IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO

KENNETH WOODSON, et al.,	**:**	
	:	**Case No. 21-AP-0381**
Plaintiffs-Appellants,	**:**	**ACCELERATED**
	:	**CALENDAR**
v.	**:**	
	:	**On appeal from the Franklin**
OHIO DEPARTMENT OF	**:**	**County Court of Common**
REHABILITATION AND	**:**	**Pleas,**
CORRECTIONS, et al.,	**:**	**Case No. 21-CV-2247**
	:	
Defendants-Appellees.	**:**	

BRIEF OF APPELLANTS KENNETH WOODSON AND LEONARD EVANS

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ASSIGNMENTS OF ERROR PRESENTED FOR REVIEW

Assignment of Error No. 1: The trial court erred by dismissing Appellants' claims for declaratory judgment, as Appellants have pled a justiciable issue. *See* Order Granting Motion to Dismiss ("Order") at 5–6.

Assignment of Error No. 2: The trial court erred by failing to accept the allegations of the Complaint as true for purposes of deciding Appellees' motion to dismiss, by failing to construe the allegations of the Complaint in a manner favorable to Appellants, and/or by accepting as true unsupported factual assertions offered in the motion to dismiss. *See* Order at 5.

Assignment of Error No. 3: The trial court erred by dismissing Appellants' claims for a writ of mandamus, as Appellants have pled sufficient facts to establish a clear legal duty on behalf of Appellees to provide the relief sought. *See* Order at 6.

ISSUES PRESENTED FOR REVIEW

1. May a trial court treat assertions contained in a defendant's motion to dismiss, but not alleged in any pleading, as factual allegations and reply upon them as the basis for dismissal?

   (Assignment of Error Nos. 1 and 2.)

2. Assuming *arguendo* that a trial court concludes, based on unverified assertions in a motion to dismiss, that a plaintiff did not join necessary parties to a declaratory judgment action, may the trial court dismiss that action for failure to state a claim rather than ordering joinder or dismissing without prejudice for lack of subject-matter jurisdiction?

   (Assignment of Error No. 1.)

3. May a trial court dismiss a claim for a writ of mandamus without explanation, where the relator has pled facts with sufficient particularity to (1) provide notice to the respondent of the mandamus claim, (2) establish a clear legal duty on the part of the respondent

to provide relief, and (3) establish an absence of adequate remedy at law?

(Assignment of Error No. 3.)

INTRODUCTION

It is black-letter law in Ohio that motions to dismiss for failure to state a claim should be granted only when the plaintiff has received every favorable inference and there is still no conceivable way that they could prevail. That is not what happened below. Appellants—incarcerated people at two Ohio prisons—had their CARES Act emergency relief checks seized by Appellees, held in limbo for weeks, and then garnished to pay government debt, despite Ohio's Attorney General having already declared that the checks were exempt from debt collection under state law. Appellants sued, primarily seeking a declaratory judgment on the grounds that Appellees had seized their checks in violation of Ohio's Equal Protection Clause, for the purpose of either transferring their funds to local courts to satisfy court debts or keeping it themselves to satisfy administrative fines. Appellees immediately conceded that they had, indeed, taken the money, but sought a Civ.R. 12(B) dismissal, claiming in their motion that they had already given the money away.

Rather than properly relying upon the well-pled facts before it, the trial court took an untested and unverified assertion made by Appellees in

a brief, relied upon it to decide the matter was not justiciable, and dismissed the Complaint. But the matter plainly is justiciable. The allegations properly pled in the complaint show a live controversy between the parties, upon which relief can be granted to satisfy Appellants' claims. Such relief includes an injunction requiring Appellees to release and return, or to reclaim and return, Appellants' funds.

Even if it had been pled that Appellees had transferred the funds away from their possession, then the issue would at most be a failure to join necessary parties. The appropriate remedy would be vacatur for joinder or amendment. Moreover, even if this court were to disagree and find that dismissal was appropriate, at the very least, the trial court's order should still be vacated to make clear that the dismissal was only for lack of subject matter jurisdiction, and without prejudice to refiling.

In the alternative, Appellants also pled an action for a writ of mandamus. The trial court dismissed that claim as well, with no explanation besides a bare recitation of the standard. That too was error: Appellants stated a valid claim for mandamus, and if declaratory relief is deemed unavailable, mandamus is an appropriate means of relief.

This is a case about equal protection of the law. But on appeal, it is a case about preserving Ohio's pleading standards. The trial court's order should be reversed or vacated and remanded for further proceedings.

