FILED
20-0644
9/14/2020 1:48 PM
tex-46205828
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

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 PETITION FOR REVIEW

DANIELS & TREDENNICK, LLP
Jillian L. Schumacher
State Bar No. 24090375
John F. Luman, III
Texas Bar No. 00794199
6363 Woodway, Suite 700
Houston, Texas 77057
Tel: 713-917-0024
jillian.schumacher@dtlawyers.com
luman@dtlawyers.com

THE LAW OFFICE OF EMILY KEBODEAUX COOK
Emily Cook
State Bar No. 24092613
4500 Bissonnet
Bellaire, Texas 77401
Tel: 281-622-7268
emily@emilycook.org

THE LAW OFFICE OF KASSI DEE PATRICK MARKS
Kassi Dee Patrick Marks
2101 Carnation Court
Garland, Texas 75040
Tel: 214-668-2443
kassi.marks@gmail.com

ATTORNEYS FOR RESPONDENTS

Table of Contents

Index of Authorities

CASES

STATUTES

Issues Presented

1. When a private hospital's ethics committee unilaterally decides to forcibly remove life-sustaining treatment pursuant to Texas Health and Safety Code section 166.046, is the hospital a state actor?

2. Should the Court of Appeals' decision be affirmed under the alternative ground for affirmance on the basis that Petitioner violated the substantive due process of rights of Mother and T.L.? (Unbriefed)

Statement of Facts

T.L. is a toddler whose Mother ("Mother") is her surrogate medical decisionmaker (collectively, "Respondents"). *See* CR 7. T.L. currently is receiving life-sustaining treatment from Cook Children's Medical Center ("Petitioner"). *Id.* Petitioner contends that T.L.'s condition is futile, she is in pain, and should be allowed to die.[1] *Petition*, at 5. Mother acknowledges that certain medical procedures, such as IV insertions, can cause T.L. pain, but T.L. is not in agony. 2 RR 292–93. T.L. is deeply loved by her family and experiences joy living. 2 RR 19–25.

On Thursday, October 31, 2019, at 11:45 p.m., Petitioner gave Mother notice that it intended to remove T.L.'s life-sustaining treatment pursuant to §166.046, which would cause her death. 2 RR 51, 88; Exh. 4.

To save her daughter's life, Mother filed suit on behalf of T.L. under 42 U.S.C. §1983 and the Uniform Declaratory Judgments Act, alleging violations of procedural and substantive due process. CR 6–24. Mother obtained a temporary restraining order against Petitioner on November 10. CR 25–27. The trial court denied Mother's request for a temporary injunction. CR 307. Mother appealed, and

[1] T.L.'s current medical condition is irrelevant to whether Petitioner is a state actor. The temporary-injunction hearing occurred in December 2019 and the testimony is dated. Time has shown that the medical testimony about her condition and prognosis was not entirely accurate. For example, Dr. Jay Duncan testified that T.L. would not survive for five more months. 2 RR 143:2-5.

the Second Court of Appeals reversed the trial court's denial of Mother's request for a temporary injunction. *See T.L. v. Cook Children's Medical Ctr.*, No. 02-20-00002-CV, 2020 WL 4260417, at *7 (Tex. App.— Fort Worth, Jul. 24, 2020, pet. filed) ("Opinion").

Petitioner seeks review of the Opinion. Respondents respectfully request that this Court deny Petitioner's Petition for Review ("Petition").

Reasons to Deny Review

I. The Opinion relates to a probable right to relief.

The Court of Appeals held that Respondents had shown a probable right to relief on their claims that Texans are entitled to procedural due process protections when the ethics committee of a private Texas hospital meets and decides to forcibly remove the patient's life-sustaining treatment. *Opinion*, at *61. Regardless of how the dissent characterizes the Opinion, the Opinion states that it is not a final and binding decision on Mother's claims. *See id.*

Because T.L. will die without a temporary injunction, causing Respondents to suffer a permanent, irreparable harm that cannot be remedied, a temporary injunction is necessary to allow a meaningful trial on the merits. Further, allowing for a full trial on the merits will put both parties in a better position to urge their positions before this Court and this Court will be in a better place to address this sensitive issue.

