

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL.)
ELIZABETH A. KOBLY, ROBERT A.)
DOUGLAS, JR. AND ROBERT P.)
MILICH, JUDGES, YOUNGSTOWN)
MUNICIPAL COURT)

CASE No. 2009-0866

RELATORS)

v.)
YOUNGSTOWN CITY COUNCIL, ET AL.)

RESPONDENTS)

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RESPONDENTS POST-HEARING BRIEF

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I. INTRODUCTION

On May 14, 2009, Relators, Judges of the Youngstown Municipal Court, filed their Complaint for a Writ of Mandamus alleging that Respondents, members of Youngstown City Council, the City of Youngstown and the Mayor of the City of Youngstown, had failed to provide Relators with suitable accommodations. In 2009, there were three judges in the Court and a magistrate. That number has since been reduced to two judges and a magistrate. In 2012, shortly after the retirement of the third judge, the Ohio General Assembly reduced the composition of the Youngstown Municipal Court to two judges due to both the general decline in the City's population, as well as an overall decrease in the volume of cases filed in Youngstown Municipal Court.

Relators' assert that the Youngstown Municipal Court facilities are drastically inadequate and unsuitable under the Ohio Supreme Court Rules of Superintendence. However, the conditions at the court are no different from the rest of Youngstown's City Hall, where the court resides. Respondents' must struggle with the financial pitfalls of an aging industrial city as it gradually attempts to reinvent itself. A recent financial study of the City of Youngstown finances resulted in a finding that the City of Youngstown is in severe financial distress. There is no argument that Youngstown Municipal Court could have a more pleasing aesthetic. Nevertheless, the facilities are not entirely inadequate and unsuitable.

Respondents have consistently maintained, and continue to adequately maintain, the Court facilities. Numerous improvements, such as a newly renovated Probation Department, have been made even in the last few years. What Respondents cannot afford to do with limited and stretched financial resources, is to write a blank check for the

myriad of Relators' demands. The existing Youngstown Municipal Court continues to meet the suitability requirements for municipal courts under Ohio law, even if it does not have every amenity that Relators desire. Further, Relators have rejected Respondents' good faith attempt to upgrade and improve the court facilities. For these reasons, Relators are not entitled to their requested writ.

II. STATEMENT OF FACTS

The Youngstown Municipal Court is located on the second floor of City Hall, which is considered the third floor of the police department. The entire floor is dedicated to the Court and its offices, including the probation department and the Clerk of Courts' office. The two buildings, although they have separate entrances, are connected. (Tr. 730)

There are security guards, who are retired police officers, and metal detectors at each entrance of the building (Tr. 300-301, 742). The security guards were trained at the Ohio Peace Officer Training Academy, and are provided with tasers, firearms, badges and uniforms with insignia (Tr. 300-301, 309, 323, 678-680). There are also officers specifically assigned to the court (Tr. 309). This includes one officer assigned to each courtroom and one to two other officers in the court area. *Id.* When court is in session, there are at least three security guards present, as well as security cameras in each courtroom (Tr. 301-302, 321).

The court facility contains three courtrooms, one for each Judge, and one for the Magistrate (Tr. 284). Each Judge also has private chambers which are close to their respective courtrooms (Tr. 330, 680). There is adequate seating in each courtroom, and there are tables for both Plaintiffs and Defendants (Tr. 123-124). Each courtroom also

contains a jury box (Tr. 717). The court has one multipurpose room, which can be used for jury deliberations, attorney-client meetings, etc., and a separate jury assembly room (Tr. 252, 285). There is a public restroom available two floors below the court, which can be accessed via an elevator or the stairwell, a restroom for jurors in council chambers, which is where they assemble, and a restroom in the court area for the court staff (Tr. 164, 167, 252-253). While there is not a law library contained within the court facilities, there is a law library in the law department, which is on the fourth floor of City Hall (Sammalone Deposition, 18).

Additionally, the court is well-lit with adequate heating and air-conditioning, and located in a building that is dignified and properly maintained (Drennan Deposition, 24-25). The Commissioner of Building and Grounds has pledged his commitment to diligently maintaining the Youngstown Municipal Court facilities, addressing the Judges' requests, and providing the Court with "safe, effective and aesthetically pleasing facilities. (McKinney Direct, 5).

