. JUHASZ

MEMORANDUM IN SUPPORT OF RELATORS' MOTION TO
OPPOSE RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Respondents' first argument as to Relators' first cause of action is that the facts cannot support the issuance of a writ of mandamus. Respondents appear to argue that OHIO REV. CODE ANN. §1901.36 imposes a duty on the part of the city council, they also appear to argue that Relators have no right to relief because Relators have not claimed that the administration of justice has been impeded by Respondents' failure to furnish suitable accommodations for the Youngstown Municipal Court. Incredibly enough, they say that the pleadings do not support such a conclusion.

First, there are any number of cases where municipal judges have been granted mandamus relief concerning the failure to furnish proper facilities. Despite Respondents' suggestion to the contrary, the courts of Ohio have recognized the right to mandamus relief is over and over again in both court funding cases and in cases to secure facilities for the proper operation of the courts. The following are examples sufficient to make the point that Respondents' claim that mandamus cannot be used to compel compliance with Ohio Rev. Code Ann. §1901.36 is spurious at best: *State, ex rel. Taylor, v. City of Delaware* (1982), 2 Ohio St.3d 17, 2 OB.R. 504, 442 N.E.2d 452 (mandamus action brought by municipal court judge);

State, ex rel. Musser, v. City of Massillon (1984), 12 Ohio St.3d 42, 12 O.B.R. 36, 465 N.E.2d 400 (mandamus filed by municipal court judges); *State, ex rel. O'Farrell v. New Philadelphia City Council* (1991), 57 Ohio St.3d 73, 565 N.E.2d 829 (mandamus action filed by municipal court judge and clerk); and, *State, ex rel. Cramer, v. Crawford Cty. Bd. of Commissioners* (Jun. 19, 1984), Crawford App. No. 3-84-17, 1984 Ohio App. LEXIS 10115, 1984 WL 7964 (mandamus action filed by municipal court clerk and judge). Relators' complaint details the number of ways in which the present facilities fail to comport with standards promulgated by this Court for the proper administration of justice. Respondents' argument, therefore, appears to suggest that these standards were promulgated for some purpose other for than the proper administration of justice.

Respondents next argue that Respondents Mayor Williams and City of Youngstown are not under a similar duty to provide suitable facilities, a duty that Respondents appear to concede that OHIO REV. CODE ANN. §1901.36 imposes upon the City Council. The City's position that the Mayor and indeed the City itself should be dismissed as parties overlooks the realities of what has occurred in Youngstown and, equally significantly, overlooks the nature of our form of American government itself. To be sure, OHIO REV. CODE ANN. §1901.36 imposes a statutory

duty upon the members of council to make sufficient appropriations to provide for suitable facilities. Funds appropriated for a specific purpose but never used for that purpose are the same as no appropriation of funds at all. According to Section 4 of the Youngstown City Charter, the "Mayor shall be the chief executive officer of the City." He is to "exercise such powers and perform such duties as are conferred or required by this Charter or the laws of the State insofar as they are consistent with this Charter." The City enters into and executes contracts through its board of control, an *executive* function. Indeed, Section 110 of the Youngstown City Charter provides:

For the purpose of *executing contracts and agreements on behalf of the City*, there is hereby created a Board of Control, *consisting of the Mayor, the Director of Law and Director of Finance, of which the Mayor shall be Chairman and the Director of Finance the Secretary*. It shall be the duty of the Board of Control to keep a Journal of all its proceedings as well as a copy of all contracts authorized by it.

(Emphasis added.)

