

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE EX. REL. THE CITY OF  
MASSILLON, OHIO CITY  
ADMINISTRATION BUILDING

Relator

JUDGES:

Hon. William B. Hoffman, P.J.  
Hon. Patricia A. Delaney, J.  
Hon. Craig R. Baldwin, J.

-VS-

Case No. 2022CA00153

THE HON. EDWARD J. ELUM  
JUDGE OF THE MASSILLON  
MUNICIPAL COURT

Respondent

O P I N I O N

CHARACTER OF PROCEEDINGS:

Writ of Prohibition

JUDGMENT:

Granted

DATE OF JUDGMENT ENTRY:

February 23, 2023

APPEARANCES:

For Relator

For Respondent

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*Hoffman, P.J.*

{¶1} Relator, the City of Massillon, Ohio has filed a Complaint seeking the issuance of a writ of prohibition against Respondent the Honorable Edward J. Elum based upon the allegation Judge Elum lacks authority to issue and enforce orders preventing the City from entering and renovating office and garage space owned by the City of Massillon but utilized by both the City and the Massillon Municipal Court.

## I. INTRODUCTION

### A. Facts

{¶2} The Complaint alleges the City of Massillon is an Ohio subdivision, acting by and through its Mayor, Kathy Catazaro-Perry, and its Safety/Service Director, Barbara Sylvester. Complaint, ¶ 1. Respondent the Honorable Edward J. Elum is the administrative judge of the Massillon Municipal Court.<sup>1</sup>

{¶3} R.C. 1901.36(A) requires a municipality to provide a municipal court “suitable accommodations for the municipal court and its officers.” *Id.*, ¶ 4. The city alleges, “[e]ach of the Municipal Court judges has a modern courtroom, with large and modern office space. Moreover, the Municipal Court has a jury room and numerous other offices and storage spaces for the Court’s personnel, records, and storage needs. All of this space is located in the Massillon Government and Justice Center, which also houses the offices of the Clerk of Courts, the Law Director, and the Police Department.” *Id.*, ¶ 3.

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<sup>1</sup> The municipal court has two judges. The other judge is the Honorable Joel C. Fichter. Judge Fichter did not author any of the orders at issue herein.

{¶4} For approximately 11 years and with the permission of the City's Safety/Service Director, the municipal court has shared with the city the use of a building near the Government and Justice Center known as the Ivan A. Getz building<sup>2</sup>.

{¶5} The building is titled in the name of the City of Massillon, and the City's Safety/Service Director is responsible for its use and maintenance under R.C. 735.02. *Id.*, ¶ 6.

{¶6} The Getz building contains a three-bay garage in which the Massillon Municipal Court parks a van used for the community service workers and stores other items such as tools, holiday decorations, old furniture and other miscellaneous items. *Id.*, ¶ 7. Judge Elum admits in paragraph 7 of his Answer:

[T]he Getz building contains a three bay parking garage in which the Municipal Court parks its community service van. [Judge Elum] further admits that the Municipal Court utilizes the three bay parking garage to store the Municipal Court's probation supplies, landscaping tools, memorial wreaths for veteran monuments, court records, repossessed equipment for judicial sale, the City's surplus furniture and e-waste for final disposition along with meeting space for Saturday's community service work crew.

{¶7} There is no written lease between the City and the Massillon Municipal Court regarding use of the Getz building, nor has there ever been one. *Id.*, ¶ 8. Instead, the Service/Safety Director, and her predecessors, have allowed the Massillon Municipal

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<sup>2</sup> The building is also referred to as the Court Services Building.

Court to utilize part of the Getz building. *Id.* The city alleges it owns and maintains the Getz building, it is not part of the Massillon Municipal Court, and the city has exclusive right to determine the building's use and occupancy. *Id.* Judge Elum admits the Getz building is titled in the name of the city, and he does not have a written lease or other instrument signed by the city granting the municipal court use of the Getz building. Answer, ¶ 6, 8.

