

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 PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

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RELATORS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Relators, Elizabeth A. Kobly and Robert P. Milich, hereby submit the following proposed Findings of Fac and Conclusions of Law, viz:

Parties

1. Relators are the duly elected, qualified, and acting Judges of the Youngstown Municipal Court, Mahoning County, Ohio.(Complaint, ¶1; Relators' direct, 2.)
2. Respondents are the duly elected, qualified, and acting members of the legislative and executive branches of the City of Youngstown. (Complaint, ¶2, Tr. 83, 145, 240, 471, 530, 710.)

3. Relators, as Municipal Judges, are charged with the constitutional and statutory duties of operating the Youngstown Municipal Court, including the Court itself and the probation department. (Kobly direct, 3.)

Present Court Facilities

4. The Youngstown Municipal Court and the support services for the Court are presently housed on the second floor of the Youngstown City Hall, and have been for quite some time. (Relators' direct 3, 20). This is actually the third floor of the City's police station, but is attached by a hallway to the second floor of City Hall. (Tr. 730.)

5. When this lawsuit was commenced in 2009, statutorily there were three judges of the Youngstown Municipal Court, Robert A. Douglas, Jr., Elizabeth A. Kobly, and Robert P. Milich. (Relators' direct, 3; Tr. 250, 284, 379, 513, 722.)

6. The facilities which house the Youngstown Municipal Court and the support services for the Court are, and have been, entirely inadequate to administer justice. (Tr. 150, 172, 260, 284, 478, 674, 688, 716; Relators' direct. 4, 21.)

History

7. The issue of adequate space and facilities for the Court's operations has been repeatedly raised with the government for the City of Youngstown for many years. (Relators' direct, 16, 25; Tr. 172, 281.)

8. Relators have attempted over a period of more than fifteen years to address with Respondents the deficiencies in the Court's facilities.

9. On July 17, 1996, the judges of the Youngstown Municipal Court entered an order indicating that the Court was "in dire need of additional space to reasonably, efficiently and effectively administer justice." (Relators' direct, 8, 14, 25; Tr. 149.)

10. The inadequacies have been brought to the attention of city officials as far back as 1997 by the Youngstown Municipal Judges, spearheaded initially by now retired Judge Robert A. Douglas, Jr. (Tr. 319, 662, 668; Relators' Direct 3.)

11. On August 28, 1998, the Youngstown Municipal Court issued an amended judgment entry that increased Court costs and established a special projects fund. (Relators' direct 26.)

12. In 2002, Youngstown City Ordinance 02-65 expressed the intent of City Council to allocate future city capital improvement funds to

construct a City Justice Center and to amortize the debt thereon, thereby committing a portion of the City's income tax receipts which were to be dedicated to capital improvements for the construction of a justice facility. After the Municipal Court declared its present facilities inadequate, the first project contemplated was near the County Jail (Tr. 60, 779), and the City purchased a piece of property there for approximately \$80,000.00. (Tr. 780.)

13. The City Finance Director informed the Mayor that the City could not afford such a project. (Tr. 780.).

14. The Municipal Court/Police Department, was abandoned. (Tr. 780.)

15. The Judges next looked at court facility to be newly constructed in downtown Youngstown, known as the Masters Block Project. (Tr. 58, 480, 780-781.)

16. The City Finance Director advised the Mayor that the City could not afford the estimated \$12-13 million construction cost. (Tr. 781.)

17. Additionally, the difficulty in finding enough property for parking made the Masters Block Project difficult to achieve, and it, too was abandoned. (Tr. 60, 61, 781.)

18. Next, the Judges proposed renovating the building known as the City Hall Annex. (Tr. 479, 480, 559, 665.)

19. Cost estimates range from about \$6 million to \$8 million. (Tr. 781.)

20. In 2008 former Mayor Jay Williams engaged the Strollo Architectural firm to see if the Youngstown Municipal Court could be fit spatially into the existing City Hall Annex. (Tr. 560-561.)

21. The drawings prepared by the Strollo firm were to study space and were not intended as construction drawings. (Tr. 560-561.)

22. The alternative set of drawings lists only construction costs, not total project costs. It does not account for permits and fees, nor for the cost of furnishing the facility or installing the necessary technology. When those factors are accounted for, the cost differences between the two project proposals are minimal. (Tr. 54, *et seq.*)

23. On January 26, 2009, Relators adopted an entry which directed the Mayor and the City Council of Youngstown, Ohio, to provide suitable accommodations and facilities for the operation of the Youngstown Municipal Court and the related offices. (Relators' Exhibit 2.)

