IN THE SUPREME COURT OF OHIO

GEORGE MARTENS, Relator-Appellant, v. FINDLAY MUNICIPAL COURT, et al., Respondents-Appellees.	Case No. 2024-0122 On Appeal from the Hancock County Court of Appeals for the Third Appellate District, Case No. 05-23-12 *From a Case Originating in the Court of Appeals*

MERIT BRIEF OF RESPONDENTS-APPELLEES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Treatises

STATEMENT OF THE CASE

On May 10, 2023, Relator-Appellant George Martens ("Martens" or "Appellant") brought a Complaint in the Third District Court of Appeals seeking a writ of mandamus directing the Findlay Municipal Court, Judge Allen Hackenberg, Judge Stephanie Bishop, the Hancock County Court of Common Pleas, Judge Reginald Routson, and Judge Jonathan Starn (collectively "Appellees," or, when referring to the judges collectively, "Appellee Judges") to cease hearing certain municipal tax proceedings he believes the respective courts lack jurisdiction to entertain.

On May 17, 2023, Martens filed an Amended Complaint in the Third District, which asked the Court to : (1) "Issue a Peremptory Writ of Mandamus compelling Respondents to initiate appropriation proceedings pursuant to Ohio Revised Code"; and (2) "Issue an alternative writ pursuant to S. Ct. Prac. R. 12.05, to order Respondents, to show cause why they should not be compelled to establish jurisdiction as required under the statutory scheme of ORC 718 to allow or initiate proceedings pursuant to said ORC 718." Martens also sought attorney fees and other equitable relief.

On June 28, 2023, the Appellees moved to dismiss Martens' Amended Complaint for several reasons: (1) Martens lacked standing to seek an extraordinary writ; (2) he was not entitled to a writ of mandamus because he has no clear legal right to the relief requested, and the Respondents have no duty to provide it; (3) he had an adequate remedy at law through appeal; and (4) to the extent Martens sought damages, his claims were barred by judicial immunity. After briefing was completed on the Motion to Dismiss, on December 14, 2023, the Third District entered judgment (the "Judgment Entry") dismissing Martens' Amended Complaint, finding: (1) Martens lacked standing to bring

his claims; (2) he was not entitled to the relief sought, nor did the Appellees have a duty to provide it; and, (3) he had adequate remedies at law precluding relief in mandamus. In determining to dismiss the Amended Complaint for these reasons, the Third District did not reach the issue of judicial immunity.[1]

Thereafter, Martens filed a motion for reconsideration pursuant to Civ. R. 60(B), and then moved to certify a conflict to this Court, both of which were denied. On January 26, 2024, Martens filed a notice of appeal of the Third District's December 14, 2023, Judgment Entry to this Court.

STATEMENT OF FACTS

As stated in Marten's Amended Complaint, he brought this action as a rental property owner and taxpayer in the City of Findlay, Ohio, who is therefore subject to property taxes (Amended Complaint, ¶6-7). As best can be discerned from the Amended Complaint, and from the arguments raised in his Merit Brief with this Court, Martens claims the City of Findlay Tax Department is improperly bringing civil complaints for unpaid municipal taxes without following the procedures set forth in R.C. Chapter 718, et seq., which governs the application and enforcement of municipal taxes, or the City of Findlay's own ordinances, C.O. 193, et seq. and C.O. 194, et seq., which were adopted by the City of Findlay to conform the City's policies to both the current and prior versions of Chapter 718 (*see* Amended Complaint, generally).

Specifically, the City of Findlay Tax Department, upon determining that a taxpayer has not filed a return with the city or paid municipal taxes, must send notice to the

[1] As the Third District's decision adequately disposed of Martens' claims, Appellees do not substantively address the judicial immunity argument herein but maintain its applicability to the extent Martens seeks damages in the Amended Complaint. *State ex rel. Fisher v. Burkhardt*, 66 Ohio St.3d 189, 191, 610 N.E.2d 299 (1993)("It is a well-settled rule in Ohio that where a judge possesses jurisdiction over a controversy, he is not civilly liable for actions taken in his judicial capacity.")

taxpayer affording them the opportunity to file a return or pay the taxes. Id., "Introduction," pp. 7-16. If the taxpayer fails to do so, then the City is required to send an assessment letter setting forth the final sum owed, by certified or regular mail, which provides notice of the right to appeal if the taxpayer disagrees with the assessment. Martens argued that it is only after this appeal process, first to the Municipal Board of Tax Review and then to the Ohio Board of Tax Appeals, that a "civil action" can be commenced by the City. Id. He contends that the assessment and appeal procedures are not being followed, and that, as a result, the Appellees lacked jurisdiction to hear tax cases brought before the respective courts pursuant to R.C. 718.12. Id.

