

IN THE MISSOURI SUPREME COURT

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

SUGGESTIONS IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION

Relator Eddie Logan, hereinafter “Mr. Logan”, a Missouri resident, petitions this Court pursuant to Rule 97 of the Missouri Rules of Civil Procedure to issue a writ of prohibition. A writ of prohibition is necessary in this matter to protect Mr. Logan’s right to justice before a trial court in the State of Missouri and ensure that his rent and possession case is properly adjudicated according to law and in compliance with his constitutional due process rights.

INTRODUCTION

In the midst of a global health pandemic, Mr. Logan—a disabled veteran with chronic health conditions, including Type 2 diabetes, that place him at heightened risk to COVID-19—is set to lose his home. On June 26, Mr. Logan’s landlord filed a rent and possession action against him alleging unpaid rent. This was despite the fact throughout the duration of his tenancy, Mr. Logan struggled with derelict and sub-habitable conditions

in his home. On August 11, the rent and possession case against Mr. Logan was set for a remote trial before Judge Neill on August 17.

Knowing that he needed to prepare for his trial and provide documentation of the conditions he endured in his home, Mr. Logan went to the 22nd Judicial Circuit three separate times so that he could file documents that would show the conditions. The first two times, Mr. Logan was turned away without speaking to a clerk at all. The third day, his wife was able to speak with a clerk, who informed them that the employee in the clerk's office responsible for filing such documents was not at work and that the clerk's office therefore could not accept the documents. As a result, Mr. Logan immediately went to the post office and sent the documents certified mail, hoping they would reach the court before his hearing the following Monday. They did not.

Instead, on August 17, Mr. Logan appeared before Respondent by telephone, having been unable to access the hearing by video conference on either his or his wife's phone. Mr. Logan asked that Respondent continue the trial so that he could submit his evidence. His request was denied. Rather, Mr. Logan was required to participate in a trial by telephone, where he could not see the judge, opposing counsel, the opposing party, or any of the documents being discussed in the hearing. Further, during the trial, the opposing party began discussing the conditions in the home and Mr. Logan was unable to provide contrary evidence or to impeach the credibility of the witness with his documentary evidence. On August 17, 2020, Respondent entered a judgment against Mr. Logan despite the fact that Mr. Logan was unable to present or examine evidence, confront the witness

used against him, and assert every available defense, all in violation of Mr. Logan's due process rights.

The conditions under which Respondent conducted the hearing that will deprive Mr. Logan of his home came nowhere close to meeting constitutional due process requirements. In just a matter of days, Mr. Logan will be evicted. Because Mr. Logan has no adequate remedy at law that would allow him to challenge the constitutionality of his eviction before he loses his home, Mr. Logan seeks a writ of prohibition instructing Respondent to set aside the judgment against him and provide Mr. Logan with a hearing that complies with due process.

STANDARD OF REVIEW

Under Article Five of the Missouri Constitution, appellate courts have authority to issue remedial writs. Mo. Const. art. V, § 4.1. Writs of prohibition are appropriate where: (1) there is a usurpation of judicial power because the trial court lacks either personal or subject matter jurisdiction, (2) there exists a clear excess of jurisdiction or abuse of discretion, or (3) irreparable harm may come to a litigant if some spirit of relief is not made available and the issue might otherwise escape review by an appellate court. *State ex rel. Noranda Aluminum, Inc. v. Rains*, 706 S.W.2d 861, 862-63 (Mo. banc 1986); *State ex rel. Bugg v. Daniels*, 274 S.W.3d 502, 504 (Mo. App. Ct. W.D. 2008).

Requests for a writ of prohibition falling within the third category, such as the one requested here, are proper when a relator's only remedy is to request prohibition after a judgment has been entered against him but not executed. *State ex rel. Tannenbaum v. Clark*, 838 S.W.2d 26, 31 (Mo. App. Ct. W.D. 1992) ("the writ of prohibition serves to

inquire into the legality of the judgment” before it is executed). This is because, as this Court has noted, there are no interlocutory appeals in civil cases in Missouri. *State ex rel. Noranda Aluminum, Inc. v. Rains*, 706 S.W.2d 861, 862-63 (Mo. banc 1986). The Appellate Courts are therefore empowered to issue this third category of writs of prohibition when there are issues which might otherwise escape appeal and cause considerable hardship and expense to an aggrieved party. *Id.* Thus, a writ of prohibition is provided for remedying a trial court’s decision where a relator “faces the plight of being without other relief.” *State ex rel. Richardson v. Randall*, 660 S.W.2d 699, 701 (Mo. banc 1983).

