

ORIGINAL

In the Supreme Court of Ohio

STATE OF OHIO, EX REL.
ELIZABETH A. KOBLY, *et al.*,
Judges, Youngstown
Municipal Court

Relators

-vs-

YOUNGSTOWN CITY COUNCIL, *et al.*

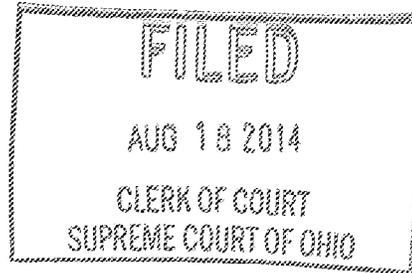
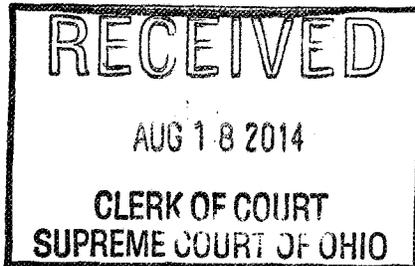
Respondents

Case No. 2009-0866

RELATORS' MERIT BRIEF

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STATEMENT OF FACTS

Relators, ELIZABETH A. KOBLY, ROBERT A. DOUGLAS, JR., and ROBERT P. MILICH, were, at the time this action was commenced five years ago, the judges of the Youngstown Municipal Court, which is established pursuant to Ohio Constitution, Article IV, Section 1 and R.C. 1901.01(A).¹ Relators bring this action pursuant to R.C. 1901.36, and 2731.01 *et seq.*, and Ohio Constitution, Article IV, Section 1. Respondents are the members of the Youngstown City Council, the President of the Youngstown City Council and the Mayor of the City of Youngstown. The City of Youngstown operates pursuant to its charter, and, to the extent that the charter is silent, the statutes of the State of Ohio. Since this action was commenced, Judge Robert A. Douglas, Jr. has retired. The Governor did not fill his vacant seat, and the General Assembly abolished one of the three judgeships. Judges Kobly and Milich are the present incumbent Relators.

¹ Ohio Constitution, Article IV, Section 1 provides: "The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, *and such other courts inferior to the supreme court as may from time to time be established by law.*" (Emphasis added.) R.C. 1901.01(A) provides in pertinent part: "(A) There is hereby established a municipal court in each of the following municipal corporations ... Youngstown"

The Youngstown Municipal Court, the Probation Department, Clerk's Office, and administrative offices are located on the third floor of the Youngstown Police Department, which is connected by a narrow hallway the second floor of Youngstown City Hall. No one seems to know how long the Court or City Hall have been there, though there were rumors that the City Hall Building is 100 years old. (Tr. 730.)

As outlined in their complaint, Relators, and their predecessors in office, have sought suitable accommodations for the Youngstown Municipal Court in order to administer justice properly. The requests date back at least to July of 1996. For more than 12 years, the Respondents and their predecessors in office² offered and then broke promises, passed ordinances and then ignored them, talked little and only when cornered, and did even less.

Throughout this time, Judge Douglas, who spearheaded the effort of the Municipal Court, relentlessly refused to be ignored. He knew what

² Throughout, the reference to "Respondents" will include former council members, former council presidents, and former mayors as well as the present incumbents. This is done to avoid repetition of the cumbersome phrase, "Respondents and their predecessors in office." This is, as the Court knows, a government of laws and not of men or women. The claims here are made against the officeholders as officeholder, not as individuals.

shortcomings there were in the Court facilities, how inadequate they truly were. He also knew what has been developed as evidence in this case: that while the City has proclaimed over, now, the past 18 years that it is sympathetic to the plight of the judges but has no money, the City collects \$4 million annually in income tax revenues that are by law to be earmarked for capital improvements such as the furnishing of suitable accommodations for the Municipal Court. (Finding of Fact 45.) As a matter of policy, however, the City has chosen to transfer that earmarked money into other capital improvements and even some current operations.

The claims of poverty might be less insincere sounding if some money had been set aside in the last almost two decades. But not one penny has been segregated into a fund to show a good faith effort of the City to comply with the Municipal Court's needs, and, after 2009, with the Municipal Court's *order*.

The head-in-the-sand approach of many of the Council members, some having never even read the order (Tr. 98, 162, 242, 256, 715), having made no effort to comply with it, and having made no effort even to study the feasibility of compliance with the order, exposes the soft underbelly of

the claims that Council would *like* to help, but simply cannot. The foot-dragging of Council is epitomized by the testimony of one Council member, Janet Tarpley:

A. *** . I mean, I'm sure that there's other things we can do to try to make security and make this more affordable for both parties.

Q. Well, here we are, so what do you think those are?

A. One of the things that we already doing. You know, she -- we have the cameras. I think that's something that can be put into that -- to that plan. I think that, you know, if there's a reason why they just want the elevators for that, I'm for that, because like I said, I do work with juvenile court and I understand anything can happen and it has happened, you know? So I have no qualms about that. I want them to be safe. I want the clients to come in -- I even want the prisoners that's acting up to be safe. I want everybody to be safe. So we have to look at that. That's something that I'm not saying we shouldn't look at. I'm just saying we probably can do it without having three [elevators], we might can do it with two.

Q. Well, that order's five years old, correct?

A. Yes, sir.

Q. And this lawsuit's getting close to five years old, correct?

A. Yes, it is.

Q. When were you thinking is a good time to look at it?

A. Well, why we're here, this is what we're here for. If -- now, if we would have had -- we wouldn't have to be here, correct, if we would have had done this? So we didn't do it, so we're here, so now we've got to get it done.

(Tr. 547-548.) This type of approach demonstrates why the Judges of the Municipal Court expressed so much frustration.

A. And so Ray Jaminet has lived this -- this whole process over the past 15 years with us and our effort to acquire suitable facilities. He probably had brown hair back then when it all started because it's been at least 15 years that he has lived that project with us.

So -- and -- and now that we're at the -- now that we're at the annex site, we asked him to consider the traffic patterns, the flow of people through the building. Originally, you know, it was -- it's not disputed that the -- I don't think that's disputed with anyone that the probation department and the clerk's office should be on the first floor, that's where the greatest traffic is. The courtrooms should be on the third floor, no problem with that, everybody agrees that that's common sense.

(Tr. 666.)

A. There was significant discussion as to how we can make this the safest, the absolute safest facility that we could possibly make it, meet our needs, satisfy the court standards, and finally have a place that commands the respect of the people that are there, ensures their safety, enables us to carry out our duties, and we were perfectly happy with [the Jaminet design]. Absolutely perfectly happy with it. It did everything that we wanted it to do, but for we couldn't go anywhere because council wouldn't allocate the moneys even though they said they would.

(Tr. 667.)

