

IN THE UNITED STATE COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 22-1786

A.C., a minor child by his next friend,)	Appeal from the United States
mother, and legal guardian, M.C.,)	District Court for the Southern
)	District of Indiana, Indianapolis
Plaintiff-Appellee,)	Division
)	
v.)	No. 1:21-cv-2965-TWP-MPB
)	
METROPOLITAN SCHOOL DISTRICT)	Hon. Tanya Walton Pratt, Chief
OF MARTINSVILLE, <i>et al.</i> ,)	Judge
)	
Defendants-Appellants.)	

**APPELLEE’S RESPONSE TO COURT’S ORDER OF MAY 4, 2022—
MEMORANDUM IN SUPPORT OF LIMITED REMAND**

On April 29, 2022, the district court entered its Order on Plaintiff’s Motion for Preliminary Injunction (Dist. Ct. Doc. No. 50). Although styled an “Order,” the district court’s entry was a memorandum decision supporting the granting of the motion for preliminary injunction filed by plaintiff-appellee. No other order was entered concerning the preliminary injunction.

On May 2, 2022, the defendants-appellants filed their Notice of Appeal, asserting that the appeal was being taken pursuant to 28 U.S.C. § 1292(a)(1), which allows for appeals as of right from, among other things, district court orders granting preliminary injunctions. (Dist. Ct. Doc. No. 52). However, as noted by this Court in its Order of May 4, 2022, Federal Rule of Civil Procedure 65(d) requires that a preliminary injunction

must be entered by a document separate from a memorandum opinion as “[l]anguage in an opinion does not comply with Rule 65(d).” *BankDirect Capital Finance, LLC v. Capital Premium Financing, Inc.*, 912 F.3d 1054, 1057 (7th Cir. 2019) (further citation omitted). Instead, this Court “interpret[s] Rule 65(d)(1)(C) to require that an injunction must be embodied in a standalone separate document.” *Auto Driveaway Franchise Systems, LLC v. Auto Driveaway Richmond, LLC*, 928 F.3d 670, 676 (7th Cir. 2019) (citing *BankDirect*, 912 F.3d at 1057).

Although failure to comply with the separate document requirement is not jurisdictional, *Id.* at 677-79, this Court, as it noted in its May 4, 2022 Order, has issued limited remands so that an injunction that complies with Rule 65(d)(1)(C) can be entered by the district court. See *Quincy Bioscience, LLC v. Ellishbrooks*, 957 F.3d 725, 728 n. 17 (7th Cir. 2020); *MillerCoors LLC v. Anheuser-Busch Companies, LLC*, 940 F.3d 922, 922-23 (7th Cir. 2019) (*per curiam*). In *MillersCoors LLC*, the Court recognized that “[a]lthough the district court’s intent to afford enforceable equitable relief is sufficiently clear to provide appellate jurisdiction, despite the noncompliance with Rule 65(d) . . . enforcing the Rule is sufficiently important that we order a limited remand with instructions to enter the injunction on a document separate from the opinion[].” *Id.* at 923 (internal citation omitted). There is no reason here to deviate from the Circuit’s rule that a standalone preliminary injunction order should be entered to comply with Rule

65(d) and a limited remand should issue for such an injunction to be entered by the district court.

/s/ Kenneth J. Falk

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Certificate of Service

I certify that on this 17th day of May 2022, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the

Seventh Circuit by using the CM/ECF system. Service will be made on all ECF-registered counsel by operation of the Court's electronic system.

s/ Kenneth J. Falk

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