ARGUMENT SUMMARY

For a court to dismiss a complaint pursuant to Civ.R. 12(B)(6), it must appear beyond doubt from the complaint that the relator can prove no set of facts warranting relief, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in the relator's favor. *State ex rel. Natl. Elec. Contrs. Assn., Ohio Conference v. Ohio Bur. Of Emp. Servs.*, 83 Ohio St.3d 179, 181, 699 N.E.2d 64 (1998). This Court reviews a dismissal under Civ.R. 12(B)(6) de novo. *State ex rel. Brown v. Nusbaum*, 152 Ohio St.3d 284, 2017-Ohio-9141, 95 N.E.3d 365, ¶ 10.

To be entitled to a writ of mandamus, the relator must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Love v' O'Donnell*, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3.

While Martens raises nineteen (19) "understandings" and nine (9) separate "propositions of law," the Appellate Court's decision was premised on three findings: (1)

Appellant lacked standing to bring his action; (2) the Judges had no clear duty to provide the relief requested; and (3) Martens had an adequate remedy at law precluding relief in mandamus. For the following reasons, the Third District's decision was correct and should be upheld.

LAW AND ARGUMENT

I. First Proposition of Law: Relator-Appellant lacked standing to bring his claims in mandamus.

Martens brought his Amended Complaint as a City of Findlay property owner and taxpayer, but this alone is insufficient to establish standing to bring this action. Standing determines "whether a litigant is entitled to have a court determine the merits of the issues presented." *Ohio Contrs. Assn. v. Bicking,* 71 Ohio St.3d 318, 320, 1994-Ohio-183, 643 N.E.2d 1088 (1994). A party must establish standing to sue before a court will consider the merits of the party's claim. *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 27. As outlined below, Martens failed to establish standing under traditional standing principles, taxpayer standing, or the public-right doctrine.

A. Martens lacked general standing to bring his claim in mandamus.

A party lacks standing unless he has, in an individual or representative capacity, "some real interest in the subject matter of the action." *State ex rel. Dallman v. Court of Common Pleas,* 35 Ohio St.2d 176, 298 N.E.2d 515 (1973), syllabus. To have standing in a mandamus case, a relator must be "beneficially interested" in the case. *State ex rel. Hills & Dales v. Plain Local School Dist. Bd. of Edn.,* 158 Ohio St.3d 303, 2019-Ohio-5160, 141 N.E.3d 189, ¶ 9, quoting *State ex rel. Spencer v. E. Liverpool Planning Comm.,* 80 Ohio St. 3d 297, 299, 685 N.E.2d 1251 (1997); R.C. 2731.02. "[T]he applicable test is whether

[a] relator[] would be directly benefited or injured by a judgment in the case." *State ex rel. Sinay v. Sodders,* 80 Ohio St.3d 224, 226, 685 N.E.2d 754 (1997).

Martens alleged in the Amended Complaint that he had standing as a property owner and taxpayer in the City of Findlay who has appeared before the Appellee Judges for tax complaints (Amended Complaint, ¶6-7). This legal conclusion is insufficient to support a finding that Martens had standing. *See State ex rel. Ames v. Portage Cty. Bd. of Revision*, 2021-Ohio-4486, 166 Ohio St. 3d 225, 184 N.E.3d 90 (holding that Relator lacks standing to bring mandamus action against a board of revision when he fails to allege that his property was the subject of an improper hearing by the board or that he has been personally harmed by the board's practices; Court was not required to accept the legal conclusion that this property ownership confers standing on Relator to bring the mandamus action). While generally referencing that he has appeared before the Appellee Judges on prior cases, Martens did not allege that he had a current real interest in the outcome of the mandamus action, or that he would suffer injury should the Third District not grant his petition.