And so we've tried everything. We have -- we have done all these different plans, we've backed off on certain things, we've modified things, we've gone back and forth the whole while, the entire time, the entire 15 years with one architect that has done everything that we have asked him to do, and then here comes out of the blue a set of drawings from Gregg Strollo.

In the context that I've just explained it to you where we have had an architect for 15 years, we have lived the facility, we know what's wrong with it, we know it can't be fixed, we know

that we have made it as safe as we possibly can, and it in no way complies with what is required of us. We have done all that we can do. We can't do anymore.

(Tr. 668-669.)

So now Judge Milich and I are pretty much -- at this point we're in a backseat to Judge Douglas who has spearheaded everything. Well, that's gotten us nowhere. That's gotten us nowhere over 12, 15 years. So he and I are thinking, okay, well, maybe we ought to -- we ought to take a different approach here because being Mr. Nice Guy has gotten us nowhere except 10 years of wasted time.

So we think, okay, well, let's -- you know, we've got to start pushing this issue somehow. So we have a meeting with the mayor intending for us to convey, leave Judge Douglas out of it for a minute, let's us two get involved, let's us meet with the mayor and see if we could do something to encourage after all of these years somebody to finally pay attention to us about what we think we need. And we are given these drawings from Mr. Strollo just like that. And he -- he -- the mayor tells us we're not going to give you a check for \$8,000. [*sic* \$8 million]. We're not going to do that. You're going to take this and that's what you're doing to get.

(Tr. 669-670.)

The record hearing in this case showed some light at the end of the nearly 20 year long tunnel. The City's newest Mayor, John A. McNally, IV, a former Law Director and a practicing lawyer, recognized the concerns of the Municipal Court. He has acknowledged that those concerns are for the most part reasonable, and he has expressed a desire to furnish suitable accommodations for the Court both for the Court's operations and so that

departments which report to him can be moved into the space that the Court would vacate. The City's long-time finance director, who had previously informed mayors that the City could not afford any of the Judges' proposals, testified at the trial that, with the assistance of the Municipal Court judges contributing most of the money that has been accumulated in the Court's special projects fund, paying for the renovations which the Judges have contemplated *is possible*.

But still the order remains as it has been for five years: ignored and dishonored. As Judge Kobly testified:

Contempt would be useless. The Mayor and Council appear to have regarded us with contempt since 1996. Some of the Council members did not even seem to be aware of the order. To the extent that they were aware of it, they seemed to be waiting for the Mayor to tell them what to do. Contempt or a fine would be pointless. Could we really jail them until a court is built? That's not realistic. Nothing short of an order from a court-a court other than ours-will do anything.

(Relators' direct, 16-17.)

The record in this case clearly establishes that the present facilities do not constitute "suitable accommodations" for the daily administration of justice in the Youngstown Municipal Court. The courtrooms lack adequate seating. Courtroom 1 is the largest of the three courtrooms. The two remaining courtrooms, Courtrooms 2 and Courtroom 3, are small.

(Relator's Exhibit J-38, a photograph of Courtroom No 3, with "overflow" litigants in jury box.) The space between counsel tables is insufficient to allow litigants and their counsel to consult privately during court proceedings. (Relators' Exhibit J-33, a photograph of Courtroom No 2, showing the narrow "trial" tables, and the small amount of space between them.)

Parties and witnesses often must confer wherever they can, usually in a hallway or a corner of the courtroom. (See, Relators' Exhibit J-36, a photograph of a lawyer conferring with client at the bar in Courtroom No 2; and, Relators' Exhibit J-9, a photograph of an attorney meeting with his client in entrance hallway, using window sill as table to review legal documents.) There are no witness waiting rooms. There are no attorney-client conference rooms. The courtrooms lack blackboards and other necessary demonstrative aids. The courtrooms do not have individual soundproof jury deliberation rooms located near the courtrooms.

Indeed, the three courtrooms share one jury deliberation room, which is poorly furnished. (Relators' Exhibits J-12 and J-13, photographs of the jury deliberation room showing table, chairs, TV and boxes.) Jury

sessions must be scheduled among the three courtrooms so that the three trial courts can share the lone jury deliberation room. (Relators' direct, 6.)

There is no jury assembly room. The jurors are assembled in the Youngstown City Council chamber. Although Council Chambers have been renovated (Relators' Exhibits J-46, J-47, and Exhibit K), they lack the amenities required by law for jurors. The court facilities overall were described by former council member Carol Rimedio Righetti in her deposition filed in this case in 2010 as "very deplorable" (Rimedio Righetti Deposition, p. 23, line 14).

General court security, though vastly improved with the hiring of retired trained law enforcement officers, remains inadequate due to the facility design. A melee on July 14, 2010, is captured in Relators' Exhibits L1-L4, security videos that depict the melee and the danger posed to court staff and the public. Prisoners are not held in a separate, secure, waiting area, but often are deposited in the jury box. Prisoners are regularly transported into and within the Court facility through public hallways. (Relators' Exhibits J-7 and J-8, photographs of a prisoner being transported through public hallway, and an arrestee from probation transported,

cuffed in front, through public hallway, respectively.) Transportation of those prisoners is not done in accordance with proper security guidelines. (Relators' Exhibit J-8.)

Not only are the actual physical accommodations inadequate for properly functioning court services, but also the physical condition of the facilities is deplorable. Despite the City's efforts to portray the facility as well-maintained, the ceilings in the courtrooms and judges' chambers reflect damage from water leaks and mold. (Relators' Exhibit J-15, a photograph of the light fixture in Courtroom No 3, showing mold and soot around fixture; Relators' Exhibit J-22, a photograph of water damage to the ceiling in chambers of Courtroom No 1; Relators' Exhibit J-24, a photograph of water damage in the Chambers area Courtroom No 1; Relators' Exhibit J-26, a photograph of water damage in the chambers of Courtroom No 1; Relators' Exhibit J-27, a photograph showing water/mold damage in the chambers of Courtroom No 2, and, Relators' Exhibit J-30, a photograph of the Chambers of Courtroom No 2 showing the area where sewer water leaked in; Relators' Exhibit J-39 - Photograph of Courtroom No 3 showing Judge Kobly on the bench with water damage above; and, Relators' Exhibit

J-40, a photograph of Courtroom № 3 showing water damage to the ceiling.)

Carpets are torn and damaged, "repaired" with duct tape employed to minimize hazards of tripping. (Relators' Exhibit J-20, a photograph of entrance to secretarial area from hallway outside Courtroom № 3, showing taped carpet; Relators' Exhibits J-23 and J-25, photographs of damage to carpeting in Courtroom № 1.) Heating and air conditioning is inadequate and antiquated, often leading to more damage to the court facilities. (See, Relators' Exhibits J-31 and J-32, photographs of the window air conditioner in Courtroom № 2, the latter photo also depicting rags under air conditioning unit.) Paneling is stained and pulling away from the walls. (See, Relators' Exhibit J-21, a photograph of paneling in Judge Douglas' chambers pulled away from wall with a pen inserted for perspective; Relator's Exhibit J-35, a photograph of Courtroom № 2 showing dirty and stained walls.) Wires are exposed (Relators' Exhibit J-14, a photograph of exposed wiring in hallway area) and plaster is cracked and crumbling. (Relator's Exhibits J-43 and J-44, photographs of damage to a wall in the secretary's office, Courtroom № 3.)