II. The Opinion is limited and it does not conflict with Texas or federal law.

As explained below, the Opinion does not alter the landscape of Texas jurisprudence nor does it conflict with federal caselaw.

Petitioner is correct that the Court of Appeals did not identify any State power used to direct, compel, or affect the hospital's decisions. *See Petition*, at 2. However, there are three separate tests for state action. The Opinion's holding falls under the public-function test, which is *distinct* from the test relating to compulsion.

Analyzed in the proper context, the Opinion does not conflict with any caselaw.

Summary of the Argument

The Court of Appeals did not declare any provision of Texas law unconstitutional. It held that Respondents met the elements for a temporary injunction by establishing a probable right to relief on their claims that Petitioner violated their rights to procedural due process of law as well as irreparable injury from the failure to grant a temporary injunction pending trial on the merits.

Contrary to the tone of the Petition, the Opinion does not address the ultimate outcome of the ethics committee meeting, but addresses Respondents' claim that they deserve due process protections throughout the procedure. Petitioner's discussion of the burdens on the hospital relate to the outcome of the ethics meeting. Petitioner never explains why it cannot provide due process.

In addressing Respondents' probable right to relief on their procedural due process claims, the Court of Appeals did not expand the state-action doctrine. The Opinion does not conflict with any federal or state law. The public-function test turns on the history of the way a specific area has been regulated. The Opinion held that Petitioner is a state actor under this test. It cited extensive law demonstrating that the State has traditionally and exclusively both regulated the lawful means of death and dying and has been the only entity to supervene a parent's right to make medical treatment decisions.

To conclude the Court of Appeals incorrectly determined Petitioner is performing a public function when it forcibly withdraws life-sustaining treatment that causes death, this Court must find that the State has not traditionally or exclusively defined the lawful means of death and dying. Petitioner does not make any argument that private entities historically have performed this function. Petitioner also acknowledges that when an entity performs a public function, the entity is a state actor. Texas Health and Safety Code §166.046 is a unique statute in that it authorizes a private entity to forcibly remove life-sustaining treatment causing death.

Most of the precedent Petitioner points to as holding that private actors are not state actors, when exercising their own judgment in private settings, is analyzed under a separate test. That test asks whether the State has compelled a private entity to act in a particular way. None of the private actions Petitioner contends would become state actions are analogous.

The Opinion allows Texans whose lives are at stake the opportunity to challenge the constitutionality of the statue that allows the hospital to remove medical treatment they need to survive without affording the patient basic procedural due process rights. T.L. deserves access to the courthouse.

This Court should deny review.

Analysis and Argument

I. The Court of Appeals' holding is principled and limited.

The Court of Appeals' holding is principled, limited, and narrow. In the context of reviewing a denial of a temporary injunction to maintain T.L.'s life-sustaining treatment, the Court held that Respondents had "pleaded a probable right to relief that under the flexible standard of *Matthews v. Eldridge*, the committee review process established by Section 166.046…did not provide sufficient procedural due process." *Opinion*, at *60. It further determined that "[i]f CCMC were allowed to withdraw life-sustaining treatment from T.L. before a trial on the

merits can be had, Mother and T.L. will suffer permanent, irreparable damage." *Id.* at *61.

The Opinion does not require Petitioner to perform any services, but precludes Petitioner from withdrawing the effective life-sustaining treatment T.L. is already being provided, maintaining the *status quo*, as withdrawal would result in T.L.'s death before a trial on the merits could be had. *See Opinion*, at *61.

Notably, Petitioner does not assert as an issue for the Court that §166.046 comports with procedural due process requirements. Instead, Petitioner's position is that although §166.046 sets up a quasi-judicial procedure to determine whether it will forcibly remove life-sustaining treatment from patients, Petitioner is not required to treat patients fairly because it is a private entity. *See Petition*, at 2–3.

A. The Opinion does not force Petitioner to take any action.

Petitioner argues in its second issue that the Opinion creates new rights to medical treatment. *See Petition*, at 19. It does not. While Petitioner's parade of horribles is dramatic, it does not attack the Opinion's holding that Respondents met their burden to obtain a temporary injunction. *See Opinion*, at *61.

