

**IN THE MISSOURI SUPREME COURT**

<b>STATE OF MISSOURI, ex rel.</b>	)	
<b>EDDIE LOGAN,</b>	)	
<b>Relator,</b>	)	<b>Appeal No. _____</b>
	)	
<b>v.</b>	)	
	)	<b>Cause No. 2022-AC05861</b>
<b>HONORABLE MARK NEILL</b>	)	
<b>Associate Circuit Court Judge</b>	)	
<b>of St. Louis City, Division 28A, 22nd</b>	)	
<b>Judicial Circuit,</b>	)	
<b>Respondent.</b>	)	

**PETITION FOR WRIT OF PROHIBITION**

Relator Eddie Logan, hereinafter “Mr. Logan”, by and through his counsel Lee R. Camp and John A. Bonacorsi, pursuant to 97.01 et seq., for his Petition for Writ of Prohibition states as follows:

**PRELIMINARY STATEMENT**

On August 17, 2020, Mr. Logan defended himself at trial by telephone, since in-person eviction proceedings were suspended due to COVID-19. At his trial, Respondent prevented Mr. Logan from presenting and examining evidence, meaningfully confronting the witness against him, and raising every available defense, in violation of Mr. Logan’s due process rights. Mr. Logan now seeks a writ of prohibition to correct the constitutional wrongs that occurred against him during the trial below.

**STATEMENT OF FACTS**

**A. The Parties**

1. Relator, Eddie Logan, a disabled veteran, is a current St. Louis City resident.

2. Respondent, the Honorable Mark Neill, is an associate circuit judge sitting in Division 28A of the 22nd Judicial Circuit of Missouri, City of St. Louis.<sup>1</sup>

### **B. Proceedings**

3. On June 26, 2020, Plaintiff E Wright Investment Strategies, LLC filed a petition for a rent and possession action pursuant to Chapter 535 of the Missouri Revised Statutes. *E Wright Investment Strategies, LLC v. Eddie Logan*, 2022-AC05861. Exhibit A.
4. In the petition, Plaintiff alleged Mr. Logan owed unpaid rent for the month of June 2020. Exhibit A.
5. At a hearing on August 11, 2020, the case was set for trial on August 17, before Judge Mark Neill in Division 28A of the St. Louis City Circuit Courts. Exhibit B.
6. Due to the COVID-19 global health pandemic, this Court issued an Order and guidance for conducting remote hearings to prevent in-person interaction in Missouri courts. *See Missouri Supreme Court Order, In re: Operational Directives for Easing COVID-19 Restrictions on In-Person Proceedings*, July 24, 2020.
7. Pursuant to this guidance, Division 28 began utilizing remote technologies to conduct court proceedings and this case was set to be heard by WebEx Conference through a remote video conferencing forum.<sup>2</sup> Exhibit B.

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<sup>1</sup> This case remains docketed to Judge Colbert-Bochway in Division 28 of the 22nd Judicial Circuit. However, Respondent presided over the hearing in the case, but no reference to Respondent, Division 28A, or contact information for this division is made available publicly on the 22nd Judicial Circuit's website. As the Judge presiding over the case, he has been named as the party for purposes of this Petition for Writ of Prohibition.

<sup>2</sup> Again, this case was technically tried by Division 28A and Respondent Judge Neill, despite being docketed to Division 28. There is no contact information for Division 28A or Respondent available publicly on the 22nd Judicial Circuit's website.

8. With his pending eviction case set for trial in less than a week, Mr. Logan began taking steps to best represent himself at his upcoming eviction trial, and to put on evidence of the sub-habitable and derelict conditions he was experiencing in his home.
9. Relying on a notice from Division 28 regarding the procedures for self-represented litigants in the newly created remote hearings, Mr. Logan began preparing and pre-marking ten exhibits to deliver to the court ahead of his trial date. Exhibit C.
10. Mr. Logan prepared exhibits, including multiple documents demonstrating that his housing was in sub-habitable condition. These documents included his lease, City of St. Louis building inspection reports, photographs, and other documents demonstrating issues he had endured during his tenancy. *See* Exhibit D - Affidavit of Eddie Logan.
11. On Tuesday, August 11, 2020, Mr. Logan traveled to the St. Louis City Circuit Courts building to deliver ten exhibits to be considered during his eviction trial. *Id.*
12. When Mr. Logan arrived at the court building and attempted to enter and file his exhibits, he was turned away by courthouse staff and told he was not allowed to deliver his exhibits in person. *Id.*
13. Increasingly concerned about his upcoming trial date, Mr. Logan went back to the courthouse the next day, on August 12, to again attempt to deliver his exhibits. *Id.*
14. Sheriff's deputies again prevented Mr. Logan from delivering his exhibits to the courthouse, not even allowing him past the security desk. *Id.*