Frustrated with foot-dragging and delay after years of asking for suitable accommodations,³ Relators finally, on January 26, 2009, adopted an entry which directed Respondents to provide suitable accommodations and facilities for the operation of the Youngstown Municipal Court and related offices. The entry was directed to City Council, because of its control of the purse strings, and, the entry was also directed to the Mayor because he sits on the City's Board of Control, the Board through which the City enters into contractual agreements.(Tr. 712.) The Mayor appoints the remaining members of the Board of Control. When the City still failed to act upon the January 26, 2009 order, Relators commenced this action in mandamus.

Though the original discussion involved a City Justice Center, containing a court facility, a police station, and a jail (Deposition of Judge Robert A. Douglas, Jr., p. 22, line 3), when it became obvious that construction of such a facility was unlikely, Relators, faced with the

³ The delays and the frustration engendered by those delays is evidenced in the record. Relator Douglas testified:

The answer is no on both, because we see that as another stall, to start all over again and talk to Strollo from the beginning, another year stall, just like mediation was a stall, just like every year for the last 12 years was a stall. We got tired of all the stalls, understand.

challenges of an inadequate court facility, engaged in site acquisition and the design of a facility. To assist in this process, the City hired Olsavsky-Jaminet Architects. A site was selected and a design was created. The City made it clear, however, that it did not go forward with the project, and the City failed to appropriate funds for the preparation of construction drawings. Thereafter, in an effort to save the City money, Relators asked the project architects, Olsavsky-Jaminet, to design a plan that would provide suitable accommodations to the Relators for the operation of the Youngstown Municipal Court, while at the same time using an existing City facility so as to avoid the additional expense of site acquisition. Olsavsky-Jaminet completed a design to fit within an existing City-owned building, known as the City Hall Annex.

Although the City on behalf of the Judges had engaged Olsavsky-Jaminet, the Mayor hired a second architect around 2008, Strollo & Associates, to design a cheaper facility. (Deposition of Judge Robert A. Douglas, Jr., p. 46, line 18.) Unlike Olsavsky-Jaminet, Strollo & Associates did not meet with the Court or its personnel (Deposition of Judge Elizabeth A. Kobly, p. 92, line 20), and Relators found the design wholly

unsatisfactory. (Kobly Deposition, p. 85, line 16 *et seq.*; 47, Milich Deposition, line 8 *et seq.*)

ARGUMENT

Proposition of Law № 1: The legislative authority of a municipal corporation is constitutionally and statutorily required to provide suitable accommodation for a Municipal Court and its offices.

“The courthouse must be accessible, efficient, convenient and safe. Our courthouses are the most significant public buildings that we have here in America. The courthouse is the cornerstone of authority and the cornerstone of the community it serves.” So said then-Justice Maureen O’Connor of this Court, who was the keynote speaker at the dedication of an addition to the Martin P. Joyce Juvenile Justice Center in Youngstown held June 15, 2010. That the current Municipal Court facilities are inadequate cannot be disputed.

Nor can it be disputed that Respondents, the City Council members, have a legal obligation to provide suitable accommodations for the Court.

R.C. 1901.36 provides:

(A) The legislative authority of a municipal court shall provide suitable accommodations for the municipal court and its officers. The legislative authority of a county-operated municipal court may pay rent for the accommodations.

The legislative authority shall provide for the use of the court suitable accommodations for a law library, complete sets of reports of the supreme and inferior courts, and such other law books and publications as are considered necessary by the presiding judge, and shall provide for each courtroom a copy of the Revised Code.

The legislative authority shall provide any other employees that are necessary, each of whom shall be paid such compensation out of the city treasury as the legislative authority prescribes, except that the compensation of these other employees in a county-operated municipal court shall be paid out of the treasury of the county in which the court is located, as the board of county commissioners prescribes. It shall provide all necessary form books, dockets, books of record, and all supplies, including telephone, furniture, heat, light, and janitor service, and for such other ordinary or extraordinary expenses as it considers advisable or necessary for the proper operation or administration of the court.

(B) The legislative authority of the municipal court shall provide suitable accommodations for the housing or environmental division of the court. The accommodations shall be in the courthouse, include at least one courtroom in which jury trials can be conducted, be located in one or more adjacent rooms, and be provided in accordance with the Rules of Superintendence for Municipal Courts and County Courts.

This Court has held that, by enacting that statute, "which is mandatory in its terms, the General Assembly recognized that municipal courts, as an essential part of the justice system in this State, must be given the means to carry out their duties under the law." *See, State, ex rel. Taylor v. Delaware*, 2 Ohio St.3d 17, 18, 442 N.E.2d 452 (1982). Thus, just as in the *Taylor* case where there was "a clear legal duty on the part of respondents to 'provide suitable accommodations' for the Delaware Municipal Court,"

so, too, there is here a clear legal duty on the part of respondents to 'provide suitable accommodations' for the Youngstown Municipal Court.

In *State, ex rel. Hillyer, v. Tuscarawas Cty. Bd. of Commrs.*, 70 Ohio St.3d 94, 1994 Ohio 13, 637 N.E.2d 311, County Court Judge Hudson Hillyer brought an action in mandamus because in the Tuscarawas County Court, it was difficult to separate opposing witnesses due to limited space, counsel were required to take their clients outside to discuss confidential matters, the courtroom was too small to hold all defendants and spectators during traffic court, there was no waiting room for jurors, there was no private access from chambers to the courtroom, there was no consultation room for attorneys and clients, and the facilities did not comply with the predecessor to Appendix D to the Rules of Superintendence. There was no jury room, and the court furniture was old and insufficient. All of this, of course, should have a certain ring of familiarity. Judge Hillyer testified that the facilities were inadequate and the respondents admitted that the facilities were inadequate. While the courts have found that the Superintendence Rules are not mandatory in *all* respects, they are to be considered when determining what are suitable facilities.

R.C. 1901.36(A) standing alone, provides a clear legal duty on the part of the Respondents to “provide suitable accommodations” for the Youngstown Municipal Court. This mandatory duty to provide suitable accommodations furnishes the basis for the issuance of a writ of mandamus. *Taylor*, 2 Ohio St.3d at 18, 442 N.E.2d, at 454.

Relators here clearly have met the elements of mandamus. In *State, ex rel. Consolidated Rail Corp., v. Gorman*, 70 Ohio St. 2d 274, 275, 436 N.E.2d 1357 (1982), this Court held that: “A writ of mandamus may issue only where the relator shows (1) a clear legal right to the relief prayed for, (2) a clear legal duty upon respondent to perform the act requested, and (3) that relator has no plain and adequate remedy in the ordinary course of the law.”