For example, in *State ex rel. Ames*, the appellant, Ames, argued he had standing to challenge the practices of the Portage County Board of Revision as he owned a parcel in Portage County, and that he had a real interest in the case as a misevaluation of one property affects the tax assessment of his own property. *Id.* ¶ 12-15. The *Ames* Court held that, in deciding a motion under Civ. R. 12(B)(6), "the court of appeals was required to accept as true the allegation that Ames owns the parcel that he identified in his complaint, but it was not required to accept the legal conclusion that this property ownership confers standing on Ames to bring the mandamus action." *Id.*, ¶ 13. Further, the Court held that:

> Ares's theory is that a misevaluation of one property affects the tax assessment of his own property, and therefore he has standing. But even assuming that to be true, Ames alleged only that he has an interest in the *outcome* of tax-rate-assessment appeals. Whether he has standing to challenge the procedures by which the board conducts those hearings is a different question. In other words, Ames has not alleged that he is personally harmed by the board's practice of appointing alternates without first creating separate hearing boards.

Id., ¶ 15.

The same reasoning can be applied to the case *sub judice*. While the Court must accept Martens' allegations that he is a taxpayer and has been the subject of complaints before the Appellees, it need not accept his legal conclusions that these allegations afford him standing to contest the Appellees' general practices and procedures. Nor is the Court required to accept Martens' allegations that he is personally harmed by the Appellees' exercise of jurisdiction over cases in which he is not a party.

B. Martens lacked standing to bring a taxpayer suit.

In his merit brief, Martens contends he has standing as a "taxpayer and as a representative taxpayer." Taxpayers do have standing in certain circumstances, none of which are present in this matter.

In *State ex rel. Masterson v. Ohio State Racing Com.*, 162 Ohio St. 366, 123 N.E.2d 1 (1954), the Ohio Supreme Court recognized that":

> "[e]ven in the absence of legislation, a taxpayer has a right to call upon a court of equity to interfere to prevent the consummation of a wrong such as occurs when public officers attempt to make an illegal expenditure of public money, or to create an illegal debt, which he, in common with other property holders of the taxing district, may otherwise be compelled to pay."

State ex rel. Masterson at 368, quoting 39 Ohio Jurisprudence, 2, Section 2. Martens asserts that he has taxpayer standing because he is a taxpayer and property owner in the City of Findlay. Yet, *Masterson* specifically recognized that a taxpayer may not bring an

action "to prevent the carrying out of a public contract or the expenditure of public funds unless he had some special interest therein by reason of which his own property rights are put in jeopardy." *Id.* at 368. The Ohio Supreme Court held that "private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that sustained by the public generally." *Id.*

Martens argues that "Findlay taxpayers are being burdened by the loss of court resources" which they pay for (presumably with their tax dollars). In *Gildner v. Accenture, L.L.P.*, the Tenth District expanded on this Court's holding in *State ex. rel. Masterson*, and noted that when the expenditure is related to general revenue funds, the taxpayer does not have standing to challenge the expenditure. 10th Dist. Franklin No. 09AP-167, 2009-Ohio-5335, ¶ 24. The *Gildner* Court noted that without such limitations most government actions would be subject to taxpayer suits, and would violate public policy that public official should not be subject to constant judicial interference. *Id.*, ¶ 22, citing *Brinkman v. Miami Univ.*, 12th Dist. Butler No. CA2006-12-313, 2007-Ohio-4372. This Court declined to review the *Gildner* Court's decision, and then ultimately adopted the *Gildner* holding in *State ex. rel. Walgate v. Kasich*, 147 Ohio St.3d 1, 2016-Ohio-1176, 59 N.E.3d 1240, ¶ 19, citing *Gildner* ("A plaintiff does not have standing to challenge expenditures from the general revenue fund simply based upon the plaintiff's contributions to the general revenue fund as a taxpayer.").

