

FILED

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HEATHER L. SMITH
CLERK OF APPELLATE COURTS

IN THE SUPREME COURT OF THE STATE OF KANSAS

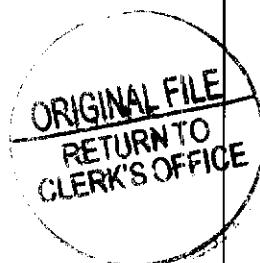
LUKE GANNON, et al,

Appellees

v.

THE STATE OF KANSAS,

Appellant.



Case No. 15-113267-S

MOTION FOR AN ORDER STAYING FURTHER PANEL PROCEEDINGS PENDING DISPOSITION OF THE PENDING APPEAL OR, IN THE ALTERNATIVE, AN ORDER REMANDING THE CASE FOR THE LIMITED PURPOSE OF HAVING THE PANEL RESOLVE THE STATE'S PENDING MOTION TO ALTER OR AMEND

On February 18, 2015, the State docketed its appeal from the December 30, 2014, Memorandum Opinion and Order on Remand ["Remand Order"] of the three-judge Panel appointed under K.S.A. 72-64b03 declaring unconstitutional the school finance system in Kansas. The State's Brief is due on March 30, 2015. Prior to filing its notice of appeal, the State had made a motion requesting the Panel to alter or amend its December 30, 2014, decision by making explicit factual findings. The Panel had not ruled on that motion when the appeal was docketed on February 18, 2015. Now, although the appeal from the Remand Order has been docketed in this Court, the Panel has scheduled a hearing for March 5, 2015, on the State's motion to alter or amend the Remand Order.

If jurisdiction is now lodged in this Court by virtue of the docketed appeal, as the State contends it is, then the Panel no longer has jurisdiction to consider the State's motion to alter and amend the Remand Order. The State thus requests that this Court stay any further proceedings

before the Panel regarding the State's motion on the grounds of lack of jurisdiction given the pending appeal or, alternatively, that this Court order a remand of this case to the Panel for the limited purpose of resolving the State's motion to alter or amend.¹

Background to the Motion for Stay or, alternatively, for Remand

The Remand Order under appeal is entry of a declaratory judgment that the Kansas public education financing system for grades K-12—through structure and implementation—is not presently reasonably calculated to have all Kansas public education students meet or exceed the “Rose factors” and, therefore, is unconstitutional in violation of Article 6 of the Kansas Constitution. The Remand Order was filed on December 30, 2014. A copy is attached hereto as Exhibit A.

This Remand Order followed this Court's remand of the first appeal in this case, *Gannon v. State*, 298 Kan. 1107, 319 P.3d 1196 (2014) [*“Gannon”*]. In the part pertinent to the State's appeal, this Court's mandate to the Panel was to do the following:

We also remand to the panel to determine whether the State met its duty to provide adequacy in public education as required under Article 6 of the Kansas Constitution. Although adequacy and equity are distinct components of Article 6, they do not exist in isolation from each other. So curing of the equity infirmities may influence the panel's assessment of the adequacy of the overall education funding system.

The panel shall promptly make findings as appropriate, consider whatever evidence it deems relevant--whether presently in the record or after reopening--and apply the adequacy test articulated in this opinion. More specifically, the panel must assess whether the public education financing system provided by the legislature for grades K-12--through structure and implementation--is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), and as presently codified in K.S.A. 2013 Supp. 72-1127.

¹ On January 26, 2015, Plaintiffs filed a motion seeking a declaration that the State had fallen out of compliance with this Court's directions regarding the “equity” aspect of this case, and seeking injunctive relief against the State. That motion does not involve matters that are the subject of the currently pending appeal before this Court, and thus the State is not asking the Court to take any action regarding the Panel's consideration of that motion.

Id. at 1199-1200. The December 30, 2014, Remand Order is the Panel's effort to address constitutional adequacy of school funding under Article 6 and thereby satisfy this Court's mandate.

The Court's jurisdiction to decide the State's appeal from the Remand Order is under K.S.A. 60-2102(b)(1). Under this statute, the right to appeal applies to "preliminary and final decisions in which a statute of this state has been held unconstitutional as a violation of Article 6 of the constitution of the state of Kansas pursuant to K.S.A. 72-64b03, and amendments thereto." *Id.*

The State filed its notice of appeal on January 28, 2015. It had earlier, on January 23, 2015, filed with the Panel a motion to alter and amend the Remand Order (K.S.A. 60-259(f)) and for additional findings of fact (K.S.A. 60-252(b)). Although the State may not have been required to file a notice of appeal until after a decision was made on its post-judgment motion (if in fact the filing of the motion tolled the time for taking an appeal), the State chose to eliminate any possible uncertainty by filing its Notice of Appeal within 30 days of the Panel's December 30, 2014, Remand Order. The State thought it prudent to be sure there could be no question that it has taken a timely appeal. The appeal was docketed on February 18, 2015, so the Panel had approximately 26 days to consider the State's motion, but made no ruling during that time. At this time, the State's opening brief in this Court is due March 30, 2015, but it is impossible to properly brief issues arising from the Remand Order if it remains possible the Panel may, at some unspecified time after the scheduled March 5, 2015, hearing, alter the Remand Order upon which the State's appeal is based.

Under longstanding Kansas law, the docketing of an appeal divests the trial court of jurisdiction over the matters that are the subject of the appeal. *State v. Fritz*, 299 Kan. 153, 155, 321 P.3d 763 (2014) (district court loses jurisdiction over case after direct appeal docketed);

Northern Natural Gas Co. v. ONEOK Field Servs. Co., LLC, 296 Kan. 906, 937, 296 P.3d 1106 (2013) (court lacks jurisdiction to modify a judgment after it has been appealed and the appeal is docketed at the appellate level); *Honeycutt v. City of Wichita*, 251 Kan. 451, 461, 836 P.2d 1128 (1992) (trial court keeps jurisdiction until the appeal is docketed in the appellate court).

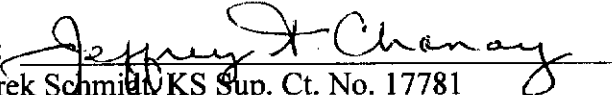
Applying that rule here, the Panel cannot now alter or amend its December 30, 2014, Remand Order, and there is no legal basis for conducting oral arguments or further proceedings before the Panel on March 5, 2015 regarding the State's post-judgment motion.

Request for Relief

Thus, the State requests that this Court issue an order staying the Panel from considering or acting on the State's post-judgment motion during the March 5, 2015, hearing for lack of jurisdiction given the pending appeal or, alternatively, remanding the case to the Panel for the limited purpose of ruling on the State's pending post-trial motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of February, 2015, a true and correct copy of the above and foregoing was mailed, postage prepaid, and delivered by electronic mail to:

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