Respondents argued in the trial court and on appeal that they have a probable right to relief on their §1983 claims, which are based on substantive due process and procedural due process. *See* CR 6–24. Petitioner's arguments about being "forced" to provide medical care address only the substantive due process claims. By

contrast, the Court of Appeals focused on procedural due process. *See Opinion*, at *61. Petitioner has no counterargument that Respondents have shown a probable right to relief based Petitioner's violation of their procedural due process rights.

Procedural due process protections do not entitle patients to any particular outcome or result. *See Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976) (describing procedural due process as providing for "such procedural protections as the particular situation demands") (internal citations omitted). None of Petitioner's arguments explain the way in which requiring the ethics committee process to comply with the requirements of procedural due process imposes an untenable burden on the hospital, which is what the Opinion addressed.

Petitioner's only challenge to the procedural due process analysis in the Opinion is the conclusion that Petitioner is a state actor. Petitioner's argument that it is being "forced" to provide care does not relate to whether its action is fairly attributable to the government. Because this argument does not attack the holding of the Opinion, it is not a reason to grant review.

B. The Opinion does not expand state action.

Petitioner claims that the Court of Appeals' Opinion attributes state action to Texans who (1) stand their ground, (2) act under the Good Samaritan law, (3) use corporal punishment, and Texas doctors who (1) determine which patients receive kidney transplants, and (2) fail to immunize children. *See Petition*, at 18–19. The

reasons the Court of Appeals held that a hospital acting pursuant to §166.046 is a state actor do not impact other statutes. Under the Opinion, Petitioner is a state actor because §166.046 delegates to the hospital the decision to determine whether to take an affirmative action to forcibly alter a patient's status from living to dying. *See Opinion*, at *14–53.

None of the statutes that Petitioner contends are affected by the Court of Appeals' Opinion are state action under the Opinion because they fall into two categories. The first is a category of cases where the Legislature has made a specific determination about the circumstances under which an individual may protect herself from another when the individual fears for her life. In those cases, the State is immunizing an individual from liability when the individual is under attack from another.

The second category of statutes immunizes individuals either from failing to take affirmative action that aids another or immunizing them when they do render aid in an attempt to save a life. The difference between these statutes and §166.046 is that they do not involve a premeditated affirmative decision by a group of people or private entity to remove treatment that will cause a specific death. Accordingly, the Opinion does not extend into these other areas.

II. Petitioner is a state actor when it makes the decision to forcibly end a patient's life over the wishes of the patient.

By granting hospitals the authority to remove life-sustaining treatment against the will of a child's medical decisionmaker under §166.046, the statute transfers from the government to the ethics committee the right to take an affirmative action that will cause the death of a child. Because the statute transfers this authority, which traditionally and exclusively has been exercised by the State, the hospital is performing a public function for two reasons.

First, §166.046 delegates to Petitioner the State's police power to regulate what is, and is not, a lawful means or process of dying. Second, the statute delegates to Petitioner, the sovereign power of the State, under the doctrine of *parens patriae*, to supervene the fundamental right of the parent to determine whether a child will receive life-sustaining treatment.

A. United States jurisprudence has developed several distinct tests to determine when an action is fairly attributable to the State.

To state a claim under §1983, a plaintiff must allege a violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250, 2255, 101 L.Ed.2d 40 (1988). If an actor

satisfies the state-action requirement of the Fourteenth Amendment, the actor is acting under the color of state law. *Id.* at 49, 108 S.Ct. at 2255.

A private entity can qualify as a state actor when (1) the private entity performs a traditional, exclusive public function; (2) the government compels the private entity to take a particular action; or (3) when the government acts jointly with a private entity. *Manhattan Comm. Access Corp. v. Halleck*, 139 S.Ct. 1921, 1928, 204 L.Ed.2d 405 (2019). In the first instance, when the private entity performs a traditional, exclusive public function, the private entity must exercise power "traditionally exclusively reserved to the State." *Id.* The tests laid out in *Halleck* are laid out in the disjunctive. There are three different tests to determine when an action is fairly attributable to the State. *See id.*

Throughout its brief, Petitioner cites caselaw holding that an action is not attributable to the State under *Halleck's* second and third tests in its attack of the Opinion's holding that Petitioner is a state actor under the first test. Because these tests have different requirements, the context in which a court is making a holding is crucial. An actor that performs a traditional and exclusive public function is still a state actor even if the government has not compelled the private entity to take a particular action. *See id.*

B. Compliance with §166.046 is not voluntary, but, even if it were, the voluntary nature of the statute would not change the state-action analysis.