ARGUMENT

Both the Fourteenth Amendment of the United States Constitution and Article I of the Missouri Constitution guarantee the fundamental promise that no person shall be deprived of life, liberty, or property “without due process of law.” U.S. Const. amend. XIV, § 1; Mo. Const. art. I, § 10. Central to this promise is that “*at a minimum* [due process] require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950) (emphasis added).

The opportunity to be heard is the “fundamental requisite of due process of law.” *Id.* at 314. In the context of landlord-tenant actions, the U.S. Supreme Court has unequivocally stated that “[d]ue process requires that there be an opportunity to present every available defense.” *Lindsey v. Normet*, 405 U.S. 56, 66 (1972) (citations omitted). The right to present every available defense persists, despite the fact that these proceedings

are summary in nature. *See Id. at 84*. Due process also “necessarily includes the right to present evidence and 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).

Respondent violated Mr. Logan’s due process rights on August 17, 2020, when he forced Mr. Logan to conduct a trial by telephone, denying him the opportunity to present and examine evidence and meaningfully confront witnesses or to raise every available defense. Further, because Mr. Logan has no right to interlocutory appeal and the trial court’s order sanctioning the eviction of Mr. Logan from his home cannot be stayed pending the outcome of a trial de novo, this Court should issue a writ of prohibition ordering Respondent to set aside the judgment against Mr. Logan and to provide Mr. Logan with a new hearing that complies with due process.

I. Mr. Logan was Erroneously Deprived of His Protected Interest in his Leasehold Because His Trial by Telephone did not Afford Him a Constitutionally Sufficient Opportunity to Present and Examine Evidence, Confront Witnesses, and Raise Defenses

“Under both the federal and state constitutions, [t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Jamison v. State, Dep’t of Soc. Servs., Div. of Family Servs.*, 218 S.W.3d 399, 405 (Mo. banc 2007), quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotations omitted).

Courts evaluate due process through a two-part analysis. *Kentucky Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). “The first inquiry in every due process challenge is

whether the plaintiff has been deprived of a protected interest in ‘property’ or ‘liberty.’” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999). Here, like all Missouri tenants, Mr. Logan’s leasehold is “undoubtedly” a property right. *Gentry v. City of Lee's Summit, Mo.*, 10 F.3d 1340, 1343 (8th Cir. 1993). Indeed, the U.S. Supreme Court has explicitly deemed the continued residence in one’s home a “significant interest in property.” *Greene v. Lindsey*, 456 U.S. 444, 451 (1982). When Respondent entered an eviction judgment against Mr. Logan, he inevitably deprived Mr. Logan of his protected interest in his leasehold. Thus, the first part of the due process analysis is met.

The second inquiry, then, is “whether the procedures attendant upon that deprivation were constitutionally sufficient.” *Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). In determining whether procedures are constitutional sufficient, courts apply a three-part test that balances three factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

All three of these factors weigh heavily in favor of this Court entering a writ of prohibition and remanding to the trial court for a rehearing. In particular, Mr. Logan has

an unequivocal protected property right in his leasehold. The proceeding conducted by Respondent not only created a high risk of erroneous deprivation but, in fact, resulted in a wrongful order for both rent and possession of the property, which could have been avoided had Respondent implemented basic procedural safeguards. Finally, the government interest in protecting as many people as possible from displacement during the COVID-19 pandemic, as well as its interest in ensuring that newly established remote court hearings uphold due process of law, also weighs in favor of a writ.