In recent years, the City Building and Grounds Department has provided the following services and improvements for the municipal court and the areas of City Hall which connect to it:

- (1) painting the lobby, stairwell, restrooms, offices and common areas;
- (2) new flooring in the open portions of the Youngstown municipal court area;
- (3) new heating and air conditioning for all judges' chambers and courtrooms;
- (4) updated the entrance to the court area through the Police Department with new carpet, paint, tile, furniture, receptacles, lights and new ceilings;
- (5) updated the lighting to make it energy efficient;
- (6) installed new bathroom fixtures;
- (7) installed new fire alarm systems;
- (8) installed eighteen-ton compressor HVAC used for Court Administrator's Office and Clerk of Courts' Office to maintain proper air flow and increase energy efficiency;
- (9) changed all traps on radiators to increase energy efficiency;
- (10) implemented a system requiring I.D. badges for all employees;
- (11) implemented twenty-four hour security system;
- (12)

providing parking accommodations for all judges, court administrator and magistrate; (13) continued to provide all janitorial, carpet cleaning and maintenance services; (14) provided valve repair, pipe insulations, steam trap repair, increased sustainability and installed new lights pursuant to a Department of Energy and Conservation Block Grant; (15) provided major parking lot lighting; (16) administered, project managed and supervised all aspects of the Youngstown Probation Office renovation; (17) [repainted] common areas of the adjoining Youngstown Police Department [in July of 2013]; (18) provided fire safety training in conjunction with the Youngstown Fire Department; (19) provided all needed telephone changes with AT&T; (20) provided all needed movement of furniture, boxes and files to off-site facilities; and (21) [provided] a new generator in conjunction with the Departments of Water and Wastewater to be used for emergency backup situations.

(McKinney Direct, 3)

Despite the numerous improvements and the City's dedication to maintaining and improving the court facilities, the Judges have suggested that the only way to cure the alleged deficiencies is to construct a new court facility. As a result, they consulted with Raymond A. Jaminet, a local architect, and created a new facility plan which would occupy the existing City Hall Annex Building (Tr. 665).

In creating his plan, Mr. Jaminet relied only on the Judges desires, and did not rely on the Rules of Superintendence (Tr. 65-66). For instance, Mr. Jaminet's plan includes an indoor sallyport where prisoners would be dropped off and picked up, and an indoor parking garage for the Judges (Tr. 30, 32-34). He acknowledged that these specifications are not required by the Rules, but were included because the Judges requested them. *Id.* at 31-34. In fact, he acknowledged that his firm was involved in the preparation of the plans for area courts in Mahoning County and those courts have both outdoor parking for Judges and outdoor drop off locations for prisoners. *Id.* at 33-35. In addition to the secured indoor parking and indoor sallyport, Mr. Jaminet's plan would also include the construction of three new elevators at a cost of approximately

\$193,000.00 each (Tr. 37-39). In total, the courthouse would be approximately 40,000 square feet and cost 7.9 million dollars. *Id.* at 44, 68.

As a result of the high cost of Mr. Jaminet's plan and in the spirit of cooperation, the City consulted an architect of its own (Tr. 559). Kirk Kreuzwieser, who works for Strollo Architects, became involved in the courthouse project in 2008 when the City asked Mr. Strollo to look at the existing annex building and do a design proposal (Tr. 559). Mr. Kreuzwieser's "marching orders" from the City were to face the realities, the economics of the City, and provide a decent home for the municipal court while trying to be as economic and efficient as possible (Tr. 562). In creating the plan, the goal was not to create a less secure building; the goal was to create a secure building with less cost (Tr. 611). Strollo Architects was able to accomplish this goal and created a plan with an estimated cost of 6 million dollars. (Strollo Direct, 28).

Mr. Kreuzwieser knew what he was doing when creating this plan because the Strollo firm has built two other municipal courts, and thus, the firm is aware of the security issues and standards required by the state (Tr. 564). Mr. Kreuzwieser and Mr. Strollo reported that the plan they created on behalf of the City meets all Ohio Supreme Court standards (Tr. 579, Kreuzwieser Direct, 9, Strollo Direct, 25). Mr. Kreuzwieser elaborated:

Q: Does the plan you prepared satisfy all requirements established by the Ohio Supreme Court?

A: I can say without hesitation that the plan I prepared for the Youngstown Municipal Court in the renovated City Hall Annex would comply with all standards promulgated by the Ohio Supreme Court.

(Kreuzwieser Direct, 9)

Mr. Strollo recalled a meeting with Mr. Jaminet where they examined the differences between their respective plans. (Strollo Direct, 25) He and Mr. Jaminet determined the plans were similar except for five differences. *Id.* at 25-26. The differences in the two plans are minimal. However, the Relators refuse to work out the differences, despite acknowledging that they can be resolved (Tr. 646-647). Judge Kobly's testimony demonstrates the unwillingness of the Relators to reach an agreement as to the plans:

Q: Okay. Do you – do you agree now as you sit here that the differences could be worked out between the plans?