Petitioner contends that compliance with §166.046 is voluntary. *See Petition*, at 12–13. Petitioner is wrong because, without §166.046, the removal of life-sustaining treatment can be criminal, medical malpractice, or patient abandonment. *See Opinion*, at *31–34; *see also, e.g. Gross v. Burt,* 149 S.W.3d 213, 222 (Tex. App.—Fort Worth 2004, pet. denied).

But, even if compliance with §166.046 were voluntary, when it invoked §166.046, the hospital still would voluntarily perform a public function. The reason for this is that when a hospital acts pursuant to §166.046, the hospital prevents the patient from obtaining a legal remedy, in tort, contract, or under criminal law, to challenge its decision. *See* TEX. HEALTH & SAFETY CODE §§166.044-046. Instead of allowing the judicial system to make the ultimate decision about the hospital's duty, the statute places that decision exclusively in the hands of an ethics committee. *See id.* § 166.046.

Petitioner argues that this effect is "narrow" as it claims § 166.046 provides only a safe harbor. *Petition*, at 13. Even were that true, the effect is deep. The hospital becomes the court of law, supposedly weighing and balancing the interests of the patient, the hospital, and medical professionals. *See id.* §166.046. But the only way to assure those interests are truly balanced is to require strict adherence to

procedural due process. Section 166.046 does not comport with due process. Petitioner does not argue otherwise.

C. Section 166.046 delegates to the hospital the State's traditional and exclusive power to determine a lawful means of death.

The Court of Appeals held that the State has traditionally and exclusively determined the lawful means of death. Historically, the government, and only the government, has set the boundaries on which actions constitute lawful killing. *See Opinion*, at *36–48 (noting that the government, and exclusively the government, has made determinations about the lawfulness of homicide, suicide, wrongful death, and mercy killing, among other decisions relating to the lawful process of dying).

Petitioner does not attack any of the Court of Appeals' analysis or suggest that this function has ever been performed by private actors. Petitioner's only discussion of the State's traditional and exclusive power to determine a lawful means of death is the erroneous argument that other Texans must be state actors. As discussed above, the Opinion does not have this effect.

D. Section 166.046 is not merely a "safe harbor," but to the extent it could be considered a safe harbor, the nature of section 166.046 is different from other affirmative defenses.

Petitioner contends that creating a "safe harbor" does not delegate regulatory authority to private hospitals but merely withdraws the liability for private acts in a private setting. *See Petition*, at 17. This is incorrect.

1. *Section 166.046 grants hospitals authority they do not have without the statute.*

Petitioner's central arguments, (1) that § 166.046 is merely a "safe harbor" provision granting it immunity for an act it already had the authority to do and (2) that the Court of Appeals' decision "forces" it to provide care, are inherently inconsistent. If §166.046 is merely a "safe harbor," providing only immunity to the hospital, then the Opinion cannot also have the effect of "forcing" Petitioner to provide medical care.

Petitioner argues here—as it did in the Court of Appeals—that §166.051 gives it the right to withdraw care. The Court disagreed for four reasons. *See Opinion*, at *31-34. In short, the Court observed that the §166.051 does not grant such a right and the common law of patient abandonment prohibits the removal of life-sustaining treatment against a patient's wishes. *Id*.; *see also, e.g. Gross,* 149 S.W.3d at 222. Petitioner has the right to withdraw life-sustaining treatment against a patient or their surrogate's will only because of §166.046.

2. *Even if §166.046 were a safe harbor, entities acting pursuant to the statute are state actors.*

Even if §166.046 were a safe harbor, Petitioner's characterization of the Court of Appeals' basis for finding state action is incorrect. The mere act of insulating an

action from liability does not create state action. But, under § 166.046, the Legislature delegated a function traditionally exclusively performed by the State.