As to the need for suitable accommodations for a *municipal* court, the Fourth District case, laid out the elements to be proved: (1) a clear legal right to the requested relief; (2) a clear legal duty to perform these acts on the part of Respondents; and (3) the lack of a plain and adequate remedy in the ordinary course of law. See, *State, ex rel. Badgett v. Mullens*, 177 Ohio App.3d 27, 2008 Ohio 2373, 893 N.E.2d 870, citing *State, ex rel. Neff, v.*

Corrigan, 75 Ohio St.3d 12, 16, 1996 Ohio 231, 661 N.E.2d 170. The “function of mandamus is to compel the performance of a present existing duty as to which there is a default. It is not granted to take effect prospectively, and it contemplates the performance of an act which is incumbent on the respondent when the application for a writ is made.” See, *State ex rel. Willis v. Sheboy*, 6 Ohio St.3d 167, 451 N.E.2d 1200 (1983), syl. 2. Given the conditions of the present accommodations, there is a duty devolving upon Respondents to furnish the Relators suitable accommodations *now*.

In cases such as this, the legal right to relief and the legal duty to perform acts are correlative. The record shows that the existing Municipal Court facilities are wholly inadequate. Under R.C. 1901.36, the Respondents have a clear legal duty to provide *suitable* court facilities, not just any court facilities. The entire record supports the claims that the current court facilities are not “suitable” as R.C. 1901.36 requires. The Complaint and the affidavits of Relators appended thereto, and indeed all of the evidence in this case fully support the conclusion that the present facilities are inadequate and unsafe. Another “brawl in the hall” is simply a matter of time, given some of the emotionally-charged serious and violent offenses

which come before the Municipal Court for initial appearance and preliminary hearing.

Yet, the record shows that, since being served with the order five years ago in January of 2009, the Respondents have done nothing to educate themselves about the court facilities. Of the Respondents who actually knew about the municipal court's facilities, they conceded the insufficiency of the court's physical plant.

We can turn to another Municipal Court case, the Fourth District's *Badgett case, State, ex rel. Badgett v. Mullens*, 177 Ohio App.3d 27, 37, 2008 Ohio 2373, 893 N.E.2d 870, for guidance. Indeed, Relators quote heavily from the opinion here because the similarities between the evidence in that case and the evidence in this case is striking.

b. Respondents Have Not Provided "Suitable Accommodations" for the Marietta Municipal Court

Because this is an original action, we serve as the finder of fact and determine whether the municipal court facilities are suitable without the lens of deference that normally applies to appellate decision making. Having reviewed the depositions, exhibits, and affidavit submitted, we conclude they are not suitable. *Frankly, this is not a difficult determination to make*—particularly because the City and Intervenors *acknowledge that the facilities have many flaws and dispute very few of the claimed inadequacies* cited by Mr. Badgett and Judge Welch.

It is clear from the record that the municipal court facilities impede the fair and efficient administration of justice in Marietta and appear to be an unsafe environment for the judge, court staff,

litigants, counsel, and the general public. The staff at the courthouse must use space heaters in the winter because the heat is inadequate, even though they have been advised against this practice. (Welch Dep. 8). There is sagging and discolored tile where water has damaged the ceiling, and water accumulated in a light fixture. (Welch Dep. 11). The city law director's office and civil clerk's office have only a partial dividing wall between them resulting in the staff from either office having the ability to access the other's facilities. (Welch Dep. 12).

The facilities are clearly too small. Although an architectural report recommended a space of approximately 7,300 square feet, the current court is only 1,983 square feet—well less than half the space needed. (Welch Dep. 14 - 16, Exhibit 2). There is inadequate seating in the courtroom resulting in litigants, observers, and potential jurors having to wait in the hallway or on the stairwell. (Welch Dep. 19-21). There are only two small counsel tables in the courtroom so there is not always enough room for the parties and their lawyers to converse privately. (Welch Dep. 22-23). In fact, one end of a table abuts the jury box so that the party and counsel are unable to have a private conversation. (Welch Dep. 24).

The area from the judge's chambers to the courtroom is shared by the judge and the jurors and there is no separation between court staff, the judge, members of the public, and prisoners. (Welch Dep. 25). * * *. Further, the jury room is not monitored by any security. (Welch Dep. 28). The jury room is also used by the probation office to meet with defendants every morning and by the court for meetings. (Welch Dep. 34). The multiple uses for this room make scheduling very difficult. (Welch Dep. 35).

There is no private restroom for the jurors to use and potential jurors are not separated in a jury assembly area. A portable room divider is placed in the hallway to separate the jurors from the parties. Although this provides visual separation, there is no sound separation. (Welch Dep. 28). There is only one men's restroom on the first floor and one women's restroom on the second floor— with only one commode—for use by all the offices in the building plus the public. (Welch Dep. 29, 42). Additionally, there is a locked unisex bathroom on the first floor that can be used by all Marietta city employees. (Welch Dep. 43). There is no public telephone. (Welch Dep. 31).

There is no separate room for use by the attorneys. Instead, they must use the employee break room and ask any court staff in the room to leave or walk outside to speak with their clients privately. (Welch Dep. 32).

The violations bureau is located on the second floor, not near a parking area, and the counter in the bureau is at least four feet tall. (Welch Dep. 36, 45). There are also access issues with the court *because anyone with a physical disability must go to the police department to use the elevator.* * * * .

* * *

The court's security system is wholly inadequate. There is no screening of individuals entering the courtroom and no uniformed, armed law enforcement officer assigned specifically to the court. There is an armed bailiff, but he has multiple responsibilities in the courtroom and is not a court security officer. *Further, the prisoners, public and court staff all travel the same hallways.* Although there is a duress system now, it doesn't have enunciation capability or identify the location of the panic. (Welch Dep. 65-66).

Based on this evidence, we conclude that the Marietta Municipal Court does not comply with many of the court facility standards outlined in Appendix D of the Rules of Superintendence. The court is not adequately heated and air conditioned (A); is not separate from non-judicial governmental agencies (B); the courtroom does not have adequate seating capacity (C); tables are not situated to allow private interchanges between litigants and counsel (C); the judge does not have private access to the courtroom from chambers (C); the magistrate does not have a courtroom or office facilities similar to those of a judge (E); there are no private personal convenience facilities available for the jurors (F); there is no consultation room provided for the use of attorneys (G); the facilities for the violations bureau are not located near public parking areas (H); there is not adequate space and equipment for court personnel to prepare, maintain, and store necessary court records (I); there are not adequate restroom facilities separate from the public restroom facilities for all court personnel (I); and public telephones are not available (J).

Additionally, the court security standards are inadequate under Appendix C. Persons are not subject to security screening (3); there are no uniformed, armed law enforcement officers assigned to the court (4); prisoners are transported through areas

accessible to the public (6); and the duress alarms do not have enunciation capability (7).