In *City of Oregon v. Dansack*, 68 Ohio St.3d 1, 1993 Ohio 39, 623 N.E.2d 20, the city council proposed an ordinance which directed the mayor and the auditor to execute a contract with an investigator, who was to research the alleged abuse of authority in the police department. The mayor vetoed the ordinance, and the city council overrode his veto. The mayor then refused to execute the contract, and the city brought an

action in mandamus against the mayor. This Court found that the appropriation for the contract had lapsed. Thus, said the Court, the mayor did not have a duty to execute the contract. The Court said that if the appropriation was current, then the mayor would have a duty to execute the contract, which includes the duty to encumber a valid appropriation if one were available. Thus, the mayor could not avoid his duty to execute a contract and be outside the reach of mandamus on the ground that no appropriation has been identified or encumbered. The Court said it is the mayor's and the clerk-auditor's duty to identify and encumber the appropriation if this can lawfully be done. The Court denied the writ in that case because there was no current appropriation.

In this case, it is clear that the Mayor should remain a party. As the City's executive and member of the City's Board of Control, any contracts to provide suitable accommodations for the Municipal Court would be executed by the Board of Control, of which the Mayor is an integral part. The remainder of the Board of Control is composed of mayoral appointees. Moreover, it is the Mayor who has been the spokesman for the city administration, as evidenced by the City's own exhibits. The letter from Mr. Hollon, dated January 20, 2009 and attached to the City's Answer as "Exhibit A," is a letter to Relators, copied to the Mayor and one of his lawyers, but none of the City Council

members. Unless the Council members are “other representatives” from the City referenced on page 1 of the letter, the Council members were not among the “city leaders” consulted by Mr. Hollon.

Likewise, Dr. Sweet’s Memorandum to the Chief Justice and Mr. Hollon (“Exhibit B” attached to the Respondents’ Answer) is copied to the Mayor, the Relators and the City Clerk of Court, but not to the Council members.

The same argument applies to the City of Youngstown as a respondent. The City, acting through its legislated and executive branches, has an obligation to furnish suitable accommodations.¹

Respondents’ sub-argument on this point is one that seems to defy the very nature of our legal system as one for rationally and peaceably resolving disputes. Implicit in the argument of Respondents is that the Relators are “unreasonable” in their directives as to what should be furnished as far as proper court facilities for the Youngstown Municipal Court. Parties are free to negotiate and attempt to determine on their

¹ The City admits a *statutory* obligation, but denies that there is a *constitutional* one. While this is a matter better left to the briefing, it is sufficient for purposes of responding to the City’s motion to make two quick points. The first is that there cannot be a valid statute without some authority in the Constitution. The second point is that while the Constitution does not specifically mention the doctrine of separation of powers, the Constitutional doctrine requires judicial independence and integrity. Put another way, if the City’s legislative and executive branches designated the City’s maintenance garage as the place for the judges to hold court, such an action would violate not only the requirement under the *statute* to provide “suitable accommodations,” but would be a violation of the *constitutional* separation of powers doctrine that requires judicial independence and integrity.

own what is reasonable, and they are free to do so both before a lawsuit is filed and after a lawsuit is filed but before judgment is entered. However, if the parties cannot agree, then a third party decides what is reasonable. Depending upon the case, that third party is a judge, a jury, or, as here, a panel of judges. Respondents lose sight of this fact. They confuse their assertion that what the Relators have ordered is unreasonable with an unsubstantiated conclusion that Relators have no valid cause of action.

Respondents also appear to argue that the order of Relators is unreasonable simply because, in Respondents' view, Relators have taken no account of the fact that the City has but limited resources available to all departments of the City. To be sure, judges do not have unlimited authority to order unlimited funds. But every government entity has limited resources. This is not a remarkable proposition. Limited resources can never, in an if itself be a basis to refuse an order such as the one at issue in this case. Moreover, Relators' Complaint details that Respondents have used the same claim, without the commitment of one penny of construction or renovation money, for over a decade, despite promising the citizens of Youngstown that a portion of income tax revenues would be devoted to capital improvements. While judges do not have an absolute right to compel the issuance of a blank check, neither do city

officials have the right to spend the public money elsewhere in ignorance of, or defiance of, the needs of the judicial branch to administer justice properly and efficiently.