A: I'm sure there (sic) could be, there's no doubt in my mind that they could be.

Q: Are you interested in doing that?

A: Why would we?

Id.

Judge Kobly further acknowledged that after a meeting between the Judges, their counsel, the former law director and the former Mayor, Relators' counsel sent a letter to Respondents informing them that the Relators were not interested in any further meetings to work out the differences (Tr. 649-651). Further, the Relators testimony shows their contempt for any plan other than the one that they set forth. *Id.*

Q: But it goes on to, at the end, set forth that the judges are not interested in any meetings about how to work out the differences between the two plans, that the only meetings that should now take place are meetings in which the city and they discuss how the city is going to finance the plan the judges have set forth?

A: Sure, I'll agree with that.

Q: Okay. And you would agree that at that meeting you refer to the Strollo schematic as garbage?

A: Absolutely I do.

Id.

The City would like to provide new or renovated facilities for the municipal court (Tr. 778). This is not about the City's unwillingness, but is merely about the cost according to David Bozanich, the City's Finance Director. *Id.* David Eichenthal, the Director of the Public Financial Management (PFM) Group's Management and Budget Consulting Practice did an extensive assessment of the City of Youngstown and conducted an operational efficiency study of the City. He and his team spent more than six months studying all aspects of Youngstown. (Eichenthal Direct, 50) They found that the City of Youngstown was in "severe economic and fiscal distress." *Id.* at 51. His testimony reflects the following:

Q: What is your impression of Youngstown's condition?

A: Youngstown is a city in severe economic and fiscal distress. Between 1960 and 2010, Youngstown's population declined by nearly sixty percent of approximately 100,000 residents. More recent population estimates by the Census Bureau suggest continued population decline since 2010. Population loss has been accompanied by both long-term and more recent decline in unemployment. As a result, unemployment rates for Youngstown residents are generally higher than unemployment rates for Mahoning County, the State of Ohio or the nation. Youngstown has a concentration of very low income residents and high poverty rates. Nearly one-in-three residents are living in poverty and, in 2010, per capita income in Youngstown was just \$14,889—compared to \$26,942 nationally. The impact on Youngstown neighborhoods is evidenced by the high number of vacant properties and structures in the community. Vacant structures impose significant burdens on city services.

Q: How does it function on a day to day basis?

A: Youngstown's current path is not fiscally sustainable. Over the years, Youngstown has developed a structural deficit where growth in expenditures has outpaced any reasonable projection in growth in revenue. Our analysis projected that expenditures would outpace expenditures in

FY 2013 by \$5.5 million, growing to a budget gap of \$6 million in FY 2017. Over a five year period, deficits would total \$28.0 million.

The City's ability to close these gaps by increasing tax rates is extremely limited. At 2.75 percent, Youngstown already has one of the highest municipal income tax rates in the state and a tax rate substantially higher than some of its neighboring jurisdictions. As a result, any further increases in income tax would be anti-competitive and could exacerbate the loss of jobs and population.

Absent the ability to raise revenue to close the gap, Youngstown needs to continue to reduce the cost of government. Between 2007 and 2011, the City's workforce (supported by tax funds) declined by ten percent. Further reductions in workforce are necessary, but need to be targeted at those operational areas where the impact will not erode provision of essential services.

The path that the City has utilized in past years to close annual budget gaps—reliance on transfers from different governmental funds or one time revenues being used to support recurring cost—is not sustainable.

Id. at 50-52.

Mr. Eichenthal also had an opportunity to analyze the Youngstown Municipal Court and the Youngstown Municipal Court Clerk's Office. *Id.* at 53.

Q: As part of your analysis of the City government, did you analyze the Youngstown Municipal Court and the Youngstown Municipal Court Clerk's Office?

A: Yes. Efficient operation of the criminal justice system is one of my particular areas of expertise...Let me summarize the analysis that we performed for the City and our findings. From 2000 to 2010, Youngstown's Municipal Court and Clerk operations had a relatively stable headcount, while the City's headcount decreased by 16.3 percent. Between 2002 and 2011, expenditures for the Youngstown's Municipal Court and Clerk operations grew by 25.5 percent—more than four times the 6.0 percent growth in the City's General Fund during the same period. From 2002 to 2010, Municipal Court filings declined by 41.7 percent, but Clerk and Court headcount declined by less than 10 percent and spending increased by 18.3 percent (over \$600,000)....

Current levels of funding for the Clerk and Court are unreasonable and unnecessary. While other parts of City government were asked to do more with less, the Court and Clerk have done less with more...