In Ohio, common pleas courts are funded by the general fund of the state and the County commissioners (R.C. 5707.02), and municipal courts are funded by the general funds of the local funding authority, either municipal corporations/townships or counties (R.C. 1901.02, 1901.01, 1901.024). Thus, from a generous reading of Martens' arguments, he alleges taxpayer standing based on expenditure of general revenue funds due to his

contributions to those funds, which is expressly prohibited. Because Martens has failed to allege any damage to himself or his property that differs in character from any damages sustained by the public generally, he lacks standing to institute a common-law taxpayer action. *See id; State ex rel. Walgate v. Kasich*, 147 Ohio St.3d 1, 2016-Ohio-1176, 59 N.E.3d 1240, ¶19; *State ex rel. Longville v. City of Akron*, 9th Dist. Summit Nos. 25354, 25356, 2013-Ohio-1161, ¶ 13-16.

C. Martens lacked standing pursuant to the public-right doctrine.

Likewise, Marten's Amended Complaint failed to establish standing pursuant to the public-right doctrine, which provides "an exception to the personal-injury requirement of standing." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 503, 715 N.E.2d 1062 (1999). The doctrine provides that "when the issues sought to be litigated are of great importance and interest to the public, they may be resolved in a form of action that involves no rights or obligations peculiar to named parties." *Id.* at 471. To succeed in bringing a public-right case, a litigant must allege "rare and extraordinary" issues that threaten serious public injury. *Id.* at 504. Not all allegedly illegal or unconstitutional government actions rise to this level of significance. *Id.* at 503. Public-right standing is available only in mandamus actions "to procure the enforcement or protection of a public right." *Id.* at paragraph one of the syllabus. This, however, is a narrow exception to be applied when refusal of the writ will cause serious harm to the public. *Lager v. Plough*, 11th Dist. Portage No. 2006-P-0013, 2006-Ohio-2772, ¶11 ("In light of the Supreme Court's general guidance on this point, Ohio appellate courts have continued to conclude that the "public action" exception was intended to be used in a very limited manner.").

Here, any alleged irregularities in the City of Findlay's municipal tax procedures are not "rare and extraordinary" enough to warrant invocation of public-right standing and, as set forth more fully below, can be cured on an individual basis by way of appeal.

"Not all alleged illegalities or irregularities are thought to be of that high order of concern." *Sheward, supra*, at 503, quoting Jaffe, Standing to Secure Judicial Review: Public Actions (1961), 74 Harv.L.Rev. 1265, 1314. "There are serious objections against allowing mere interlopers to meddle with the affairs of the state, and it is not usually allowed *unless under circumstances when the public injury by its refusal will be serious*." (Emphasis added.)" *Id.* at 472 quoting *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 615-616, 64 N.E. 558 (1902). Moreover, "[t]he vast majority of such cases involve voting rights and ballot disputes." *Bowers v. State Dental Bd.*, 142 Ohio App.3d 376, 381, 755 N.E.2d 948 (10th Dist. 2001).

Based upon the foregoing, it is clear that Martens lacked standing to bring his action in mandamus under any of these theories; the Third District's reasoning was therefore correct and should be affirmed.

II. <u>Second Proposition of Law:</u> Relator-Appellant had no right to the relief sought, and the Respondents-Appellees had no clear duty to provide it.

To be entitled to a writ of mandamus, a relator must establish a clear legal right to the requested relief, and a clear legal duty on the judge's part to provide it. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶6. Martens' Amended Complaint sought a writ of mandamus compelling the Appellees to follow the procedures for proceeding in actions to recover municipal income taxes pursuant to R.C. Chapter 718; however, Martens is not entitled to such relief, nor are the Appellees under a duty to provide said relief.

The procedure outlined in R.C. Chapter 718 et seq. requires a notice of assessment to be issued prior to any contested hearing before the Court. This procedure has been adopted by the City of Findlay in the Findlay Codified Ordinances Chapter 194.

The proceedings begin when a taxpayer has failed to pay municipal taxes or file a tax return. The Tax Department, on behalf of the City of Findlay, issues a notice of delinquency, based on an estimate of taxes owed. *See* City of Findlay Ordinance 194.133(E). The taxpayer then has the option to file a return or pay the unpaid taxes as provided in the notice. City of Findlay Ordinance 194.091. Alternatively, a defendant may provide additional documentation so that the Tax Department can revise its estimate prior to a return being filed. The Tax Department may also issue an estimated return based on information available to it. City of Findlay Ordinance 194.133(E). The Tax Department and the taxpayer may reach a compromise for the amount of taxes owed and may also enter into payment plans over a period of time. City of Findlay Ordinance 194.132.

