IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

BRENDA KAY MONROE, et al

v) Civil Action
)
) No. 1327

BOARD OF COMMISSIONERS OF THE
CITY OF JACKSON, TENNESSEE, et al

ORDER ON PLAINTIFFS' MOTION UNDER RULE 60

THIS CAUSE came on again for hearing on plaintiffs' motion under Rule 60 for "appropriate relief", the evidence adduced at the hearing of the motion, argument of counsel, and the entire record in the cause, and the Court makes the findings and holdings stated in its Addendum to Memorandum Decision filed October 9, 1963 a part of the record, which Addendum is hereby adopted as additional findings of fact and conclusions of law.

It is, therefore, ORDERED, ADJUDGED, DECREED and ENJOINED as follows:

(1) All Negro pupils who have been admitted to the heretofore "white" school system prior to the end of the 1962-63 school year will be entitled to continue in that school system.

(2) All pupils who have entered the school system prior to the end of the 1962-63 school year will be entitled to continue in the particular school they were attending at the end of that year until graduation provided that this does not deprive a pupil who is entitled to attend a school by virtue of residing in the new unitary zone of the right to attend that school.

(3) Except to the extent hereinabove indicated the motion of the plaintiffs under Rule 60 is overruled.

All of which is ORDERED, ADJUDGED and DECREED this 9 day of October, 1963.

United States District Judge

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ADDENDUM TO MEMORANDUM DECISION

Subsequent to the filing of the foregoing memorandum decision (in lieu of findings and conclusions) and the entry of a judgment based on the decision, the Jackson schools opened for the 1963-64 school year. Thereafter, plaintiffs filed a motion under Rule 60 for "appropriate relief." In this motion, plaintiffs attacked the decision and judgment of the Court, and to this extent the motion was in effect a motion to amend findings and conclusions or for a new trial. Plaintiffs also, in their motion, contended that the defendant Board is not properly applying the plan as approved by the Court. A hearing has been held on the plaintiffs' motion, and this addendum to the original memorandum decision constitutes the Court's ruling on the motion.

Plaintiffs have misconstrued the ruling of the Court in one respect. Under the plan submitted by the defendant Board, pupils would be allowed to continue in the particular school they were attending in 1962-63 until they graduate from that school irrespective of the new unitary zones adopted under the plan. The Court intended to approve, and does approve, this provision so long as pupils who have a right to attend a school by virtue of residing in the new unitary zone of the school would not thereby be deprived of their right to attend. In short, the Court saw good reason for allowing a pupil to continue in the school he has been attending and he should be allowed to do so provided pupils residing in the new unitary zone of the school have first choice to attend the school. This good reason is the obvious advantage of a continuation in familiar surroundings with the same teachers and fellow students. This provision will, of course, expire by its own terms in a relatively few years.

As heretofore stated, some Negro pupils have been attending "white" schools. The memorandum decision and judgment do not deal with their right to continue to do so. The defendant Board has taken the position that unless these pupils would be entitled to attend the "white" schools under the general provisions of the approved plan, they will be denied this right. Accordingly, the Board has required these Negro pupils to leave the heretofore "white" school system if, but only if, they, at the end of 1962-63 school year, graduated from the school they had been attending. While the overall plan approved by the Court meets, in the Court's opinion,

the requirement of "all deliberate speed," at the same time the Court believes and so finds that it should be a part of the plan that Negro pupils already attending school in the "white" school system be allowed to continue to do so.

Plaintiffs seek to have set aside the approval by the Court of the unitary zones for grades one through six as proposed by the defendant Board on the ground that, plaintiffs claim, these zones are gerrymandered to effect a perpetuation of segregation. As heretofore indicated, the Court believes that the school Board should be allowed considerable discretion in establishing unitary zones for attendance and that the action of the Board should not be overridden unless it constitutes a clear abuse of this discretion. Certainly this Court would be entering an administrative thicket if it sought to divide the city into zones and should do so only when the need for such action is clear and plain. The Court does not believe, from the evidence adduced at the trial, that establishment of these zones does constitute an abuse of discretion.

The plaintiffs make more basic attacks on these unitary zones. The proof shows that the residences of the Negroes in Jackson are in substantial part concentrated in certain areas with the result that de facto segregation in the school system will be promoted by a geographical zoning system even if it is not gerrymandered. From this the plaintiffs argue that the unitary zones based on residence do not comply with the requirements of the Constitution. First they argue that the School Segregation Cases require integration of white and Negro pupils rather than an abolition of compulsory

segregation based on race. Secondly they argue that, even if the School Segregation Cases require only an abolition of discrimination, a right to attend schools based on residence zones is in substance a right to attend based on race.