{¶8} Approximately two years ago, the City of Massillon constructed an amphitheater on Duncan Plaza, adjacent to the Government and Justice Center, with capacity up to 1,000 patrons. *Id.*, ¶ 9. To accommodate patrons at the plaza, the city proposed to construct Americans with Disabilities Act (ADA) compliant restrooms adjacent to Duncan Plaza, to include an exterior entrance for access from the plaza. *Id.* The city also needed to bring the Getz building into compliance with ADA in numerous other aspects. *Id.*

{¶9} The city awarded the project to a contractor, the contract has been signed, and work is to begin within 60 days of the filing of the City of Massillon's Complaint. *Id.*, ¶ 12. The project will be almost entirely financed through Department of Housing and Urban Development Community Development Block Grant (CDBG) funds awarded to the city in the amount of approximately \$250,000. *Id.*, ¶ 13. The City alleges if the project is not 80% completed by August 2023, the grant funds will be lost. *Id.*

{¶10} As a result of the changes to be made to the Getz building, the city offered the Massillon Municipal Court a dedicated parking space in the Government and Justice Center parking lots for its van. *Id.*, ¶ 14. The parking space is in the same reserved section where other city vehicles, including police vehicles, are parked. *Id.* The city has also

offered storage space area for the items the court is currently storing in the Getz building garage. *Id.*

{¶11} Judge Elum claims these proposed accommodations are unsatisfactory. *Id.* at ¶ 15. He recently served notice on the city, through two court orders and a letter signed by his attorney, of his intent to authorize court security to deny entrance into the Getz building without his prior authorization, to appoint a special prosecutor to prosecute persons coming into the Getz building without his permission for criminal trespass and/or contempt, and to prohibit renovation of the Getz building garage to provide the public with ADA complaint restrooms. *Id.*, ¶ 17. The city concludes Judge Elum has made clear that any effort to renovate the Getz building and the three-bay garage in the Getz building to include ADA compliant restrooms will subject persons to potential criminal charges. *Id.*, ¶ 18.

{¶12} The city further contends it has satisfied its statutory authority to provide the Massillon Municipal Court with all of the facilities it needs to carry out its statutory duties. *Id.*, ¶ 19. The city maintains Judge Elum does not have the authority to commandeer a city-owned building, or any part of it, for the court's use, particularly when the city has provided adequate substitute parking and storage space. *Id.* The city is concerned that Judge Elum's threat of prosecution will have a substantial chilling effect on the willingness of contractors or city employees to enter the Getz building garage, to clean it out, and renovate it as planned. *Id.*, ¶ 20. The city maintains it will be irreparably harmed because it will be deprived of its ability to provide ADA complaint restroom facilities to the public and lose the benefit of the \$250,000 CDGB funds. *Id.*

{¶13} In support of the requested writ, the city argues Judge Elum patently and unambiguously has no jurisdiction to exert unilateral control over the Getz building to the detriment of the building's lawful owner, the City of Massillon. *Id.*, ¶ 21. The city seeks the following relief: (1) an order prohibiting Judge Elum from preventing city employees and agents (including contractor employees) from entering the Getz building and garage; (2) an order prohibiting Judge Elum from prosecuting or presiding over prosecutions of any city employee or agent (including contractor employees) from entering into or participating in renovation of the Getz building and garage; (3) an order invalidating Judge Elum's and the Massillon Municipal Court's prior ex parte orders insofar as they purport in any way to limit the ability of the city and its agents and contractors to renovate the Getz building and garage; (4) award the City of Massillon its costs, together with such other and further relief at law or in equity as this Court deems just and proper.

## II. ANALYSIS

### A. Required elements for a writ of prohibition

{¶14} To be entitled to a writ of prohibition, the city must establish: (1) Respondent is about to exercise judicial power, (2) the exercise of power is unauthorized by law, and (3) denying the writ would result in injury for which no adequate remedy exists in the ordinary course of law. (Citation omitted.) *State ex rel. Duke Energy Ohio, Inc. v. Hamilton Cty. Court of Common Pleas*, 126 Ohio St.3d 41, 2010-Ohio-2450, 930 N.E.2d 299, ¶ 16. "If a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition \* \* \* will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions." *Id.* at ¶ 17, quoting *State ex rel. Mayer v. Henson*, 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223, ¶

12, citing *State ex rel. Dannaher v. Crawford*, 78 Ohio St.3d 391, 393, 678 N.E.2d 549 (1997). “Where jurisdiction is patently and unambiguously lacking, [a relator] need not establish the lack of an adequate remedy at law because the availability of alternate remedies like appeal would be immaterial.” *Id.*, quoting *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 15, citing *State ex rel. Columbus S. Power Co. v. Fais*, 117 Ohio St.3d 340, 2008-Ohio-849, 884 N.E.2d 1, ¶ 16.