If the taxpayer fails to file a return, or insufficient taxes are paid, the Tax Department issues an assessment notice by certified mail. R.C. 718.18(A)(1). These assessments include information related to the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment, and the address to which the appeal should be directed. R.C. 718.11(C). The Tax Department then waits at least 60 days from the date of receipt before filing a complaint in the appropriate Court, which would depend on the amount of taxes owed and the jurisdictional threshold of the court.[2]

[2] Common pleas court have jurisdiction for cases over $15,000 (R.C. § 2305.01), municipal courts have jurisdiction for cases under $15,000 but over $6,000 (R.C. § 1901.17), and small claims have jurisdiction for cases under $6,000 (R.C. § 1905.02).

R.C. 718.12(G)(1). If there is no response and no resolution after the statutory period expires, the Tax Department may then file a complaint, and the Court issues a Summons and Information Sheet to the defendant by certified mail and, if necessary, by ordinary mail for refused or unclaimed certified mail. *Id.*

If filed in small claims, for example,[3] the hearing is set approximately 40 days from the date of filing. *See* Small Claims Summons in Findlay Small Claims Case No. 198CVI03628, attached to Martens' Amended Complaint. The defendant is also sent a hearing notice the week before the hearing as a reminder. *See generally*, Findlay Municipal Court Local Rule 3.04. If the defendant files additional information, such as a W-2, prior to the date of the hearing, the Tax Department will then amend the proposed assessment due based on the actual filings rather than the original estimate. *Id.* Additionally, the Tax Department may enter into a compromise with the taxpayer at any point, even if the person failed to file an appeal with the Local Board of Tax Review and court proceedings have been initiated. City of Findlay Ordinance 194.17(B)(2).

In the small claims context, the contested hearings are conducted by a magistrate. *See* Findlay Municipal Court Local Rule 1.05. After the magistrate makes a recommendation as to tax liability, the parties have an opportunity to file objections before the matter is sent to the judge. Civ. R. 53(D)(3). At that time, the judge would either reject or adopt the recommendation of the magistrate. Civ. R. 53(D)(4), et seq. If the recommendation is adopted, "the judge will issue a judgment for the amount owed. *Id.* Once a final judgment is issued in any appropriate court, then the taxpayer has the right to file an appeal to the appropriate Court of Appeals pursuant to R.C. 2502.02.

[3] The case attached to Relator's Amended Complaint, Case Number 19CVI03628, proceeded in the Small Claims Division of the Findlay Municipal Court. Amended Complaint, Exhibit A.

Martens alleges that the above procedures of Chapter 718 and Findlay Ordinance 194.02 are not being followed, specifically taking issue with the filing of a civil action prior to any appeal made pursuant to R.C. 718.11 and 718.12. As a result, he alleges the Appellees do not have jurisdiction over the actions. Martens cites R.C. 718.12(G)'s requirement that:

> No civil action to recover municipal income tax or related penalties or interest shall be brought during either of the following time periods:
>
> **(1)** The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties;
>
> **(2)** The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

By the plain language of the statute there are two circumstances in which a civil action to recover municipal taxes can occur: (1) if a taxpayer receives an assessment and fails to appeal within 60 days; or (2) during the pendency of an appeal, if the taxpayer files a timely notice. If either of these two requirements is satisfied, a civil action against the taxpayer can be commenced. Accordingly, a civil action may be filed even if the taxpayer fails to file an administrative appeal, so long as the Tax Department waits 60 days from a properly noticed assessment.

Martens then complains that City of Findlay taxpayers are not receiving proper notice of the assessment, and thus unable to assert their appellate rights under R.C. 718.11 prior to the commencement of the civil action, and unable to defend themselves in the civil action. He alleges this failure to issue a proper assessment renders the Appellees without jurisdiction to hear these civil actions. However, even assuming Martens' allegations regarding the assessment and administrative process are true, it would only impact the *exercise* of jurisdiction, not the fact that the Appellees have subject-matter jurisdiction over the cases. And "any clear error in the exercise of [a court's] jurisdiction

renders the court's judgment voidable, not void," and a voidable judgment generally "may be set aside only if successfully challenged on direct appeal." *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 26.