We readily acknowledge that a *deficiency concerning one or two—or perhaps even more—of the guidelines in Appendix D or Appendix C would not render a court facility unsuitable*. However, here *the deficiencies are so numerous and so serious that we simply cannot conclude the City has provided “suitable accommodations” for the municipal court as required by R.C. 1901.36*. We find that Mr. Badgett has demonstrated that he has a *clear legal right to the relief requested*— on behalf of the taxpayers of Marietta—and that the *City has a clear legal duty to provide “suitable accommodations” for the Marietta Municipal Court pursuant to R.C. 1901.36*. Therefore, we conclude Mr. Badgett has established the first two requirements for the issuance of a writ of mandamus.

Badgett, supra, at ¶¶27-38. (Emphasis added.)

The Respondents here have done nothing to give effect to the order of January, 2009 (Relators’ Exhibit 2). Though Councilwoman Tarpley realized that by not complying with the order she earned herself and her colleagues a trip to Columbus to testify, that is the only change among in the Respondents’ conduct as regards this case. Before the trial, they would talk about the issue but do nothing. When the trial came up, they drove to Columbus, then testified, and they went back home, not addressing the issue once again. They have not introduced legislation to furnish suitable accommodations for the Youngstown Municipal Court. Faced with a complaint in mandamus that recites that the facilities which house the Youngstown Municipal Court and the Court’s support services are, and

have been, entirely inadequate, and faced with a laundry list of those inadequacies, the Respondents have done nothing.

The record supports Findings of Fact 24 and 25, which detail shortcomings of the Youngstown Municipal Court. Like Marietta, the Court in Youngstown falls short not just in an area or two, but in many.

To determine whether there is a clear legal right to the relief prayed for by the Relators and a clear legal duty upon Respondents to perform the act requested, *i.e.*, to furnish accommodations that comport with the Municipal Court's January, 2009 entry—the first determination is, what is the definition of “suitable accommodations” as that phrase was employed by the General Assembly in R.C. 1901.36.

Badgett supplied the standard for defining “suitable accommodations” as used in R. C. 1901.36. The statute does not explicitly define “suitable accommodations” and the Court in *Badgett* found the term ambiguous. *Badgett, supra*, at ¶21. But the Court cited to decisions of this Court, finding that this Court “has already addressed how to determine whether court accommodations are suitable within the meaning of R.C. 1901.36.” *Id.*

In *State ex rel. Taylor v. City of Delaware* (1982), 2 Ohio St.3d 17, 18, 2 Ohio B. 504, 442 N.E.2d 452, 454, the Supreme Court held that M.C. Sup.R. 17—now Appendix D to the Rules of Superintendence—is “intended to provide basic guidelines for facilities of municipal and county courts.” Therefore, “[a]lthough not all of the provisions of the rule are mandatory in character, the standards set forth in the rule should be taken into consideration in measuring the adequacy of existing court facilities * * *.” *Id.*

And, in *State ex rel. Hillyer v. Tuscarawas Cty. Bd. of Commrs.*, 70 Ohio St.3d 94, 95-96, 1994 Ohio 13, 637 N.E.2d 311, 313, the Supreme Court again reached a similar conclusion. In *Hillyer*, the county court judge filed a complaint in mandamus alleging that the court facilities were inadequate for many of the same reasons that Mr. Badgett cites—it was difficult to separate opposing witnesses due to limited space, counsel were required to take their clients outside to discuss confidential matters, the courtroom was too small to hold all defendants and spectators during traffic court, there was no waiting room for jurors, there was no private access from chambers to the courtroom, there was no consultation room for attorneys and clients, and the facilities did not comply with M.C. Sup. R. 17 (now Appendix D to the Rules of Superintendence)—in addition to claiming that the court furniture was old and insufficient and there was no jury room. In interpreting an analogous statute to R.C. 1907.17 requiring that the board of county commissioners provide suitable county court facilities, the Supreme Court of Ohio affirmed its holding in *Taylor* that the Rules of Superintendence be used as a measuring stick in determining whether court facilities are suitable. *Id.* at 99.

Based on the holdings in *Taylor* and *Hillyer*, we look to the Rules of Superintendence for guidance in determining whether the legislative authority of Marietta has met its duty of providing “suitable accommodations” for the municipal court as required by R.C. 1901.36.⁴

⁴ The Court’s footnote 2 (renumbered here) read:

At the time *Taylor* and *Hillyer* were decided, Appendix C governing court security standards did not exist. However, Appendix C is now part of the Rules of Superintendence; therefore, we consider

(continued...)

Badgett, supra, at ¶¶22-24. Much like the Respondents' claims here, the City of Marietta argued that the Appendices to the Superintendence Rules did not bind the City.

The City and Intervenors contend that Appendix D does not contain mandatory requirements that bind the legislative authority because the vast majority of the standards state only that the court "should" have certain items, i.e. "the courtroom should have adequate seating * * *." Appendix D, Section (C). They contend that only sections (A), (C), and (I) of Appendix D contain mandatory provisions; therefore, these are the only provisions that they can be held accountable for violating. Likewise, they note that Appendix C specifically states in its Preamble that "[t]hese standards are not mandates."

Ordinarily, we would agree with this position. The word "shall" in a statute is construed as mandatory, while the word "should" is construed as directory. *State v. Book*, 165 Ohio App.3d 511, 2006 Ohio 1102, 847 N.E.2d 52, at ¶20. However, here, we are construing these standards not as mandatory requirements but rather utilizing them in deciding the factual issue of whether the Marietta Municipal Court facilities are "suitable" as defined in R.C. 1901.36. See *Hillyer, supra* at 99 (court of appeals properly considered Rules of Superintendence in measuring suitability of court facilities despite their non-mandatory nature). Moreover, to hold that the Rules of Superintendence should not be considered in determining the adequacy of the court facilities would be in direct contravention to the Supreme Court of Ohio's holdings in *Taylor* and *Hillyer*. See, also, *State ex rel. Musser v. City of Massillon* (1984), 12 Ohio St.3d 42, 45-46, 12 Ohio B. 36, 465 N.E.2d 400 (granting writ of mandamus seeking provision of accommodations for referee based on M.C.Sup.R. 17(E) stating that "[r]eferees

⁴(...continued)

it in determining whether the municipal court facilities are "suitable" in the same way we consider Appendix D.

(Footnote in original.)

should have courtroom and office facilities similar to those of a judge * * *”).

Badgett, supra, at ¶¶24-26.

As did the Fourth District in *Badgett*, this Court must find from the record here that the “municipal court facilities impede the fair and efficient administration of justice in Marietta and appear to be an unsafe environment for the judge, court staff, litigants, counsel, and the general public.”

Badgett, supra, at ¶28. And so it is in Youngstown.