Deficiencies in Present Facilities

24. The Youngstown Municipal Court facilities do not comply with Appendix D of the Ohio Superintendence Rules in the following respects:

(A) The Courtrooms do not maintain a suitable judicial atmosphere and do not properly serve the public because they are not clean, well-lighted, adequately heated and air -conditioned. (Relators' direct, 4, 21; Relator's Exhibit J-15 - Photograph of Light in Courtroom No 3 with mold and soot around fixture; Relator's Exhibit J-14 - Photograph of Exposed wiring in hallway area; Relator's Exhibit J-20 - Photograph of Entrance to secretarial area from hallway outside Courtroom No 3 showing taped carpet; Relator's Exhibit J-21 - Photograph of Paneling in Judge Douglas' chambers pulled away from wall; Relator's Exhibit J-22 - Photograph of Water damage to ceiling in chambers of Judge Douglas; Relator's Exhibit J-23 - Photograph of damage to carpeting in Courtroom No 1; Relator's Exhibit J-24 - Photograph of Water damage in Chambers area Courtroom No 1; Relator's Exhibit J-25 - Photograph of damage to carpet in Courtroom No 1; Relator's Exhibit J-26 - Photograph of Water damage in Judge Douglas' chambers; Relator's Exhibit J-27 - Water/mold damage chambers Courtroom No 2.)

(B) The Courtrooms are not in a courthouse, and while they are in a county or municipal building, there is insufficient signage to notify the public that the Court is located in the building. (Tr. 95, 169.)

(C) The Court's location within the building is not separated from the location of non-judicial governmental agencies.

(D) The Court facilities are not located in a building that is dignified and properly maintained.

(E) The courtrooms do not have adequate seating capacity so that litigants and others are not required to stand or wait in hallways and areas adjacent to the courtroom.

(F) There are insufficient desks, tables, and chairs for all court personnel regularly present in the courtroom. (Relators' Direct, 4.)

(G) Tables and chairs provided for the parties and counsel are not situated to enable all participants to hear and to allow private interchanges between litigants and counsel.

(H) Not all courtrooms have a blackboard and other necessary demonstrative aids (Relators' direct, 4, 22), as there is no room for blackboards and other demonstrative tools, and the Court does not, in any event, have such items. (Relators' direct, 4.)

(I) The courtrooms do not each have a soundproof jury deliberation room located in a quiet area as near the courtroom as possible. (Relators' direct, 5, 22; Relator's Exhibit J-17 - Photograph of Jury room window and air conditioner.)

(J) There are no private personal convenience facilities available for the jurors in the rooms that are used as jury assembly and deliberation rooms. (Relators' direct, 22, 23.)

(K) The only public restroom for those who come to the Court facility as litigants, observers, witnesses, counsel or jurors, is a one stall, one room unisex bathroom, located in the basement of City Hall, two floors below the court and six floors below the City Council Chambers that are used as a jury assembly room. (Relators' direct, 5, 22, 23.)

(L) There is no adequate waiting room for jurors, nor reading material of general interest, television, or telephones. (Relators' direct, 5, 22; Tr. 86, 166, 167, 718.)

(M) There is no waiting room for witnesses, and witnesses are often forced to stand in the hallway when a separation of witnesses is ordered. (Relators' direct, 5, 22; Tr. 88, 163, 249, 717, 726.)

(N) There is no consultation room for use by attorneys. (Relators' direct, 4, 23; Tr. 89, 90, 165-166, 249, 285.)

(O) Prisoners are often kept until their case is called in the jury box, where lawyers must confer with them, as there are no other facilities for such conferences. (Tr. 716-717.) In fact, the present Mayor, who was a practicing lawyer, has in the past been forced to confer with clients in the Court's jury box. (Tr. 717.)

(P) The violations bureaus and pay-in windows are not located near public parking areas. (Relators' direct, 5, 23.)

(Q) There is insufficient space and equipment for court personnel to prepare, maintain, and store necessary court records. (Relators' direct, 5, 23.)

(R) There are no public telephones available. (Relators' direct, 5, 23.)

(S) Prisoners are not transported into and within a court facility through areas that are not accessible to the public. There is no separate entrance and public hallways must be utilized. (Relators' direct, 7, 12, 23; Relator's Exhibit J-7 - Photograph of Prisoner being transported through public hallway; and Relator's Exhibit J-8 - Photograph of Arrestee from Probation transported, cuffs in front, through public hallway.)

(T) During the transport of prisoners, law enforcement officers who are in direct contact with the prisoners carry firearms. (Relators' direct, 7, 23.)