Petitioner cites several cases that it contends "make clear" that when a hospital exercises medical judgment according to a statutory framework, the hospital is not a state actor. *See Petition*, at 14. The cases Petitioner cites do not hold that a hospital exercising medical judgment according to statutory framework cannot perform a public function.

First, several of the provisions of these cases to which Petitioner cites do not address the public-function test. Second, in the cases involving the public-function test, the history and the background of the statutes are different, which leads to a different result under the public-function test. None of Petitioner's cases involve a procedure that entirely supplants the court system and immunizes the medical decision to take affirmative steps that will cause death.

a. Discussion of portions of cases that do not discuss public function

In its citations, Petitioner blends several distinct lines of cases relating to different tests for state action.

The statement in Petitioner's brief from *Flagg Brothers, Inc. v. Brooks*, that the denial of judicial relief does not convert private conduct into a public act was made in the context of assessing whether there was state action on the basis that the State compelled the private entity to take a particular action. *See Petition*, at 14; 436

U.S. 149, 165, 98 S.Ct. 1729, 1738, 56 L.Ed.2d 185 (1978). The Court explained that the denial of judicial relief is not considered "encouragement" to take any particular act. *See id.* Whether a statute encourages a particular action is irrelevant to the public-function test.

Similarly, in *Goss v. Memorial Hospital System*, the Court was not considering the public-function test, but instead analyzing whether the statute compelled private action. 789 F.2d 353, 356 (5th Cir. 1986). Likewise, *S.P. v. City of Takoma Park, Md Takoma Park* does not provide any analysis under the public-function test. 134 F.3d 260, 269 n.7 (4th Cir. 1998) (noting simply that the court agreed with the district court's public-function analysis).

b. Petitioner's cases discussing the public-function test

The public-function analysis in *White v. Scrivner* and *Bass v. Parkwood Hospital* turns on historical facts relating to the facts of those cases that are not relevant here. *See White v. Scrivner*, 594 F.2d 140, 143 (5th Cir. 1979); *Bass v. Parkwood Hosp.*, 180 F.3d 234, 243 (5th Cir. 1999). In *White*, having rejected the public-function test based on the history, the Court's analysis of the statute insulating merchants from liability relates to the compulsion test. *See White*, 594 F.2d at 143. Neither case involved the power to make decisions about taking affirmative steps to cause death.

In *Blum v. Yaretsky*, the Court held that the day-to-day decisions of nursing

homes are not the kind of decisions that have traditionally and exclusively been made by the sovereign. *See* 457 U.S. 991, 1011, 102 S.Ct. 2777, 2789–90, 73 L.Ed.2d 534 (1982). Although *Blum* discusses medical decisions, it does not address medical decisions to take affirmative steps to end life (and against the patient's will without due process). While the State has traditionally and exclusively regulated the narrow area of decisions regarding affirmative steps to end life, it has not regulated day to day medical decisions.

Because the Opinion turns on the content and nature of the statute at issue, the Opinion is compatible with the cases Petitioner cites. *See Opinion*, at *17–48.

E. Section 166.046 delegates to the hospital the State's traditional and exclusive power to act as *parens patriae*.

The Opinion explicates the reasons why deciding to withdraw life-sustaining treatment from a child, pursuant to §166.046, is traditionally and exclusively a public function. *See* Opinion at *17–28. The State, traditionally and exclusively, has had the ability, under the doctrine of *parens patraie*, to supervene a parent's decision regarding the medical care of a child. *See id.*

1. The State's power to act as parents patriae

The only medical decisionmakers for children are their parents and the government. *See Schall v. Martin*, 467 U.S. 253, 265, 104 S.Ct. 2403, 2410 (1984). The parents' decision is subject only to the *parens patriae* authority of the State to

"supervene" their refusal to consent to treatment recommended for their child's welfare. *See Miller ex rel. Miller v. HCA, Inc.*, 118 S.W.3d 758, 766–67 (Tex. 2003).