A. Mr. Logan’s Property Interest in His Home is “Among the Most Cherished Property Interests that Due Process Protects”

The U.S. Supreme Court has long recognized that a person’s home is a significant property interest that weighs heavily in favor of requiring significant procedural safeguards. *Greene v. Lindsey*, 456 U.S. 444, 451 (1982) (holding that eviction from one’s home deprives an individual of “a significant interest in property: indeed, of the right to continued residence in their homes.”). Like all tenants, Mr. Logan’s interest in his home “ranks among the most cherished property interests that due process protects, and the uninterrupted enjoyment of its comforts and security is undoubtedly a significant private interest.” *See Grayden v. Rhodes*, 345 F.3d 1225, 1233 (11th Cir. 2003). It is therefore uncontroverted that Mr. Logan’s property interest in his home “is a private interest of historic and continuing importance.” *See U.S. v. James Daniel Good Real Prop.*, 510 U.S. 43, 53–54 (1993). As such, it is essential that he receives the due process protections to which he, and all tenants, are entitled. Therefore, based on U.S. Supreme Court precedent,

the first factor in the *Matthews v. Eldridge* test weighs heavily in favor of the court finding a violation of Mr. Logan's due process rights.

B. There is an Enormous Risk that Mr. Logan's Home Will be Erroneously Deprived Because He Was Not Presented a Meaningful Opportunity to Present and Examine Evidence, Confront Witnesses, and Raise Defenses

The due process right to be heard "necessarily includes the right to present evidence and to confront and cross-examine opposing witnesses and to rebut their testimony with controverting evidence." *Burton v. Burton*, 874 S.W.2d 461, 464 (Mo. App. Ct. W.D. 1994). Here, Mr. Logan did not receive any of those opportunities, creating an extremely high risk of erroneous deprivation.

Respondent denied Mr. Logan his right to present any type of documentary evidence in support of his defense. Prior to court, the only instructions Mr. Logan received were in the form of a two-page document. Exhibit C. The first page simply instructed parties about how to access Division 28's virtual hearings. *Id.* The second page provided additional information for self-represented litigants, but offered absolutely no guidance as to how pro se litigants could file evidence to be considered by the Court in a remote hearing. *Id.* The only information potentially related to providing evidence to the court is one bullet point stating, "If you are not represented by a lawyer, you may file answers or other pleadings with the court by mail, or when the Court is open to the public come in person to the St. Louis City Circuit Clerk's office, 10 North Tucker, St. Louis, MO 63108." *Id.*

It is reasonable to assume that this language means that unrepresented litigants can file documentary evidence either in person or through the mail. Mr. Logan attempted both methods, to no avail. After printing and hand marking ten different exhibits, Mr. Logan

attempted to submit his evidence to the court in-person, on three separate occasions: the Tuesday, Wednesday, and Friday before his August 17 court hearing. Exhibit D. Each time, he was told by court staff that they could not accept his exhibits. *Id.* Unable to hand-deliver his evidence, Mr. Logan made copies of his exhibits, which he sent to the court via first-class certified mail the Friday before his court date. *Id.* Respondent, however, did not receive Mr. Logan's documents prior to the hearing, and denied a continuance that would have allowed time for them to arrive and be considered. *Id.*, *see also* Exhibit E. Thus, the only procedure available to submit documents to the court was denied to Mr. Logan.¹ The denial of this evidence not only prevented Mr. Logan from introducing facts in his favor, but also had an adverse impact on his ability to challenge the validity of the opposing party's testimony or impeach the credibility of the plaintiff's witness.

The meaningfulness of a party's ability to present evidence is further impaired when the process used for the hearing allows the judge, plaintiff's attorney, and plaintiff's witness to view each other through video stream, but excludes the pro se defendant. Here, Mr. Logan was the only party to the hearing that was unable to access it by video conference. Exhibit D and E. Thus, unlike the opposing party, Mr. Logan was merely a disembodied voice, literally unseen by Respondent. This placed Mr. Logan at an inherent disadvantage, specifically because the parties presented directly contradictory testimony regarding the conditions of the property. Because the Respondent's decision necessarily

¹ In addition to not having an accessible and operational method of accepting a pro se litigant's evidence, the 22nd Judicial Circuit has seemingly failed to institute any number of processes to allow pro se litigants to assert their legal rights. For example, the Court has no functional process for pro se litigants to file an application for trial de novo. Indeed, our attempts to learn how to file an application have resulted in multiple dead ends, even with one court clerk stating that the Court is "not really taking in person applications anymore at the courthouse". Exhibit H.

turned on the issue of credibility, it was imperative that Respondent be able to observe Mr. Logan during the hearing to assess credibility. The failure to provide this necessary process, therefore denied Mr. Logan his constitutionally protected right to be seen and heard.