Incredibly, the City claims that Relators have a remedy in the ordinary course of law and thus are not entitled to the extraordinary relief of mandamus. As noted above, the cases to the contrary are numerous.

Respondents also claim that Relators have a plain and adequate remedy available (they leave out the phrase “in the ordinary course of law”), and that is to engage in direct negotiations and possible mediation with Respondents. While there are times where this might be a desirable course of action, it is clearly not a remedy in the ordinary course of law, and it is injudicious for Respondents to suggest otherwise. Moreover, the complaint details 12 frustrating years on the part of Relators and their predecessors in office to obtain suitable accommodations for the Youngstown Municipal Court. The justice system exists in part so that when parties have legal disputes that they cannot resolve themselves, someone else resolves the dispute for them. Relators are obviously at the point. When after a dozen years of Relators attempting to meet and agree without litigation, Respondents now themselves in a lawsuit, they chastise Relators for being too hasty in commencing litigation. It is not, as

Respondents suggest in their improperly framed motion for judgment on the pleadings, replete with references to matters outside of the pleadings, as if Relators had one meeting with the City officials and then filed a lawsuit. Relators' Complaint details more than a decade of inaction by Respondents.

Equally improper is Respondents reference to the Dr. Sweet memorandum, not to mention that the Respondents have not accurately reported the facts. Respondents offer their opinion that what Relators have ordered includes "luxuries and amenities." Respondents conclude that mandamus exists to protect the rights of those who are suffering because others have failed to exercise a duty owed, and there is no other means of redress. Respondents simply ignore the realities of the law. This is neither the time nor the place to make arguments and counter-arguments that demands our excessive, that the city lacks sufficient funds, and the like. The question is simply whether, construing the pleadings, without extraneous materials, in a light most favorable to Relators, they have stated a valid cause of action.

The cases on the subject of court facilities and court funding are, of course, legion. Two relatively recent ones, however, should make the point. The first is *State, ex rel., Judges Toledo Municipal Court, v. Mayor of the City of Toledo*, Lucas App. No. L-08-1236, 2008 Ohio 5914, 2008

Ohio App. LEXIS 4969. That case was a mandamus action. The appellate court did not require the municipal judges first to hold the city officials in contempt. The court orders sought to be compelled by mandamus in that case were orders directing the furnishing of proper security officers and the funding therefor, and funding of a pretrial drug testing program. Even though the respondents in that case claimed that the City of Toledo would have a three to seven million dollar deficit by the end of 2008, the judges prevailed. The appellate court specifically found that it was not unmindful of the city's concern about budgetary funding and financial conditions. However, because what the judges had ordered was not demonstrated to be unreasonable, the judges were granted summary judgment in that case.

That case relied upon *State, ex rel., Badgett, v. Mullens*, 177 Ohio App.3d 27, 2008 Ohio 2373, 893 N.E.2d 870, later proceeding, *State, ex rel. Badgett, v. Mullens*, 118 Ohio St.3d 1500, 2008 Ohio 3305, 889 N.E.2d 574; to implement settlement agreement, *State, ex rel. Badgett, v. Mullens*, 119 Ohio St.3d 1432, 2008 Ohio 4419, 893 N.E.2d 196. That case was a writ of mandamus brought by a taxpayer to compel the City of Marietta to furnish the municipal court suitable accommodations as required by OHIO REV. CODE ANN. §1901.36. The Court of Appeals found

that the taxpayer did indeed have standing to bring the action.² In *Badgett*, utilizing the testimony of the municipal judge, and appendices C and D to the Rules of Superintendence of Ohio, the taxpayer was granted relief based upon the failure of the municipality to furnish a court that complied with those standards. That case is almost precisely this case, save for the fact that the Judges themselves have brought this action, rather than it being brought through a taxpayer. In *Badgett, supra*, the court concluded quite easily that the facilities were not suitable. The court noted, *supra*, at ¶38, that while a deficiency concerning perhaps one or two of the guidelines would not render a court facility unsuitable, in Marietta, the deficiencies were, as they are here, and as alleged in the Complaint, numerous.

