

STATE OF MICHIGAN
COURT OF APPEALS

IN RE KIRCHER.

DAVID J. KIRCHER,
Plaintiff,

UNPUBLISHED
March 9, 2006

v

No. 262153

WASHTENAW CIRCUIT COURT JUDGE,
Defendant,

and

CITY OF YPSILANTI,
Intervenor.

Before: Zahra, P.J., and Murphy and Neff, JJ.

ZAHRA, P.J. (*dissenting*).

I respectfully dissent. The arguments adopted by the majority to dismiss plaintiff's complaint were presented and rejected by this Court when this Court issued its June 3, 2005 order granting plaintiff's complaint for superintending control. I conclude that because this Court granted the complaint for superintending control, we are obligated to address the merits of the complaint. I further conclude plaintiff is entitled to the relief he seeks.

"It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court." *Rodriguez v General Motors (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994). On April 27, 2004, this Court instructed the trial court to enter an order that more precisely defined the receiver's duties, listing repairs that were in keeping with (1) the reasons that the receivership was sought (i.e., to repair the building so that it was no longer a hazard to human life); (2) the trial court's finding that the building was in dangerous condition and was a nuisance; and (3) MCL 600.2926, which provides that "[i]n all cases in which a receiver is appointed the court shall provide for bond and shall define the receiver's power and duties where they are not otherwise spelled out by law." To date, the trial court has not issued an order that complies with this Court's April 27, 2004 remand instructions. Although the trial court analyzed in its January 19, 2005 opinion and order whether certain completed

repairs conformed to this Court's remand instructions, the trial court has not delineated what, if any, repairs are still necessary to repair the building so that it is no longer a hazard to human life. The trial court's clear legal duty to define the receiver's duties did not end with the issuance of its January 19, 2005 order because the receivership did not end. I would remand with instructions that the trial court forthwith take any steps necessary, including the conducting of an evidentiary hearing, to issue an order complying with this Court's April 27, 2004 remand instructions.

/s/ Brian K. Zahra