#### B. Summary judgment standard

{¶15} On January 26, 2023, we issued an order advising the parties “the Court will address the parties’ merit briefs as cross-motions for summary judgment under Civ.R. 56” and allowing the parties “to submit additional evidence specifically enumerated in Civ.R. 56 in support of their respective merit briefs.”

{¶16} Our review of this matter on summary judgment is limited to the pleadings and affidavits and any sworn or certified copies of papers or parts of papers referred to in the affidavits submitted for consideration. See Civ.R. 56(E).

{¶17} Civ.R. 56(C) explains:

A motion for summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the parties’ favor.

### C. Orders Issued by Judge Elum

{¶18} Judge Elum issued two orders on November 2, 2022. The first order, Journal Entry 105-2020, details the Massillon Municipal Court's use of the Getz building and improvements made by the Court to the Getz building. The order further makes a finding that the Getz building is an "integral facility and suitable accommodations to support court operation. . ." The order concludes, "The Court Orders Court Security to protect the CSB from any outside interference, hindrance, obstruction or unauthorized entrance without prior Court approval." The second order, Journal Entry 98-2022, appoints a special prosecutor with "prosecutorial authority to direct, subpoena and demand from Court Security and the Massillon Police Department the ability to investigate and file criminal complaints or criminal contempt of court charges, under her direction, against anyone who obstructs, hinders, interferes, or trespasses upon the administration of justice stated herein and attached hereto." The first order was attached to the second order. Also attached to the second order were three letters: one to Stark County Prosecutor Kyle Stone requesting a special prosecutor and two letters to Attorney Terrence Seeberger, counsel for the City of Massillon. In the September 13, 2022 letter to Attorney Seeberger, Judge Elum's counsel states, "The City has other options to construct its restrooms . . . Accordingly, Judge Elum will not vacate the Court Services Building or three-bay garage without an order from the Ohio Supreme Court to do so. Any action by the City to remove court property, interfere with court operations, impede or obstruct statutory duties and obligations of the court may result in civil and criminal contempt of court orders. Judge Elum has authorized me to proceed with efforts to seek



the appointment of a special prosecutor from the Stark County Prosecutor to be ready to prosecute any and all criminal violations of the law.”

{¶19} We begin by noting we do not dispute the Municipal Court’s authority to operate and maintain the community service program, probation department, and other essential court operations for securing court property. We also do not dispute a three-bay garage or other suitable space may be necessary and efficient for the operation of the Municipal Court’s programs.

D. City’s standing to bring prohibition action

{¶20} Before turning to the merits, we must address Judge Elum’s argument the city lacks standing to bring this prohibition action. If the city lacks standing, we are required to dismiss the Complaint. See, e.g., *Cleveland ex rel. O’Malley v. White*, 148 Ohio App.3d 564, 2002-Ohio-3633, 774 N.E.2d 337, at ¶ 47. In *State ex rel. Matasy v. Morley*, 25 Ohio St.3d 22, 23, 494 N.E.2d 1146 (1986), the Ohio Supreme Court explained the criteria for standing: “\* \* \* [A] prohibition action may only be commenced by a person who is either a party to the proceeding sought to be prohibited \* \* \* or demonstrates an injury in fact to a legally protected interest.”

{¶21} Judge Elum contends the city lacks standing to prosecute this matter under R.C. 733.53<sup>3</sup> because city council did not pass a resolution authorizing the filing of the Complaint seeking prohibition relief. See Answer, ¶ 1; Third Affirmative Defense, ¶ 31. This statute provides, in part: “The city director of law, when required to do so by resolution of the legislative authority of the city, shall prosecute or defend on behalf of the

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<sup>3</sup> Judge Elum references section (b) of R.C. 733.53. However, this Revised Code section does not contain a section (b).

city, all complaints, suits, and controversies in which the city is a party, and such other suits, matters, and controversies as he is, by resolution or ordinance, directed to prosecute. \* \* \*