Id. at 53-54

It is indisputable that the City is in financial distress. According to Councilman Nathaniel Pinkard “with the present financial conditions of city government, we’re doing the best we can with what we have.” (Tr. 111). The condition of the municipal court does not differ substantially from the rest of City Hall. (Tr. 136, 270) While the court facilities could be better, they are adequate. (Tr. 255, 716). Nonetheless, in an attempt to satisfy the Relators, the City proposed the aforementioned six million dollar renovation plan for the City Hall Annex. Rather than accept the City’s offer, Relators filed the instant action.

III. LAW AND ARGUMENT

RESPONSE TO RELATORS’ FIRST PROPOSITION OF LAW

THE RELATORS HAVE FAILED TO DEMONSTRATE THAT THEY ARE ENTITLED TO A WRIT OF MANDAMUS ORDERING RESPONDENTS TO PROVIDE SUITABLE ACCOMODATIONS FOR THE YOUNGSTOWN MUNICIPAL COURT.

In order for a writ of mandamus to issue, Relators must demonstrate (1) that they have a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) they have no plain and adequate remedy in the ordinary course of law. *State ex rel Am. Legion Post 25 v. Ohio Civ. Rights Comm.*, 117 Ohio St.3d 441, 444, 2008-Ohio-1261, 884 N.E.2d 54. The burden is on the Relator to show by plain, clear and convincing evidence that the writ should issue. *State ex rel. Henslee v. Newman*, 30 Ohio St.2d 324, 325, 285 N.E.2d 54 (1972).

While Respondents agree that the legislative authority of the City of Youngstown is bound by the terms of R.C. 1901.36, which requires them to provide suitable accommodations for the Youngstown Municipal Court, Relators have failed to prove by

clear and convincing evidence that the deficiencies in the present court facilities are so numerous or serious that they are entitled to a writ of mandamus. As such, Relators have failed to demonstrate that they have a clear legal right pursuant to R.C. 1901.36 that would entitle them to the prayed for relief.

The Youngstown City Council, as the legislative authority for the City of Youngstown, does have a duty to provide the court with suitable facilities pursuant to R.C. 1901.36. However, Relators have failed to demonstrate that council breached this duty, and thus, a writ of mandamus against them is both inappropriate and unwarranted.¹ Relators have made sweeping allegations and exaggerated perceived deficiencies in the condition of the existing facilities. However, they have failed to meet their burden and demonstrate by clear and convincing evidence that the facilities, which have housed the court for as long as any of the witnesses can remember, are unsuitable.

Admittedly, the courts are not luxurious, but neither do they have the dungeon like character that Relators try to present. The condition of Youngstown City Hall as a whole is the result of a City that has been in financial distress for decades. As expressed by many of the council members, the condition of the courts is not substantially different than the condition of the rest of City Hall. The Court is not being singled out, the nature of the facilities is purely indicative of the financial situation of the City. In the words of Councilman Nathaniel Pinkard, “with the present financial condition, we are doing the best we can with what we have.” Further, David Eichenthal, the Director of the PFM

¹ R.C. 1901.36 provides in relevant part the “legislative authority of a municipal corporation shall provide suitable accommodations for the court and its offices.” The plain language of the statute demonstrates that it creates a duty solely on the legislative authority of a municipality, and not the Mayor. Therefore, there is no clear legal duty on the part of the Mayor to provide suitable accommodations and the issuance of a writ of mandamus against him would be improper under any circumstances.

Group's Management and Budget Consulting Practice opined that the City of Youngstown is in "severe economic and fiscal distress." After an extensive analysis of the City's finances, he concluded that the path the City is taking is "not fiscally sustainable," the City has developed a structural deficit, and over a five year period the deficit would total approximately 28 million dollars.

Despite the poor economic condition, the City has made every effort to maintain the Court facilities, and has made numerous improvements to the facilities over the past few years. These include: painting the lobby, stairwell, restrooms, offices and common areas, new flooring in the open portions of the court area, new heating and air conditioning in the Judges' chambers and courtrooms, updating the lighting, installing new bathroom fixtures, installing new fire alarm systems, installing a new HVAC system for use in the court administrator's and clerk of courts' office, remodeling the probation office, and hiring retired police officers to serve as security officers for the court. The Relators barely acknowledge these improvements, however, and instead continue to focus only on the negative aspects of the court in proclaiming them to be unsuitable.

The Relators rely on several cases to support their allegations that the facilities are unsuitable. However, these cases are distinguishable from the case at bar.