Thus, Martens' argument conflates subject-matter jurisdiction with jurisdiction over a particular case, arguing that because the City of Findlay is not following the statutory requirements, the Appellees lack "statutory jurisdiction" over the actions. Martens cites this Court's decision in *Hughes v. Ohio DOC*, 114 Ohio St.3d 47, 2007-Ohio-2877, 868 N.E.2d 246 for its holding that "[t]he common pleas court lacks jurisdiction over this administrative appeal because a certified copy of the final order was never served" and "an administrative agency must strictly comply with procedural requirements. ¶¶ 18-19. However, the *Hughes* case again speaks to jurisdiction over a specific case which, as was the case in *Hughes,* can be remedied on appeal.

This Court has distinguished a court's subject-matter jurisdiction from a court's "jurisdiction over a particular case." *See Bank of Am., N.A. v. Kuchta,* 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040. The Court held that "[s]ubject matter jurisdiction is the power of a court to entertain and adjudicate a particular class of cases" and "is determined without regard to the rights of the individual parties involved in a particular case." *Id.* at ¶ 19. A court's jurisdiction over a particular case pertains to "the court's authority to proceed or rule on a case that is within the court's subject-matter jurisdiction." *Id.* A party that contests a court's jurisdiction does not call into question the subject-matter jurisdiction of the court. *Id.* at ¶ 22-23. A court's subject-matter jurisdiction is determined without regard to the rights of any individual party. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 701 N.E.2d 1002 (1998); *Handy v. Ins. Co.*, 37 Ohio St. 366, 1881 Ohio LEXIS 187 (1881).

It cannot be disputed that the Appellees have jurisdiction pursuant to R.C. 718.12 over civil actions to recover municipal taxes owed, and Martens' complaints , if true, amount to no more than error in the exercise of that jurisdiction. This is not an appropriate consideration for a mandamus action and can be challenged by way of direct appeal. As the Third District noted in a prior case involving Martens, "there is no indication that failure to comply with R.C. 718 or Findlay Ordinance 194.02 would deprive the trial court of jurisdiction over the matter." *City of Findlay v. Martens*, 3rd Dist. Hancock No. 5-22-05, 2022-Ohio-4146, ¶ 20, fn. 6 (*dicta*).

Thus, Martens' assertion about the pre-suit operations of the City's Tax Department necessitates an inquiry into the trial court's jurisdiction over a particular case, not whether the court had subject-matter jurisdiction. Indeed, the alleged pleading defect—i.e., the Tax Department's failure to properly issue an assessment—would qualify as a "procedural irregularity" that does not affect the trial court's subject-matter jurisdiction to hear the claim. *See In re J.J.,* 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, ¶ 15; *Barnes v. Univ. Hosps. of Cleveland*, 119 Ohio St.3d 173, 2008-Ohio-3344, 893 N.E.2d 142, ¶ 27; *State ex rel. Welt v. Doherty*, 166 Ohio St. 3d 305, 2021-Ohio-3124, 185 N.E.3d 1019.

Moreover, in his Merit Brief, as in the Amended Complaint, Martens argues it is the City of Findlay's failure to abide by the administrative procedures set forth in R.C. Chapter 718 that renders the Appellees without jurisdiction. While this argument makes clear that Martens feels the City of Findlay, through its Tax Department, is not fulfilling its duties, it is unclear what he is asking this the named *Appellees* be ordered to do. In essence, Martens seeks an order compelling two separate inferior courts to direct a

separate government agency (the City of Findlay, through its Tax Department) to act in compliance with the law.

In addition to failing to identify an actual duty of the Appellees, such a request is inappropriate from a separation-of-powers perspective. At its core, the separation-of-powers doctrine—which is implicitly embedded within the Ohio Constitution—establishes that "powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others." *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 44, quoting *State ex rel. Bryant v. Akron Metro. Park Dist. of Summit Cty.*, 120 Ohio St. 464, 473, 166 N.E. 407 (1929); see also *State ex rel. Ohioans for Secure & Fair Elections v. LaRose*, 159 Ohio St. 3d 568, 2020-Ohio-1459, 152 N.E.3d 267. Martens would have this Court ignore this fundamental rule and, in effect, order the Appellees to control from the bench the actions of City of Findlay officials.