(U) There is no secure prisoner holding area equipped with video monitoring. (Relators' direct, 7, 23.)

(V) There is no effective secondary security perimeter at the entrance to the office space housing judges and court personnel. (Relators' direct, 7, 23.)

(W) There is no ability to stop anyone from accessing the court area at any time of the day or night. (Relators' direct, 7, 23.)

25. The present facilities of the Youngstown Municipal Court do not comply with Appendix C of the Ohio Rules of Superintendence, specifically Standard 14, *viz.*:

(A) The Court does not provide an adequate and suitable environment for jurors.

(B) The entrance and registration area are not clearly identified and appropriately designed to accommodate the daily flow of prospective jurors to the Court. The Court uses the City Council Chamber, 4 floors above the Court, as a jury assembly room.

(C) Jurors are not accommodated in pleasant waiting facilities furnished with suitable amenities. (Relator's Exhibit J-12 - Photograph of Jury room showing table, chairs, TV and boxes, and Relator's Exhibit J-13 - Photograph of Jury deliberation room.)

(D) There is one jury deliberation room and it lacks the space, furnishings, and facilities conducive to reaching a fair verdict. Moreover, the location of the room makes it difficult to insure the safety and security of the deliberation room. (Relator's Exhibit J-3 - Photograph of Hallway leading from public hallway to jury room.)

(E) The juror facilities are not arranged to minimize contact between jurors, parties, counsel, and the public. (*Id.*)

26. Mr Jaminet, the architect who has worked with the Judges since the inception of the project, was asked to analyze the present facilities to see if they could be repaired or renovated to meet the needs of the Court and they cannot. He described the present facilities: "They are horrible and they are unsafe at best." (Tr. 70.)

27. The deficiencies that remain in the facilities of the Youngstown Municipal Court are so numerous and so serious that the Respondents

have failed to provide "suitable accommodations" for the Youngstown Municipal Court as required by R.C. 1901.36 and OHIO CONST., art. IV, §1.

28. The City's present Mayor acknowledged that but for a few minor issues such as the pay-in window for traffic violators, Relators' Exhibit 2 is not unreasonable.

Impact on Nature of Court's Docket

29. Youngstown is, in terms of the poverty rate, one of the poorest cities in the state. (Tr. 207, 226, 318.)

30. There are a number of vacant houses in the City. (Tr. 212.)

31. There is usually some relationship between areas of concentration of poverty, vacant properties, and high crime. (Tr. 362.)

32. In those types of cities, nature of crime is different than in a "bedroom community" where the crimes are more like shoplifting, theft, receiving stolen property and driving under suspension. (Tr. 363.)

33. These and other factors lead to an increase in crime, and Youngstown has a high rate of violent crime. (Tr. 227, 363.)

34. In 1990, there were three Municipal Judges and an annual caseload of approximately 17,000 cases, with the caseload as high as 21,000 in 2002. (Tr. 213, 228, 387.)

35. Now, there are two Municipal Judges and an annual caseload of about 12,000. (Tr. 213, 228.)

City's Failure to Address Concerns

36. In the time since the Respondents and their predecessors in office were served with the entry, only some remodeling been done that has been largely paid for with Court accumulated funds, and those modifications have not increased the size or space of the Court. (Tr. 142-143.)

37. Aside from the money that the Municipal Court has itself collected in special projects funds, the Respondents have set aside no capital improvement money to comply with Relators' 2009 order for a Court facility, Relators' Exhibit 2. (Tr. 108, 116, 177, 185, 188, 224, 232, 254, 255, 771.)

38. The Respondents or their predecessors in office have not dedicated any income tax proceeds to defray the cost of a City Justice Center as set forth in the 2002 ordinance. (Relators' direct, 14; Tr. 108, 173, 177, 185, 188, 224, 232, 254, 255, 491.)

39. The Respondents or their predecessors in office, since the time that Relators entered an order in 2009, have funded and accomplished

other capital construction projects, including a fire station and improvements to a City-owned building known as 20 Federal Place. (Tr., 117-118, 727.)

40. The Respondents or their predecessors in office have not set aside any money from extraordinary income such as the V&M Star lease arrangement, or any other extraordinary form of revenue receipts, to comply with Relators' Exhibit 2. (Tr. 103, 186, 188.)

41. The Respondents or their predecessors in office have made other policy and value judgments as to where to spend available tax dollars, such as demolition and maintenance. (Tr. 258, 770.)

42. The failure to set aside any money at all to comply with the order of Relators (Relators' Exhibit 2) is a value decision arrived at through the budget process. (Tr. 771.)