STATEMENT OF THE CASE AND FACTS

In March 2020, Congress enacted the first in a sequence of emergency relief laws designed to "provide emergency assistance … for individuals, families, and businesses affected by the 2020 coronavirus pandemic." *See* Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub.L. 116-136, 134 Stat. 281 (2020). That emergency relief featured direct cash payments to every American earning less than $99,000 per year. *See id*. at § 6428(a), (c)-(d).

The CARES Act did not expressly address whether and when creditors could garnish the relief payments. Recognizing this "legislative oversight," on April 13, 2020, Ohio joined with a majority of states to assert that the funds should not be subject to garnishment.[1] That same day,

[1] *See* Apr. 13 Letter from 26 States to the U.S. Treasury, available at https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/04-13-20-multistate-letter-to-Treasury-re-garnishm.aspx.

Attorney General Dave Yost confirmed that Ohio law—specifically, R.C. 2329.66(A)(12)(d)—wholly exempts CARES Act relief payments from attachment for any debts, public or private, other than child support:

> The payments under the CARES Act are in the nature of emergency support, designed to support basic needs of tens of millions of Americans. This is why debts owed to the Federal and State governments are not being withheld from the payments. Although there is no explicit exemption for CARES Act payments under federal law, Ohio law protects them.[2]

Nothing in Attorney General Yost's decision limited the exemption in any way, including by carceral status.

Although the federal government began distributing emergency relief funds in the spring of 2020, relief for incarcerated people was delayed. In statements published on its website on May 6, 2020, the Internal Revenue Service ("IRS") asserted, contrary to the plain language of the CARES Act, that prisoners were ineligible for the funds. The IRS was ordered to reverse that irrational position in a federal class-action

[2] Ohio Attorney General, *Notice of Applicability of State Law Exemption to Payments Under the Federal CARES Act,* https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/STATE_LAW_EXEMPTION_FOR_WEB.aspx.

lawsuit. *See Scholl v. Mnuchin*, 489 F.Supp.3d 1008 (N.D. Cal. 2020). The IRS began sending checks to prisoners in October 2020.

As relief checks began arriving, ODRC instructed prison wardens to intercept them and wait "until further direction is received from legal." Motion for Preliminary Injunction ("PI Motion") Ex. 1. ODRC's agents held the relief funds for weeks. Eventually, ODRC sent a message to all prisoners that it had finally begun processing the checks. For prisoners whom ODRC had already released, the agency returned the checks to the IRS. Prisoners soon to be released, a category with no clearly defined bounds, could retrieve their whole checks on their way out. Prisoners with no outstanding debt could access their money at long last. Prisoners with child-support debt—eligible for extraction under the CARES Act—could access their money subject to that extraction.

But Appellants, and all other prisoners with other court-ordered debts, would not receive anything unless they applied for an exemption to garnishment, and even then would receive only the portion that ODRC did not garnish. *Id.* ODRC has since confirmed that rather than applying the full, uncapped garnishment exemption of R.C. 2329.66(A)(12)(d)—

which Ohio's Attorney General determined governs relief checks for every single Ohioan—it would instead apply a different provision, R.C. 2329.66(A)(3), which protects only $500.

During December 2020, prison staff made available forms that could be used to request an exemption, though many prisoners, including Appellant Woodson, were told that seeking an exemption would be fruitless. Appellants timely completed these forms but were denied the full exemption that all other Ohioans enjoy. *See* Complaint Ex. 1 ("Woodson Aff.") ¶¶ 13-15; Complaint Ex. 2 ("Evans Aff.") ¶ 15–17. Both Appellants also exhausted the grievance and administrative appeals process, to no avail. Evans Aff. ¶ 18; Woodson Aff. ¶ 16.

The current status of Appellants' seized relief funds is unclear. Appellants have alleged that the funds were garnished for the apparent purpose of paying court debts, or to pay debts owed to ODRC itself. Compl. ¶ 31, 42, 53, 61. They also offered evidence below demonstrating that ODRC and its prisons reserved the right to use the seized funds for "other debts" as well, such as fees imposed by ODRC's Rules Infraction Board. *See* PI Motion at Exhibit 2. While both Appellants received

responses suggesting that at least some of their funds may have been sent to the courts, *see* Compl. Exs. 3–4, Appellants did not allege that the funds were out of ODRC's possession, let alone inaccessible to ODRC.