In addition to presenting evidence, due process requires that a party to civil suit have the opportunity to confront adverse witnesses and examine the evidence used against him or her. *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). Mr. Logan's trial by telephone precluded him from meaningfully confronting and cross-examining the witness used against him because he had to cross-examine the witness over the phone, without the benefit of sight and visual cues. The lack of visual access to the hearing put Mr. Logan at a severe disadvantage, preventing him from raising important objections, such as when the plaintiff's witness potentially read from a document not entered into evidence. *See* Exhibit E.

Mr. Logan's ability to confront the witnesses and evidence against him was frustrated further by the fact that he believed his phone was inadvertently muted, which prevented him from being heard by the court. Exhibit D.

Further, Mr. Logan was also denied the opportunity to raise every available defense as required in landlord-tenant cases. *Lindsey v. Normet*, 405 U.S. 56, 66 (1972) (citations omitted). Outside of the testimony Mr. Logan gave over the phone, Respondent did not allow Mr. Logan to offer any additional evidence. Mr. Logan, therefore, could not address and dispute the conditions of his home, which could have led to either a reduction or even complete abatement of actual rent due, or allowed him to challenge his landlord's legal right to even collect rent.

This is precisely what Mr. Logan intended to do with the exhibits he sought to present to the court, which included photos and Citizen Service Bureau complaints indicating problems with the conditions in his home, maintenance requests and related communication with his landlord, and an expired certificate of inspection (commonly referred to as an occupancy permit), *see* Exhibit D, which prevents a property owner from collecting rent. St. Louis City Ordinance 67914, Section Five. 25.56.040.

Simple procedural safeguards would have ensured that Mr. Logan's protected property interest in his leasehold was afforded adequate constitutional protection. In particular, the 22nd Judicial Circuit could provide instructions about how tenants can submit evidence for remote eviction hearings, and then have staff ready and available to accept said evidence. Similarly, judges like Respondent could grant continuances more liberally in the context of remote proceedings due to COVID-19, knowing that the courts are creating and holding new and unprecedented forms of proceedings, which will inevitably create unforeseen hurdles for litigants, especially those representing themselves pro se. Moreover, if trials are to be held remotely, courts could arrange for video streams to be accessible for litigants who do not have the ability to access or operate the technology required to appear by video.

Respondent could have easily cured the constitutional violations described above with simple, additional safeguards. Respondent could have simply granted a continuance to give Mr. Logan's exhibits additional time to arrive by mail. Instead, Respondent made no such allowance. He told Mr. Logan that he could take any issue up at the trial de novo stage and Respondent then proceeded to preside over a trial where only documentary

evidence submitted by the landlord was considered. Further, the Court should have ensured Mr. Logan was provided with a way to access the videoconferencing technology so that he could fully participate in the hearing.

The context in which Mr. Logan found himself—self-represented in an unprecedented trial, where litigants attempt to represent themselves remotely with a lack of procedural safeguards to account for the novelty of the new forum—is precisely the situation where an individual’s protected interests are at serious risk of erroneous deprivation. Indeed, this forum, and Respondent’s refusal to grant a continuance or make necessary accommodations, prevented Mr. Logan from a meaningful opportunity to present and examine evidence, confront the witness used against him, or raise every available defense. As such, Respondent placed Mr. Logan’s protected interest in his leasehold at grave risk of mistaken deprivation due to the rushed and unfair nature of Mr. Logan’s trial.

C. The Government Has a Strong Interest in Preventing Displacement During a Pandemic and Ensuring the Integrity of the Judicial System, Which Are Furthered Through Implementing Easily Achievable, Basic Procedures

The government’s interest in protecting litigants in landlord-tenant actions from wrongful displacement from their homes far exceeds any minor burdens imposed by adding simple procedural safeguards to protect individuals’ constitutional rights. The government’s interest in preventing wrongful eviction is only heightened during a health pandemic where keeping individuals safely in their homes is one of the key combatants to stem the spread of COVID-19. Executive Order on Fighting the Spread of COVID-19 by

Providing Assistance to Renters and Homeowners, 85 Fed. Reg. 49935 (Aug. 8, 2020). Indeed, the government's failure to implement simple procedures to protect litigants from wrongful eviction would only exacerbate the COVID-19 public health crisis, and thereby increase the societal and economic costs to be borne by the government.