The State has historically and exclusively been the only entity to supervene a parent's right to determine the medical care of her child. *See Opinion*, at *17–28. An example of the government's exercise of this power includes creating a process whereby a doctor, after making appropriate reports to a state agency, has the authority to take measures to save the life of a child, including keeping the child in the hospital and providing unwanted medical care. *See id.* at *21–22.

Further, the Court of Appeals notes that consistent with its exclusive and traditional regulation of actors seeking to deny life-sustaining treatment to children, the Legislature subjected the TADA to the Child Abuse Prevention and Treatment Act. *See id.* at *22–26. The Child Abuse Prevention and Treatment Act requires state intervention through Child Protective Services when parents withhold consent to life-sustaining treatment. *See id.* at *22. As the Opinion demonstrates, the State has traditionally and exclusively been the only entity to supervene a parent's right to make decisions regarding the provision of life-sustaining treatment to a child.

2. Parens patriae applies to this case.

Petitioner contends that the Court of Appeals wrongly decided that the doctrine of *parens patriae* applies to this situation because, according to Petitioner, the doctrine applies only when the State dictates a patient's treatment. *Petition*, at

16. Petitioner contends that in this instance, it is not dictating T.L's treatment because it is not restricting T.L.'s ability to seek treatment, but instead is limiting its own services. *See id.* This argument is disingenuous.

a. Petitioner is dictating T.L.'s treatment.

Petitioner began treating T.L., and as a direct consequence of Petitioner's inability to treat T.L., and refusal to perform procedures (such as a tracheostomy) that other facilities have said are necessary to consider T.L. for transfer, T.L. has no other immediate treatment option. *See* 2 RR 198–99; 2 RR 220–21. Accordingly, though she is in a private facility, because of the condition she is in, Petitioner's refusal to provide care that would allow her transfer, and its request to withdraw life-sustaining treatment, all dictate T.L.'s treatment.[2]

b. Petitioner is a state actor under the doctrine of parens patriae.

In *West v. Atkins*, the Supreme Court of the United States noted that inmates rely on prison authorities to treat their medical needs and this reliance created a constitutional obligation to the State to provide adequate medical care. *See* 487 U.S. 42, 54, 108 S.Ct. 2250, 2258, 101 L.Ed.2d 40 (1988). In *West*, the court held that because the State employed private doctors, authorizing and obliging them to treat inmates, the doctors did so clothed with the authority of state law. *Id.* 487 U.S. at

[2] Dr. Duncan testified that he would not sign discharge orders for T.L. to go to another facility that had a lower level of care, yet he also testified "Yes" when asked if he believed "the best thing for T[] is to die." 2 RR 98:5-23.

55, 108 S.Ct. at 2259. Based in part on this precedent, the Opinion holds that if the State is exclusively responsible for the medical well-being of an individual patient, then the treatment decisions for that patient constitute state action. *See Opinion*, at *15.

Petitioner is a state actor in the same way the private physician in *West* is a state actor because Petitioner contracts with the State of Texas to provide indigent care to Texas's medically fragile children under the Medicaid Star Kids Program, a special subset of Medicaid beneficiaries, who are further limited in terms of options due to their care needs. 2 R.R. 224:8-12. Further, once under Petitioner's care, T.L. ended up in a condition where she could not readily receive other care, and with even more limited options, as Petitioner's own briefing emphasizes. *See Petition*, at 16.

Because of T.L.'s condition, the way T.L. has been treated (and left untreated) by Petitioner, and Petitioner's efforts to supervene Mother's decision to continue life-sustaining treatment, Petitioner is dictating T.L.'s treatment. Its action is therefore fairly attributable to the State because supervening a parent's right to make medical treatment decisions for a child has been traditionally and exclusively a public function.

Conclusion

The Opinion articulates two reasons why Petitioner's action is fairly attributable to the State. Rather than attack the analysis, Petitioner's central

arguments are that (1) it should not have to provide care it does not want to provide and (2) the Opinion will disrupt the landscape of Texas jurisprudence.

Petitioner's first complaint is misguided. The Opinion does not address the ultimate outcome of ethics committee meetings. It addresses the process patients are due. Mother and T.L. deserve due process protections because Petitioner seeks to exercise the power to forever take away Mother's daughter.