Promptly upon exhausting administrative remedies, Appellants sued in the Franklin County Court of Common Pleas. They sought a declaratory judgment establishing that ODRC's garnishment policy violates the Equal Protection Clause of Article I, Section 2 of the Ohio Constitution. In the alternative, they sought a writ of mandamus compelling ODRC and its wardens to reverse implementation of its unlawful policy and remit all wrongfully garnished funds to Appellants.

Appellants moved for a preliminary injunction. Appellees opposed, and moved to dismiss pursuant to Rule 12(B)(6). In their motion, Appellees wrote that the funds "have been paid" to the respective clerks of court. *See* Motion to Dismiss at 3. The trial court accepted Appellees' assertion as true and relied on it as the basis for dismissal, concluding that "since Defendants have already paid out the garnished funds," the clerks of courts "who would have the authority to issue refunds" were necessary parties. *See* Order at 5. The trial court also dismissed Appellants'

mandamus claim, stating merely that the complaint "failed to plead a set of facts with sufficient particularity demonstrating a clear legal duty on behalf of [Appellees] to provide the relief sought." *Id.* at 6.

ARGUMENT

I. This Court's Review Is *De Novo*

As discussed below, the trial court was incorrect to characterize its ruling on Appellants' declaratory judgment claim as a determination of non-justiciability, rather than a finding of failure to join a necessary party. Failure to join a necessary party in a declaratory judgment action creates a defect in subject-matter jurisdiction. *Infra* at 20.

Although a finding of non-justiciability in a declaratory judgment action would be reviewable only for abuse of discretion, dismissal for lack of subject-matter jurisdiction—the proper characterization of the trial court's dismissal here—is an inherently legal determination. As with any pure issue of law, it is to be reviewed *de novo*. *E.g.*, *One Energy Enterprises, LLC v. Ohio Dep't of Transp.*, 10th Dist. Franklin No. 17AP-829, 2019-Ohio-359, ¶ 28, 45; *Zarbana Indus. v. Hayes*, 10th Dist. Franklin No. 18AP-104, 2018-Ohio-4965, ¶ 13.

The trial court's dismissal of Appellants' mandamus claim is also reviewed *de novo*. *E.g.*, *State ex rel. Russell v. Klatt*, 159 Ohio St.3d 357, 358–59, 2020-Ohio-875, ¶ 6; *Harris v. Ohio Dep't of Veterans Servs.*, 114 N.E. 3d 634, 638, 2018-Ohio-2165, ¶ 5.

II. The Trial Court Improperly Dismissed the Complaint Based on Disputed Factual Assertions

"A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint." *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992). The trial court "must construe the complaint in the light most favorable to the plaintiff, presume all factual allegations in the complaint are true, and make all reasonable inferences in favor of the plaintiff." *Coleman v. Columbus State Community College*, 10th Dist. No. 15AP-119, 2015-Ohio-4685, ¶ 6. A court may not grant the motion unless it "appear[s] beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to relief." *City of Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, ¶ 5; *accord York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 145 (1991).

A trial court considering a Rule 12(B)(6) motion may not rely on allegations or evidence outside the "four corners of the complaint" and its attachments. *See Loveland Ed. Ass'n v. Loveland City School Dist. Bd.*, 58 Ohio St.2d 31, 32 (1979); *see also State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207, 680 N.E.2d 985, 987 (1997). If a movant relies on additional evidence, then the motion must either be denied or converted to a summary judgment motion, with all parties given notice and a reasonable opportunity to present relevant materials. Civ.R. 12(B); *see also, e.g.*, *State ex rel. Natalina Food Co. v. Ohio Civ. Rights Comm'n*, 55 Ohio St.3d 98, 99 (1990); *Powell v. Vorys, Sater, Seymour & Pease*, 131 Ohio App.3d 681, 684 (10th Dist. 1998).

Here, it was error for the trial court to grant a motion to dismiss based on Appellees' unpled assertions. *See, e.g.*, *Loveland Ed. Ass'n*, 58 Ohio St.2d at 32. Appellees wrote, and the trial court accepted, that Appellants' CARES Act funds were no longer in Appellees' possession. Order at 5–6. Appellants had never alleged that to be the case, nor has the matter been explored in discovery. Because "there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff

to recover," the trial court erred in granting Appellees' motion to dismiss. *See York*, 60 Ohio St.3d at 145.

