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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' REPLY BRIEF

JOHN B. JUHASZ No 0023777
7081 West Boulevard, Suite 4
Youngstown, Ohio 44512-4362
Telephone: 330.758.7700
Facsimile: 330.758.7757
E-mail: Jbjjurisdoc@yahoo.com
COUNSEL FOR RELATORS

MARTIN S. HUME No 0020422
REBECCA M. GERSON 0062695
26 South Phelps Street
Youngstown, Ohio 44503
Tel: 330.742.8874
Fax: 330.742.8867
COUNSEL FOR RESPONDENTS

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TABLE OF CONTENTS

Table of Authorities ii

Reply Brief of Relators 1

Certificate of Service 12

TABLE OF AUTHORITIES

Cases:

In re Furnishings and Equipment for the Judge, Courtroom and Personnel for Courtroom Two, 66 Ohio St.2d 427, 423 N.E.2d 86 (1981) 10, 11

Lake County Board of Commissioners, v. Hoose, 11th Dist. No. 89-L-14-076, 1989 Ohio App. LEXIS 4714 11

State, ex Rel. Britt, v. Board of County Commissioners, Franklin County, 18 Ohio St.3d 1, 480 N.E.2d 77 (1985) 11

State, ex Rel. Wolff et al. v. Donnelly, 24 Ohio St.3d 1, 492 N.E.2d 810 (1986))10

REPLY BRIEF OF RELATORS

In an effort to be brief in a case that already has much evidence, much argument, and much paper, Relators will reply to Respondents' claims in a consolidated fashion, hoping quite shamelessly to draw the approbation of the Court for doing so.

I

This is a government of laws and not of men. We've all heard that phrase over and over again, starting, at the latest, in junior high school. The phrase pre-dates America as a nation, having been inserted by John Adams into the 1780 Massachusetts Constitution. Though inculcated into our very fabric from an early age, we often take it for granted or even forget it.

That phrase, in connection with this case, means that it does not matter who are the present Relators or who the present Respondents might be. Each new mayoral administration—and there have been many since the judges declared the present facilities inadequate—brings with it the promise of “change” and a new direction. For these judges and for their predecessors in office, however, there has been no change and the promises to the Relators of change and progress have been empty

promises. Fifteen years of resolutions, ordinances, expressions of support, and promises of results. After 15 years, absolutely no progress. The Judges proposed a court near the County Jail. "Too expensive," said the City. "We cannot afford it." The Judges proposed a new site at the "Masters Block." "Too expensive," said the City again, "we cannot afford it." Fine. The judges proposed taking a building that the City owns, to avoid site acquisition costs, and to renovate it. Though paying lip service, in reality, the City's response is the same. "We cannot afford what you *desire*." But it is not what the judges *desire*. It is what is needed to run a modern court. Not a modern court in a small town of 14,000 like Marietta, or a bedroom community like Boardman or Canfield in Mahoning County, where the misdemeanor crimes are shoplifting and the felonies are writing a bad check for \$2,500.00 to a plaza shopkeeper for a necklace. The misdemeanor crimes in Youngstown are assault, domestic violence, and aggravated menacing. The felonies in Youngstown are murder, rape, robbery, and burglary. Violent crime requires more security. For this proposition, Relators cite common sense and experience, for nothing more is required.

No one knows how long the Court has been in its present location. What is clear from the evidence is that the operation of the court has changed, and there is no room—literally—to accommodate change. The biggest change is security. What the judges have ordered deals first and foremost with security. One need simply look at the evidence in this case. The prior submissions, before the appointment of a special master, are part of the record in this case. Look at the photos. There is no dignity, there is no safety, there is no ability to function properly. Jury rooms, witness rooms, attorney rooms, secure areas; these are not luxuries or “desires.” They are necessities. There are in what the Relators have ordered no cavernous courtrooms or chambers with ornate chandeliers, no brass doors, no imported teakwood paneling.

But the response is the same from the City. We are poor; we cannot afford it. Having twice said that what the judges proposed (Fifth Avenue near the jail and the Masters Block) was too expensive, on the third try, the City hired an architect, not to do it *better* or *safer*, but to do it *cheaper*. In 15 years, even the lowliest pauper can set aside a dollar or two. Yet, these Respondents and their predecessors in office have done *nothing*. They have acknowledged it under oath and they have given no valid

excuse. The City Council members, apparently believing that a court order does not tell them what to do, are waiting for someone to tell them what to do. Their excuse, sprinkled through the record, is that they have more important things to do with the money. Over \$4 million per year is earmarked for capital improvements. Not one red cent has been set aside for the Court. No one has even explored what the annual debt service would be if the City were to capitalize the cost of the project. No one is serious about this project except the Relators.