First, Relators rely on *State ex rel. Hillyer v. Tuscarawas Cty. Bd. of Commrs.* 70 Ohio St.3d 94, 637 N.E.2d 311 (1994). In *Tuscarawas*, there was uncontroverted testimony that the county court facilities were inadequate for several reasons including the following: (1) it was difficult to separate opposing witnesses due to a lack of space, (2) counsel were required to take their clients outside to discuss confidential matters, (3) the courtroom was too small to hold all defendants and spectators, (4) there was no

waiting room for jurors, (5) the court furniture was old and insufficient, (6) there was no private access from the Judge's chambers to the courtroom, (7) there was no jury room, (8) there was no attorney-client consultation room, and (9) the facilities did not comply with the Court Facility Standards. *Id.* at 95. Further, Respondents admitted that the courtrooms were crowded, not very good and did not comply with the Facility Standards, including some of the mandatory provisions. *Id.* at 99. As a result, the Ohio Supreme Court upheld the appellate court's decision that the facilities were unsuitable, noting that they would not substitute their judgment for that of the court of appeals. *Id.*

In the case at bar, most of the deficiencies enumerated in *Tuscarawas* do not exist. Specifically, the Youngstown Municipal Court is not too small to hold all defendants and spectators, there is a jury assembly room, the court furniture has never been deemed old and insufficient, there is private access from the Judges' chambers to the courtroom, there is a jury deliberation room, and most of the Court Facility Standards are met.

Relators further rely on *State ex rel. Badgett v. Mullen*, 177 Ohio App.3d 27, 2008-Ohio-2372, 893 N.E.2d 870, to support their claim. The Court in *Badgett* held that the court facilities were unsuitable as the facilities had many flaws, which were admitted by respondents, who disputed very few of the numerous claimed inadequacies cited by the Judge. *Id.* at 39. The Court further stated "[i]t is clear from the record that the municipal court facilities impede the fair and efficient administration of justice...and appear to be an unsafe environment for the judge, court staff, litigants, counsel and the general public." *Id.* The deficiencies noted in *Badgett* are as follows: the facilities were clearly too small; the court area was not separated from non-judicial offices; there was inadequate seating in the courtroom; there were only two small counsel tables in the

courtroom; the area from the Judge's chambers was shared by the judge, jurors, members of the public and prisoners; the magistrate did not have an office or hearing room; the jury room was not monitored by security and was also used by the probation office; there was no private restroom for jurors to use; there was no jury assembly area; there was only one men's restroom and one women's restroom, with only one stall, for use by all offices in the building as well as the public; there were no public telephones; there were no separate rooms for the attorneys; the jail cell area was used for record storage because the clerk's office was too small; and there was no screening of persons entering the courtroom, and no armed law enforcement officers assigned to the court. *Id.* at 39-41.

The Youngstown Municipal Court shares, at most, a small fraction of the deficiencies outlined in *Badgett*. It has never been established that the Youngstown Municipal Court facilities are too small, nor has it been argued that the court area is not separated from non-judicial offices. As for the courtrooms, there is adequate seating; the area from the Judges' chambers to their respective courtrooms is private; the magistrate has a courtroom and office similar to that of the Judges; there is adequate security near the jury room; the probation department has their own separate offices; there is a jury assembly area with a private restroom; there is a restroom for jurors to use when they are in the jury deliberation room which can be accessed via the stairwell or elevator, and it is not shared by all offices in the building; there is no evidence that the clerk's office has insufficient storage space; there is screening of all persons prior to entering the court area; and multiple uniformed, armed officers are assigned to the court.

Relators make conclusory statements suggesting that the facilities are not suitable, but they do not parse out the alleged violations of the Rules of Superintendence, and

instead claim that the case at bar is exactly like those decided before. As evidenced by the specific facts presented in this case, it is not.

Relators have failed to prove by clear and convincing evidence that they have no plain and adequate remedy in the ordinary course of law. Relators failed to demonstrate that their contempt powers do not provide them with a plain and adequate remedy.

Relators repeatedly refer to this remedy as “illusory,” suggesting that if used, it would merely be ignored. These assertions do not excuse Relators from using this power prior to pursuing a mandamus claim. *State ex rel. Wellington v. Kobly*, 112 Ohio St.3d 195, 198, 2006-Ohio-6571, 85 N.E.2d 798.

Relators are precluded from claiming the remedy of contempt is inadequate because contempt powers carry with them the power to enforce Orders. “In any action or proceeding of which a municipal court has jurisdiction, the court or any judge of the court has power to...punish contempts...and to exercise any other powers that are necessary to give effect to the jurisdiction of the court and to enforce its judgments, orders, or decrees.” R.C. 1901.13(A)(1), See *State ex rel. Wellington v. Kobly*, 112 Ohio St.3d 195, 198, 2006-Ohio-6571, 85 N.E.2d 798. The exercise of their contempt powers is obviously a plain and adequate remedy in the ordinary course of law that is available to Relators.