There is also a significant government interest in keeping courts accessible to the public, particularly in times of emergency. When courts are forced to adjust to continue operating during a period of emergency, as they are now, it is essential that they uphold basic constitutional protections, since any new practice, like remote telephonic hearings, inevitably do not have the same safeguards as traditional in-person, court hearings.

Here, simple measures—such as establishing a method for pro se litigants to submit evidence to the court, implementing a policy of more liberal continuances, providing video access to litigants without it, or postponing hearings until it is safe for the public to appear for in-person—would obviate all of the remote hearing issues described within this due process analysis and create minimal, if any, administrative or fiscal burdens.

III. Without the Issuance of a Writ by this Court, Mr. Logan Will be Left Without an Adequate Remedy on Appeal to Address the Due Process Violations that Occurred During His Trial and Will Suffer the Irreparable Harm of Losing His Home

In only two days, Mr. Logan will lose the lawful right to remain in his home and be left without an adequate remedy on appeal to challenge the legal errors that occurred in the trial court during his off-the-record, telephonic eviction trial. Issuing a writ of prohibition in this extraordinary circumstance is necessary and follows the established precedent for individuals facing immediate hardships like Mr. Logan. Mr. Logan will also be irreparably

harmed when the eviction judgment issued against him is final and he faces the immediate threat of being deprived of his right to continued residence in his home.

A. Mr. Logan Has No Adequate Opportunity for Review on Appeal Before Suffering Irreparable Harm

Missouri courts have held that “[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). A writ will not be issued in cases that have an adequate remedy on appeal. *State ex rel. Baldwin v. Dandurand*, 785 S.W.2d 547, 549 (Mo. banc 1990).

In this instance, however, a writ is appropriate because Mr. Logan has no adequate remedy on appeal. First, Mr. Logan is prevented from filing a direct appeal with an appellate court from the associate circuit judgment issued against him. Second, Mr. Logan has no way to stay the pending eviction judgment from being executed without considerable hardship and expense as a consequence of such action. Finally, the issue Mr. Logan challenges will evade review on appeal if not reviewed through this extraordinary writ process. As such, a writ should issue under the standard outlined by the *Chassaing* Court.

Appellate courts have made clear that Mr. Logan cannot file a direct post-trial appeal from an associate circuit judgment in a rent and possession case filed under Chapter 535. In two opinions issued within the past year, the Court of Appeals has dismissed rent and possession appeals filed by tenants from associate circuit court for lack of statutory

authority to review the matters. *Sansone Group DDR LLC v. Pennington-Thurman*, ED 108169, 2020 WL 2844228 (Mo. App. Ct. E.D. 2020); *Reynolds v. Robben*, 589 S.W. 3d 676, 679 (Mo. App. Ct. E.D. 2019). In each case, the Eastern District Appellate Court declared that the procedural remedy to appeal a Chapter 535 rent and possession action is to seek a trial de novo, not an appeal. *Id.*; § 512.180 RSMo. Only after a trial de novo is conducted does a party in a Chapter 535 action have the right to file an original appeal in Missouri.

Although on its face it may appear that a trial de novo is a satisfactory avenue to eventually reach this Court for appellate review, it is not. If Mr. Logan wants to stay in his home while the trial de novo is pending, he would be forced to post a bond with the trial court in the amount of the judgment against him, \$2,839.51. § 535.110 RSMo. Here, Mr. Logan is unable to stay the execution of the possession judgment simply because he does not have enough money to post the bond. For individuals like Mr. Logan, who cannot post the entire amount of the judgment, a complete bar to obtaining a stay is created. Thus, while a trial de novo may remedy any errors made relating to rent, it cannot remedy errors related to possession of the premises. As a result, a trial de novo cannot prevent the considerable hardship of Mr. Logan being physically evicted from his home, presenting a hardship and expense to him that warrants appellate intervention through the extraordinary writ process. *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 577 (Mo. 1994).