{¶22} The statute cited in Judge Elum’s argument does not relate to the issue of standing. Rather, the referenced statute defines when a city law director has a duty to prosecute or defend. “Specifically, the obligation to prosecute or defend takes effect only ‘when required to do so by resolution of the legislative authority of the city.’ ” *City of Marietta v. Bd. of Commissioners of Washington Cty.*, 4th Dist. Washington No. 19CA1, 2019-Ohio-3883, ¶ 14, citing R.C. 733.53. See also *City of Cuyahoga Falls v. Robart*, 58 Ohio St.3d 1, 567 N.E.2d 987 (1991), where the Ohio Supreme Court cited R.C. 733.53 and explained, “[o]ne of the additional duties imposed on the law director by state law \* \* \* is the duty to file suit on behalf of the city when required to do so by city council.” Thus, the statute does not address a city law director’s seeking authorization to file a complaint but instead addresses the obligations of a city law director to prosecute or an action when required to do so by the legislative authority.

{¶23} There is no evidence indicating Massillon City Council passed a resolution authorizing and requiring its law director to prosecute this matter on behalf of the city. Therefore, the law director had no obligation to prosecute this matter. Further, our conclusion that R.C. 733.53 did not require the city to seek approval from city council before commencing this action is supported by *Green v. Helms*, 9th Dist. Summit No. 26371, 2013-Ohio-2075. In *Green*, appellant cited R.C. 733.53 and argued the City of Green’s law director was not authorized to bring a zoning violation action against him without legislative approval. The court of appeals rejected this argument noting that R.C.

733.53 “sets forth the action that a law director must take ‘when required to do so[.]’” Thus, R.C. 733.53 does not require a city law director to seek permission to pursue litigation, but instead places an obligation on a city law director to prosecute or defend on behalf of the city when instructed to do so by resolution of the legislative authority of the city.

**{¶24}** With regard to the issue of standing, we also note the city and its agents are the intended party whose actions are prohibited by Judge Elum’s orders. In paragraph 6 of his Answer, Judge Elum admits the Getz Building is titled in the name of the city. Based on the restrictions found in the orders, the city demonstrates an injury in fact to its legally protected interest in the Getz Building. Therefore, the City has standing to pursue this matter.

E. Judge Elum’s Statutory and Inherent Authority and the City of Massillon’s Duty  
to Provide Suitable Accommodations

**{¶25}** Judge Elum maintains his orders were a lawful exercise of his statutory and inherent authority to maintain the Community Service Program and Probation Department of the Massillon Municipal Court. Judge Elum argues the city has not met its burden to provide the Massillon Municipal Court with “suitable accommodations” under R.C. 1901.36. He argues the Getz Building and attached three-bay garage constitute essential and established facilities necessary to operate and maintain the court’s Community Service Program and Probation Department. He also asserts the municipal court’s facilities lack a law library and jury room. Further, magistrates are required to share offices, and there is insufficient space for attorneys to meet and confer with clients.

**{¶26}** Under R.C. 1901.36, the legislative authority of a municipal court is tasked with providing accommodations and needs of the municipal court. These include “suitable

accommodations for the municipal court and its officers” (R.C. 1901.36(A)); “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” (*id.*); “shall provide any other employees that are necessary (*id.*); “all necessary form books, dockets, books or 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” (*id.*); “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.” (R.C. 1901.36(B), emphasis added).

**{¶27}** Judge Elum’s reasonable accommodation argument fails for several reasons. Respondent cites caselaw addressing the adequacy of court facilities, however, the adequacy of the facilities offered by the City is not an issue before this Court. Rather, the issue before this Court is whether Respondent has the authority to essentially mandate its exclusive use of City owned property outside the confines of the courthouse in order to provide its inherent and statutorily authorized court functions. More specifically, whether Judge Elum can prohibit the City from use of its own property i.e., the Getz garage.

**{¶28}** Barbara Sylvester is the Safety/Service Director and under R.C. 735.02 is required to “manage and supervise all public works and undertakings of the city[.]” The

director is required to supervise the “construction of public improvements and public works.” She is also required to “supervise the construction and have charge of the maintenance of public buildings and other property of the city not otherwise provided for in Title VII.” In fact, Judge Elum concedes in paragraph 6 of his Answer Ms. Sylvester is responsible for the Getz Building’s use and maintenance under R.C. 735.02.