43. The Respondents have chosen to commit money to what various mayors and city councils have determined to be a lot of great needs in the City of Youngstown, and appropriate a budget that they deemed reflected the needs of the community as a whole. (Tr. 771-772.)

44. The other areas where city revenues have been spent include police and fire operations, demolition of unsafe houses and economic

development, where the City has spent money to assist industry coming in. (Tr. 772.)

45. The City of Youngstown collects approximately \$4 million annually in income tax revenues that are credited to the City's capital improvements fund. (Tr. 774.)

46. The share of income tax collections that are by law specifically deposited in the police department fund is approximately \$4 million to \$5 million annually. (Tr. 774.)

47. The City Police Department collects annual revenues of about two hundred thousand dollars annually. (Tr. 774.)

48. The annual police department budget is approximately \$15 million to \$16 million per year. (Tr. 775.)

49. The Youngstown Municipal Court collects annual revenues of about \$750,000.00 annually, plus the collections that are deposited in the Court's special projects funds. (Tr. 766, 767.)

50. The difference between the collections of the Court and the operating cost of the Court and the separately elected Clerk of Court is about \$1.3 million annually. (Tr. 375, 376, 386, 767.)

51. The City Fire Department generates approximately \$200,000 annually in fees and revenue, aside from income tax collections. (Tr. 775.)

52. The annual budget of the Youngstown city fire department is approximately \$12 million. (Tr. 775.)

53. The annual approximate total General Fund budget for the City of Youngstown is \$41 million annually. (Tr. 775.)

Ability to Address Order

54. The present Mayor wants to provide new or renovated facilities for the Municipal Court. (Tr. 740.) He testified that it is his "wish to move the court out and to provide them space. . . . For several reasons . . . [that] have to do with court conditions [and with his] desire to bring city employees who report directly to me back into city hall. . . . And quite frankly to do that, I need to get the courts and the Clerk of Courts into a new location." (Tr. 740-741.)

55. In response to concerns expressed by the present Mayor, the Judges agreed to revise the plans and eliminate an elevator. (Joint Exhibit 1.)

56. Funding the facility as ordered by the judges would not be impossible (Tr. 138), and there is no evidence that funding the project would force the City into financial emergency. (Tr. 140.)

57. In fact, the City "could probably find a way to live with [\$]8 [million] depending upon the commitment of the ... courts to work with the administration in terms of how much capital funds from their capital budget [the Judges would commit]." (Tr. 781.)

Conclusions of Law

1. R.C. 1901.36 provides in pertinent part:

(A) The legislative authority of a municipal court shall provide suitable accommodations for the municipal court and its officers. ...

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, 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.

2. By virtue of R.C. §1901.36 and Ohio Constitution, art. IV, §1,

Respondents have a clear legal duty to provide suitable court facilities for

the Youngstown Municipal Court in compliance with R.C. 1901.36 and the Rules of Superintendence.

3. Despite Respondents' present existing duty to provide suitable accommodations facilities for the Youngstown Municipal Court in compliance with R.C. 1901.36 and the Rules of Superintendence, Respondents have defaulted upon the same.

4. Because of that default, and in light of the years of repeated requests from the Relators that the issues of the Court be addressed, Relators' order for facilities (Relators' Exhibit 2) is reasonable, and Respondents have not demonstrated that it is not. Indeed, the Mayor and several council members have conceded that the Court's present facilities are inadequate.

5. Relators' efforts to secure suitable accommodations through the issuance of Relators' Exhibit 2 was reasonable and was not an abuse of discretion.

6. As they have not abused their discretion, Relators have a clear right to the relief requested here, *i.e.*, that Respondents are to provide suitable court facilities for the Youngstown Municipal Court in compliance with R.C. 1901.36 and the Rules of Superintendence, and in accordance

with the 2009 order attached as "Exhibit A" to the Complaint and admitted as Relators' Exhibit 2 at trial.

7. For the requested relief, Relators lack a plain and adequate remedy in the ordinary course of law. Contempt is not an adequate remedy because, *inter alia*, the actions of Respondents indicate that they will continue to ignore or to defy the orders of Relator as they have done in the past. The Relators noted in their testimony:

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.

(Relators' direct, 16.)

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, 17.)

8. A writ of mandamus shall issue, compelling the Respondents to comply forthwith with the order of Relators and to furnish suitable accommodations in accordance with the most recent plans submitted at the trial as Joint Exhibit 1.

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 sent by electronic mail this 15th day of August, 2014 to Mr. Martin S. Hume, Esq., and Ms. Rebecca M. Gerson, Esq., Counsel for Respondents, 26 South Phelps Street, Youngstown, Ohio 44503.



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