

2016 WL 6875963

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United States District Court, E.D. Louisiana.

Joyce Marie MOORE, et al.

v.

TANGIPAHOA PARISH SCHOOL BOARD, et al.

CIVIL ACTION NO. 65-15556

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Signed September 16, 2016

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Filed 09/19/2016

Attorneys and Law Firms

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ORDER AND REASONS

Ivan L. R. Lemelle, SENIOR UNITED STATES DISTRICT JUDGE

*1 Before the Court are two motions filed by the Tangipahoa Parish School Board (“the Board” or “TPSB”). The first is the Board’s “Motion for Forfeiture and Other Relief” (Rec. Doc. 1417), seeking an order requiring the Tangipahoa Charter School Association

(“TCSA”) to forfeit the local portion of its 2016-17 Minimum Foundation Program (“MFP”) funds. The Board also filed a “Motion for Citation of Contempt, Sanctions, and Other Relief” (Rec. Doc. 1418), urging this Court to issue sanctions against TCSA for its failure to fully comply with this Court’s previous Order requiring it to pay the local portion of MFP funds to the school district for the 2015-26 school year. TCSA timely filed opposition memoranda to both motions. Rec. Doc. 1420, 1421. For the reasons outlined below,

IT IS ORDERED that the motions are **DENIED**.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On July 27, 2015, this Court granted TCSA’s motion to operate a charter school in Tangipahoa Parish subject to several conditions, including that TCSA forfeit the 2015-26 local portion of MFP funds. Rec. Doc. 1297 at 2-3. In making this ruling, we acknowledged that, without such forfeiture, TPSB would be subject to serious financial constraints. *Id.* At 7. We also noted that the forfeiture order was subject to revision based on data provided by Michael Bruno, CPA and that TPSB would have the right to timely re-urge the issue annually with supporting documentation *Id.* at 3, 7. On August 26, 2015, TCSA filed a Notice of Appeal as to that ruling. Rec. Doc. 1307. It then filed a partial motion to stay the ruling’s forfeiture requirement pending appeal. Rec. Doc. 1314.

In denying the motion for partial stay, this Court found that TCSA failed to demonstrate a likelihood of success on the merits or an irreparable injury—the two most critical factors for determining whether to issue a stay. Rec. Doc. 1323. TCSA then filed a Motion for Partial Relief from Order and Motion for Indicative Ruling, urging this Court to indicate that it would reverse the forfeiture order based upon the report of Michael Bruno if the Fifth Circuit would remand for that purpose. Rec. Docs. 1327, 1328. TCSA’s motion for partial relief contended that Bruno’s report constituted “new evidence” under Federal Rule of Civil Procedure 60(b)(2) and justified revision of the Forfeiture Order because Bruno concluded that the loss experienced by TPSB due to the operation of Tangi Academy could not be determined with reasonable certainty. *See* Rec. Doc. 1327.

This Court ultimately denied both motions, finding that Bruno's Report did not constitute "new evidence" for the purposes of Rule 60(b)(2) because Bruno had only served as a technical advisor, and the Court had not relied upon the findings in his report so as to render him an expert witness—a proper source of evidence who is subject to cross-examination. Rec. Doc. 1353 at 5-8. Moreover, we noted that, even if Bruno's report qualified as new evidence, its conclusion was not so compelling that it *clearly* would have produced a different result if present before the original judgment, which is the standard for granting reconsideration under Rule 60(b)(2). *Id.* at 1353 (citing *Goldstein v. MCI WorldCom*, 340 F.3d 238, 257 (5th Cir. 2003)). Now, TPSB seeks an order requiring TCSA to forfeit the local portion of its MFP funds for another full year and an order sanctioning TCSA for failing to remit all funds due from the previous year.

II. DISCUSSION

a. Motion for Forfeiture and Other Relief

i. The parties' contentions

*2 The Board argues that this Court should continue the forfeiture order for the 2016-17 school year for several reasons. Rec. Doc. 1417-7 at 1. First, the Board claims that it continues to operate at a deficit, making forfeiture necessary for the Board to meet its desegregation obligations. *Id.* at 4-5. Further, the Board allegedly faces a significant reduction in funding due to the operation of Tangi Academy—purportedly a net loss of \$1,886,016 for the 2016-17 school year. *Id.* at 5-7. Finally, the Board contends that the further reduction of state funding will adversely affect its ability to provide magnet programs and majority-to-minority transportation privileges. *Id.* at 7.