{¶29} The construction of public restrooms in the Getz Building squarely falls within Ms. Sylvester’s duties under R.C. 735.02. She owes no statutory duty to the Massillon Municipal Court to ensure it has “suitable accommodations.” As noted above, that statutory obligation is placed upon the legislative authority for the City of Massillon. Therefore, Judge Elum’s reliance on R.C. 1901.36 as a defense to the construction of the public restrooms in the three-bay garage is misplaced.

{¶30} In reaching this conclusion, we are not determining a community service program is something that should not be accommodated under R.C. 1901.36 as required accommodations for a municipal court. *Id.* Instead, our decision is limited to pointing out any claim the three-bay garage, or other suitable space, is an accommodation needed by the Massillon Municipal Court must be presented to the legislative authority of a municipal court per R.C. 1901.36.

{¶31} Judge Elum cites *State ex rel. Hottle v. Bd of Cty. Commrs. Of Highland Cty.*, 52 Ohio St.2d 117, 370 N.E.2d 462 (1977), in support of his reasonable accommodation argument. In *Hottle*, a court of common pleas judge filed a mandamus action against the board of commissioners, its members and the county clerk of courts because the judge was denied space in the county courthouse. *Id.* at 118. The court of appeals issued the writ finding the proper administration of justice required that the judge

be allowed to occupy and use the two rooms utilized by the clerk of courts on the second floor of the courthouse. *Id.* at 118-119. We find significant *Hottle* involves a writ of mandamus filed by a judge to acquire additional space within the **existing courthouse**. (emphasis added).

{¶32} While the legislative funding source of a municipal court has the duty to provide “suitable accommodations” for a municipal court, we conclude Judge Elum cannot use the “reasonable accommodation” requirement under R.C. 1901.36 to acquire City owned property outside the confines of the existing courthouse. To do so would be to recognize a court’s “de facto” use of eminent domain, a power it does not possess either statutorily or inherently. Such argument is not a defense to the writ of prohibition filed by the City of Massillon and does not support the control Judge Elum has asserted over the Getz Building and its three-bay garage.

{¶33} For example, in *State ex rel. Musser v. City of Massillon, et al.*; 12 Ohio St.3d 42, 465 N.E.2d 400 (1984), judges of the Massillon Municipal Court brought a writ of mandamus against the city and city council members to provide for reasonable accommodations. *Id.* at 401. The Ohio Supreme Court relied on R.C. 1901.36 when it granted mandamus relief in favor of the municipal court and ordered the city and city council to provide funding for an additional bailiff and salary increases for other bailiffs; fund a new court secretary; provide reasonable compensation to a referee; and provide accommodations for a referee. *Id.* at 402-403.

{¶34} Similarly, in *Committee for Marion Cnty. Bar Ass’n v. Marion Cnty.*, 162 Ohio St. 345, 350, 123 N.E.2d 521, 523–24 (1954), the Supreme Court determined a court was without authority to issue an order requiring the installation of an elevator even where the

ordering court had found the elevator was essential to the efficient performance of functions of the Court. The Supreme Court explained, “Of course, there may be instances with respect to the provision of quarters, facilities and equipment for the Common Pleas Court where the commissioners fail to perform mandatory duties imposed upon them by these statutes or grossly abuse their discretion with respect to discretionary duties imposed upon them thereby. In such instances, in the absence of any other adequate remedy in the ordinary course of the law, a writ of mandamus might be an appropriate remedy.” *Id.* At 524.

{¶35} Having found Judge Elum lacks both statutory or inherent authority to issue an order preventing the owner of the Getz building from making changes to the building, we issue a writ of prohibition with regard to Journal Entry 105-2020. We hereby order Journal Entry 105-2020 vacated.

F. Judge Elum lacked authority to issue Order No. 98-2022 because he has  
no interest to protect in the Getz Building.

{¶36} Judge Elum’s Order No. 98-2022 appointed a special prosecutor to prosecute anyone “obstructing, hindering, interfering, or trespassing” at the Getz Building.

{¶37} In light of our finding Journal Entry 105-2020 to be invalid, we find Judge Elum’s order appointing a special prosecutor is no longer required and likewise vacate it.