Because Mr. Logan cannot post the bond requirement, his landlord can request execution of possession judgment issued against Mr. Logan. § 535.110 RSMo. If the execution occurs, Mr. Logan will be left litigating a suit simply about monetary damages

should he apply for a trial de novo. The merits of the initial landlord-tenant dispute, and the legal question of who has lawful right to possession of the premises, would evade review by an appellate court.

Because Mr. Logan has no direct avenue for appealing a Chapter 535 landlord-tenant action from associate circuit court without losing his home and because the merits of the case will change and escape appellate review if a trial de novo is adjudicated after Mr. Logan has been displaced from his home, he has no adequate remedy on appeal.

B. Mr. Logan Will Suffer Irreparable Harm Without Issuance of a Writ

Missouri courts have repeatedly recognized a writ of prohibition may issue when a party will suffer irreparable harm. This Court has issued writs of prohibition to prevent irreparable harm when “some spirit of justifiable relief is not made available to respond to a trial courts order.” *State ex rel. Richardson v. Randall*, 660 S.W.2d 699, 701 (Mo. banc 1983). Although this is a departure from the traditional use of a writ of prohibition to cure jurisdictional issues, a writ of prohibition may lie in circumstances “to avoid irreparable harm to a party.” *State ex rel. Bugg v. Daniels*, 274 S.W.3d 502, 504 (Mo. App. Ct. W.D. 2008).

Mr. Logan faces the imminent harm of losing his continued residence in his home without receiving due process under the United States and Missouri Constitutions. The continued residence in one’s home has been deemed a “significant property interest” that requires a due process hearing before being deprived. *Greene v. Lindsey*, 456 U.S. 444, 451 (1982).

A writ is also appropriate in this case, because unlike others where an aggrieved decision by a party could be stayed while on appeal to a higher tribunal, *see State ex rel. Riverside Joint Venture v. Missouri Gaming Comm'n*, 969 S.W.2d 218, 222 (Mo. 1998), in rent and possession cases, the ten-day timeline for filing an application for trial de novo is absolute, and thus cannot be stayed. *Avery v. Bi-State Dev. Agency*, 670 S.W.2d 585, 586 (Mo. Ct. App. E.D. 1984); *State ex rel. Sweet v. Smith*, 659 S.W.2d 578, 580 (Mo. Ct. App. 1983) (stating Rule 81.07 cannot change the statutory time of ten days under Section 512.190); *Columbia Glass & Window Co. v. Harris*, 945 S.W.2d 5, 6 (Mo. Ct. App. 1997) (the time frame is absolute even if the clerk never sends notice that a judgment has been entered).

As previously explained, Mr. Logan's true options to challenge the judgment and remain in possession of his home have been foreclosed. Instead, Mr. Logan faces the threat of irreparable harm from the judgment entered against him by Respondent without an option to stay the judgment against him while on review.

Because Mr. Logan faces the immediate threat of irreparable harm without relief from this Court, a writ of prohibition is the appropriate remedy to seek and it may lie in this case to remedy this extraordinary situation.

THE WRIT SHOULD ISSUE IN THIS EXTRAORDINARY CIRCUMSTANCE

Mr. Logan, who now has an eviction judgment issued against him, faces the imminent threat of losing his home as the result of a trial that violated his due process rights. This violation of his rights will inflict irreparable harm upon him and he has no

adequate remedy at law for addressing this violation of his rights before execution of the lower court's order.

Complicating all of these issues is the fact that this hearing was done remotely while Mr. Logan was not even able to view the proceedings that eventually led to the judgment against him. While issuing a writ of prohibition is discretionary and should be limited to situations where some “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), Mr. Logan's unique problems accessing the courts to defend himself and his unique trial through a remote forum, all spurred by the COVID-19 pandemic, are extraordinary and warrant review by this Court.