15. After failing to get his documents filed on back-to-back days, Mr. Logan contacted the landlord-tenant assistance line at a local fair housing agency, the Metropolitan St. Louis Equal Housing and Opportunity Council (EHOC). *Id. see also* Exhibit E - Affidavit of Kalila Jackson.
16. He spoke with an attorney, Kalila Jackson, on Friday, August 14, who instructed him to once again try and deliver the exhibits to the courthouse and also mail a copy to the court. *Id.*
17. Based on this advice, on August 14, Mr. Logan went with his wife to make a third trip to the court to attempt to deliver the exhibits. *See* Exhibit D.
18. During this trip, Mr. Logan's wife was able to speak with an employee in the clerk's office who informed them that the docket clerk for Division 28 did not work on Fridays. The clerk told them he would be unable to file his physical exhibits with the court that day. *Id.*
19. Still struggling to provide copies of his evidence to the court, Mr. Logan left the courthouse and immediately sent an additional copy of the exhibits by first-class certified mail to the courts. *Id.*
20. On Monday, August 17, Mr. Logan appeared for a virtual trial conducted via the WebEx video conference platform. *Id.*
21. Mr. Logan appeared in the court by telephone while a witness for the plaintiff, the plaintiff's attorney, and Respondent all appeared by video. *Id.*
22. Mr. Logan had attempted to access the video hearing on both his phone and his wife's phone, but was unable to get the technology to work on either phone. *Id.*

23. Because he could not access the hearing by video, Mr. Logan had to dial into the hearing and participate by telephone. *Id.*
24. After learning that his evidence had not arrived, Mr. Logan immediately requested a continuance in the case so that his evidence could be delivered to the court, or so he could learn of some other way to submit his evidence so that it would be considered when he was made to defend himself in a trial. *Id.*
25. Although he argued he could not adequately represent himself without his evidence being considered, Respondent denied his request and forced Mr. Logan to proceed to trial. *Id. see also* Exhibit E.
26. Before the trial began, Respondent informed Mr. Logan that he could file an appeal within ten days if a judgment was entered against him. *Id.*
27. During the trial, Mr. Logan was not able to visually witness any of the proceedings that occurred on video. After being sworn in by telephone, he listened as the trial began. *See* Exhibit D.
28. During the trial, Mr. Logan listened as his landlord and her attorney went into an extensive discussion concerning the conditions of Mr. Logan's home and Mr. Logan's claims that there were issues with his housing. *Id.*
29. On cross-examination, Mr. Logan attempted to cross-examine his landlord by telephone about the conditions of his home, but was left without an avenue to offer rebuttal and contravening evidence against her testimony because his exhibits were not before the Court for its consideration. *Id.*

30. Mr. Logan was also prevented from showing this evidence to the Court by video because he was the only party unable to access the video application. *Id.*
31. Despite his best efforts to represent himself over the phone, and without the benefit of any of the evidence he had prepared for court, Respondent issued a judgment at the end of the trial against Mr. Logan for both rent damages of \$2,839.51 and awarding possession of his home back to his landlord. Exhibit F.
32. Mr. Logan has not received any information or instruction about how to file an application for trial de novo in the 22nd Judicial Circuit. Exhibit D.
33. The 22nd Judicial Circuit Court does not appear to have a clear or accessible method for pro se litigants to file an application for trial de novo. Exhibit H.
34. The judgment against Mr. Logan becomes final on August 27, 2020.

**RELIEF SOUGHT BY MR. LOGAN**

35. Relator seeks a preliminary order and subsequent writ of prohibition directing Respondent Judge Neill to set aside the judgment entered against Mr. Logan on August 17.
36. Relator further seeks a writ compelling Respondent to rehear the case with proper procedural due process safeguards in place to ensure Mr. Logan has an opportunity to present all available defenses and be heard in a meaningful manner through the remote and virtual court forum.
37. Because the judgment against Mr. Logan is final on August 27, Mr. Logan also requests that this Court expedite the hearing on this writ and issue preliminary relief to stay any execution of the judgment against Mr. Logan in Case. No. 2022-

AC05861 and/or shorten the time for Respondent to file suggestions in opposition to this petition.

