

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

15-113267-S

MAR 03 2015

HEATHER L. SMITH  
CLERK OF APPELLATE COURTS

LUKE GANNON,  
By his next friends and guardians, *et al.*,

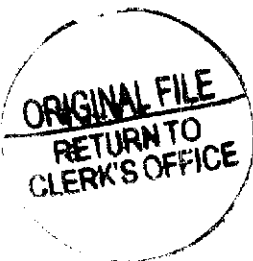
Appellees/Plaintiffs,

County Appealed From: Shawnee

v.

District Court Case No.: 10-C-1569

STATE OF KANSAS,



Appellant/Defendant.

**RESPONSE TO STATE'S MOTION FOR AN ORDER STAYING FURTHER PANEL PROCEEDINGS**

The *Gannon* lawsuit has two equally important components: adequacy and equity. As the State noted in its Motion, the adequacy portion of this lawsuit has been appealed to the Kansas Supreme Court; that appeal has been docketed. The State contends that this strips the Panel of jurisdiction to alter the adequacy portion of the judgment and seeks an order from this Court staying the Panel from acting on the State's post-judgment motion (which requested that the Panel do what the State is now trying to stop it from doing: alter the adequacy portion of the judgment). As alternative relief, the State requests that the Court remand the case to the Panel for the limited purpose of ruling on the State's pending post-trial motion related to adequacy. Instead, Plaintiffs suggest the following, more practical relief, as set forth in the attached Proposed Order (Exhibit A): that the Court remand the adequacy portion of this case to the Panel until the conclusion of all of the pending post-trial motions (including the State's post-trial motion related to adequacy and the Plaintiffs' post-trial motion related to equity).

This result is beneficial for multiple reasons. First, it avoids piecemeal litigation of this matter, which is consistent “with the clearly stated Kansas policy to avoid piecemeal appeals.” *Harsch v. Miller*, 288 Kan. 280, 288 (2009) (citing multiple cases); *Cooke v. Gillespie*, 286 Kan. 748, 754 (2008) (“In Kansas, ‘piecemeal appeals are frowned upon.’”). Second, it allows the Court to make the most informed decision as to whether the State is in compliance with its Article 6 obligations. As this Court has previously noted, adequacy and equity are intertwined; “they do not exist in isolation from each other.” *Gannon v. State*, 298 Kan. 1107, 1199 (2014). The curing of an equity infirmity can very well affect the overall adequacy of the school finance formula. *Id.* Plaintiffs’ suggested relief takes that into consideration and allows the Panel to enter a final, comprehensive judgment on both issues that is ripe for appellate review.

There is no need for the Court to enter the State’s requested relief, which will only extend and prolong this litigation. Obviously, when the State filed its motion, it was concerned about preserving its appeal deadline. Remanding this matter to the Panel and entering Plaintiffs’ requested relief would obviate those concerns while still allowing the Panel to correct any alleged failures within the December 30, 2014 Order. The end result will be a final, comprehensive judgment on both adequacy and equity that is ripe for appellate review by the Court.

#### RELEVANT FACTUAL STATEMENT

1. On December 30, 2014, the three-judge panel appointed pursuant to K.S.A. 72-64b03 (the “Panel”) issued a Memorandum Opinion and Order on Remand (“December 30, 2014 Order”). Within that Order, the Panel found that “the Kansas public education financing system provided by the legislature 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*." Order, at p. 114-15.

2. On January 23, 2015, the State filed a motion with the Panel to alter and amend the December 30, 2014 Order, pursuant to K.S.A. 60-259(f) and K.S.A. 60-252(b). *See* Court's March 2, 2015 Order.

3. On January 27, 2015, the Plaintiffs filed a motion with the Panel to alter and amend the December 30, 2014 Order, pursuant to K.S.A. 60-259(f). *Id.*

4. On January 28, 2015, the State filed a Notice of Appeal with the Kansas Supreme Court; the appeal was docketed on February 18, 2015. *Id.* The appeal only took up the issues of the Panel's determination regarding adequacy; the equity component of this matter has not yet been appealed.

5. On February 13, 2015, the Panel set oral arguments on the pending post-trial motions for March 5, 2015. *See* Exhibit B, E-mails from Judge Theis Regarding March 5, 2015 Hearing.

6. On February 27, 2015 (two weeks after the hearing was set and ten days after the State's appeal was docketed), the State filed the motion currently at issue, seeking to interfere with the Panel's ability to address the State's post-trial adequacy motion.