The cases Relators cite in support of their claim that there is no plain remedy at law are distinguishable from the case at bar. See *State ex rel. Maloney 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); *State ex rel. Judges of the Toledo Municipal Court v. Mayor of the City of Toledo*, 179 Ohio App.3d 270, 2008-Ohio-5914, 901

N.E.2d 321 (6th Dist.). The aforementioned cases deal with a funding order for the daily operation of the court, a funding order for counsel to represent the court, and a funding order for courtroom security, respectively. Here, the Relators are not asking the Court to order Respondents to fund some administrative function of the Court. Instead they are asking the Court to order Respondents to provide suitable court facilities, and force them to implement a particular facility plan. Moreover, these cases do not suggest that there is no plain remedy at law when dealing with budgetary, space and security issues as Relators suggest; they merely suggest that mandamus is an appropriate vehicle when handling a funding order for specific, administrative functions of the court.

Thus, Relators have failed to show by clear and convincing evidence that a writ must issue. In fact, Relators have failed to satisfy any of the three requirements for the issuance of a writ of mandamus. Accordingly, their complaint must be dismissed.

RESPONSE TO RELATORS' SECOND PROPOSITION OF LAW

THE SEPARATION OF POWERS DOCTRINE DOES NOT PROHIBIT THE LEGISLATIVE AUTHORITY FROM DETERMINING WHAT CONSTITUTES SUITABLE ACCOMMODATIONS FOR A COURT.

Relators filed an action seeking a writ of mandamus to compel Respondents to provide them with suitable accommodations. In their second proposition of law, Respondents seek a declaratory judgment that they possess the sole power to determine what constitutes suitable accommodations and an injunction preventing Respondents from providing suitable accommodations in any form other than as directed by Relators. Such a finding is not a remedy available to Relators in this action.

If the real objects sought in a mandamus action are a declaratory judgment and prohibitory injunction, then the complaint does not state a cause of action and must be

dismissed. *State ex rel. Obojski v. Perciak*, 113 Ohio St.3d 486, 488-489, 2007-Ohio-2453, 866 N.E.2d 1070. In the present matter, Relators are using the vehicle of a complaint for writ of mandamus to seek a declaratory judgment determining that only they can determine what constitutes suitable accommodations, and thus preventing Respondents from providing suitable accommodations in keeping with the decisions and published standards of this Court.

No writ has yet been issued compelling Respondents to provide specified accommodations. The determination of what will constitute suitable accommodations is prospective in nature. The “function of a 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.” *State ex rel. Willis v. Sheboy*, 6 Ohio St.3d 167, 451 N.E.2d 1200 (1983), paragraph 2 of the syllabus. It would be contrary to the function of a writ of mandamus to use such to decide a separate, future potential issue rather than merely ordering the performance of the duty owed.

Additionally, Relators’ argument that only they have the right to make the determination as to what constitutes suitable accommodations has no legal authority. Relators refer to three cases which they allege support this proposition. None of the cases are actually supportive.

Relators reference one case from the Fourth District Court of Appeals which involves a writ of mandamus. *State ex rel. Badgett v. Mullen*, 177 Ohio App. 3d 27, 2008-Ohio-2372, 893 N.E.2d 870 (4th Dist.). In *Badgett*, the court in which the original action was presented determined that suitable accommodations had not been provided

pursuant to R.C. 1901.36 and ordered the parties to cooperate to accomplish the task of providing facilities which satisfy the statute. *Id.* at 48. *Badgett* does not suggest or imply that municipal courts have an inherent constitutional power to determine the sole method by which they may be provided suitable accommodations, and then compel the host city to carry out exactly the plan specified by the municipal court. The portion of *Badgett* quoted by Relators is merely a statement that the host city cannot entirely avoid its statutory duty to provide suitable accommodations. *Id.* at 44.

Badgett follows the precedent set by this Court in *State ex rel. Taylor v. City of Delaware*, 2 Ohio St.3d 17, 442 N.E.2d 452 (1982). In *Taylor*, the Ohio Supreme Court granted a writ of mandamus to provide suitable accommodations based on the respondents' failure to comply with R.C. 1901.36. It did not, however, suggest or imply in any way that municipal courts, which are creations of the legislature, possess an inherent constitutional right to determine for themselves the sole means by which the legislature may provide them with suitable accommodations. Such a result conflicts with the principles reflected in this Court's decisions. For example, in *Taylor*, this Court again ordered the parties to cooperate to formulate a facility plan acceptable to both of them. It stated:

In holding that this writ of mandamus should be allowed in this cause, this court is not being 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.