{¶38} In *State ex rel. Williams-Byers v. South Euclid*, 163 Ohio St.3d 478 2020-Ohio-5534, 171 N.E.3d 264, the Ohio Supreme Court addressed the concept of inherent authority noting “that in some situations, a court may exercise inherent judicial power to compel essential funding when necessary to preserve judicial independence.” *Id.* at ¶ 14. The justification for such an intrusion into the legislative branch is to protect the separation

of powers where the legislative branch refuses to provide the essential funds needed for the judicial branch to fulfill its basic constitutional and statutory functions. *Id.*, citing *State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 154-155, 126 N.E.2d 57 (1955).

{¶39} Here, Judge Elum is not attempting to exercise inherent power for funding purposes. He is instead attempting to exercise alleged inherent power by essentially exercising ownership over the Getz Building through Order No. 98-2022. Judge Elum admits in his answer he has no ownership interest in the Getz Building or three-bay garage. We find no authority that permits Judge Elum to take such action and therefore, Order No. 98-2022 is not enforceable.

F. The City of Massillon's use of the Getz Building does not violate the separation of powers clause of the Ohio Constitution.

{¶40} Judge Elum contends the city's use of the Getz Building and three-bay garage for its own use despite the municipal court's use of the space violates the separation of powers principle contained in the Ohio Constitution. Judge Elum concludes issuance of Order 98-2022 was therefore proper and necessary to maintain the separation and balance of powers between the judiciary and legislature. His separation of powers argument cuts both ways. Management of City property is clearly invested in the executive branch of government pursuant to R.C. 735.02.

{¶41} Having already determined Judge Elum had no authority to issue Order 98-2022, we find his separation of powers argument has no merit.

G. The City of Massillon does not have an adequate remedy at law.

{¶42} Finally, Judge Elum maintains the writ of prohibition should be denied because the city has an adequate remedy at law. He contends there are three options for



the city regarding alternative locations for ADA compliant restroom facilities. These include: (1) the underground parking garage located adjacent to Duncan Plaza; (2) the Massillon Police Department lobby that connects to and is adjacent to Duncan Plaza and already has two ADA compliant restrooms that can be expanded to accommodate more; and (3) the city could use CBDG funds to purchase two mobile restroom units for Duncan Plaza.

{¶43} We do not find these options to be legal remedies at law. They are merely proposed alternatives to locating the bathrooms in the three-bay garage area. Further, Judge Elum references this Court’s prior determination “[a]ppealing a contempt order is an adequate remedy at law which will result in the denial of [a] writ.” *State of Ohio, ex rel. Morrow Cty. Job and Family Services, et al. v. Morrow Cty. Court of Common Pleas, Juvenile Div., et al., 5th Dist. Morrow No. 2022CA0007, 2022-Ohio-2549, ¶ 28.*

{¶44} Judge Elum concludes if individuals are held in contempt under Order 98-2022, the city would have an adequate remedy at law to challenge the order. While individual contemnors would have the ability to challenge the order, the City would not.

{¶45} Furthermore, as we explained in *State ex rel. Morrow Cnty. Job & Family Services v. Morrow Cnty. Court of Common Pleas*, 5th Dist. Morrow No. 2022CA0007, 2022-Ohio-2549, ¶ 22, if a trial court has a patent and unambiguous lack of jurisdiction, an exception to the requirement of the lack of an adequate remedy at law exists. *State ex rel. Jones*, 84 Ohio St.3d at 74, 701 N.E.2d 1002. Under that scenario, a relator is no longer required to establish the lack of an adequate remedy. *State ex rel. Rogers v. McGee Brown*, 80 Ohio St.3d 408, 410, 686 N.E.2d 1126 (1997). *Id.* at ¶ 22.

{¶46} Having previously determined Judge Elum lacks the authority to issue Order No. 105-2020, we conclude the City is not required to demonstrate lack of an adequate remedy at law.

### III. CONCLUSION

{¶47} For the foregoing reasons, we grant the City of Massillon's request for a writ of prohibition. We order Judge Elum be prohibited from preventing city employees and its agents (including contractors) from entering the Getz Building and the three-bay garage. Judge Elum is also prohibited from prosecuting or presiding over prosecution of any city employee and its agents (including contractors) from entering into or participating in the renovation of the Getz Building and the three-bay garage.

**{¶48}** The Clerk of Courts is hereby directed to serve upon all parties not in default notice of this judgment and its date of entry upon the journal. See Civ.R. 58(B).

**{¶49}** WRIT OF PROHIBITION GRANTED.

**{¶50}** COSTS TO RESPONDENT.

**{¶51}** IT IS SO ORDERED.

By: Hoffman, P.J.