7. On March 2, 2015, the Panel cancelled the March 5, 2015 hearing. *See* Exhibit B, E-mails from Judge Theis Regarding March 5, 2015 Hearing. The Panel indicated that it anticipated setting the hearing for a later date. *Id.*

## ARGUMENT AND AUTHORITY

### **A. Plaintiffs' Suggested Relief Would Avoid Piecemeal Appeals, Which are Frowned Upon in Kansas**

Plaintiffs request that the Court remand the adequacy portion of this case to the Panel until the conclusion of all pending post-trial motions, including those related to both adequacy and equity. In Kansas, "piecemeal appeals are frowned upon." *Id.* (citing *Cooke v. Gillespie*, 286 Kan. 748, 754 (2008)). Therefore, unlike the State, Plaintiffs seek relief consistent "with the clearly stated Kansas policy to avoid piecemeal appeals." *Harsch v. Miller*, 288 Kan. 280, 288 (2009) (citing multiple cases).

The State contends that, under longstanding Kansas law, the docketing of an appeal divests the trial court of jurisdiction over matters that are the subject of the appeal. *See* State's Motion, at p. 3. However, "an appeal under the civil code does not automatically stay further proceedings in the court below." *Harsch v. Miller*, 288 Kan. 280, 286-287 (2009) (citing multiple cases for the proposition). Nonetheless, it is clearly within the Court's power to remand the adequacy appeal to the Panel until all post-trial motions are resolved. And, as pointed out below, doing so will preserve judicial economy.

### **B. Resolving Equity and Adequacy Issues Together Will Allow the Court to Make the Most Informed Decision As to Whether the State is in Compliance with Article 6**

From a logistical standpoint, there are multiple incentives for the Court to resolve both the equity and adequacy issues following the resolution of the post-trial motions currently pending before the Panel.

First and foremost, the State has raised issues related to the factual findings within the Panel's December 30, 2014 Order. On January 23, 2015, the State told the Panel that its December 30, 2014 Order does not comply with the Kansas Rules of Civil Procedure and

Supreme Court Rule 165. *See* Exhibit C, Excerpts from Motion and Memorandum of the State of Kansas to Alter and Amend the Panel's Opinion and Order on Remand, at p.1. That failure, according to the State, "makes it impossible for the parties to take effective appeals" and "for the Supreme Court to engage in meaningful appellate review of the factual determinations." *Id.* Yet now, a month later, the State is asking this Court to block the Panel's efforts to correct any alleged failures within the December 30, 2014 Order with regard to adequacy. The State's requested relief (that the Court issue an order staying the Panel from considering or acting on the State's post-judgment motion) is perplexing, in light of its previous position. The State's requested relief should be denied; granting it would not be beneficial to the parties or this Court. If there truly are issues with the factual findings entered by the Panel in its December 30, 2014 Order, the Panel is the proper court to sort those issues out. *See e.g. Fischer v. State*, 296 Kan. 808, 825 (2013) (indicating that requiring a party to file post-trial motions related to Supreme Court Rule 165 "gives the trial court an opportunity to correct any findings or conclusions that are argued to be inadequate").

In fact, if the State is correct that the Panel's findings are insufficient, and this case proceeds on appeal, it is highly likely that the issue will later be remanded to the Panel to ensure that sufficient factual findings are made. *See Moll v. State*, 41 Kan. App. 2d. 677, 685-86 (2009) (citing the "legion" of Supreme Court cases remanding matters to the district court for failure to enter sufficient factual findings). Given the likelihood that the matter could be remanded to the Panel at a later date for an issue that is currently pending before the Panel, it is in the interest of judicial economy to allow the Panel to resolve this issue now – rather than on a later remand.

Second, common sense dictates that the Court should resolve both the equity and adequacy issues together. As this Court has previously noted, adequacy and equity are

intertwined; "they do not exist in isolation from each other." *Gannon*, 298 Kan. at 1107. The curing of an equity infirmity can very well affect the overall adequacy of the school finance formula. *Id.* Judicial economy suggests that appellate review of these two issues should take place simultaneously.

### CONCLUSION

Plaintiffs respectfully request that the Court deny the State its requested relief and instead remand the adequacy portion of this case to the Panel until the conclusion of all of the pending post-trial motions (including the State's post-trial motion related to adequacy and the Plaintiffs' post-trial motion related to equity).

Dated this 3rd day of March, 2015.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of March, 2015, I sent a copy of the foregoing to the following via U.S. First Class Mail, postage prepaid, and electronic mail to:

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Jeffrey A. Chanay  
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*Attorneys for Defendant*

Additionally, the above and foregoing was sent by e-mail and first-class mail to the following:

Honorable Franklin R. Theis  
Shawnee County District Court  
200 S.E. 7th Street, Room 324  
Topeka, KS 66603

Honorable Robert J. Fleming  
Labette County District Court  
201 South Central Street  
Parsons, KS 67357

Honorable Jack L. Burr  
Sherman County District Court  
813 Broadway, Room 201  
Goodland, KS 67735



Alan L. Rupp

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 113,267

LUKE GANNON, *ET AL*,  
*Appellee*,

v.

