

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

JANE TURNER, et al.,	)	
	)	
Plaintiffs,	)	Cause No. 07SL-CC00605
	)	
vs.	)	Division No. 9
	)	Date: October 21, 2010
SCHOOL DISTRICT OF CLAYTON, et. al.,	)	
	)	
Defendants.	)	

**Court Order and Judgment**

This matter is before the Court on remand from the Supreme Court of Missouri with a mandate to this Court for further proceedings to be had therein, in conformity with the opinion in *Jane Turner, et al., v. School District of Clayton, et al.*, No. SC90236 (Mo.banc 2010).

**Motion for Entry of Declaratory Judgment**

On September 9, 2010, after the Supreme Court’s mandate was issued, Plaintiffs Jane Turner and William Drendel (hereinafter Parents) filed in this cause of action their “Motion Of Plaintiffs Drendel And Turner For Entry Of Declaratory Judgment In Accordance With The Supreme Court Of Missouri’s Opinion And Mandate” (hereinafter Motion for Entry of Declaratory Judgment). On September 28, 2010, Defendant School District of Clayton (hereinafter Clayton School District) filed its “Combined Memorandum (1) In Support Of Its Motion To Dismiss And For Summary Judgment, (2) In Opposition To Plaintiffs’ “Motion” For Declaratory Judgment And (3) In Support Of Its Alternative Request For A Full Trial On The Merits,” and Defendants The Transitional School District of St. Louis and The Board of

Education of the City of St. Louis in Its Official Capacity (hereinafter Transitional School District) filed their “Memorandum of Transitional School District In Opposition to Motion for Entry of Declaratory Judgment.”

A hearing was held on September 28, 2010 on Parents’ Motion for Entry of Declaratory Judgment. Attorneys Elkin L. Kistner and Sean M. Elam appeared on behalf of the Parents, Attorneys Mark J. Bremer and D. Leo Human appeared on behalf of Clayton School District, and Attorneys Richard B. Walsh, Jr. and Evan Z. Reid appeared on behalf of Transitional School District. During the hearing Parents’ counsel submitted to the Court a Proposed Judgment and the school districts were granted leave to file responses to Parents’ Proposed Judgment. Also, the school districts were granted leave to file legal memoranda regarding appellate mandates.

On October 7, 2010, the school districts filed their “Joint Memorandum Regarding The Law Of Mandates And Remand, In Support Of The Defendants’ Proposed Order, And In Opposition To Plaintiffs’ Proposed Judgment.” In response thereto, the Parents filed on October 20, 2010 a “Response to Defendants’ Joint Memorandum,” after which this matter was deemed submitted to the Court for a ruling.

This matter having been submitted to the Court on Parents’ Motion for Entry of Declaratory Judgment, including legal memoranda, this Court, now being advised in the premises, overrules and denies without prejudice Parents’ Motion for Entry of Declaratory Judgment for the following reasons:

In their Motion for Entry of Declaratory Judgment, Parents essentially stated that the Supreme Court issued its opinion that declared that §167.131 requires the Transitional School District to pay the school tuition of Parents' children who choose to attend school in the Clayton School District. The Parents further averred that the Supreme Court's opinion and mandate specifically directed this Court to issue a declaratory judgment in accordance with the Supreme Court's opinion, citing as authority *Durwood v. Dubinsky*, 361 S.W.2d 779, 783 (Mo. 1962). In their motion, Parents are seeking a declaratory judgment from this Court to enter a court order that the Clayton School District is obligated to accept Parents' children as students and to bill Transitional School District for tuition payment. Also, Parents want a court order from this Court that declares Transitional School District's obligation to pay for the children's tuition.

Parents are claiming in their motion, in essence, that the Supreme Court's opinion and mandate issued a "remand with directions" that specifically directed this Court to grant their Motion for Entry of Declaratory Judgment. However, the Supreme Court's opinion and mandate only issued a general remand for this Court to resolve all legal issues between the parties, and not a "remand with directions" for entry of a declaratory judgment.

In Missouri, there are two types of remands when cases are reversed and sent back to the trial courts for further proceedings. The first one is a "general remand" where an appellate court does not provide any specific direction and leaves all issues open to consideration in a new trial. The second one is a "remand with directions" which provides the trial court with "express instructions" on how to proceed with the case. *Guidry v. Charter Communications, Inc.*, 308 S.W.3d 765, 768 (Mo.App.E.D. 2010), citing *Durwood v. Dubinsky*, *supra.*, and *Outcom, Inc. v. City of Lake St. Louis*, 996 S.W.2d 571, 574 (Mo.App.E.D.1999). Also, under

a remand with directions, a trial court is directed to take a specified action such as, for example, to conduct a new trial on issue of damages. *Id.*

Contrary to the Parents' motion, the Supreme Court's opinion and mandate did not include any specific directions or express instructions for this Court to order or enter a declaratory judgment in Parents' favor. Instead, the Supreme Court's opinion and mandate determined, inter alia, § 167.131's applicability to the Transitional School District and generally remanded the matter back to this Court for further proceedings. In addition, the Supreme Court's August 24, 2010 Order remanded this case "for resolution of all issues," which is a further indication of a general remand and not a remand with directions. As such, the Supreme Court's opinion and mandate ordered a "general remand" that allows this Court to resolve all legal issues between the parties, including allowing amendments of pleadings and a trial on the merits, rather than a "remand with directions," as suggested by Parents.

Additionally, given that this case was transferred to this Court under a general remand, all issues are open to consideration on a new trial and the pleadings may be amended or new and controlling facts produced, including affirmative defenses. See, e.g., *Butcher v. Main*, 426 S.W.2d 356, 358 (Mo. 1968) and *Chouteau Auto Mart v. First Bank of Missouri*, 91 S.W.3d 655, 658 (Mo.App.W.D. 2002). After this case was remanded to this Court, the school districts filed their answers to Parents' original Petition for Declaratory Judgment and asserted affirmative defenses that included the following: (1) constitutional violation of the Hancock Amendment, Article X, §§ 16-24; (2) impossibility of compliance and potential conflict with federal desegregation order entered in the case of *Liddell v. Board of Education*; and (3) binding contracts between the Parents and the Clayton School District. Consequently, further proceedings in this matter will include consideration of these affirmative defenses.

Because the Supreme Court's opinion and mandate did not include any specific or express instructions, this case was generally remanded to this Court for further proceedings for consideration of all issues in conformity with the Supreme Court's opinion. During the proceedings in this matter, all issues, including the Parents' Petition for Declaratory Judgment and the school districts' affirmative defenses, will be open to consideration. Therefore, Parents' Motion for Entry of Declaratory Judgment is denied at this time.

### **Order and Judgment**

ACCORDINGLY, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Parents' Motion for Entry of Declaratory Judgment is overruled and denied without prejudice. The September 28, 2010 Court Order entered in this matter is set aside and held for naught. Parties are ordered to submit proposed scheduling orders by October 29, 2010. Cause continued to November 22, 2010 at 9:00 am in Division No. 9 for status conference, unless further order of court.

**SO ORDERED,**

**Date: October 21, 2010**

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**Hon. David Lee Vincent, III**  
**Circuit Judge, Division 9**

cc: Attorneys of Record

*Turner, et al., v. School District of Clayton, et al., Cause No. 07SL-CC00605*