Appellees claimed below that Appellants had "admitted that the funds garnished . . . have already been distributed to third parties who are not named in this action." Reply in Support of Motion to Dismiss at 2. They supported this mischaracterization by citing two inapposite paragraphs in the Complaint and, for the first time in their Reply, pointing to grievance documents attached as an exhibit to the Complaint. *See id.*

Appellees' argument fails. First, the Complaint alleged only that Appellees took the funds with the *purpose* of either transferring them or keeping them. *See, e.g.*, Complaint at ¶ 46.[3] Appellants never alleged that Appellees had actually transferred the seized funds anywhere. Second, exhibits to a complaint, when not mentioned or affirmatively pled in the complaint, are not automatically treated as allegations. Rather, courts recognize that parties attach exhibits for many reasons, and not always to allege the accuracy of every statement included. *See State ex rel.*

[3] Appellees have asserted a power to keep garnished funds for ODRC's own Rules Infraction Board fees. *See* Motion to Dismiss at 6.

Washington v. D'Apolito, 156 Ohio St.3d 77, 2018-Ohio-5135, ¶ 10 (attaching a docket entry showing completed service did not resolve case at motion-to-dismiss stage); *State ex rel. Mango v. Ohio Dept. of Rehab. & Correction*, 10th Dist. Franklin No. 18AP-945, 2019-Ohio-4774, ¶ 6–7, 10 (attaching police narrative to complaint did not justify dismissal based on "what the officer's testimony might have been and what the bodycam video might depict").[4]

Here, Appellants attached their grievance documents for the obvious—and required, *see* R.C. 2969.26—purpose of showing that they had exhausted their administrative remedies. They did not ratify the truth of any ancillary statements that happen to appear in them. While a court is not required to accept allegations in a complaint as true when they are contradicted by documents attached to the complaint, that is not the situation here. No allegations in the Complaint are contradicted by the

[4] A limited exception to this rule exists for contract disputes in which the existence and proper execution of a contract or promissory note is acknowledged and affirmatively pled in the complaint. *See, e.g.*, *Brisk v. Draf Industries*, 10th Dist. No. 11AP-233, 2012-Ohio-1311, ¶ 16. That is not the case here.

exhibits. Rather, Appellees asked the trial court to derive additional, unpled facts from the exhibits and to take them as true. For the trial court to do so was "to weigh the facts, make an inference against [Appellants] (who [are] the nonmoving part[ies]), and reject [Appellants'] allegations as false." *Washington* at ¶ 11. Courts "must refrain from doing so at the motion-to-dismiss stage." *Id.* The truth of factual ambiguities and assertions like these is to be tested in discovery, not at the pleadings stage.

Indeed, if all ancillary statements in an exhibit to a complaint were taken as true and construed against a plaintiff, the 12(B)(6) standard would be turned on its head. Incarcerated plaintiffs would have to either omit the required evidence of exhaustion, or accept as true any self-serving statements made by defendants in those documents. Prison defendants could immunize themselves from suit merely by making such statements in response to grievances.

Even if accepting facts not in the complaint had been permissible, it was error for the trial court to grant the motion to dismiss without affording Appellants an opportunity to amend their complaint. In *Hanson*, for example, a defendant had submitted evidence along with its motion to

dismiss, and the trial court had granted that motion without an opportunity to amend. 65 Ohio St.3d at 546–547. The Court explained that Hanson was entitled to amend his pleading under Civ.R. 15(A). *Id.* at 549.

Here, while Appellees assert that the funds were given away, Appellants have had no chance to test this proposition through discovery, or to add necessary parties if true. As in *Hanson*, it was error both to accept Appellees' assertions, and to respond with immediate dismissal.

III. Appellants Have Pled a Justiciable Controversy, and Even if Appellants Failed to Join a Necessary Party, the Trial Court's Dismissal Order Is Inappropriate

A. Appellants Have Pled a Justiciable Controversy

The elements for declaratory relief are (1) the existence of a real controversy between the parties; (2) that is justiciable; and (3) speedy relief is necessary to preserve the parties' rights. *E.g.*, *Aust v. Ohio State Dental Bd.*, 136 Ohio App.3d 677, 681 (10th Dist. 2000); *T&M Machines, LLC v. Yost*, 10th Dist. No. 19AP-124, 2020-Ohio-551, ¶ 16. As the Declaratory Judgment Act is "remedial in nature," these elements are "to be liberally construed and administered." *T&M Machines* at ¶ 15. The only reasons to dismiss a declaratory judgment complaint are: (1) there is

no justiciable controversy requiring speedy relief, or (2) a controversy exists, but the judgment would not terminate it. *Halley v. Ohio Co.*, 107 Ohio App.3d 518, 524 (8th Dist. 1995); *Hill v. Croft*, 10th Dist. Franklin No. 05AP-424, 2005-Ohio-6885, ¶ 12.