Id. at 18-19.

This Court has made it clear that the parties are to work together to bring about the provision of suitable accommodations. Relators' second proposition of law is

antithetical to the principles this Court has expounded. There is no circumstance in which the municipal court may, by fiat, select a facility plan which it determines will provide it with suitable accommodations and compel the municipality to execute that specific facility plan.

The Ohio Supreme Court has already determined the standard by which the court hearing a mandamus action is to determine whether or not a facility plan would provide suitable accommodations—the guidelines promulgated by the Ohio Supreme Court in the Appendices to the Rules of Superintendence for the courts of Ohio. It stated: “Although not all of the provisions of the rule are mandatory in character, the standards set forth in the rule [of superintendence which established the guidelines for court facilities] should be taken into consideration in measuring the adequacy of existing court facilities and in the planning of new facilities.” *Taylor*, 2 Ohio St.3d at 18.

Relators also misapply and misinterpret the two other cases they offer in support of their second proposition of law, *State ex rel. Foster v. Bd. of Cty. Comm'rs of Lucas Cty.*, 16 Ohio St.2d 89, 242 N.E.2d 884 (1968) and *Zangerle v. Court of Common Pleas of Cuyahgoa Cty.*, 141 Ohio St. 70, 46 N.E.2d 865 (1943). *Foster* and *Zangerle* deal with the power of courts of general jurisdiction to prevent other branches of government from impeding the administration of justice. *Foster* at paragraph 2 of the syllabus, *Zangerle* at paragraphs 2 and 3 of the syllabus. Municipal courts are not, however, courts of general jurisdiction. *State ex rel. Foreman v. Bellefontaine Municipal Court*, 12 Ohio St. 2d 26,27, 231 N.E.2d 60 (1965), *State ex rel. Slaby v. Summit Cty. Court*, 7 Ohio App.3d 199, 208, 454 N.E.2d 1379 (9th Dist.). As such, these cases are inapplicable.

RESPONSE TO RELATORS' THIRD PROPOSITION OF LAW

THE YOUNGSTOWN MUNICIPAL COURT IS A COURT OF LIMITED JURISDICTION AND HAS NO POWER TO PASS UPON THE SUITABILITY AND SUFFICIENCY OF QUARTERS AND FACILITIES FOR ITS OCCUPATION AND USE, NOR IS ITS JUDGMENT SUPERIOR TO THAT OF THE EXECUTIVE OR LEGISLATIVE BRANCHES OF GOVERNMENT.

Relators seem to think that courts of general jurisdiction have all encompassing power in determining the suitability and sufficiency of court facilities. While Respondents respectfully disagree, the larger issue is the Relator's suggestion that municipal courts are courts of general jurisdiction. The Ohio Supreme Court has stated in no uncertain terms, that municipal courts are courts of limited, not general, jurisdiction. To be sure, in *State ex rel Foreman, supra*, it was stated:

...[T]he Municipal Court is not a court of general civil jurisdiction. The Municipal Court is a court of limited and specific jurisdiction. This jurisdiction is set forth in Section 1901.18, Revised Code. Under this section Municipal Courts are given specific jurisdiction in designated areas of the law."

Foreman, 12 Ohio St.2d at 17.

Municipal courts are creatures of statute and have limited jurisdiction. *State v. Cowan*, 101 Ohio St.3d 372, 374, 2004-Ohio-1583, 805 N.E.2d 1085, *State ex rel. Talaba v. Moreland*, 132 Ohio St. 71, 5 N.E.2d 159 (1936), *State v. McCoy*, 94 Ohio App. 165, 114 N.E.2d 624 (4th Dist.). Courts created by statute have only limited jurisdiction, and may exercise only such powers as are directly conferred by legislative action. *State ex rel. Johnson v. Cty. Court of Perry Cty.*, 25 Ohio St.3d 52, 54, 495 N.E.2d 16 (1986), *Oakwood v. Wuliger*, 69 Ohio St.2d 453, 432 N.E.2d 809 (1982), *Foreman*, 12 Ohio St.2d at 27-28. As the Youngstown Municipal Court is a court of limited and specific jurisdiction, Relators' reliance on cases dealing with courts of general jurisdiction is

misplaced. Further, nowhere in R.C. 1901.18, which sets forth the jurisdiction of municipal courts, is it provided that municipal courts have the power to determine what constitutes suitable accommodations.

