

No. 04-1144

**In the
Supreme Court of Texas**

SHIRLEY NEELEY, TEXAS COMMISSIONER OF EDUCATION, THE TEXAS
EDUCATION AGENCY, CAROLE KEETON STRAYHORN, TEXAS COMPTROLLER
OF PUBLIC ACCOUNTS, AND THE TEXAS STATE BOARD OF EDUCATION,
Appellants,

v.

WEST ORANGE-COVE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT,
COPPELL INDEPENDENT SCHOOL DISTRICT, LA PORTE INDEPENDENT
SCHOOL DISTRICT, PORT NECHES-GROVES INDEPENDENT SCHOOL DISTRICT,
DALLAS INDEPENDENT SCHOOL DISTRICT, AUSTIN INDEPENDENT SCHOOL DISTRICT,
AND HOUSTON INDEPENDENT SCHOOL DISTRICT, *ET AL.*,
Appellees.

On Direct Appeal from the 250th District Court, Travis County, Texas

REPLY IN SUPPORT OF STATEMENT OF JURISDICTION

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REPLY IN SUPPORT OF STATEMENT OF JURISDICTION

In their response to the State's Statement of Jurisdiction, the Edgewood Intervenors incorrectly claim that the Court has no jurisdiction to entertain a direct appeal in this case. But, under the controlling constitutional and statutory provisions, no jurisdictional barrier exists. Moreover, the Edgewood Intervenors have provided no persuasive reason why the Court should decline to exercise its jurisdiction. Accordingly, the State asks the Court to note probable jurisdiction over this direct appeal, request briefing on the merits, and submit the appeal on an expedited basis, as requested in the State's Statement of Jurisdiction.

ARGUMENT

The Edgewood Intervenors do not dispute the State’s contention that this case, like previous school finance appeals, is of paramount importance to the jurisprudence of the State and thus worthy of the Court’s attention on direct appeal. Instead, Edgewood advances two other arguments: first, that the Court lacks direct-appeal jurisdiction because motions are still pending before the trial court, *see* Edgewood Resp. at 3-5; and second, that the Court should delay exercising jurisdiction over this case until (a) the trial court’s plenary jurisdiction has expired, and (b) Edgewood has had the opportunity to pursue factual-sufficiency review in the court of appeals, *see id.* at 5-7. These arguments are meritless and should not dissuade the Court from noting probable jurisdiction over this appeal.

I. THE PENDENCY OF POST-JUDGMENT MOTIONS DOES NOT THWART THIS COURT’S JURISDICTION.

Edgewood erroneously asserts that “[t]he Court does not have jurisdiction over this direct appeal at this time.” Edgewood Resp. at 3. The Court’s direct-appeal jurisdiction is governed by Article V, §3-b of the Texas Constitution and §22.001(c) of the Texas Government Code. As the State explained in its Statement of Jurisdiction, those standards are fully satisfied. *See* St. Jur. at 3-4.

Edgewood does not challenge the State’s claims or even address either controlling provision. Instead, Edgewood argues that the Court lacks jurisdiction because the trial court retains continuing plenary jurisdiction over the case. *See* Edgewood Resp. at 3. Although Edgewood correctly notes that its motion to modify the judgment operated to extend the trial

court's plenary jurisdiction, Edgewood jumps to the incorrect conclusion that this Court cannot act until the trial court's plenary jurisdiction has expired. Nothing in the Texas Rules of Civil or Appellate Procedure provides that the trial court's post-judgment jurisdiction is exclusive. In fact, those rules expressly contemplate concurrent jurisdiction by the trial and appellate courts in the period following the judgment. *See, e.g.*, TEX. R. CIV. P. 329b(d) ("The trial court, *regardless of whether an appeal has been perfected*, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment within thirty days after the judgment is signed.") (emphasis added); TEX. R. APP. P. 27.3 ("*After* an order or judgment in a civil case *has been appealed*, if the trial court modifies the order or judgment . . . the appellate court must treat the appeal as from the subsequent order or judgment.") (emphasis added).

This case aptly illustrates why Edgewood's argument is inaccurate. If the trial court allows Edgewood's motion to modify the judgment to be overruled by operation of law on the seventy-fifth day after the judgment was entered, its plenary jurisdiction continues for another thirty days thereafter. *See* TEX. R. CIV. P. 329b(e),(g). However, Edgewood's notice of appeal would be due on the ninetieth day after the judgment, a full fifteen days before the trial court's jurisdiction would expire. *See* TEX. R. APP. P. 26.1. The unremarkable fact that trial and appellate courts' jurisdiction sometimes overlaps does not divest this Court of the direct-appeal jurisdiction provided by Article V, §3-b of the Texas Constitution and §22.001(c) of the Texas Government Code.