In *Badgett*, the Court of Appeals acknowledged that:

a deficiency concerning one or two—or perhaps even more—of the guidelines in Appendix D or Appendix C would not render a court facility unsuitable. However, here the deficiencies are so numerous and so serious that we simply cannot conclude the City has provided “suitable accommodations” for the municipal court as required by R.C. 1901.36. We find that Mr. Badgett has demonstrated that he has a clear legal right to the relief requested—on behalf of the taxpayers of Marietta—and that the City has a clear legal duty to provide “suitable accommodations” for the Marietta Municipal Court pursuant to R.C. 1901.36. Therefore, we conclude Mr. Badgett has established the first two requirements for the issuance of a writ of mandamus.

Badgett, supra, at ¶38.

Here, Relators have demonstrated a veritable bounty of deficiencies that render these present facilities unsuitable. In this original action, this Court is the trier of fact. Relators have presented overwhelming evidence

that the present court facilities are unsuitable. Just as in the *Badgett* case, this is not a difficult determination to make. Like the City and the intervenors in *Badgett*, the Respondents in this case “acknowledge that the facilities have many flaws and dispute very few of the claimed inadequacies cited by [Relators.]” *Badgett, supra*, at ¶27.

Relators must also demonstrate that they have no plain and adequate remedy at law. This Court and the appellate courts of this State have found that mandamus is proper and that there is no plain remedy at law when dealing with budgetary, space and security issues. *See, e.g., State, ex rel. Dellick, v. Sherlock*, 100 Ohio St.3d 77, 2003 Ohio 5058, 796 N.E.2d 897; *State ex rel. Donaldson, v. Alfred*, 66 Ohio St.3d 327, 612 N.E.2d 717 (1993); *In Re: 2008 Operating Budget Lake County Juvenile Court*, 11th Dist No. 2008-L-044, 2008 Ohio 4048, 2008 Ohio App. LEXIS 342; *State, ex rel. Judges of the Toledo Municipal Court v. Mayor of the City of Toledo*, 6th Dist. No L-08-1236, 2008 Ohio 5914, 2008 Ohio App. LEXIS 4969.

In their answer, the Respondents deny that Relators have a plain and adequate remedy at law. However, the alternatives offered by Respondents are illusory. These judges and their predecessors in office

have tried for a dozen years to get relief. Even now, the Relators deny the ability to pay for a court when in fact they spend more than \$4,000,000.00 annually on “value decisions.” The attitude of the current Mayor is a far cry from former Mayor Williams, who told retired Judge Douglas that he would blame a shift in these value decisions on the Court, even though the capital improvements monies were being spent on non-capital, current expenses. Relator Douglas testified:

And the Mayor and I had a very long, very long conversation about the project and paying for it, the cost of the project and how it could be paid for and, you know, capital improvement monies for special project funds. And at the end of that long conversation, the Mayor said about the Masters Block property—in fact, he pointed to the picture up on the wall that I had there. He said it is reasonable. He said that, yes, the City could pay for it, could float bonds and pay for it, but that he would not do it because he did not want to trade off the projects that he needed to do it and that if the Judges forced him to do it, he would say that we are forcing him to lay off police and fire.

(Douglas Deposition, p. 42, lines 5-17.)

The Respondents’ claimed inability to pay is illusory. In *Taylor*, this Court’s *per curiam* opinion said in part: “In holding that the writ of mandamus should be allowed in this cause, this court is not unmindful of the present financial problems being experienced by political subdivisions in the state. Of necessity, those problems must be taken into account by

both relator and respondents in satisfying the mandatory obligations imposed by R.C. 1901.36." Many of those claims in any event have been dissipated by the testimony of the Mayor and finance director at trial that this can be done. Yet, while it *can* be done, it has not been done. Relators thus stand before the Court, confident that the inadequacies of the present facilities have shown over and over that the present "accommodations" are anything but "suitable."

Respondents' proffered ignorance of the condition at the Municipal Court is insufficient to excuse their failure to respond to the order here sought to be enforced. Faced with an order to furnish the Municipal Court suitable accommodations, Respondents have failed to act.

The decision to spend the money elsewhere was not done after careful review of the conditions of Youngstown Municipal Court or with the order in mind. Impossibility is no defense here, factually or legally. Just as in court funding cases, where the duty to appropriate the ordered amounts is not vitiated by the fact that compliance with the court's requests would work an undue hardship on other offices and agencies, so

too, here compliance with the Court's order will not dissemble city government.

Court funding orders are presumed reasonable, and the political branches of government must rebut the presumption in order to justify noncompliance with the order. *See, State ex rel. Weaver v. Lake Cty. Bd. of Commrs.*, 62 Ohio St.3d 204, 205, 580 N.E.2d 1090 (1991). The presumption emanates from the separation-of-powers doctrine because courts must be "free from excessive control by other governmental branches to ensure their independence and autonomy." *See, State ex rel. Wilke v. Hamilton Cty. Bd. of Commrs.*, 90 Ohio St.3d 55, 60-61, 2000 Ohio 13, 734 N.E.2d 811. In order to preserve the separation of powers doctrine, the Municipal Court's order must be presumed reasonable. Claims that it costs too much have given way to a concession that even at the higher cost (if it is higher), the renovated Court is within reach if the Judges pitch in money from their special projects account. Still, however, no action, just more talk. It is better talk than in the past, but still just talk.

For the last 15 years, the Municipal Court has not been "free from excessive control by other governmental branches" thereby undermining

the Court's "independence and autonomy." The Court can no longer be the slave to the political branches of government while council members insure that sidewalks in their neighborhoods are repaired. Respondents have done nothing to demonstrate that Relators' Exhibit 2 and Joint Exhibit 1 are unreasonable. Accordingly, the writ must issue.

While the City may be in financial difficulty, that is true of every local government across America. If these Judges were asking for the Taj Mahal, it would be one thing. Here, the City uses the \$4.5 million it collects for capital improvements every year for everything other than the Court or debt service for court renovations. The Relators have shown a clear right to relief. The Respondents' proffered arguments of inability to pay must fall on deaf ears, lest every court in the State be subject to the spending priority decisions of the political branches of government.

Proposition of Law № 2: The constitutional separation of powers doctrine compels the conclusion that a determination of what constitutes suitable accommodations necessarily rests with the court, and not with the legislative authority of a municipal corporation.

The doctrine of separation of powers is grounded in the Constitution. Though statutes such as R.C. 1901.36 may be enacted by the legislature to enforce and breathe life into the doctrine of separation of

powers, the duty to ensure sufficient resources rests upon the coordinate political branches of government independent of and in the absence of any statutory enactment. Put another way, if R.C. 1901.36 were never enacted, or if the statute were repealed tomorrow, the Respondents nonetheless would have the obligation to furnish the funds necessary for the administration of justice. This *constitutional* doctrine of separation of powers “requires that the funds necessary for the administration of justice be provided to the courts.” *See, State, ex rel. Badgett v. Mullens*, 177 Ohio App.3d 27, 44, 2008 Ohio 2373, 893 N.E.2d 870, at ¶49. In *State, ex rel. Foster v. Board of County Comm’rs*, 16 Ohio St.2d 89, 242 N.E.2d 884 (1968), this Court held:

It is a well-established principle that the administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers. The proper administration of justice requires that the judiciary be free from interference in its operations by such other branches. Indeed, it may well be said that it is the duty of such other branches of government to facilitate the administration of justice by the judiciary.

