

836 F.3d 503

United States Court of Appeals, Fifth Circuit.

M. C. MOORE, as father and next friend to minors  
Joyce Marie Moore, Jerry Moore, and Thelma  
Louise Moore; Henry Smith, as father and next  
friend to minors Bennie Smith, Charles Edward  
Smith, Shirley Ann Smith, and Earline Smith,  
Plaintiffs–Appellees

v.

TANGIPAHOA PARISH SCHOOL BOARD, a  
corporation, Defendant–Appellant

No. 15–31119

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FILED September 7, 2016

### Synopsis

**Background:** In longstanding pending school desegregation action, the United States District Court for the Eastern District of Louisiana, Ivan L.R. Lemelle, J., denied parish school board’s motion for approval of its candidate for position of Chief Desegregation Implementation Officer (CDIO) and appointed named plaintiffs’ candidate instead. Board filed timely notice of appeal and subsequently moved for relief from judgment.

The Court of Appeals held that substantial issue regarding CDIO’s alleged conflict of interest warranted remand.

Remanded.

Appeal from the United States District Court for the Eastern District of Louisiana, Ivan L.R. Lemelle, J.

### Attorneys and Law Firms

Gideon Tillman Carter, III, Esq., Baton Rouge, LA, James Austin Gray, II, Attorney, Gray & Gray, A.P.L.C., New Orleans, LA, Nelson Dan Taylor, Sr., Esq., Chief Counsel, J.K. Haynes Legal \*504 Defense Fund, Thibodaux, LA, for Plaintiffs–Appellees.

Pamela Wescovich Dill, Robert L. Hammonds, Hammonds, Sills, Adkins & Guice, L.L.P., Baton Rouge,

LA, Andre Gerard Coudrain, Esq., Ashley E. Sandage, Esq., Cashe, Coudrain & Sandage, Christopher M. Moody, Moody Law Firm, Hammond, LA, for Defendant–Appellant.

Before JOLLY, BARKSDALE, and SOUTHWICK,  
Circuit Judges.

### Opinion

PER CURIAM:

The district court entered an initial injunction against Tangipahoa Parish School Board in 1967 soon after this desegregation suit was filed. In 2008, the district court granted the parties’ joint motion to create the position of Chief Desegregation Implementation Officer (“CDIO”) to spearhead the Board’s implementation of the court’s remedial orders.

In 2015, a dispute arose concerning the Board’s selection of the newest CDIO. In accord with its former practice, the Board selected a candidate, Lawrence Thompson, with a master’s degree and educational experience. The plaintiffs claimed that a local minister, Andrew Jackson, would be a better choice. The Board moved in the district court for (1) approval of its candidate as CDIO, (2) elimination of the CDIO position, or (3) revision of the CDIO job description. The district court denied the motions and appointed the plaintiffs’ candidate as CDIO. The Board then filed a timely notice of appeal. Later, the Board filed a motion in the district court under Federal Rule of Civil Procedure 60(b), seeking relief from the order appointing Jackson as CDIO. The Board alleged it recently discovered Jackson has a conflict of interest with the named plaintiffs that affects his suitability for the CDIO position.

A timely notice of appeal divests the district court’s jurisdiction, meaning it cannot grant a party’s Rule 60(b) motion unless this court remands. *Lopez Dominguez v. Gulf Coast Marine & Assocs., Inc.*, 607 F.3d 1066, 1073–74 (5th Cir. 2010). Rule 12.1 of the Federal Rules of Appellate Procedure and Rule 62.1 of the Federal Rules of Civil Procedure permit a district court to state that a motion filed while a case is on appeal and which it cannot grant raises a “substantial issue.” The district court so stated and indicated that if the case were remanded, it would determine whether a conflict of interest exists.

We REMAND for the limited purpose of allowing the district court to rule on the matter identified in its indicative order. Should the district court determine that Andrew Jackson should no longer be the CDIO, this remand does not authorize the court to make a new appointment. The district court should also make additional findings to explain its appointment of Mr. Jackson instead of Mr. Thompson.

pending motion, the case should be returned to this panel, which will retain jurisdiction during the pendency of the limited remand.

**All Citations**

836 F.3d 503, 336 Ed. Law Rep. 112

After the district court's entry of a final ruling on the

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