The trial court couched its dismissal of Appellants' declaratory judgment claim under the former reason: that the issues presented were not justiciable. *See* Order at 5–6. It concluded that "since Defendants have already paid out the garnished funds and Plaintiffs have not joined the necessary parties who would have the authority to issue refunds, the matter is not ripe for judicial resolution and does not have a direct and immediate impact on the parties." *Id.* at 5. Yet as discussed above, the trial court's belief that "Defendants have already paid out the garnished funds" is an error, as it arises from Appellees' unverified assertions, not on the allegations of the complaint. *See, e.g.*, Complaint at ¶ 46.

Absent its mistaken premise, the trial court's dismissal order cannot stand. The controversy alleged in the complaint is whether ODRC has the power to seize federal emergency relief payments provided by the CARES Act. Resolution of that dispute would have an immediate impact

on both Appellants and Appellees by ascertaining whether Appellees may continue to withhold Appellants' relief funds and whether their policy of doing so is unlawful on its face. Appellees maintain that their policy is lawful: that they may disregard Ohio law and the Attorney General's decree and are permitted to impose a garnishment regime unique to prisoners without any rational basis for that differential treatment. Appellants disagree about the lawfulness of the policy, and because of that policy, they remain deprived of the funds to which they are entitled. It is therefore a live and justiciable controversy, and the complaint should not have been dismissed. *See Halley* at 524; *Hill* at ¶ 12.

If further relief proves appropriate—for example, an injunction ordering Appellees to release, return, or reclaim and return the funds because they refuse to do so—then the Declaratory Judgment Act authorizes such relief. *See* R.C. 2721.09; *see also* Complaint at ¶ 17 (prayer for relief seeking an injunction). The possibility that further relief may be needed is no bar to a declaratory judgment. "Courts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Gannon v. Perk*, 46 Ohio St.2d 301, 310 (1976)

(citing *Herrick v. Kosydar*, 44 Ohio St.2d 128, 131 (1975)). This is true even where "the central purpose of the action is to secure injunctive relief[.]" *Id.*; *Burge v. Ohio Atty. Gen.*, 10th Dist. No. 10AP-856, 2011-Ohio-3997, ¶ 7 (declaratory judgment is a remedy "in addition to" others).

The trial court also stated that "because there is no guarantee of issuance of further EIPs, the claim rests upon future events that may not occur at all." Order at 5. That is a non sequitur. This action pertains to relief funds issued under the CARES Act and no subsequent statute. *See* Compl. ¶ 1–7. Those funds remain unlawfully seized by Appellees. Whether any declaratory relief would extend to Appellees' seizures of yet more emergency relief payments is irrelevant.

B. <u>This Court Should Hold That the Appropriate Remedy for Failure to Join a Party Is Joinder or a Chance to Amend, Not Dismissal</u>

Even if this Court were to assume—as the trial court did, contrary to Civ.R. 12—that all of Appellants' seized emergency relief funds were already transferred to the clerks of courts and that the clerks were necessary parties, dismissal was inappropriate. The proper course would have been to give Appellants a chance to amend under Civ.R. 15. *See*

supra at 13-14. Alternatively, the trial court should have authorized or ordered joinder under Civ.R. 19.

"Ohio courts have eschewed the harsh result of dismissing an action because an indispensable party was not joined, electing instead to order that the party be joined pursuant to Civ.R. 19(A) (joinder if feasible)[.]" *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 81 (1989). Dismissal is warranted only "where the defect cannot be cured." *Id*.; *Eschtruth v. Amherst Twp.*, 9th Dist. Lorain No. 02CA008141, 2003-Ohio-1798, ¶ 10–13 (reversible error where trial court granted summary judgment in a declaratory judgment action for failure to join a necessary party, as "the trial court should have ordered" joinder); Civ.R. 19(A) ("If [a necessary party] has not been so joined, the court shall order that he be made a party"); *cf. Plumbers & Steamfitters Local Union 83 v. Union Local Sch. Dist. Bd. of Educ.*, 86 Ohio St.3d 318, 321 (1999).