Relator further cites this Court's holding in *Walker v. City of Toledo*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.3d 474 that under the home-rule authority to establish administrative procedures afforded to municipalities in Ohio, administrative remedies "be exhausted before offenders or the municipality can pursue judicial remedies." This again speaks to the duties of the *municipality*, not the court where such judicial remedies are pursued.

"The basic purpose of the writ of mandamus is to compel a public officer to perform the duties imposed upon him by law." *State ex rel. Scott v. Masterson*, 173 Ohio St. 402, 404-405, 183 N.E.2d 376 (1962); see also *State ex rel. Hodges v. Taft*, 64 Ohio St.3d 1, 4, 591 N.E.2d 1186 (1992); *State ex rel. GMC v. Indus. Comm.*, 117 Ohio St.3d 480,

2008 Ohio 1593, 884 N.E.2d 1075, P 9, fn. 2. While Martens cites several instances where he believes the City of Findlay Tax Department is not performing its duties, such as properly issuing assessments, he does not identify how the Appellees are not performing duties imposed on them by law. Martens also argued that discovery is needed in this action to show whether the City of Findlay Tax Department is actually following procedures, but he has not named the City as a party, nor does he establish how the Appellees could answer discovery on behalf of a separate governmental entity.

Ultimately, Martens cites no law or proposition that Appellees have a legal duty, or ability, to oversee the City of Findlay's assessment procedures prior to a complaint being filed. And significantly, the Appellee Judges would not even have the ability to raise the questions related to the City of Findlay's procedures that Martens views as necessary *without* exercising subject-matter jurisdiction over the complaints. Even assuming, *arguendo*, that Appellees have certain duties under R.C. 718.12 that are not being followed, Martens essentially asks this Court to order Appellees to comply with the law going forward, but mandamus will not compel the general observance of laws in the future. *State ex rel. Zamborsky v. State Bd. of Embalmers & Funeral Dirs.,* 10th Dist. Franklin No. 18AP-768, 2019-Ohio-4016, citing *State ex rel. ACLU of Ohio v. Cuyahoga Cty. Bd. of Commrs.,* 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶ 27.

Martens has no clear legal right to challenge the exercise of the Appellees' subject-matter jurisdiction, and the Appellees have no duty to waive their subject-matter jurisdiction. As the Amended Complaint failed to allege the trial court lacked subject-matter jurisdiction under any viable legal theory, the Third District correctly determined Martens was not entitled to relief in mandamus; the decision should be upheld.

III. <u>Third Proposition of Law:</u> Relator-Appellee had adequate remedies at law precluding relief in mandamus.

Finally, for a writ of mandamus to issue, a relator must have no adequate remedy at law. Here, there are adequate remedies at law to resolve these issues by way of appeal or a declaratory judgment action.

First, both R.C. 718.11 and R.C. Chapter 5717 et seq. provide for a direct right of appeal of any tax assessment. Specifically, R.C. 718.11(B) provides that:

> Any person who has been issued an assessment may appeal the assessment to the board created pursuant to this section by filing a request with the board. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty days after the taxpayer receives the assessment.

At that point, the local Municipal Board of Tax Review sets a hearing and may affirm, reverse, or modify the tax administrator's assessment or any part of that assessment. The board then issues a final determination on the appeal within ninety days after the board's final hearing on the appeal and sends a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen days after issuing the final determination. The taxpayer or the tax administrator may then appeal the board's final determination as provided in Chapter 5717 of the Revised Code. R.C. Chapter 5717 sets forth a specific procedure for the appeal of decisions from a Municipal Board of Tax Review. Such an appeal can be made to either the Board of Tax Appeals, pursuant to R.C. 5717.01, or to the Court of Common Pleas in which the property is located, pursuant to R.C. 5717.05.

In addition, R.C. 718.37 allows for a direct action to be brought in the common pleas court by a "taxpayer aggrieved by an action or omission" of a tax administrator or municipal corporation. Therefore, Martens, and other City of Findlay taxpayers, have adequate remedies at law to cure any alleged defects in the exercise of jurisdiction over tax complaints.

