

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 113,267

LUKE GANNON, *et al*,
Appellee,

v.

STATE OF KANSAS,
Appellant.

ORDER

On December 30, 2014, the three-judge panel appointed under K.S.A. 2014 Supp. 72-64b03 issued in the district court a Memorandum Opinion and Order on Remand. On January 23, 2015, the State filed in the district court pursuant to K.S.A. 60-259(f) and K.S.A. 60-252(b) a motion to alter and amend the panel's December 30 order on the issue of adequacy. On January 27, the Plaintiffs filed in the district court a motion under K.S.A. 60-259(f) to alter the December 30 order on the issue of equity. The panel scheduled a hearing on these motions for March 5, but cancelled the hearing on March 2. The hearing has not been rescheduled as of the date of this order.

On January 28, the State had filed a notice of appeal in the district court and on February 18 filed its docketing statement in this court on the issue of adequacy. On February 27, the State also filed in this court a Corrected Motion for an Order Staying Further Panel Proceedings Pending Disposition of the Appeal or, in the Alternative, an Order Remanding the Case for the Limited Purpose of Having the Panel Resolve the State's Motion to Alter and Amend. In its motion, the State argues the docketing of its appeal in this court divested the district court panel of jurisdiction to consider its outstanding motion to alter and amend. Accordingly, it requests that this court either (1)

stay any further proceedings before the panel regarding its motion to alter and amend or (2) remand the case to the panel for the limited purpose of resolving its motion to alter and amend.

On March 2, this court ordered the Plaintiffs to respond to the State's motion by 5:00 p.m. on March 3. In this response, the Plaintiffs ask that we deny the State's requested relief. They also ask that we instead remand the State's appeal to the panel for final resolution of all pending post-trial motions, including the State's January 23 motion to alter and amend the December 30 order on the issue of adequacy and the Plaintiffs' January 27 motion to alter the December 30 order on the issue of equity.

The court has reviewed this matter and takes the following action:

Remand

The State's Corrected Motion for an Order Staying Further Panel Proceedings Pending Disposition of the Appeal or, in the Alternative, an Order Remanding the Case for the Limited Purpose of Having the Panel Resolve the State's Motion to Alter and Amend is denied.

The Plaintiffs' Response to State's Motion for an Order Staying Further Panel Proceedings is noted.

This matter is remanded to the district court for resolution of all pending post-trial motions, including the State's January 23 motion to alter and amend the December 30 order regarding adequacy and the Plaintiffs' January 27 motion to alter the December 30 order regarding equity. In the panel's consideration, it should remain mindful that although the issues underlying the two motions "do not exist in isolation from each other," they do exist in different stages of their resolution. *Gannon v. State*, 298 Kan.

1107, 1199, 319 P.3d 1196 (2014). More specifically, this court affirmed the panel's equity rulings and remanded for the panel to enforce them after giving the legislature an opportunity to cure the constitutional infirmities. 298 Kan. at 1181, 1188, 1198. But instead of affirming the panel's adequacy rulings, we remanded for the panel to apply the test we articulated to determine whether the State met its constitutional duty to provide adequacy in public education. 298 Kan. at 1172, 1199.

The appellate briefing schedule is stayed pending further order of this court.

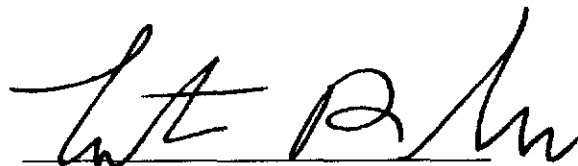
Recusals

Justice Caleb Stegall is recused, and Senior Judge Michael J. Malone has been assigned to sit for Justice Stegall.

Justice Carol Beier remains recused, and Judge David L. Stutzman of the 21st Judicial District remains assigned to sit for Justice Beier.

The remaining members of the Supreme Court will be sitting.

IT IS SO ORDERED this 5th day of March 2015.

A handwritten signature in black ink, appearing to read 'L. R. Nuss', written over a horizontal line.

Lawton R. Nuss,
Chief Justice