This Court has previously held that the rules of civil procedure concerning joinder do not apply with full force in declaratory judgment actions. *See Copeland v. Tracy*, 111 Ohio App.3d 648, 656 (10th Dist.1996); *contra* Civ.R. 57 ("The procedure for obtaining a declaratory

judgment . . . shall be in accordance with these rules."). The Supreme Court of Ohio has taken a skeptical view of *Copeland*, holding that joinder is at least permissible through a Civ.R. 15 amendment. *See Plumbers & Steamfitters* at 323. Notwithstanding *Plumbers & Steamfitters*, this Court recently concluded again that Civ.R. 19 does not *require* a court to order joinder in a declaratory judgment action. *Capital City Cmty. Urban Redevelopment Corp. v. Columbus*, 10th Dist. Franklin No. 12AP-257, 2012-Ohio-6025, ¶ 19–20 (noting that Plaintiffs had filed a notice indicating that they did not wish to join the party).

This Court did not, however, conclude that joinder by amendment is impermissible. *See Plumbers & Steamfitters* at 323. Should the Court determine that additional parties are necessary, Appellants simply want the opportunity to add them as the rules and statute permit.[5] Accordingly,

[5] In the alternative, Appellees respectfully submit that *Capital City* was wrongly decided, and that Civ.R. 19 joinder was appropriate here. Neither the Supreme Court's opinion in *Plumbers & Steamfitters*, nor the text of R.C. 2721, suggests any reason why a Civ.R. 19 joinder would be prohibited if joinder by amendment is not. Moreover, in *Copeland*, the necessary party was ascertainable from the face of the complaint, *see* 111 Ohio App. 3d at 656, while in *Capital City* it was derived from affidavit

even if this Court were to conclude that the clerks were necessary parties, it should vacate the dismissal and remand with instructions for the clerks to be joined, either by Civ.R. 19 joinder or by permitting Appellants to amend the complaint.

C. The Trial Court's Dismissal Was Not on the Merits

Even if this Court determines that a trial court may rely upon defendants' assertions in a motion to dismiss, and also concludes that dismissal was appropriate for failure to join a necessary party, the trial court's dismissal order cannot stand as written. The trial court failed to specify that its decision was not on the merits and erroneously cited Rule 12(B)(6) as the basis for dismissal, rather than specifying the nature of its decision as jurisdictional and therefore without prejudice to refiling.

Dismissal of a declaratory judgment for failure to join a necessary party is not a merits decision. Rather, it arises from a defect in subject-matter jurisdiction. *See, e.g.*, *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 125, 2006-Ohio-954, ¶ 100; *Plumbers & Steamfitters*, 86

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evidence establishing the party's interest, determined at summary judgment. *See* 2012-Ohio-6025, at ¶¶ 12-13. Neither is the case here.

Ohio St.3d at 323; *Gannon*, 46 Ohio St.2d at 310–311; *Capital City*, 2012-Ohio-6025 at ¶ 21; Civ.R. 41(B). It is "axiomatic" that a dismissal not on the merits is without prejudice. *Fletcher v. Univ. Hosps. of Cleveland*, 120 Ohio St.3d 167, 2008-Ohio-5379, ¶ 16; *see also State ex rel. Arcadia Acres v. Ohio Dept. of Job & Family Servs.*, 123 Ohio St.3d 54, 58 (2009) (dismissals on jurisdictional grounds are presumed without prejudice, while other dismissals are presumed on the merits); *cf. State ex rel. Edwards v. Toledo City School Dist. Bd. of Edn.*, 72 Ohio St.3d 106, 109 ("[A] Civ.R. 12(B)(6) dismissal based upon the merits is unusual and should be granted with caution."). The merits of Appellants' claims were never reached here, and the order must reflect that dismissal is without prejudice to advancing those claims in a refiled case.

IV. Appellants Have Pled a Plausible Mandamus Claim

A. The Trial Court's Mandamus Ruling Is Best Read as Reincorporating Its Declaratory-Judgment Ruling

Appellants sought mandamus in the alternative, if a declaratory action was deemed unavailable. The trial court dismissed, stating without further explanation that "Plaintiffs ha[d] failed to plead a set of facts with

sufficient particularity demonstrating a clear legal duty on behalf of Defendants/Respondents to provide the relief sought." Order at 6. Appellants read this cursory statement to rest on the same basis as the dismissal of their declaratory claim—that is, a finding that the clerks of court were necessary parties, based on Appellees' assertions. For the reasons already given, the mandamus dismissal is also erroneous.