STATE OF KANSAS,  
*Appellant*.

ORDER

This matter is before the Court following remand in *Gannon v. State*, 298 Kan. 1107, 319 P.3d 1196 (2004). On February 27, 2015, the State filed 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 or Amend. Having considered the State's Motion and the response of the Plaintiffs, the relief requested by the State in its Motion is denied. The Court remands the adequacy portion of this case, which is currently before it on appeal, to the Panel until the conclusion of all pending post-trial motions (including the State's post-trial motion related to adequacy and the Plaintiffs' post-trial motion related to equity). The Court will resume jurisdiction of the adequacy portion of this case upon notice that the pending post-trial motions have been fully and finally resolved.

BY ORDER OF THE COURT this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
LAWTON R. NUSS,  
Chief Justice





**Skladzien, Jessica L.**

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**From:** Cindy Jones <CJones@shawneecourt.org>  
**Sent:** Friday, February 13, 2015 5:30 PM  
**To:** 'Johnrobb@robblaw.com' (Johnrobb@robblaw.com); Rupe, Alan L.; Kanaga, Mark A.;  
chalmers@hitefanning.com; tibbets@hitefanning.com; lomas@hitefanning.com;  
Hawkins@hitefanning.com; jeff.chanay@ksag.org; stevermac@fastmail.fm;  
m.willoughby@ksag.org; Skladzien, Jessica L.  
**Co:** Robert Fleming (Judgefleming@sbcglobal.net); Jack Burr  
**Subject:** 2010CV1569

The Court has reserved March 5, 2015, at 1:30 p.m. for oral arguments on all pending motions, subject to a subsequent decision by the Court that one or more motions should be resolved without oral argument prior thereto by a written opinion or a decision by the Court that no oral argument would be of further use to the Court for one or more of the pending motions. Franklin R. Theis for the Panel

**Skladzien, Jessica L.**

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**From:** Cindy Jones <CJones@shawneecourt.org>  
**Sent:** Monday, March 02, 2015 4:45 PM  
**To:** Skladzien, Jessica L.; Rupe, Alan L.; 'John Robb (Johnrobb@robblaw.com)'; 'Chanay, Jeff (Jeff.Chanay@ag.ks.gov)'; 'stevermac@fastmail.fm'; 'M.J.Willoughby@ag.ks.gov';  
'chalmers@hitefanning.com' (chalmers@hitefanning.com); Gaye Tibbets (tibbets@hitefanning.com); 'hawkins@hitefanning.com'; 'lomas@hitefanning.com'  
**Co:** Robert Fleming (Judgefleming@sbcglobal.net); 'jack1313@st-tel.net'; Barbara White  
**Subject:** 2010CV1569

Counsel: Due to recent events, the flow of briefing, and the respective Court's calendars, the Court would cancel the oral argument set for March 5, 2015, at 1:30 p.m. and anticipate a resetting.

Franklin R. Theis for the Panel



IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS,  
IN THE MATTER OF PROCEEDINGS BEFORE THE  
THREE-JUDGE PANEL APPOINTED PURSUANT TO  
K.S.A. 72-64b03 IN RE SCHOOL FINANCE  
LITIGATION

FILED BY CLERK  
KS. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPEKA, KS  
DML  
2015 JAN 23 P 3:06

LUKE GANNON, *et al.* )  
 )  
 ) Plaintiffs, )  
 )  
 v. ) Case No. 2010C1569  
 )  
 ) STATE OF KANSAS, )  
 )  
 ) Defendant. )

**MOTION AND MEMORANDUM OF THE STATE OF KANSAS TO ALTER AND AMEND THE PANEL'S OPINION AND ORDER ON REMAND**

Pursuant to K.S.A. 60-259(f) and K.S.A. 60-252(b), Defendant State of Kansas ("State") moves that the Panel alter and amend its "Opinion and Order on Remand" ("Remand Opinion"), filed December 30, 2014. In support of this motion the State declares the following:

I. The Remand Opinion *does not comply* with K.S.A. 60-252(a) and Supreme Court Rule 165 because the Panel's vague decision regarding the parties' extensive proposed findings of fact makes it impossible for the parties to take effective appeals and, more importantly, for the Supreme Court to engage in meaningful appellate review of the factual determinations the Panel has purported to make.

Critically, the Panel effectively failed to make findings of fact when it addressed the parties' extensive proposed findings as follows:

We believe the Plaintiffs' Proposed Findings of Fact attached to their pleadings for Judgment on the Existing Record speak the truth, as we also believed their original Proposed Findings of Fact spoke the truth. As before in our original *Opinion*, all facts, by whomever [sic] presented, could not reasonably be

EXHIBIT  
C