To be sure, like the predecessors in office, these Respondents claim poverty. If there's a government in America that claims that it has enough money to do everything that it wants to do, one would be hard pressed to find it. These Respondents and their predecessors in office promised the citizens of the city of Youngstown that if they voted to increase once again their income taxes, a portion would be set aside for capital improvements. The City complains that it cannot write a blank check. No one has asked it to that. Frustrated with the fact that the City had done nothing, the judges increased court costs. Yes, it was another "tax" on what the Respondents claim is an already impoverished population. But *someone* had to do *something*. And since that increase in

court costs, the *judges* have set aside money, but the Respondents have set aside none. To make matters more insulting, the Respondents claim that they have made improvements to the present court facilities, and that is true. But they have done so only because they have not furnished the facilities that the judges ordered, and the Respondents cavalierly failed to mention in their brief that those renovations were paid for with court costs collected by the judges. One doesn't know whether to laugh at the absurdity or to be insulted at the arrogance of the Respondents' claim that they are financially strapped, that they don't have any money for this project—and, if the Court will no longer buy that excuse, the present facilities will continue to work, even if not ideal. After all, if you are holding court there, then the facilities must by definition be suitable for court. *That* has been what the Respondents have offered.

II

The position of the Respondents is frankly astonishing. They argue that the present Court facilities are “not entirely inadequate and unsuitable.” *Respondents' Brief*, at 1. This is like saying that a woman is “not entirely unpregnant” or, to match the phrase to modern times, that a person is not entirely ebola free.” For this backhanded concession, the

City offers the excuses that "the conditions at the court are no different from the rest of Youngstown's City Hall, where the court resides" and that the Respondents' [sic] must struggle with the financial pitfalls of an aging industrial city as it gradually attempts to reinvent itself." *Respondents' Brief*, at 1. Ironically, the City paid \$250,00.00 for a study it cites as evidence that it cannot afford the Court, and the City has done "nothing" towards compliance with the Court's order. If the City had put that \$250,000.00 into a fund, it would be a greater effort than what we have seen from the Respondents thus far. In fact, the present facilities do not allow it to comply. Facilities Superintendent McKinney testified:

Q. All right. So it depends on the budget, but doesn't it also depend on, for example, if the judges come and say, you know what, Sean, we need -- we need two jury rooms, you don't have any place to do that in that facility, do you?

A. No.

Q. Okay. Or same thing, if they said we need witness rooms, you don't have the ability to do that in that facility, do you?

A. No.

Q. Or attorney/client rooms, things like that, you don't have the ability to do that, do you?

A. Currently, no.

Transcript, Vol. III, p. 843.

The City's claims of poverty were expressed in the hyperbolic claim that it was in part the fault of the Municipal Court:

Partly as a result of the disproportionately high cost of operation of the municipal court and the municipal court clerk's office, the City of Youngstown is routinely forced to expend funds out of its capital improvement fund to help finance operations in the street and park and recreation departments aimed at preserving and maintaining its capital assets such as streets, parks, and playgrounds.

Bozanich direct and cross, at Vol. III, p. 769. But that testimony *was* hyperbolic, as the Finance Director conceded on cross examination.

Q. Okay. So how does the municipal court costing the city a million dollars a year force the city to spend \$4 million a year on other departments?

A. Well, it doesn't. It's just whatever we -- we -- whatever we take in that is less than our operating costs, that has to be made up somewhere through the general funds operating budget.

Q. Okay.

A. So --

Q. So the fact that the difference between what the court brings in and what it spends, \$1.3 million I think you said, the fact that the city has to spend \$1.3 million out of the general fund, you would agree with me doesn't force the city to take its \$4 million of capital collections every year and spend it on other departments, does it?

A. Yeah, that's correct.

Id., at 769-770. (Emphasis added.) But the City's expert on its distressed economic condition agreed that capital improvements are important and that even distressed cities should dedicate funds for that purpose:

Q. Okay. And even a city that's in financial distress should dedicate some money to capital improvements, shouldn't it?

A. Yes.

Q. Okay. So there's nothing unreasonable about that, is there?

A. There's nothing unreasonable about a local government dedicating certain resources to capital improvement, that's correct.

Eichenthal testimony, at Vol. II, p. 394. City officials conceded that the City has never been in fiscal emergency and that furnishing a proper court facility would not be impossible.