To the extent the trial court intended to dispose of any additional issues, such perfunctory language was insufficient to do so. *See Sheridan v. Metro. Life Ins. Co.*, 182 Ohio App. 3d 107, 2009-Ohio-1808, ¶ 16 (10th Dist.) (reversal was appropriate where trial court had erroneously dismissed a claim on one basis and then stated "without explanation, that appellants had not otherwise brought claims upon which relief can be granted"). This is sufficient to warrant remand.

B. Appellants Stated a Valid Alternative Claim for a Writ of Mandamus

All elements of a viable mandamus claim were pled in this action. "A complaint in mandamus states a claim if it alleges the existence of the legal duty and the want of an adequate remedy at law with sufficient particularity so that the respondent is given reasonable notice of the claim

asserted." *State ex rel. Boggs v. Springfield Loc. Sch. Dist. Bd. of Edn.*, 1995-Ohio-202, 72 Ohio St. 3d 94, 95 (internal quotations omitted). As noted above, "a Civ.R. 12(B)(6) dismissal based upon the merits is unusual and should be granted with caution." *Edwards*, 72 Ohio St.3d at 109. The trial court misapplied this standard and erroneously dismissed Appellants' alternative mandamus claim.

First, Plaintiffs have "allege[d] the existence of the legal duty . . . with sufficient particularity so that the respondent is given reasonable notice of the claim asserted." *Boggs* at 95. Appellants alleged, based on the Ohio Constitution's Equal Protection Clause, the Attorney General's directive, and R.C. 2329.66(A)(12)(d), that Appellees have "a clear legal duty to disburse to Plaintiffs the full amount of the emergency-relief payments issued to Plaintiffs by the federal government." Compl. ¶ 77. *See Boggs* at 96 n.1 (deeming a less detailed complaint sufficient); *State ex rel. Harris v. Toledo*, 74 Ohio St. 3d 36, 37–38 (1995) (relator was "not required to prove his case in his complaint").

Second, Appellants need only show that they "might prove some set of facts entitling [them] to relief." *Boggs*, 72 Ohio St.3d at 96. Appellants

set forth detailed factual allegations—all of which must be deemed true at this stage—documenting their claim. These allegations include that: (1) Appellants were issued payment under the federal CARES Act, e.g., Compl. ¶ 53, 59; (2) the Attorney General determined that all CARES Act payments were exempt from garnishment under Ohio law, Compl. ¶ 23–26; (3) Appellees defied the Attorney General and state law, singling out prisoners for different treatment without any legal or rational basis for that distinction, *e.g.*, Compl. ¶ 34–78; which (4) meant that Appellees had wrongfully withheld money from appellants, *e.g.*, Compl. ¶ 53, 61.

While Appellants contend that this Court need not reach the merits, if it decides to do so, it should find that ODRC's policy lacks a rational basis. Ohio's Equal Protection Clause requires "that reasonable grounds exist for making a distinction between those within and those without a designated class." *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, ¶ 61 (quoting *State v. Buckley*, 16 Ohio St.2d 128, 134 (1968)). In *Mole*, for example, the legislature had singled out police officers for strict criminal liability for a certain offense, even though there was no connection between the offense and being a police officer. *Id.* at ¶ 58. In other words,

while the government had a valid interest in punishing the offense, there was no rational basis for treating police officers differently; the government had pursued its interest in an irrational way. *Id.* at ¶ 68; *see also State v. Peoples*, 102 Ohio St.3d 460, 2004-Ohio-3923, ¶ 10 (plurality opinion) (no rational basis for excluding only prisoners sentenced to exactly five years from applying for judicial release).

Singling out incarcerated people for seizure of their CARES Act checks is similarly irrational. Contrary to common—but incorrect—assumptions, prisoners' needs are generally more acute than the broader population's. While "the state provides some basic essentials . . . , state prisons need not and do not pay incarcerated persons anywhere near the minimum wage," and "[m]ost individuals are economically disadvantaged before they enter prison." *Scholl v. Mnuchin*, 489 F.Supp.3d 1008, 1039 (N.D. Cal.2020). Incarcerated people also face significant expenses. Appellant Woodson, for example, earned only $18 per month when this suit was filed, but a tube of toothpaste would have cost him $2.14—more than 10% of his monthly income. *See* Compl. ¶ 50 & n.11. Appellant Evans could quickly exhaust his $22 per month income

talking to family on the phone; with in-person visitation closed during the pandemic, he had no other means to speak with them. Compl. Ex. 2, ¶ 11.[6] Prisoners often rely on loved ones for financial support, but also come from families that tend to be poorer than the average population, and such families are themselves "suffering from the economic effects of the pandemic." *Scholl* at 1040; *see also* PI Motion at 10.