If, however, tax liability were to proceed to judgment in a civil action as provided in R.C. 718.12, either after an appeal made pursuant to R.C. 718.11 or if a party fails to respond to a properly noticed assessment, the aggrieved taxpayer would have a right of appeal to this Court, as they would for any judgment issued by a court of competent jurisdiction pursuant to R.C. 2505.02. *See City of Shaker Hts. v. Calhoun*, 8th Dist. Cuyahoga No. 109601, 2021-Ohio-2101 (appealing judgment to court of appeals for unpaid municipal taxes brought pursuant R.C. 718.12).

Martens argues there is no adequate remedy at law because taxpayers should not be forced to appeal decisions where the Appellees allegedly lack jurisdiction. As outlined *supra*, the Appellees do have subject-matter jurisdiction over the tax complaints, and any error in the exercise of that jurisdiction can be cured on appeal.

Regardless of whether Martens agrees this is an adequate remedy, Ohio Courts have consistently held that where a court exercises its subject-matter jurisdiction, appeal is an adequate remedy at law. *Id.; State ex rel. City of Cleveland v. Russo*, 156 Ohio St.3d 449, 2019-Ohio-1595, 129 N.E.3d 384 (absent a patent and unambiguous lack of jurisdiction, a court possessing general subject matter of an action possesses the necessary authority to determine its own jurisdiction. A party challenging the court's jurisdiction has an adequate remedy at law through an appeal from the court's holding that it possesses jurisdiction).

Because Martens and other property owners in the City of Findlay have the opportunity to raise these issues on appeal, he cannot establish that he is entitled to a writ of mandamus. *Shoop v. State,* 144 Ohio St.3d 374, 2015-Ohio-2068, 43 N.E.3d 432, ¶"8 ("An appeal is generally considered an adequate remedy in the ordinary course of law sufficient to preclude a writ."). The fact that an appeal is unsuccessful or even wrongly

decided does not mean that it was not an adequate remedy. *See, State ex rel. Walker v. State*, 142 Ohio St.3d 365, 2015-Ohio-1481, 30 N.E.3d 947, ¶ 14; *State ex rel. Barr v. Pittman*, 127 Ohio St.3d 32, 2010-Ohio-4989, 936 N.E.2d 43, ¶ 1.

Relator further argues that the Appellate Court erred in determining that the proper vehicle for the relief sought, a finding that the Appellees are not abiding the law, is a declaratory judgment action. *See State ex rel. JobsOhio v. Goodman*, 133 Ohio St. 3d 297, 2012-Ohio-4425, 978 N.E.2d 153, ¶ 14 (citations omitted) ("If the allegations of a *mandamus* complaint indicate that the real object sought is a declaratory judgment, the complaint does not state a viable claim in *mandamus* and must be dismissed for lack of jurisdiction"); *State ex rel. Obojski v. Perciak*, 113 Ohio St.3d 486, 2007-Ohio-2453, 866 N.E.2d 1070, ¶ 13 ("[i]t is axiomatic that if the allegations of a complaint for a writ of mandamus indicate that the real objects sought are a declaratory judgment and a prohibitory injunction, the complaint does not state a cause of action in mandamus and must be dismissed for want of jurisdiction").

He argues this is not an adequate remedy because he has filed a declaratory judgment action, and the Third District dismissed that as well. *See*, *Martens v. Price*, 3rd Dist. Hancock No. 5-23-04, 2023-Ohio-4359. As stated, however, the failure of another legal remedy does not render it "inadequate" for purposes of mandamus. *State ex rel. Walker, supra*, ¶ 14; *State ex rel. Barr, supra*, ¶ 1.

Because adequate remedies at law exist through direct appeal or a declaratory judgment action, Martens claim for relief in mandamus fails, and this Court should affirm the decision of the Third District.

CONCLUSION

For the foregoing reasons, the Third District did not err in denying Relator-Appellant Martens' request for a writ of mandamus. Respondents-Appellees the Findlay Municipal Court, Judge Allen Hackenberg, Judge Stephanie Bishop, the Hancock County Court of Common Pleas, Judge Reginald Routson, and Judge Jonathan Starn therefore request this Court affirm the decision of the lower court dismissing Relator-Appellant George Martens' Amended Complaint.

Respectfully submitted,

/s/ Linda L. Woeber
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following by ordinary, U.S. mail, this 1st day of May, 2024:

George Martens
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/s/ Linda L. Woeber
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