### **REASONS WHY THE WRIT SHOULD ISSUE**

38. The extraordinary remedy of a writ of prohibition is available when there are issues which might otherwise escape appeal and cause considerable hardship and expense to an aggrieved party. *State ex rel. Noranda Aluminum, Inc. v. Rains*, 706 S.W.2d 861, 862-63 (Mo. banc 1986).
39. A writ of prohibition may lie “to inquire into the legality of the judgment” before it is executed. *State ex rel. Tannenbaum v. Clark*, 838 S.W.2d 26, 31 (Mo. App. Ct. W.D. 1992).
40. This Court has the jurisdiction and authority to issue a preliminary order and permanent writ pursuant to Mo. Const. art. V, § 4.1
41. Without the issuance of a writ by this Court, the due process violations that occurred during Mr. Logan’s remote eviction trial will escape review by an appellate court and he will suffer the irreparable harm of losing his home.

#### **A. Mr. Logan’s Due Process Rights Were Violated in the Trial Court**

42. In the seminal case examining due process requirements in eviction cases, such as the one before this court, the U.S. Supreme Court stated “[d]ue process requires that there be an opportunity to present every available defense[.]” even despite the summary nature of the cases. *Lindsey v. Normet*, 405 U.S. 56, 66 (1972).
43. In Missouri, due process also requires the opportunity to be heard which includes the right to present evidence, to confront and cross-examine opposing witnesses,

and to rebut their testimony with controverting evidence. *Burton v. Burton*, 874 S.W.2d 461 (Mo. Ct. App. W.D. 1994).

44. Here, Mr. Logan was not able to present every defense or given an opportunity to be heard within the bounds of Missouri law as his opportunities to present his own evidence and controverting evidence were foreclosed on by inadequate Circuit Court procedures.

45. Mr. Logan was also not able to meaningfully cross-examine the adverse witness against him, as he was left without any other option but to participate by phone while the plaintiff, its attorney, and Respondent all participated by video.

46. Mr. Logan, on three separate occasions, traveled to the 22nd Judicial Circuit Courthouse to attempt to file the exhibits that established his defense to the plaintiff's claims against him; each time he was turned away by court staff who refused to let him submit his evidence.

47. During the trial, when the plaintiff's witness opened the door to the specific defense he was trying to lay at trial—that his home was in derelict condition—he found himself yet again unable to provide controverting evidence, as well as without any means to impeach the credibility of the witness.

48. These problems were only exacerbated by the fact that Mr. Logan was representing himself entirely by phone while the plaintiff's attorney, plaintiff's witness, and Respondent were able to see each other through the virtual video forum.

49. All of the procedural due process issues that occurred in this telephonic eviction trial could have been obviated by simply granting a continuance to Mr. Logan,

providing him a true opportunity to submit evidence to the court, offering access to video technology, or continuing the case to a point-in-time where it was safe for the proceedings to be conducted in person for a pro se litigant like himself.

50. Instead, Mr. Logan faces the immediate deprivation of a protected and private property interest in his ability to maintain continued residence in his home.

**B. Mr. Logan has no Adequate Remedy on Appeal to Challenge the Due Process Violations without Losing His Home**

51. In Missouri, “[p]rohibition will lie when there is an important question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision.” *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 577 (Mo. banc 1994).

52. The judgment issued against Mr. Logan will be final on August 27, 2020, and Mr. Logan will certainly face considerable hardship and expense as a consequence of the violations of his due process protections if the judgment stands.

53. Of dual importance, because of the unique statutory nature of Chapter 535 actions, allowing this judgment to stand means Mr. Logan will also lose his ability to utilize appellate review to challenge the legal question of who has the lawful right to possession of his home on appeal and, in turn, this legal question will escape any chance for appellate review entirely without issuance of a writ by this court.

54. Mr. Logan is jurisdictionally restricted from filing a direct appeal with an appellate court. *Sansone Group DDR LLC v. Pennington-Thurman*, ED 108169, 2020 WL 2844228 (Mo. App. Ct. E.D. 2020)
55. Mr. Logan also cannot afford to post a bond in the amount of the judgment issued against him and avail himself of a trial de novo proceeding where he is allowed to remain in his home while the case is retried in the circuit court.
56. While ordinarily a party would file a trial de novo application, proceed to the circuit court, and then appeal to the appropriate appellate court when appealing associate circuit judgments, that is not the case in a Chapter 535 rent and possession action.
57. Under § 535.110 RSMo, if a tenant who loses in a rent and possession trial—such as Mr. Logan—wishes to remain in their home while the case is proceeding through the trial de novo process, the tenant must post a bond in the amount of the judgment and court costs issued against them.
58. Mr. Logan cannot post a bond in the amount of the judgment and court costs against him, effectively foreclosing any ability for him to remain in his home once the judgment comes final and while the case is being retried before the Circuit Court.
59. For Mr. Logan, this would create the exact type of considerable hardship and expense based on an error of law described by the *Chassaing* court.
60. Even if Mr. Logan was forced to seek a trial de novo without remaining in possession of his home, the issue would continue to evade review on appeal and leave him without an adequate path to challenge the merits of the case.