Not every single incarcerated person will lose future earnings because of the COVID-19 pandemic, but that is equally true of all other Ohioans. Congress provided broad, categorical relief with the CARES Act. Attorney General Yost, similarly, made a categorical judgment in interpreting R.C. 2329.66(A)(12)(d), recognizing that the payments were "in the nature of emergency support" and fully exempt from non-child-

[6] *See also* PI Motion at 9; Gordon & Santiago, *'I Don't Deserve to Die in Here': Women in an Ohio Prison Fear COVID-19 Will Kill Them*, The Guardian (June 24, 2020), https://www.theguardian.com/us-news/commentisfree/2020/jun/24/coronavirus-covid-prison-release ("Women at ORW have seen their meals slashed from three to only two per day. They've been denied basic necessities, like toilet paper and cold medicine. Their only option is to buy these necessities at inflated prices at the commissary, which, a correspondent explains, 'means you choose between food and hygiene or medicine.'").

support garnishment for all Ohioans—not just the subset who could show a specific loss in income. *See supra* at 4, note 2. The only people denied that categorical assumption are prisoners—who happen to be, on average, in greater need than the non-incarcerated population. That is irrational. *See, e.g.*, *Mole*, 2016-Ohio-5124 at ¶ 68; *Peoples*, 2004-Ohio-3923 at ¶ 10; *see also James v. Strange*, 407 U.S. 128, 141 (1972) (federal equal-protection rights violated where recoupment statute provided exemptions to some debtors but excluded indigent criminal defendants).

C. Mandamus is an Appropriate Alternative Vehicle for Relief

Although not addressed by the trial court, to the extent that declaratory judgment is not available, Appellants lack an adequate remedy at law to vindicate their constitutional rights. Appellants pled mandamus as an alternative to their declaratory judgment action. Compl. ¶ 74–78. Pleading in the alternative is authorized by the Rules of Civil Procedure. Civ.R. 8(E) ("A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds."); *see also Ohio Acad. of Nursing Homes v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 05AP-562, 164 Ohio App.3d

808, ¶ 21 (reversing dismissal of a declaratory action for lack of jurisdiction because trial court "did not consider allowing appellants to amend their complaint yet another time to state a valid claim in mandamus in the common pleas court"), *aff'd*, 114 Ohio St.3d 14.

While Appellants maintain that declaratory judgment *is* available, if this Court disagrees, mandamus provides a vehicle for challenging the constitutional violation that they have suffered. Mandamus is an appropriate method for compelling agencies to comply with the constitution and to challenge agency policies that unlawfully withhold funds. *See, e.g.*, *State ex rel. Ohio AFL-CIO v. Ohio Bur. of Workers' Comp.*, 2002-Ohio-6717, 97 Ohio St. 3d 504, 505, ¶ 3 (mandamus granted to prevent agency from violating constitutional rights); *State ex rel. Pipoly v. State Tchrs. Ret. Sys.*, 2002-Ohio-2219, 95 Ohio St. 3d 327, 330, ¶ 14 (mandamus available to review agency refusal to pay disability retirement benefits); *Ohio Acad. of Nursing Homes v. Ohio Dep't of Job & Fam. Servs.*, 2007-Ohio-2620, 114 Ohio St. 3d 14, 18, ¶ 15 (mandamus available when "appellants seek [state agency] to adjust their reimbursements (so that the state will be providing them more money if

they prevail)"). The availability of mandamus avoids the serious constitutional concern that would arise if there was no judicial forum available for appellants' constitutional claim. *See* Ohio Constitution I.16; *Ohio Acad. of Nursing Homes*, 114 Ohio St. 3d 14, ¶ 25.[7]

CONCLUSION

For the foregoing reasons, this Court should reverse or vacate the trial court's dismissal order and remand for further proceedings.

[7] To the extent that the Court determines that mandamus is inappropriate because Appellants have another adequate remedy at law, the Court should make it clear that the dismissal of this case is without prejudice to Appellants' pursuit of that other remedy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed on August 27, 2021. Notice of this filing will be sent to counsel for all parties via the Court's electronic filing system, and the following parties may access the filing though that system.

/s/ David J. Carey
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