

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 00-11404

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HOLLISTER GARDNER

Plaintiff - Appellee - Cross - Appellant

v.

TULIA INDEPENDENT SCHOOL DISTRICT; JEANETT HERRING, In her official capacity and in her individual capacity as Trustee; SAM SADLER, in his official capacity and in his individual capacity as Trustee; SCOTT BURROW, in his official capacity and in his individual capacity as Trustee; ANNA GRANADO, in her official capacity and in her individual capacity as Trustee; BOYD MILNER, in his official capacity and in his individual capacity as Trustee; BEN HOWARD, in his official capacity and in his individual capacity as Trustee; GARY GARDNER, in his official capacity as Trustee

Defendants - Appellants - Cross - Appellees

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DAN GARDNER, Guardian Ad Litem for Molly Gardner; JO BETH GARDNER, Guardian Ad Litem for Molly Gardner

Plaintiffs - Appellees

v.

TULIA INDEPENDENT SCHOOL DISTRICT; JEANETT HERRING, In her official capacity and in her individual capacity as Trustee; SAM SADLER, in his official capacity and in his individual capacity as Trustee; SCOTT BURROW, in his official capacity and in his individual capacity as Trustee; ANNA GRANADO, in her official capacity and in her individual capacity as Trustee; BOYD MILNER, in his official capacity and in his individual capacity as Trustee; BEN HOWARD, in his official capacity and in his individual capacity as Trustee; GARY GARDNER, in his official capacity as Trustee

Defendants - Appellants

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Appeals from the United States District Court for the  
Northern District of Texas, Amarillo  
97-CV-20  
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September 6, 2002

Before KING, Chief Judge, DAVIS, Circuit Judge, and VANCE<sup>1</sup>, District  
Judge.

PER CURIAM:<sup>2</sup>

The Supreme Court recently decided Board of Education of  
Independent School District No. 92 of Pottawatomie County v. Earls, 122  
S.Ct. 2559 (2002), which is factually analogous to this case. Because  
of the effect the Earls decision may have on this case, we vacate the  
district court judgment and remand this case to the district court for  
further consideration in light of Earls. We leave it to the discretion  
of the district court to conduct additional hearings if it considers it  
advisable to do so.

VACATED AND REMANDED.

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<sup>1</sup>District Judge of the Eastern District of Louisiana, sitting by designation.

<sup>2</sup>Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

