

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

JOHN DOE, Individually and as  
next friend of his minor children,  
JAMES DOE, and JACK DOE,

CIVIL ACTION

versus

NO. 03-2870

TANGIPAHOA PARISH SCHOOL BOARD, ET AL SECTION "C"

ORDER AND REASONS

This matter comes before the Court on plaintiff's third and fourth motions for contempt, which were taken under advisement on June 5, 2006. Having considered the record, the depositions and evidence submitted, the memoranda of counsel and the law, the Court has determined that the motion should be partially granted for the following reasons.

The remaining focus of these motions are two instances of allegedly contemptuous non-compliance with the Consent Judgment signed in August 2004, wherein the parties agreed to the following:

Defendants and any officers, employees or agents of the Board, as well as all persons in active concert or participation with any of them who receive notice of this injunction, be and hereby are restrained, enjoined and prohibited from the following:

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3. Allowing invocations by students to the student body over the school's public address system, during assemblies or at any school sponsored event, except as permitted during graduation ceremonies by *Jones v. Clear Creek Independent School District*, 977 F.2d 963 (5<sup>th</sup> Cir. 1992), *cert. denied* 113 S.Ct. 2950 (1993).

(Rec. Doc. 14, p. 3)(emphasis added). The remaining issue in the third motion for contempt of court concerns the conduct of defendant Tangipahoa Parish School Board ("Board), defendant Board Member Sandra Bailey-Simmons ("Bailey-Simmons") and Loranger High School Principal Billie Theriot ("Theriot") with regard to a prayer offered by a student at an April 2005 off-campus banquet for students enrolled in the General Cooperative Education course. The remaining issue in the fourth motion for contempt of court against the Board and former Amite High School principal Richard Covington involves a May 2005 on-campus awards banquet at which a student offered a prayer.

The defendants do not argue that the prayers offered violated the terms of the Consent Judgment. Rather, the defendants argue that in both instances the participants erroneously thought that it was permissible for students to initiate such prayers under the Consent Judgment, and that the Board has subsequently taken extraordinary action by way of training, investigation and discipline to ensure that any future violations of the Consent Judgment do not occur. The defendants also argue that they are not

required to intervene and prevent prayers from being offered in their presence under the rule recognized in Goluba v. School District of Ripon, 45 F.3d 1035 (7<sup>th</sup> Cir. 1995).

The plaintiff replies that the Board's initial efforts in disseminating the terms of the Consent Judgment to its employees were deficient and contributed to any official misunderstanding of the propriety of any prayer. The plaintiff also argues that the failure to intervene and stop the prayers by the individuals named in the third motion is equivalent to active participation in the invocation, and that the misguided permission of the Amite High School principal in the fourth motion was actually condoned or ratified by the Board. The plaintiff provides solid legal authority that it is not required to show either willfulness or knowledge of the specific terms of the injunction in order to prevail on claims for civil contempt.

In order to establish civil contempt, the plaintiff must establish by clear and convincing evidence that a court order was in effect, that the order required specific conduct by the respondent and that the respondent failed to comply with the court's order. United States v. City of Jackson, Mississippi, 359 F.3d 717, 731 (5<sup>th</sup> Cir. 2004). Civil contempt has two "wholly remedial" purposes: to compensate the prevailing party for losses sustained by the noncompliance and to coerce compliance. Southern Railway Co. v. Lanham, 403 F.2d 119, 124 (5<sup>th</sup> Cir. 1968). Good faith is not a defense to a finding of civil contempt. Jackson, supra; Chao v. Transocean Offshore, Inc., 276 F.2d 725 (5<sup>th</sup> Cir. 2002).

The Court finds that the plaintiff has established civil contempt as alleged with regard to the two claims remaining in the third and fourth motions for civil contempt of court. There is no disagreement between the parties regarding the relevant facts or the law. In both instances, the Consent Judgment was in effect, it required specific conduct by the respondents and the respondents failed to comply with it. The Court notes that the terms of the Consent Judgment differ from those presented in the Goluba case. The Consent Judgment here prohibits “[a]llowing invocations by students ... at any school sponsored event” without regard to intent. Student conduct is the focus, and the defendant’s responsibilities with regard to student conduct are necessarily supervisory in nature.

While the conduct at issue did violate the order, the Board’s subsequent efforts to ensure compliance with the Consent Judgment were commendable. Although it is not a defense to civil contempt, the Court find the Board in good faith in these efforts. The Consent Judgment concerns a very complex area of law. “As we have often observed, Establishment Clause jurisprudence is less than pellucid.” Doe v. Santa Fe Independent School District, 168 F.3d 806, 814 (5<sup>th</sup> Cir. 1999), aff’d, 530 U.S. 290 (2000). As the Santa Fe case history reflects, the defendants are not alone in erroneously focusing only on the whether the invocation was student-initiated regardless of the content. The Court agrees with the defendants that civil contempt’s remedial purpose of compliance has

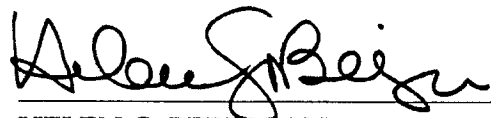
been met in this difficult litigation and warrants a minimal penalty reflecting only the plaintiff's legal expenditures attendant to the prosecution of these two motions.

Accordingly,

IT IS ORDERED that the plaintiff's third and fourth motions for contempt are PARTIALLY GRANTED as to the remaining claims of civil contempt. (Rec. Docs. 47 & 50).

IT IS FURTHER ORDERED that within ten days counsel meet and attempt to stipulate as to the amount of actual and reasonable attorney's fees and costs incurred by the plaintiff in prosecuting the third and fourth motions for contempt. Counsel shall promptly advise the Court if such a stipulation can not be reached so that further court proceedings can be scheduled.

New Orleans, Louisiana, this 28<sup>th</sup> day of June, 2006.



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HELEN G. BERRIGAN  
UNITED STATES DISTRICT JUDGE