Respondents insist that they "have consistently maintained, and continue to adequately maintain, the Court facilities." Respondents brag of the "[n]umerous improvements, such as a newly renovated Probation Department, [that] have been made even in the last few years," failing to mention that the Court paid for the lion's share from funds the Court accumulated to help pay for a more modern facility. *See*, the testimony of

Sean McKinney, during which Respondents' counsel attempted to testify to improvements of which the facilities superintendent was unaware:

Q. Okay. And are you aware of any significant improvements that have been made in the Youngstown Municipal Court facilities in the last year or two?

A. Probably the only one I'm really aware of or knowledgeable of is the improvements to the probation department, which I think occurred in the past year.

Q. Okay. And were you aware that there had also been some improvements to the heating and air-conditioning systems in the municipal court?

A. I'm not aware of that.

Testimony of Sean McKinney, Vol. III, p. 737. Mr. McKinney also testified:

Q. Mr. Hume asked you about some renovations that have been made to the court, and I think you were aware of the probation renovations, correct?

A. Yes.

Q. Are you aware that the court paid for those renovations out of the funds that it had collected from fees and costs?

A. Generally I'm aware of, yes.

Id., at 743. Respondents complaint that what they cannot afford to do with limited and stretched financial resources, is to write a "blank check" for the myriad of Relators' "desires." They argue that the existing Youngstown Municipal Court continues to meet the suitability require-

ments for municipal courts under Ohio law, even if the Court does not have every amenity that Relators “desire.” This is in spite of the fact that the current Mayor, a lawyer, acknowledges that there are not any witness or attorney rooms, that security is awful and that the courtrooms are small.

III

Despite the City’s claim, mandamus is proper way to secure proper facilities for a court. See, *In re Furnishings and Equipment for the Judge, Courtroom and Personnel for Courtroom Two*, 66 Ohio St.2d 427, 423 N.E.2d 86 (1981). The history of this case shows that if the Respondents were to be held in contempt they would spend their entire term of office in jail and the Municipal Court would remain where it is, as it is. A court has “a responsibility to see that office space is sufficient for the conduct of its business [and] that funds are adequate for its operations * * *.” See, *State, ex Rel. Wolff et al. v. Donnelly*, 24 Ohio St.3d 1, 492 N.E.2d 810 (1986). This action, after *years* of asking nicely, is an effort to do just that.

Respondents have not shown that what Relators have ordered is unreasonable, just more money than they want to pay — so that they can go on tearing down houses and fixing sidewalks and playgrounds to help

insure their re-election. That is not to say that such functions are not important. But this Court is, by bedrock constitutional doctrine, to be a separate and co-equal branch of government, not the red-headed stepchild of the council, mayor, and board of control. If a court *truly* has "all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions," *In Re Furnishings for Courtroom Two*, 66 Ohio St.2d, at 430, then this order must surely be enforced. Claims of governmental hardship, standing alone, are not determinative as to whether a court has committed an abuse of discretion in issuing an order. See, e.g., *Lake County Board of Commissioners, v. Hoose*, 11th Dist. No. 89-L-14-076, 1989 Ohio App. LEXIS 4714, at *32-*33; *State, ex Rel. Britt, v. Board of County Commissioners, Franklin County*, 18 Ohio St.3d 1, 4, 480 N.E.2d 77 (1985).

If this writ is granted, based upon the history of this case, it would be foolish to believe that another renovation or update to the Court would occur in the next half-century. The only area that Respondents can even *claim* that what Relators have ordered is excessive is in the area of security. Though such claims of excessiveness are not well-founded, amendments to court security standards that take place in the future are

only likely to call for more, not less, security. In 50 years, what has been ordered here will almost certainly be inadequate.

If, in light of the testimony and exhibits in this case, if the present facilities are "suitable" for a modern court to conduct business, or if what the judges have ordered is patently unreasonable, then the judges lose this case. Otherwise, not, and the writ must issue.

Respectfully submitted,



JOHN B. JURASZ No 0023777
7081 West Boulevard, Suite 4
Youngstown, Ohio 44512-4362
Telephone: 330.758.7700
Facsimile: 330.758.7757
E-mail: Jbjjurisdoc@yahoo.com
COUNSEL FOR RELATORS

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 20 day of October, 2014 to Mr. Martin S. Hume, Esq., and Ms. Rebecca M. Gerson, Esq., Counsel for Respondents, 26 South Phelps Street, Youngstown, Ohio 44503.



JOHN B. JURASZ

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