The constitutional separation of powers doctrine was properly stated by this Court in *Zangerle v. Court of Common Pleas*, 141 Ohio St. 70, 46 N.E.2d 865 (1943), at syl. 2: “courts of general jurisdiction, whether

named in the Constitution or established pursuant to the provisions thereof, possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and cannot be directed, controlled, or impeded therein by other branches of government. The *Zangerle* case also established that courts of general jurisdiction, whether named in the Constitution, or established pursuant to the provisions thereof, pass upon the suitability and sufficiency of quarter and facilities for their occupation and use. *Zangerle v. Court of Common Pleas*, 141 Ohio St. 70, at syl. 3.

This is scarcely a novel principle. In fact, in *Zangerle*, this Court quoted from 21 CORPUS JURIS SECUNDUM 255, §166, which stated the general principle that while other bodies or officers are charged with the duty of providing suitable buildings or rooms for the holding of courts, the court or judge may pass upon the suitability of the quarters furnished and may exercise control over the courthouse to the extent necessary to secure suitable rooms for, and to prevent interference with, the discharge of public business. Thus, aside from the statutory obligation of Respondents to furnish suitable accommodations, there is a *constitutional* duty to insure

that the Municipal Court has the tools necessary to administer justice effectively, because, as shown below, though they are not named in the Constitution, they are *created pursuant to the Constitution* and are entitled to the same respect as all other courts.

Proposition of Law № 3: Courts of general jurisdiction, whether named in the Constitution or established pursuant to the provisions thereof, possess all powers necessary to pass upon the suitability and sufficiency of quarters and facilities for their occupation and use, and, subject to an abuse of discretion, their judgment is superior to that of the executive or legislative branches.

Zangerle v. Court of Common Pleas, supra, established that courts of general jurisdiction, whether named in the Constitution or established pursuant to the provisions thereof, possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions. Just as they cannot be directed, controlled or impeded by other branches of the government when it comes to matters such as budgets and necessary personnel, so, too, the courts are in the best position to pass upon the suitability and sufficiency of quarters and facilities for their occupation and use. As with any rule of law, there must be a limit or an exception, and there must be one here. The Youngstown Municipal Court, as opposed to the City Council or the Mayor, has the constitutional

authority to pass upon the sufficiency—the suitability—of their accommodations, absent an abuse of discretion.

The political branches of the Youngstown government want to restructure the design the Municipal Court has achieved after years of hard work. This *design*, incidentally, is just that. Construction drawings are not complete. The Strollo spatial design was used by Respondents as another stall. Implicit in its use was the claim that the City, after it has been *ordered* to provide certain accommodations, now wanted to dicker.

One doubts very much that this Court stood back silently while the political branches of the State government appropriated and spent over \$101,000,000.00 to renovate the Ohio Judicial Center. This Court did not simply stand by and say, “just fix it up however you think best.” These municipal judges are not asking for marble floors, brass doors, or crystal chandeliers that admittedly are fitting for the State’s highest court. But when it comes to safety, design, and day to day usefulness, the law recognizes what the facts of this case compel: that we should entrust a determination of the needs of a court to the judge or judges of that court rather than to the city council or the mayor. In this case, it is a city council

that does not know if the Municipal Court has public restrooms or telephones, does not know if the Court has witness waiting rooms, jury deliberation and assembly rooms, attorney-client conference rooms, to name but a few. Time and again, from *Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 177, 2 L.Ed. 60 (1803), through the Watergate tapes case, see, *United States v. Nixon*, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974), the courts have echoed that “[i]t is emphatically the province and duty of the judicial department to say what the law is.”

In *State, ex rel. Finley, v. Pfeiffer*, 163 Ohio St. 149, 126 N.E.2d 57 (1955), this Court observed that the majority opinion of the Court of Appeals, where the action was commenced, held that a probate court is a court of general jurisdiction, and that the law as indicated in the syllabus of *Zangerle, supra*, applies to a probate court. The dissenting appellate court judge said that a probate court is *not* a court of general jurisdiction but one of limited jurisdiction. But this Court rejected that view, because the probate court had full authority and power to deal with all the subjects entrusted to it. If it can be said that the probate court was a court of limited jurisdiction as that dissenting judge had argued, the same can be

said of any of the courts of the state. Each court has only such jurisdiction and power as the Constitution and the laws enacted thereunder give to it. This is no less the case with a municipal court, a court which, while not named in the Constitution, is certainly "established pursuant to the provisions thereof." The Municipal Court has full authority and power to deal with all the subjects entrusted to it by the jurisdictional statutes that have been enacted. Were it otherwise, the balance of powers that is the true genius of our constitutional system would be lopsided in the City of Youngstown and in every other municipality across the State.

Speaking about which branch of government determines the security needs of a court, the Sixth District Court of Appeals in *State, ex rel. Judges of the Toledo Municipal Court v. Mayor of the City of Toledo, supra*, had this to say:

In our view, Ohio's statutory scheme does not specifically reserve discretion to the legislative authority over the provider, the number of security officers needed, or the details of how those services are provided. Rather, R.C. 1901.36 requires that the legislative authority provide the "necessary" employees, including those needed for proper security. In addition, unlike court personnel who manage the court's documents, scheduling, and other "paper work," court security officers must have specialized training to deal with courtroom security, transportation and supervision of prisoners, and general courthouse security, addressing issues with the public-at-large in a variety of situations.

As a result of the specialized nature of security services, upon consideration of the Rules of Superintendence and prior case law, we conclude that decisions regarding specific security requirements are within the municipal court's purview and control. The court's judges are in the best position to know how many officers are needed to effectively secure courtrooms and the courthouse, whether such officers should be full-time or part-time employees, and which agency would best be able to provide qualified officers.

We are not unmindful of the city's concern about budgetary funding and projected financial conditions. Nevertheless, respondents do not claim that relators' cost proposals for 2008 or 2009 are facially groundless or unreasonable. Instead, the city appears to have merely reduced the court security budget as part of an "across-the-board" cut in overall expenses, and expected the court to accommodate the reduction by lowering court security levels. Since respondents have not shown that the amount requested by relators for 2008 or that the same system be implemented for 2009 to be unreasonable, we conclude that, as a matter of law, relators are entitled to summary judgment regarding the authority to make such decisions.

Id., at ¶¶35-37. This holding does little more than apply the longstanding rule in this State that the courts must be independent and are in the best position to determine their own needs.

