

IN THE SUPREME COURT OF THE STATE OF KANSAS

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

Plaintiffs-Appellees,

v.

STATE OF KANSAS, *et al.*,

Defendants-Appellants.

Case No.: 113,267

APPELLEE’S RESPONSE TO STUDENTS’ ADVISORY COMMITTEE’S MOTION TO RECONSIDER ORDER DENYING APPLICATION TO FILE AMICUS CURIAE BRIEF

Plaintiff-Appellees (“Plaintiffs”), by and through their undersigned counsel of record, respectfully request that this honorable Court deny the motion filed by the Students’ Advisory Committee (“SAC”) asking this Court to reconsider its March 22, 2018 Order denying the SAC’s application for leave to file an amicus curiae brief for the reasons set forth herein:

I. Introduction

On March 8, 2018, SAC filed an application to file an amicus curiae brief. In its application, SAC stated its brief would argue “that the Kansas Constitution includes all levels of public education, not just K-12, in the Article 6 §6(b) mandate that ‘[t]he legislature shall make suitable provision for finance of the educational interests of the state.’” SAC further noted “In light of the numerous references to the Kansas Board of Regents in Article 6 of the Constitution, [SAC] believes that the Constitution mandates that higher education be considered when evaluating the provision of financial support to public education.”

On March 13, 2018, Plaintiffs filed a response to SAC’s application. Plaintiffs opposed SAC’s application on two grounds: (1) that SAC’s amicus curiae brief raises issues not addressed by a trial court and (2) that SAC’s brief would not provide any relevant information regarding whether the State has adequately funded K-12 education. On March 22, 2018, this Court entered an Order

denying SAC's application for leave to file an amicus curiae brief. The Order noted that an amicus curiae brief cannot raise an issue for appellate review.

On April 5, 2018, SAC filed a Motion to Reconsider the March 22, 2018 Order. In its Motion, SAC argues that its amicus brief "would urge the Court to be mindful of the legislature's concurrent obligation to adequately fund higher education, in the course of addressing the remedial issues related to K-12 education in this case." The Motion also indicates that SAC "would provide the Court with information showing how, over the past decade, funding of higher education has been systematically and dramatically reduced to make up for budget shortfalls in other areas, including (inadvertently or not) K-12 education."

II. Arguments and Authority

A. Despite SAC's attempt to shift the focus of its proposed amicus brief, the brief would still only raise new issues.

SAC's application for leave to file an amicus brief noted that the brief would argue "the Kansas Constitution includes all levels of public education, not just K-12[.]" In its motion to reconsider, SAC now indicates it "will not argue whether current funding levels are inadequate or ask the Court to define what levels of higher education funding would be adequate." Instead, SAC will "urge the Court to be mindful of the legislature's concurrent obligation to adequately fund higher education, in the course of addressing the remedial issues related to K-12 education in this case.." To the extent that SAC is attempting to raise a new issue, a motion to reconsider is inappropriate. *In re Mullokandova*, 364 P.3d 579 (Kan. Ct. App. 2016) ("motion to reconsider is not a place to raise new issues or obtain a second chance to present a stronger case.") (unpublished) (citing *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)).

Despite SAC's re-characterization of its argument, SAC is still raising new issues that have not been previously considered by the trial court: specifically, whether Article 6, Section 6(b)

includes higher education. SAC's brief would require this Court to decide or assume that Article 6, Section 6(b) includes higher education. This is a different way to make the same argument that "Article 6 of the Kansas Constitution requires suitable funding for 'all levels of public education, not just K-12.'" *See id.* ("It is not appropriate to revisit issues [in a motion to reconsider] already addressed or advance arguments that could have been raised in prior briefing.") (quoting *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)) (internal quotations omitted). That issue was directly addressed in this Court's March 22, 2018 Order.

B. SAC's motion to reconsider should be denied because it will not aid the Court in resolving the issues already presented.

SAC's amicus brief will argue that "the remedy crafted for K-12 should not come at the expense of higher education." However, SAC's perspective will not help the Court resolve the issues in front of the Court in *Gannon*. Neither the *Rose* factors nor any other order of this Court has ever required the Legislature to cut funding to other services. As SAC notes in its motion to reconsider, the Legislature's reduction of funding is not entirely the product of funding for K-12 education. SAC states, "funding of higher education has been systematically and dramatically reduced to make up for *budget shortfalls in other areas*, including (inadvertently or not) K-12 education." (emphasis added). The Court's ultimate remedy in the *Gannon* litigation will not directly implicate funding for any other state function or service.

C. It is within this Court's discretion to refuse leave to file an amicus brief.

SAC argues that all of the case law cited by Plaintiffs and this Court considered amici briefs that had been filed. However, "[t]he privilege of being heard amicus rests in the discretion of the court which may grant or refuse leave according as it deems the proffered information timely, useful, or otherwise." *Cnty. Ass'n for Restoration of the Env't v. Deruyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999). Because SAC's amicus curiae brief will not provide relevant information to

the considerations in the *Gannon* litigation and will raise new issues on appellate review, it was within this Court's discretion to deny SAC's application for leave to file an amicus brief.

III. Conclusion

This Court should deny SAC's motion for reconsideration. The motion, like the original application, advances issues that were not considered by the *Gannon* trial court. SAC also fails to demonstrate that it will provide a perspective that will assist this Court in resolving the issues before it.

WHEREFORE, Plaintiffs respectfully request that this Court deny SAC's motion to reconsider this Court's March 22, 2018 Order denying SAC's application for leave to file an amicus curiae brief in this proceeding.

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CERTIFICATE OF SERVICE

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