Plaintiffs make these same attacks on the provision in the plan whereby pupils are allowed, within the limitation heretofore described, to continue in the particular school now attended until graduation. This, plaintiffs argue, promotes de facto segregation, and therefore runs counter to the claimed mandate of the School Segregation Cases to effect integration. Plaintiffs also argue that this provision amounts to a recognition of racial factors with respect to admissions and transfers in view of the prior history of the operation in Jackson of segregated schools.

With respect to the contention that the law requires more than an abolition of compulsory segregation based on race and that it sets up an affirmative duty to bring about integration, this Court heretofore had occasion to point out in the Obion County, Tennessee, school case, Vick v. County Board of Education of Obion County, 205 F.Supp. 436, 7 R. Rel. Rep. 380 (WD Tenn. 1962) that the language of the Supreme Court in the leading cases of Brown v. Board of Education, 347 U.S. 483, (1954) and 349 U.S. 294 (1955), and Cooper v. Aaron, 358 U.S. 1 (1958) does not support this contention.

It can, of course, be argued that the decision of the Supreme Court in the Brown case is based primarily on a finding

that separate facilities for the two races cannot be equal because of the adverse psychological and sociological effect of such segregation on the children. See Blaustein & Ferguson, Desegregation and the Law, (Vintage, 2d Rev. Ed. 1962), Chapters 9 and 10. From this it can be argued that even if de facto racial segregation results from voluntary choice or from consideration of factors other than race, the law requires that it be ended in order to bring about equality of educational opportunity. (It should be pointed out, in passing, that the view that the Supreme Court's decision is based on findings of fact also can plausibly support the argument that in each school desegregation case a separate inquiry must be made as to the effect of segregation on school children in that community. This was the holding in the case of Stell, et al v. Savannah-Chatham County Board of Education, et al, _____F.Supp._____ (SD Ga., June 28, 1963), which decision appears to have been reversed. _____F.2d_____ (CA 5, May 24, 1963).) However, even conceding that the Supreme Court's decision in the Brown case is primarily based on such a finding of fact, the finding of fact was not that segregation per se has a detrimental effect on children but rather the finding was that compulsory segregation based on race has such an effect. Moreover, even if the Supreme Court did reach the conclusion, based on the record, that racial segregation did per se have this adverse effect on the children, it is difficult to see how it could have declared all racial segregation in the schools unconstitutional because presumably voluntary segregation cannot be said to result from "state action." Accordingly, it does not follow that the Supreme Court's decision in the Brown case commands integration rather than an abolition of compulsory segregation based on race

even if it be considered to be grounded primarily on a finding of fact.

There remains to be dealt with the argument of plaintiffs to the effect that in the factual context here existing the admission of children into schools according to their residence locations and allowing them to continue in the particular school heretofore attended until graduation amounts to compulsory segregation because of race or in any event amounts to a consideration of racial factors in admissions and transfers.

There is nothing in the Brown decision or in other Supreme Court decisions in this field or in the decisions of the Court of Appeals for this Circuit which indicates that school attendance cannot be based on neighborhood zoning. In one case (Northcross, et al v. Board of Education of the Memphis City Schools, et al, 302 F.2d 818 (CA 6, 1962), cert. den. 370 U.S. 944 (1962)) our Court of Appeals said at page 823:

> "Minimal requirements for non-racial schools are geographic zoning, according to the capacity and facilities of the buildings and admission to a school according to residence as a matter of right."

If Negro residences tend to be concentrated in certain areas because of illegal pressure or compulsion, certainly the remedy for this is not to upset the system of neighborhood public schools.

The holding in the case of Goss v. Board of Education of Knoxville and Maxwell v. County Board of Education of Davidson County, Tennessee, _____U.S._____ (June 3, 1963) does not support plaintiffs' contention that allowing pupils to continue

in their particular schools until graduation is an unconstitutional consideration of racial factors in the admission and transfer of pupils. This Court approved this provision in the plan, as amended by this Court, for good reasons, herein indicated, having nothing to do with race. This provision applies equally to white and Negro pupils, contemplates a voluntary decision on the part of pupils and parents involved, and applies regardless of the racial composition of the school in which a pupil would continue until graduation.

Concurrently with the filing of this addendum the Court is entering an order on plaintiffs' motion under Rule 60.

United States District Judge