

NOT RECOMMENDED FOR PUBLICATION

No. 19-5123

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Oct 20, 2020  
DEBORAH S. HUNT, Clerk

NICHOLAS CHARLES BREINER, )  
 )  
Plaintiff-Appellant, )  
 )  
v. )  
 )  
BOARD OF EDUCATION OF MONTGOMERY )  
COUNTY, )  
 )  
Defendant-Appellee. )

ORDER

Before: NORRIS, GRIFFIN, and LARSEN, Circuit Judges.

Plaintiff Nicholas Charles Breiner appeals the dismissal of his action, brought under Title VII, for disparate treatment by his employer after he revealed that he is bisexual. He and Defendant Board of Education of Montgomery County, Kentucky jointly move to remand the case in light of the United States Supreme Court’s recent ruling in *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020).

The district court dismissed Breiner’s suit based on binding Sixth Circuit precedent that relief did not lie under Title VII for discrimination based on sexual orientation. *See Tumminello v. Father Ryan High Sch., Inc.*, 678 F. App’x 281, 285 (6th Cir. 2017); *Gilbert v. Country Music Ass’n, Inc.*, 432 F. App’x 516, 519 (6th Cir. 2011); *Vickers v. Fairfield Med. Ctr.*, 453 F.3d 757, 762 (6th Cir. 2006). After *Bostock*, the district court’s dismissal analysis is no longer sound. And,

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because the district court did not consider the factual basis for Breiner's claim or provide any other alternative ground for dismissal, we remand the case for further proceedings.

The joint motion to remand is **GRANTED**. Should either party wish to appeal an adverse decision following remand, a new timely notice of appeal must be filed.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

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Deborah S. Hunt, Clerk

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt  
Clerk

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Re: Case No. 19-5123, *Nicholas Breiner v. Board of Education, Montgomery*  
Originating Case No. : 5:18-cv-00351

Dear Sir or Madam,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/C. Anthony Milton  
Case Manager  
Direct Dial No. 513-564-7026

cc: Mr. Robert R. Carr

Enclosure

Mandate to issue