Even if *Foster* and *Zangerle* do apply to municipal courts, it would not justify the Youngstown Municipal Court Judges determining that a specific design plan is the only possible means by which they can be provided with suitable accommodations, and then demanding that their host city appropriate whatever amount is necessary to execute the plan, regardless of its financial circumstances. The claimed inherent power exists only to prevent the administration of justice from being impeded, not to demand a particular facility that the court finds more desirable than another. *State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 126 N.E.2d 57 (1955). In order to justify the use of the inherent powers described in the syllabus of *Zangerle* in making specific directives or demanding the implementation of a particular plan, that facility plan would need to be the only possible means to assure the proper and efficient operation of the Court. *Finley*, 163 Ohio St. at 155.

It would be nonsensical to conclude that the Youngstown Municipal Court Judges' eight million dollar renovation plan, as opposed to the Respondents' proposed six million dollar renovation plan, is the only way to assure suitable facilities for the Court's proper function and efficient operation. Such a conclusion would constitute one of the outrageous results this Court warned against in *Finley*.

The Marion County case points out that, although the second paragraph of the syllabus in the *Zangerle* case is very broad in its language, it must be confined to the facts in that case, and that the court there had no power to order the county commissioners to make permanent or capital improvements in a courthouse.

Id. at 154. The Marion County case referenced in *Finley* is *Comm. for Marion Cty. Bar Ass'n v. Marion Cty.*, 162 Ohio St. 345, 123 N.E.2d 521 (1954). In *Marion County*, this Court considered *Zangerle* and found that it did not apply to circumstances in which a court seeks to compel a government entity to engage in specific renovations. *Marion County*, 162 Ohio St. at 360-361. “[Zangerle]...did not involve any right of the court to compel the remodeling or even the repair of any part of the courthouse.” *Id.* at 352. The court further stated

[they] have been able to find no precedent which recognizes any inherent power of a court to provide a substantial addition to its courthouse building, especially where applicable statutes provide that other officers are to have discretionary powers with respect to providing such courthouse and determining its style, dimension and expense. Our conclusion is that the Common Pleas Court has no such inherent power.

Id. at 360-361.

Even if one were to assume that *Zangerle* applies to municipal courts despite the fact that they are not courts of general jurisdiction, the subsequent decisions of this Court make it clear that *Zangerle* did not create any inherent power for courts to demand specific renovations be carried out by their host government entity. *Id.*, *Finley*, 163 Ohio St. at 154-155. This Court also actively sought to discourage relators from misinterpreting *Foster* in a manner similar to the way Relators have in their second and third propositions of law. In *State ex rel. Cleveland Mun. Court v. Cleveland City Council*, 34 Ohio St.2d 120, 296 N.E.2d 554 (1973), relators argued, as the current Relators have, that they could just demand whatever funds necessary to engage in specific renovations they believe appropriate and the host city would be required to allocate it so long as the request was reasonable and did not constitute an abuse of

discretion. The relators in that case relied on *Foster* as support for said proposition just as the current Relators do. This Court explained that in *Foster*

...[w]e did not hold that legislative authorities have an inherent duty to allocate all funds requested by a Municipal Court, without regard to the limited funds available for disbursement to all departments and divisions of city government and the ability of the court to properly exercise its judicial function. Contrary to relators' reading of *State ex rel. Foster v. Bd. of Count Commrs.*, supra, such a right does not inherently exist even where the request is reasonable and does not constitute an abuse of discretion.

Id. at 125.

The Relators further rely on the case of *State ex rel. Judges of the Toledo Municipal Court v. Mayor of the City of Toledo*, 179 Ohio App.3d 270, 2008-Ohio-5914, 901 N.E.2d 321 (6th Dist.), to support their case. This case is clearly distinguishable from the present case as the court's decision was based upon the "specialized nature of security services..." Here there are no such specialized services at issue. This case does not support the general proposition that courts are always in the best position to determine their own needs as Relators suggest, it actually suggests that outside of certain particularized circumstances, courts cannot dictate to the legislative branch the specifics of how to provide suitable accommodations for a court facility.

Relators' claimed inherent right to dictate the plans of any future facility has no basis in law. A financially struggling city like Youngstown cannot be required to install private elevators and build an underground parking deck just because those items are on the Municipal Court Judges' wish list. Relators have no right under the existing law to compel such a result through this mandamus action.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny Relators' request for a writ of mandamus.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONDENTS POST-HEARING BRIEF was sent via regular U.S. Mail, postage pre-paid, on this 26th day of September, 2014 to John B. Juhasz, Esq., Counsel for Relators, 7081 West Boulevard, Suite 4, Youngstown, Ohio 44512.



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