Edgewood also challenges this Court's jurisdiction because, they argue, the pendency of their motion to modify the judgment prevents the judgment from becoming final. *See* Edgewood Resp. at 3. This assertion is simply wrong. A judgment such as this one that is rendered after trial on the merits and expressly disposes of all parties and issues is final. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 197-99 (Tex. 2001). Although any lawyer would love to have the ability to force the trial court to take back an unfavorable judgment by simply filing a motion, the rules do not contemplate that result. Unless and until the trial court enters a new judgment, the judgment as entered on November 30, 2004 remains final.

II. THE COURT SHOULD REJECT EDGEWOOD'S INVITATION TO DELAY.

As noted above, Edgewood neither disputes this case's importance nor asks the Court to decline to exercise jurisdiction because a swift resolution is unimportant. Instead, Edgewood suggests that the Court's consideration of this appeal is somehow premature and should be delayed until some later time to avoid prejudice to Edgewood. *See* Edgewood Resp. at 5-7. But Edgewood's claims of prejudice are overstated and provide no reason to delay the Court's acceptance of this appeal or the commencement of briefing.

A. Edgewood's Desire to Pursue a Factual-Sufficiency Challenge Is No Reason to Dismiss the State's Direct Appeal.

In the event that the trial court overrules Edgewood's motion to modify the judgment, Edgewood states that it might wish to challenge the factual sufficiency of the evidence supporting the judgment. *See id.* at 5-6. Edgewood correctly observes that such a challenge cannot be pursued in a direct appeal to this Court, but only in a traditional appeal to the court

of appeals. *See id.* at 5. But Edgewood's possible desire to pursue a factual-sufficiency challenge is no reason to dismiss the State's direct appeal. Rather, the specter of a full-fledged factual-sufficiency review of the findings from this bench trial confirms that direct appeal is the speediest, most efficient way to resolve this case.

Edgewood appears to suggest that it could make a quick trip to the court of appeals for factual-sufficiency review and then join the other parties back in this Court. But that is not the procedure that the direct-appeal rules contemplate. The rules are clear that no party may file an appeal in any other court as long as the direct appeal is pending. *See* TEX. R. APP. P. 57.5. To allow Edgewood to go to the court of appeals, this Court would have to dismiss the State's direct appeal. And then the State would have no choice but to proceed to the court of appeals along with Edgewood. This would accomplish nothing more than an unnecessary detour through the court of appeals before obtaining this Court's final determination of the controlling legal questions. And the only benefit would be to allow Edgewood to have its factual-sufficiency challenge, a claim that (1) at most wins Edgewood a new trial and thus provides no finality, and (2) could easily be obviated by this Court's resolution of the legal issues that would necessarily control any factual-sufficiency review. Direct appeal is the only way to resolve the constitutionality of the school finance system quickly and efficiently.

B. No Prejudice Will Occur If the Court, While Awaiting the Trial Court’s Ruling on Edgewood’s Post-Trial Motion, Accepts the State’s Appeal and Orders Briefing on the State’s Issues to Commence.

Edgewood provides no persuasive argument that it will be prejudiced if briefing commences in the State’s appeal, which is all that the State, the West Orange Cove Plaintiffs, and the Alvarado Intervenors have requested. Contrary to Edgewood’s claim, no one has asked for a “severance.” Edgewood Resp. at 7. And no party has requested that the Court hold argument or issue a decision before the parties have a chance to brief Edgewood’s appeal. If the Court must wait for the trial court to make a decision on the efficiency claim and for Edgewood to file its appeal, it will no doubt want to use that time to begin to familiarize itself with the extremely complex issues and voluminous record in this case. It would presumably be more helpful to the Court to undertake this laborious task with the aid of the parties’ briefing.

Edgewood claims that it will somehow be prejudiced because its constitutional efficiency appeal is closely intertwined with the State’s adequacy appeal. *See id.* at 3-5. Although constitutional adequacy and efficiency are intertwined, it is the latter that depends on the former; thus, the parties (including Edgewood as appellee) should have no trouble fully briefing adequacy and the other issues in the State’s appeal even if Edgewood’s efficiency appeal is delayed.¹

1. Edgewood’s motion to modify the judgment will be overruled by operation of law on the 75th day after the date of the judgment (which is February 14, 2005 because February 13, the 75th day, falls on a Sunday), unless the trial court rules on the motion before that date. *See* TEX. R. CIV. P. 329b(c). In any event, unless its motion is granted, Edgewood’s notice of appeal is due on the 90th day after the judgment—February 28, 2005. *See* TEX. R. APP. P. 26.1.

Finally, Edgewood’s assertion that the record is not “adequately developed” for appeal, even after a seven-week trial on the merits is groundless on its face, as is Edgewood’s suggestion that further “factual development” could somehow occur as a result of its motion to modify the judgment or in the court of appeals. *See* Edgewood Resp. at 4

CONCLUSION

The State respectfully requests that the Court note probable jurisdiction over this direct appeal, request briefing on the merits, and submit the appeal on an expedited basis in accordance with the briefing schedule suggested in the Statement of Jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the Reply in Support of Statement of Jurisdiction was served by certified mail, return receipt requested, on February 2, 2005, to:

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