Additionally, the appellate court rejected arguments made by city officials. They included, first, that the city had no clear duty to perform because the municipal judge had not demanded that the city provide adequate facilities. The court found ample evidence that the city council *and the mayor* were on notice of the need to address the problem. The second argument was that OHIO REV. CODE ANN. §1901.36 does not

² Interestingly, in both of these cases, *Badgett* and the Toledo case, the mayors were named as parties, and apparently did not contend, as Mayor Williams does here, that the mayor has no executive involvement in carrying out the legislative decisions of city council to provide court facilities.

specifically require the city to construct a new municipal courthouse. The court found, however, that as a practical matter, building a new courthouse may be the only way for the city to meet its statutory duty. *Badgett, supra*, at ¶46.³

The Marietta city officials also contended that the city was in dire financial straits and could not afford the construction of a new courthouse. The court rejected the argument, finding that the entire cost of the project did not have to be paid at once, and the cost of the debt service was affordable. The court specifically found, *Badgett, supra*, at ¶50, that the city officials could not use the city's finances as an excuse to completely ignore their duty to comply with OHIO REV. CODE ANN. §1901.36.

Like the Respondents here, the respondents in *Badgett, supra*, accused the relator of laches. The court found that laches constitutes the failure to assert a right for an unreasonable and unexplained length of time under circumstances that are prejudicial to the adverse party. *Badgett, supra*, at ¶57. The court noted that delay itself does not give rise to the defense of laches, and that in order to successfully assert a laches defense, the defending party must show that it has been materially prejudiced by the delay of the party asserting the claim. In this case, what would the

³ Relators here have not demanded a new building, just a different suitable facility.

City's claim be? That it has neither segregated nor expended money over the past 12 years for the construction or renovation of a court facility, thus leaving the City free to spend the money elsewhere as the council chose? After more than a decade of nearly superhuman patience, outlined in Relators' Complaint, with meetings, drawings, plans, promises, but no action, for the City officials now to accuse these judges of laches is laughable at best and insulting at worst.

Respondents apparently believe, based upon their pleadings, that what Relators have demanded is unreasonable, or, in the words of the statute, OHIO REV. CODE ANN. §1901.36, unsuitable. Relators, of course, think otherwise, but those differences of opinion are to be resolved in the course of presenting proof to this Court. But the office of a motion for judgment on the pleadings is quite different. The function of such a motion is to ask the Court to determine whether, even if Relators were to prove everything alleged in their complaint, they would have a cognizable cause of action or a cognizable right to relief. Respondents have cited no case law standing for the proposition that OHIO REV. CODE ANN. §1901.36 does not require them to furnish suitable accommodations for a municipal court.

A motion for judgment on the pleadings is to be granted when, after viewing the allegations and reasonable inferences therefrom in the

light most favorable, here, to Relators as the non-moving party, the moving party, here, the Respondents, is entitled to judgment as a matter of law. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 63 Ohio Op.2d 262, 297 N.E.2d 113.

This is an action in mandamus. Mandamus will lie where (1) the relator has a clear legal right to the relief sought, (2) the respondent has a clear legal duty to perform the requested act, and (3) relator has no plain and adequate remedy at law. See, e.g., *State ex rel. Westchester Estates, Inc. v. Bacon* (1980), 61 Ohio St.2d 42, 15 Ohio Op.3d 53, 399 N.E.2d 81. Accord, *Brown v. Wood County Bd. of Elections* (1992), 79 Ohio App.3d 474, 477, 607 N.E.2d 848

Assessing this case solely from the pleadings and not the extraneous matters, the Respondents have failed to demonstrate that Relators can under no circumstances demonstrate a right to relief. The Respondents' motion for judgment on the pleadings must be overruled and an alternative or peremptory writ should issue.

Respectfully submitted,



JOHN B. JUHASZ
COUNSEL FOR RELATORS

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