As always, those decisions are subject to the abuse of discretion standard. But the choice between the Jaminet design, which has taken into account the needs of the Municipal Court, and the Strollo design, which has not, and is nothing more than an attempt to furnish a court "on the cheap," is clear. Subject to an abuse of discretion, the judges must determine the needs of the court they are entrusted to operate. Thus, the

City will not have furnished "suitable accommodations" if it simply presses forward and implements the Strollo design. At this late date, and in the context of a mandamus, only adherence to Relators' Exhibit 2 and Joint Exhibit 1 will do.

Finally, and perhaps most important, the City's attempts come too late. The statute directs the legislative branch to provide suitable accommodations. For 12 years *before* an order was entered, the City might have enacted its own schematic design, leaving it to the Court to then decide if what the City had provided it was "suitable." But that ship has sailed. Negotiations are no longer part of the landscape. Having spent 12 years doing nothing to furnish suitable accommodations, spending money on street department trucks, fire stations, neighborhood sidewalks and streets, and a building at 20 Federal Place where the City is in the landlord business, the City waited until the Municipal Court entered an order. *Then* the City wants to claim that a failure of the Municipal Court to negotiate is unreasonable.

That's not how it works. Prior to then entry of an order, one can argue to a court, attempt to persuade a court, or even argue *with* a court.

But once an order is entered, it is a court order. It is not an agenda for a labor negotiation, to see what now can be worked out. This proceeding, then, is not about negotiation, and not about Judges being unreasonable because after 15 years of foot-dragging, they do not want to negotiate with the foot-draggers. This proceeding is about the vindication of a *court order*. If Relators' Exhibit 2 and Joint Exhibit 1 are reasonable and not an abuse of discretion, and if the City has failed in its statutory obligation to provide suitable accommodations, then a clear right to relief exists, there is a clear obligation on the part of the Respondents to furnish that relief, and the Relators have no plain and adequate remedy at law. Respondents have met all of those conditions here, and the writ must issue.

CONCLUSION

The thorny issue of the expenditure of public tax dollars arises in virtually every case involving furnishing proper facilities or proper funding for the operation of the court. Municipal legislative authorities and boards of county commissioners doubtless will continue to complain that they cannot furnish what the courts require for their proper operation simply because they lack the money to do so. This Court and the appellate

courts have taken claims of financial hardship into account. But taking those claims into account and allowing them to stand as an absolute bar are two separate matters entirely. The courts have not allowed claims of financial hardship to stand as an absolute bar to the issuance of a writ of mandamus. These holdings are eminently sensible, because the holdings not only jealously guard the independence of the judiciary that is required by the Constitution, but also, these holdings ensure that legislative bodies and boards of county commissioners do not defeat bona fide claims for the proper operation of the judiciary simply by allocating the money elsewhere as those appropriating authorities see fit in implementing policy.

The City has now said that it can and wants to comply with the Municipal Court's order. The City is now hard-pressed to say that the order is illicit or unreasonable. The decisions of this Court, the appellate courts of this State, and the supreme and appellate courts of other jurisdictions all have wisely recognized that while funding authorities are granted discretion in how they appropriate, that discretion is not limitless. They must provide for the sufficient and proper operation of the judicial branch, and thereafter funding may be exercised with discretion.

Just as there are limits, then, in how a legislative authority or a board of county commissioners may appropriate public funds, so, too, there are limits upon the ability of the courts to order funding, facilities, and furnishings. That limitation is that the order must be reasonable. The order in this case is patently reasonable. The Municipal Court has set out space requirements which are scarcely opulent. The order contains no requirements for oak or imported teak wood paneling, marble floors, or brass fixtures. What is called for by the order is a moderately sized court facility with a design that satisfies court security and design standards that will have to last 50 years.

It is an inescapable human psychological feature that appearances have an impact upon the effect of what our courts do. This Court, rather than convening in the Ohio Judicial Center, with its wide hallways, vaulted ceilings, and large courtrooms, and rather than issuing its decisions in bound and printed format, could meet in the conference room of a Best Western Hotel and issue its opinions on construction or notebook paper, with the scrivener employing crayon. The oral arguments and conferences of the Court would still be valid, having been conducted by

the duly constituted Supreme Court of this State. The construction paper opinions would be the law of this State, having been handed down by the State's duly constituted highest court.

This silly and admittedly extreme example is made to highlight a point—a point in fact that this Court made tacitly when it moved from the State Office Tower into the Ohio Judicial Center. Justice in America and justice in Ohio operates largely on citizen respect for the law, as opposed to the force of arms. To the extent that court decisions are respected and obeyed, it is because of the things the courts conduct themselves in ways that engender respect. And so the Court holds oral arguments and conferences in, and issues decisions from, the Ohio Judicial Center, not the conference room of a sleazy hotel, not from a warehouse and not from someone's garage.

From the earliest days of the United States Supreme Court, when the opinions of individual justices were printed *seriatim*, to today, courts issue opinions explaining their decisions. A simple "judgment affirmed," or "judgment reversed," will not do. Court proceedings are open to the public. Indeed, this Court has gone further in recent years, making the oral

arguments available over the Internet and over cable television to those who may wish to observe the workings of the Court, but are unable to attend its proceedings in Columbus. The Court has also made its opinions available to the public, so that interested members of the public who cannot afford the monthly LexisNexis or Westlaw fees can nonetheless have access to the Court's decisions.

All of these things are designed to foster respect for the Court by showing that it conducts its proceedings in dignified accommodations befitting the State's highest Court; that its proceedings are conducted with the seriousness and decorum attendant to deciding legal questions that affect not only the individual litigants, but all citizens of this State.

The photographs submitted in this case are representative of the deplorable conditions which exist in the Youngstown Municipal Court. Relators do not claim that only surroundings analogous to those of this Court will do—quite the contrary, in fact. At the same time, justice cannot be dispensed from a setting that looks more like a cheaply paneled basement from the 1970s than from the halls of justice.

The Relators have convincingly demonstrated a clear legal right to relief and a clear legal duty on the part of Respondents to furnish it. Relators have no plain and adequate remedy at law. This Court must issue a writ of mandamus, compelling Respondents to do all things necessary to implement the Court's order of January 26, 2009, so that the Youngstown Municipal Court will be accessible, efficient, convenient and safe. Our courts are the most significant public buildings that we have here in America, and are the cornerstone of authority and the cornerstone of the community. Unless and until the writ issues to compel Respondents to furnish the suitable accommodations that the Relators have ordered, the Youngstown Municipal Court will continue to be excluded from that apt description of a court that serves the community.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ~~is~~ sent by regular United States Mail, postage prepaid, [] hand delivered to counsel or counsel's office; [] sent by telecopier this ~~10~~ day of August, 2014 to Martin S. Hume, Esq., and Rebecca M. Gerson, Esq., Counsel for Respondents, 26 South Phelps Street, Youngstown, Ohio 44503.


JOHN B. JUHASZ

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