Delaney, J., dissents and

Baldwin, J., concurs

*Delaney, J., dissenting*

{¶52} I respectfully dissent from the majority opinion.

{¶53} This matter is before the Court upon a complaint filed by Relator City of Massillon seeking a writ of prohibition against Respondent Judge Elum to prevent him from enforcing Orders 98-2022 and 105-2020, which he issued as Administrative Judge of the Massillon Municipal Court.

{¶54} To be entitled to a writ of prohibition, a relator usually must establish by clear and convincing evidence (1) that the respondent is about to exercise judicial or quasi-judicial power without authority, (2) that the exercise of that power is unauthorized by law, and (3) that the relator has no adequate remedy in the ordinary course of law. *State ex rel. Andrews v. Lake Cty. Court of Common Pleas*, Slip Opinion No. 2022-Ohio-4189, paragraph 20 (citations omitted). The city primarily seeks to undo Judge Elum's actions of which it complains. For a corrective writ of prohibition to issue, the city must demonstrate the judge patently and unambiguously lacked jurisdiction to take those actions. *Id.* Therefore, we need not determine whether the city has an adequate remedy in the ordinary course of law. *Id.*

{¶55} This Court, without objection from the parties, ordered that it would address the parties' merit briefs as cross-motions for summary judgment under Civ.R. 56. Under Civ.R. 56, the record on summary judgment must be viewed in the light most favorable to the opposing party. *Williams v. First United Church of Christ*, 37 Ohio St.2d 150, 309 N.E.2d 924 (1974). The court is obligated under Civ.R. 56 to consider *all* facts and inferences drawn in a light most favorable to the nonmoving party.

{¶56} The dispute between the city and Judge Elum is simple – what is a courthouse and who controls it? The majority concludes there is no genuine issue of material fact that the Getz/Court Services Building is not a courthouse and therefore, it is within the exclusive authority of the city to determine the use of the building. Reviewing the evidence in a light most favorable to Judge Elum, I disagree with the majority’s conclusion as to what is a “courthouse” and who has authority over said courthouse, thereby preventing the city from establishing by clear and convincing evidence the judge’s orders are unauthorized by law.

{¶57} I begin by noting that “[a] court of general jurisdiction has great inherent power to acquire and control the ordinary facilities which are essential to secure and safeguard the free and untrammelled exercise of its functions.” *State ex rel. Finely v. Pfeiffer*, 163 Ohio St. 149, 126 N.E.2d 57 (1955). When appropriate, a court’s exercise of this inherent power extends to areas of a courthouse that are not exclusively used or occupied by the court. 1976 Op. Att’y Gen. No. 76-064, at 2-217 (“this power does, in certain circumstances, extend beyond the actual physical enclosure of \* \* \* the court to the common hallways [,] the exterior, grounds, etc. \* \* \* Where the necessity exists, the power of the court may extend beyond the actual physical enclosure of the court’s chambers.”)

{¶58} Consequently, “[c]ourts of general jurisdiction \* \* \* 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 the government.” *Zangerely v. Court of Common Pleas of Cuyahoga Cnty.*, 141 Ohio St. 70, 40 N.E.2d 865 (1943) (syllabus, paragraph 2); accord *State ex rel. Johnston v. Taulbee*

(syllabus, paragraph 2); *State ex rel. Foster v. Wittenberg* (syllabus, paragraph 2); 1987 Op. Att’y Gen. No. 87-039, at 2-262 (“a court is entitled to the provision of such facilities, and the control over such facilities, as may be necessary for the proper and efficient operation of the court.”)

{¶59} The majority seems to indicate that a court’s well-established inherent power is limited to the physical structure of a “courthouse.” I believe the more accurate, modern term is “court facilities,” which reflect that Ohio courts and the statutorily mandated court services provided by the judicial branch are often no longer housed in a single “courthouse,” but conducted in publicly or privately-owned offices spaces (including this Court’s own courtroom and offices, as well as the chambers of this writing judge).