In response, TCSA contends once again that *Cleveland v. Union Parish School Board*, No. 67-12924, 2009 WL 2476562 (W.D. La. Aug. 12, 2009), does not provide sufficient legal precedent for requiring it to forfeit the local portion of its MFP funds. Rec. Doc. 1420 at 3-6. TCSA also argues that the 10th and 14th Amendments prohibit the transfer of such funds. *Id.* at 13-17.

Moreover, TCSA claims that the Board has not provided sufficient factual evidence to support forfeiture. In particular, TCSA draws this Court's attention to the Board's claimed increase in certain expenditure areas despite the reduced student population from the 2015-16 school year. *Id.* at 17. Finally, TCSA maintains that the reallocation of MFP funding negatively impacts the public school students and creates an unequal system of education. *Id.* at 6-9. It claims that it will not be able to remain open if MFP funds are diverted for a second straight year. For these reasons, TCSA urges the Court to deny the Board's motion.

ii. Law and Analysis

This Court has previously emphasized that "[l]ocal conditions, separate legal entities, state laws and statutes cannot frustrate implementation of constitutionally protected rights." *Taylor v. Coahoma Cty. Sch. Dist.*, 330 F. Supp. 174, 183 (N.D. Miss. 1970). With this in mind, we relied upon *Cleveland v. Union Parish School Board* as precedent in requiring TCSA's forfeiture of MFP funds allocated to it under state law. We found this extreme measure reasonable under the circumstances due to the "serious financial constraints" facing the Board, which were only exacerbated by the sudden loss of students and related funding to TCSA. *See* Rec. Doc. 1297. However, TCSA points out that the *Cleveland* court only ordered forfeiture for a single school year. TCSA therefore argues that it would be unprecedented for this Court to order such forfeiture for a second consecutive year. Rec. Doc. 1420 at 5. Conversely, the Board does not direct this Court's attention to any analogous case law that would render such a decision more palatable. Instead, it simply provides this Court with the affidavit and report of CFO Brett Schnadelbach.

The first issue with the CFO's declaration and report is that it assumes, without any support, that each student enrolled at Tangi Academy that resides in Tangipahoa Parish would have otherwise attended a TPSB school if not for the presence of Tangi Academy. However, we cannot speculate on the actual amount of MFP funds lost because there is no evidence showing that each Tangipahoa-based TCSA student would have attended a TPSB school if not for Tangi Academy. For example, all or a portion of those students could have chosen to attend a private school or opted for homeschooling. There is no reason to believe that there is a one-to-one loss suffered

by TPSB for each Tangipahoa Parish resident attending Tangi Academy.

Yet, even if we made that assumption, Mr. Schnadelbach's report still lacks adequate support for the conclusion that the school district will only "realize a minor reduction of expenditures" despite the more than 250 Tangipahoa Parish-based students purportedly "lost" to Tangi Academy. Rec. Doc. 1417-1 at 4. He contends that the loss of 256 students will allow the school district to eliminate only four teaching positions, resulting in savings of only \$256,192. *Id.* at 5-6. The problem lies with the methodology used by Mr. Schandelbach in determining how many teaching positions the Board could actually eliminate.

*3 Chart 2 of Exhibit A displays his methodology for determining how many positions the Board can eliminate, and it appears to rely upon a flawed method of eliminating one teaching position for each instance in which an individual school's reduction in students goes above the allocation ratio for a particular set of grade levels. *See* Rec. Doc. 1417-2 at 4. For instance, school "DCR" is projected to lose thirty-five fourth and fifth grade students (fifteen fourth graders and twenty fifth graders) to Tangi Academy in the coming school year. *Id.*

Because the allocation ratio for those grade levels is 25:1, the CFO claims that DCR can only eliminate one teaching position. *Id.* However, to accurately determine the number of positions the Board can eliminate, we must consider the projected enrollment of each grade level at DCR both pre- and post-deduction of Tangi Academy enrollees.

For example, imagine in Scenario A that DCR's enrollment pre-deduction of Tangi students was forty fourth graders and forty fifth graders. That enrollment would require two teachers per grade level given the allocation ratio of 25:1. However, once the fifteen fourth graders and twenty fifth graders are subtracted, that would leave only twenty-five fourth graders and twenty fifth graders, thus requiring only one teacher for each grade level. Accordingly, two positions could be eliminated. Yet, in Scenario B, if DCR's enrollment pre-deduction was forty-five fourth graders and forty-five fifth graders, that would result in the elimination of only one position by leaving thirty fourth graders and twenty-five fifth graders (requiring three teachers).

