

No. 20-0644

IN THE SUPREME COURT OF TEXAS

COOK CHILDREN'S MEDICAL CENTER,
Petitioner,

v.

T.L., A MINOR, AND MOTHER, T.L., ON HER BEHALF,
Respondents.

On Petition for Review from the
Second Court of Appeals at Fort Worth, Texas
No. 02-20-00002-CV

**RESPONDENTS' RESPONSE
TO PETITIONER'S EMERGENCY MOTION TO EXPEDITE**

Respondents, T.L. ("Baby T.L."), and Mother, T.L. ("Mother T.L.") are aware that this Court has requested on an expedited timetable a Response to Cook Children's Medical Center's Petition for Review. Pursuant to the Court's Order on August 24, Baby T.L. and Mother T.L. will file an expedited Response to Petitioner's Petition for Review by September 14. Respondents file this Response to Petitioner's Emergency Motion to Expedite to request the full amount of time for briefing on the merits.

A. The stakes of this appeal are high.

The reason for allowing the full amount of time to brief the merits of the case is simple. The Texas Advance Directives Act outlines the way a hospital can decide

– free of accountability from liability – whether a patient lives or dies. The constitutional challenges to this statute, which intimately affects vulnerable Texans, The Texas Advance Directives Act is flawed. It substitutes an ethics committee for a judge, hospital personnel for a jury, and rules that guarantee the right to speak to only one side (the hospital) for the adversary process.

B. Petitioner has not justified emergency relief.

Petitioner filed its Emergency Motion to Expedite on August 20, 2020, nearly a month after the Fort Worth Court of Appeals issued its 148-page Opinion asking this Court to expedite briefing and consideration of this appeal. The reasons Petitioner gives misstate the background of the case and ignore the stakes for Baby T.L., Mother T.L., and all Texans, as well as the effect that its request would have on Baby T.L., interested parties, and this Court. Indeed, the very manner in which Petitioner frames all of the issues in this appeal demonstrates precisely why this Court needs to take its time in rendering a decision in this case and why all interested parties need as much time as the Rules allow for briefing these issues.

This appeal is limited to the determination of Baby and Mother T.L.’s request for temporary injunction seeking to maintain the *status quo* – that is, maintain Baby T.L.’s life-sustaining care – pending a trial on the merits. Without a temporary injunction, this issue will not reach trial on the merits.

In addition, contrary to how Petitioner presents them, the facts of the case – including Baby T.L.’s alleged pain and suffering – are far from settled, agreed, or established. Mother T.L. does not believe that Baby T.L. is suffering and in pain the way Petitioner claims.¹ The legal issues are numerous and their consequences enormous for all Texans, but most especially Baby T.L. and Mother T.L. This is literally a life and death decision for them.

C. Texas jurisprudence will benefit from allowing the parties ample time to brief the issues.

Far from one that should be rushed, if this Court grants review, this case is one that should be carefully and methodically reasoned and determined, as the Court of Appeals did. This is a matter of first impression before this Court. There will be numerous *amici* that will submit briefs, presumably on both sides.

Though the parties both submitted briefing to the Second Court of Appeals, Petitioner is now asking for this Court to reverse the opinion of the Second Court of Appeals. The extraordinary opinion of the Second Court of Appeals was 148 pages long. It addressed numerous issues, cited dozens of cases and statutes, and provided as thorough an analysis on these critical denial-of-care / end-of-life cases as exists in the entire nation. Indeed, research has revealed no other opinion that comes even close to addressing these issues as this opinion did. Repeating the briefing filed in

the Second Court of Appeals will not serve Texas jurisprudence. This Court's decision is important. Nothing about this should be rushed.

D. The cases Petitioner cites do not justify expedition.

The case law cited by Petitioner is unavailing and inapposite at least for Petitioner's purposes. First, Petitioner cites *In re. Texas Dep't of Family & Protective Servs.*, 255 S.W.3d 613 (2008) (per curiam) and notes that an opinion was issued by the Court in only six days "where children were suffering ongoing harm from unwarranted separation from their parents." (Pet. Motion at 5-6.) This Court noted that it was premature to address the underlying issues – the suits affecting the parent-child relationship which "involve important, fundamental issues concerning parental rights and the State's interest in protecting children" – and that the children could be protected by means short of removing them from their mothers' custody entirely pending the resolution of those suits. *Id.* at 615. In other words, this Court – contrary to what Petitioner claims – did not determine fundamental issues of parental rights in six days. Rather, it did what it could to maintain the status quo, keeping the children with their mothers while protecting them from potential abusers and abuse, pending the determination of a trial on the merits. The stakes before this Court now could not be any greater when it comes to the parent-child relationship.

Likewise, Petitioner's cite to *Perry v. Del Rio*, 66 S.W.3d 239, 242 (2001) is not helpful to it. First, that case did not involve issues of life and death. Second, it

determined only which court had dominant jurisdiction and sent the case there for a trial on the merits. *Id.* at 242. It did not make any determinations that would preclude a trial on the merits or that would render it moot. It did not determine that a person should be euthanized involuntarily and avoid the determination of key constitutional issues of life, liberty, and due process.

E. Conclusion

In short, an expedited briefing schedule under these circumstances is unwarranted, inappropriate, and works a hardship on Respondents and *amici* who need the all of the time the Texas Rules of Appellate Procedure give for briefing to write the best, most comprehensive appellate brief they can to meet their burdens and the requirements for an appeal of this nature. Baby T.L. deserves no less; Mother T.L. deserves no less; Texans – all of whom can become victims of this law if it stands – deserve no less. Likewise, *this Court* deserves no less than comprehensive briefing of the appropriate standards and issues and to be allowed all the time it needs to render its precedent-setting decision, should it decide to consider this case.

This Court could, of course, quickly deny Petitioner’s Petition for Review and let the Court of Appeals’ decision stand. That would both give Petitioner the fast relief it seeks and preserve Baby T.L.’s life pending trial on the merits.

BASED ON THE FOREGOING, Respondents respectfully request that this Court deny Petitioner’s Motion to Expedite this appeal and the briefing schedule any

further than already exists in the Texas Rules of Appellate Procedure. Respondents further request such other and further relief to which they may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that in accordance with the Texas Rules of Appellate Procedure a true and correct copy of the foregoing has been served on Defendant's counsel via their emails as noted below and through the Court's e-filing system on August 25, 2020.

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