{¶60} This approach is reflected in the Rules of Superintendence for the Courts of Ohio. Sup.R. 9(A) requires each court to develop and implement a court security plan to “ensur[e] security in court facilities[.]” “[T]he plan shall address the provisions of the Ohio court security standards by the Supreme Court as set forth in Appendix C to [Ohio Sup.R. 9].” Sup.R. 9(A). The Rules of Superintendence for the Courts of Ohio do not define the term “court facilities;” however, it is reasonable to conclude that “court facilities” includes those areas of a building that are occupied or used by a court for court purposes. See 2018 Op. Att’y Gen. No. 18-027.

{¶61} The majority concluded the City was entitled to a writ of prohibition and in its determination, the majority cites almost exclusively to the Civ.R. 56 evidence presented by the city. The majority’s analysis neglects to consider the Civ.R. 56 evidence presented by Judge Elum in determining whether the city has met the high standard entitling it to a writ of prohibition. I present the evidence here to support my conclusion

that Judge Elum has demonstrated the Massillon Municipal Court has lawful, inherent authority over the use of the Getz/Court Services Building as an existing and long-term user of the building as a court facility.

{¶62} First, Judge Elum's 105-2020 Order states: "The Court has determined for the efficient and order operation of court proceedings, probation services, court-ordered counseling, off-site jury service and mandated Supreme Court Continuity of Operations Plan/Center, the Courts Services Building located at 54 City Hall Street is a *court facility* as defined by Ohio law." (Emphasis added.)

{¶63} Judge Elum further states in paragraph 19 of his Affidavit:

The Municipal Court's Community Service Program and Probation Department are well-established programs that have benefited hundreds of defendants as a jail alternate program and to complete probation orders from the Massillon Municipal Court and neighboring courts who also order/refer their defendants that live in the Massillon Municipal Court district to perform their community service at the Massillon Court's Community Service Program. \* \* \*. The Municipal Court has utilized and improved the three-bay garage for over *twenty-five years* to operate the Community Service Program, in addition to support services for the Probation Department agencies with the Court Services Building and for the necessary storage of equipment and supplies that are used directly by the Municipal Court. The City has failed to provide safe and secure alternative offices and meeting spaces to store the Municipal Court's support materials, equipment, court file storage and operate the Community Services Program

and thus, “evicting” the Municipal Court from the garage would severely impact and terminate the Massillon Court’s statutory Community Service Program and its continued operation.

(Emphasis added). Respondent provided the affidavit of George T. Maier, the city’s former Safety-Service Director to establish the history of Respondent and Relator as to Respondent’s investment in the Getz/Court Services Building to support its statutorily mandated judicial functions. Mr. Maier states that the city agreed in January 12, 2012 that the Municipal Court would be financially responsible for all repairs, clean up, improvements, remodeling, security and signage for the vacant Getz Building and the attached three-bay garage area for court facilities and offices. *Id.* at paragraph 4. Judge Elum states in Order 105-2020 at paragraph 7 that “[t]he Court has funded all improvements and repairs of \$75,000 at the CSB [Court Services Building] to establish a viable and model court facility to support the efficient and order operation of the Court, its Probation Department and related probation services.”

{¶64} The majority correctly acknowledges in paragraph 19 of its Opinion that the Massillon Municipal Court has authority to operate and maintain the community service program, probation department and other essential court operations for securing court property. Furthermore, the majority correctly agrees the three-bay garage and other suitable space in the Getz/Court Services Building may be necessary and efficient for the operation of the Municipal Court’s programs.

{¶65} In considering the Civ.R. 56 evidence in a light most favorable to Judge Elum, I find there is sufficient evidence to establish he had inherent powers to issue the subject orders to ensure the safeguard of court functions and operations in the Getz/Court



Services building, including the three-bay garage. Judge Elum's actions also safeguard the court's investment of more than \$75,000 from the municipal court's special project funds expended to improve and repair the Getz/Court Services building.

{¶66} It appears Judge Elum issued Orders 98-2022 and 105-2020 to maintain the status quo (as opposed to exercising quasi-judicial powers of eminent domain) until such time as the parties can collectively agree on alternative reasonable accommodations for both the municipal court and amphitheater restroom project. The record demonstrates the parties, including Judge Fichter, have engaged in extensive negotiations over this issue, and hopefully the parties will continue their good-faith efforts in reaching that resolution.

{¶67} For these reasons, I disagree with the conclusion that the city established Judge Elum patently and unambiguously lacked jurisdiction to take the actions of which the city complains. Therefore, the extraordinary remedy of a writ of prohibition will not lie.