Scenario A	Pre-deduction enrollment	# of teachers required (25:1 ratio)	Post-deduction enrollment	# of teachers required (25:1)	# of teaching positions reduced
4 th	40	2	25 (40-15)	1	1
5 th	40	2	20 (40-20)	1	1
Total	80	4	45	2	2
Scenario B					
4 th	45	2	30 (45-15)	2	0
5 th	45	2	25 (45-20)	1	1
Total	90	4	55	3	1

As is evident, simply looking at the number of students lost without consideration of the actual enrollment of students per grade level at each TPSB school does not allow this Court to accurately determine how many teaching positions the Board can eliminate. Consequently, Mr. Schnadelbach's chart does not provide the Court with the information necessary to accurately calculate the potential reduction in expenditures. Moreover, as TCSA points out in their opposition memorandum, the Board fails to explain why its 2016-17 budget does not include an adjustment to the Child Nutrition Program or why expenditures for supplies increased despite a decrease in student population. Rec. Doc. 1420 at 17. The Board does not seem to have fully explored all ways in which they could reduce expenditures.

Finally, unlike last year, TPSB has been expecting the 2016-17 operation of Tangi Academy for over a year and should have expected that students in its Parish would enroll there. It appears that the Board has made little or no effort to look for alternative means to resolve its budgetary crisis—such as through the political process to increase revenue in support of the school system. Rather, it aims to pull funding from another school for a second straight year. As TCSA has shown in its opposition, such a measure would have a negative impact on the students of Tangipahoa Parish who attend Tangi Academy, and, if authorized for a second consecutive year, could ultimately lead to the closure of Tangi Academy. As opposed to the 2015-16 school year where the summertime approval of Tangi Academy imposed unexpected financial strains on TPSB, the loss of some students to TCSA in 2016-17 and any related loss of funding should have been anticipated by meaningful planning initiatives as opposed to partisan political puffery that needlessly delays achieving unitary status. Accordingly, this school year does not present the same circumstances requiring the extreme measure of pulling funding from TCSA. *See Cleveland*, 2009 WL 2476562 at *4 (reallocating MFP funds to the Union Parish School Board due to on-going financial problems as well as un-anticipated losses due to the operation of D'Arbonne Woods Charter School). For these reasons, the motion for forfeiture is denied.

III. MOTION FOR CITATION OF CONTEMPT,

SANCTIONS, AND OTHER RELIEF

*4 The Board urges this Court to issue a citation of contempt and sanctions due to TCSA's failure to comply with this Court's prior forfeiture order. Rec. Doc. 1418 at 1. Specifically, the Board complains of TCSA's failure to forfeit the \$42,504 it received from the Louisiana Department of Education for the month of June 2015 (the local MFP portion for that month). *Id.* The Board claims that a citation of contempt is appropriate because the violation is continuing and knowing. Rec. Doc. 1418-2 at 4. It further requests that this Court order TCSA to pay all costs and fees related to the present motion on top of the \$42,504 plus interest. *Id.*

In response, TCSA urges the Court to deny the motion and instead absolve TCSA of the payment, or, in the alternative, allow it a reasonable period of time to pay the requested funds. Rec. Doc. 1421 at 1. TCSA argues that a citation of contempt and sanctions are inappropriate because it has complied with the Court's forfeiture order in all other respects. It claims that it failed to remit the funds for the month of July 2015 because it had already spent the money by the time of the Court's forfeiture order issued at the end of that month. *Id.* at 2. It further contends that it has not had the ability to repay that money up to this point. Finally, TCSA maintains that it should be able to pay the \$42,504 by October 31, 2016 if TPSB's Motion for Forfeiture is not granted. *Id.* at 3.

Given the tenuous financial position of TCSA and this Court's wide discretion in issuing citations of contempt and related sanctions, it is recommended that the motion is denied. *See Whitcraft v. Brown*, 570 F.3d 268, 271 (5th Cir. 2009) ("We review contempt orders and sanctions imposed thereunder for an abuse of discretion."). The Court finds that issuing monetary sanctions in this matter will only serve to disadvantage the students of Tangipahoa Parish and thus aims to avoid them if at all possible. Accordingly, TCSA shall pay to TPSB the outstanding \$42,504 plus interest as soon as possible, but in any event no later than **October 31, 2016**. However, failure to comply with this Order will result in significant monetary sanctions.

IV. CONCLUSION

For the reasons outlined above,

IT IS ORDERED that TPSB's motions are **DENIED**, subject to reconsideration if TCSA fails to comply with above directive to timely pay the outstanding forfeiture amount plus interest.

All Citations

Not Reported in Fed. Supp., 2016 WL 6875963