61. If possession of the property at issue in the initial associate circuit court trial was no longer occupied by a tenant, then the case on review at the circuit court in the trial de novo proceedings would solely focus on the monetary damages for back rent owed.

62. As such, the legal question of who has the lawful right to possession of a piece of property between parties in this Chapter 535 rent and possession case will evade review by this Court if Mr. Logan is forced to move through the trial de novo process—during which time he will lose possession of his home—and is not allowed to file a direct appeal to this Court.

### **C. Mr. Logan Will Suffer Irreparable Harm if a Writ of Prohibition is not Issued**

63. In Missouri, prohibition will lie where “absolute irreparable harm may come to a litigant if some spirit of justifiable relief is not made available to respond to a trial court’s order.” *State ex rel. Richardson v. Randall*, 660 S.W.2d 699, 701 (Mo. banc 1983).

64. Mr. Logan faces the threat of irreparable harm of losing the ability to reside in his home if a writ of prohibition is not issued to provide him some relief to remedy the procedural due process violations that beset him during his telephonic eviction trial.

65. The ability to reside in one’s home is a “significant property interest” that requires a pre-deprivation due process hearing. *Greene v. Lindsey*, 456 U.S. 444, 451 (1982).

66. Mr. Logan also has several underlying health conditions that make him susceptible to a higher rate of serious illness or even death from the COVID-19 virus.

67. Mr. Logan is diagnosed with Type 2 diabetes, a pre-existing condition that can specifically increase a person's risk of severe illness from the COVID-19 virus. *CDC updates, expands list of people at risk of severe COVID-19 illness*, (Jun. 25, 2020), <https://www.cdc.gov/media/releases/2020/p0625-update-expands-covid-19.html>.

**D. The Circumstances in this Case are Extraordinary and Issuance of a Writ is Appropriate to Remedy the Constitutional Harms Suffered by Mr. Logan**

68. While writs of prohibition only issue in extraordinary cases, they are appropriate where “absolute irreparable harm may come to a litigant if some spirit of justifiable relief is not made available to respond to a trial court’s order.” *State ex rel. Richardson v. Randall*, 660 S.W.2d 699, 701 (Mo. banc 1983).

69. Mr. Logan’s case presents such an extraordinary case that is appropriate for a writ of prohibition.

70. While the circumstances of the COVID-19 global health pandemic, and, certainly, the uniqueness of adjudicating civil court matters by remote hearings, are both unprecedented and present new questions for review before this Court, the immediate threat of irreparable harm of displacement from Mr. Logan’s home after such a severe lack of procedural safeguards were in place during his eviction trial make this case exceptional.

71. Here, Respondent had the option to enact adequate and accessible procedures to ensure a remote trial could be conducted in a manner which protected Mr. Logan’s due process rights in adjudicating the case filed against him, or to continue the case

until such a time where these alternative procedures were adequately installed in a way which did not infringe upon his constitutional rights.

72. By failing to ensure that Mr. Logan received adequate due process protections in his telephonic eviction trial, Mr. Logan is at an immediate threat of losing his home and is left with no avenue to appeal the case.

73. Mr. Logan's Suggestions in Support are filed herewith and incorporated by reference herein.

WHEREFORE, Relator, Eddie Logan, respectfully requests that this Court:

(1) enter a preliminary order and subsequent Writ of Prohibition, or, in the alternative Writ of Mandamus, directing Respondent to:

(a) set aside the judgment entered against Relator;

(b) order Respondent to rehear the case with proper procedural due process safeguards in to protect Relator's rights;

(c) expedite the hearing in these proceedings and issue a preliminary relief to stay the execution of the judgment against Relator; and

(2) grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

ARCHCITY DEFENDERS, INC.

/s/ Lee R. Camp  
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**CERTIFICATE OF SERVICE**

A copy of the foregoing pleading was sent via US Mail to Respondent, Hon. Judge Mark Neill to 10 N. Tucker Blvd., St. Louis, Missouri, 63101 and to Defendant's attorney in cause number 2022-AC05861 via US Mail, Christopher Basler, 1420 Strassner Drive, St. Louis, MO 63144 and by email to cbasler@kddl.com on August 25, 2020.

/s/ Lee R. Camp