On May 4, 2020, this Court issued an order, *In re: Operational Directives for Easing COVID-19 Restrictions on In-Person Proceedings*, outlining operating procedures for courts throughout the State of Missouri to resume the bulk of their normal proceedings, while also balancing the public health issues facing each of the communities the courts are located in. As part of the order and a subsequent July 24 Order, this Court encouraged the use of technology to allow for remote hearings in communities that could not resume in-person hearings under its prescribed guidance. Missouri Supreme Court Order, *In re: Operational Directives for Easing COVID-19 Restrictions on In-Person Proceedings*, July 24, 2020. The July 24 Order remains in effect today.

The 22nd Judicial Circuit, St. Louis City, and Missouri itself remain in the grips of the COVID-19 pandemic. Sarah Fentem, *Missouri Now A 'Red Zone' For The Coronavirus*,

But Officials Resist Statewide Orders, St. Louis Public Radio (August 9, 2020), available at <https://news.stlpublicradio.org/health-science-environment/2020-08-09/missouri-now-a-red-zone-for-the-coronavirus-but-officials-resist-statewide-orders>. This public health crisis has forced the 22nd Judicial Circuit to regress in its reopening phases under Missouri Supreme Court guidance as the virus has worsened in St. Louis. 22nd Judicial Circuit, *Exhibit A to COVID-19 ORDER 28*, August 10. Exhibit G.

As such, the 22nd Judicial Circuit Court has handled cases, such as Mr. Logan's rent and possession case, remotely utilizing the WebEx platform. 22nd Judicial Circuit, Division 28, Information For Virtual Appearances via Webex Associate Circuit Civil Cases. Exhibit C. Although these technologies can and should be utilized for proceedings where parties can participate pursuant to this Court's guidance, they present new barriers to court access for individuals like Mr. Logan who cannot avail themselves of these technologies because they do not own devices that give them this access.

Despite the barriers COVID-19 created for Mr. Logan's participation at a remote hearing, he attempted every possible method of representing himself adequately and in compliance with the standards prescribed by both local court guidance and the Missouri Supreme Court's Order endorsing remote hearings. Yet, due to the lack of procedural safeguards and Respondent's conduct, Mr. Logan's due process rights were violated.

Because it is imperative that the courts utilizing remote technology do so in a manner that does not infringe upon a party's due process rights, this court should grant a writ of prohibition to ensure Mr. Logan receives a proper hearing within the bounds of due process even if conducted through a remote forum. Upon a review of case law, due process

in connection with remote hearings during the COVID-19 pandemic has yet to be ruled upon by any of Missouri's appellate courts or this Court and presents another extraordinary circumstance warranting review by this court.

This case presents very specific examples of where Mr. Logan's due process rights were infringed upon and he was unable to access a full, fair, and meaningful trial by telephone. Further, this case demonstrates that Mr. Logan's due process rights were violated in connection to his home, which is "a modern man's place of retreat for quiet and solace[,]" *Lindsey v. Normet*, 405 U.S. 56, 82 (1972) and a place of additional importance to one's health during the pandemic. Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners, 85 Fed. Reg. 49935 (Aug. 8, 2020).

The extraordinary circumstances that occurred in this case are not likely to repeat themselves once the COVID-19 pandemic subsides and remote or virtual eviction hearings are no longer necessary. However, here, where the hearing occurred, the situation is so extraordinary to warrant this Court intervene, review, and issue a writ of prohibition, as Mr. Logan "faces the plight of being without other relief." *State ex rel. Richardson v. Randall*, 660 S.W.2d 699, 701 (Mo. banc 1983).

CONCLUSION

By conducting a remote trial proceeding that infringed upon and deprived Mr. Logan of his due process protections under the Missouri and United States Constitutions, Respondent committed an act warranting judicial review and restraint by this Court. Absent

a writ of prohibition, Mr. Logan will suffer irreparable harm and have no avenue to appeal the aggrieved judgment against him.

Relator, Mr. Logan, respectfully requests that this Court issue a preliminary order and subsequent writ of prohibition commanding Respondent Judge Mark Neill to set aside his judgment against Mr. Logan and provide Mr. Logan with an adequate and accessible hearing within the prescriptions suggested in this brief—including an opportunity to submit evidence to the court, an opportunity to visually participate in the hearing, and an opportunity to adequately examine evidence offered against him—that allows him to present every available defense in his rent and possession case in compliance with the protections of due process.

Respectfully Submitted,

ARCHCITY DEFENDERS, INC.

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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