Petitioner's second argument is inaccurate because the decisions made pursuant to § 166.046 are unlike any others. This Court should deny review and allow trial on the merits.

Prayer

Respondents respectfully request that this Court deny review.

Respectfully submitted,

DANIELS & TREDENNICK, PLLC

/s/ Jillian L. Schumacher
Jillian L. Schumacher
Texas Bar No. 24090375
jillian@dtlawyers.com
John F. Luman, III
Texas Bar No. 00794199
luman@dtlawyers.com
6363 Woodway Drive, Suite 700
Houston, Texas 77057
T: (713) 917-0024
F: (713) 917-0026

The Law Office of Emily Kebodeaux Cook
/s/ Emily K. Cook
Emily Cook
Texas State Bar No. 24092613
emily@emilycook.org
4500 Bissonnet
Bellaire, TX 77401
Tel. 281-622-7268

The Law Office of Kassi Dee Patrick Marks
/s/ Kassi Dee Patrick Marks
Kassi Dee Patrick Marks
State Bar No. 24034550
kassi.marks@gmail.com
2101 Carnation Court
Garland, TX 75040
Tel. 214-668-2443

Attorneys for Respondents,
T.L. & Mother

CERTIFICATE OF COMPLIANCE

Based on a word count run using Word in Microsoft Office 365, this brief contains 4,500 words, exclusive of the items listed in rule 9.4(i)(1) of the Texas Rules of Appellate Procedure.

/s/ Jillian L. Schumacher

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 September 14, 2020.

Thomas M. Melsheimer
tmelsheimer@winston.com
Stephen H. Stodghill
sstodghill@winston.com
Geoffrey S. Harper
gharper@winston.com
John Michael Gaddis
mgaddis@winston.com
WINSTON & STRAWN LLP
2121 N. Pearl St, Suite 900
Dallas, Texas 75201
Telephone: (214) 453-6500
Facsimile: (214) 453-6400

Wallace B. Jefferson
wjefferson@adjtlaw.com
Amy Warr
awarr@adjtlaw.com
Nicholas Bacarisse
nbacarisse@adjtlaw.com
ALEXANDER DUBOSE & JEFFERSON LLP
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562
Telephone: (512) 482-9300
Facsimile: (512) 482-9303

Attorneys for Petitioner Cook Children's Medical Center

/s/ Jillian L. Schumacher

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below:

Sara Bean on behalf of Jillian Schumacher
Bar No. 24090375
sara@dtlawyers.com
Envelope ID: 46205828
Status as of 9/14/2020 1:54 PM CST

Associated Case Party: Cook Children's Medical Center

Name	BarNumber	Email	TimestampSubmitted	Status
Amy Warr		awarr@adjtlaw.com	9/14/2020 1:48:35 PM	SENT
Nicholas Bacarisse		nbacarisse@adjtlaw.com	9/14/2020 1:48:35 PM	SENT
Geoffrey Harper	795408	gharper@winston.com	9/14/2020 1:48:35 PM	SENT
Steven Hall Stodghill	19261100	sstodghill@winston.com	9/14/2020 1:48:35 PM	SENT
Thomas M. Melsheimer	13922550	tmelsheimer@winston.com	9/14/2020 1:48:35 PM	SENT
John Gaddis	24069747	mgaddis@winston.com	9/14/2020 1:48:35 PM	SENT
Wallace B.Jefferson		wjefferson@adjtlaw.com	9/14/2020 1:48:35 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Don Cruse		don.cruse@texasappellate.com	9/14/2020 1:48:35 PM	SENT
Cathi Trullender		ctrullender@adjtlaw.com	9/14/2020 1:48:35 PM	SENT
Sara Bean		sara@dtlawyers.com	9/14/2020 1:48:35 PM	SENT

Associated Case Party: T. L., Mother on Behalf of T.L., a Minor

Name	BarNumber	Email	TimestampSubmitted	Status
Kassi Dee Patrick Marks	24034550	kassi.marks@gmail.com	9/14/2020 1:48:35 PM	SENT
Jillian Schumacher	24090375	jill@dtlawyers.com	9/14/2020 1:48:35 PM	SENT
John Francis Luman	794199	luman@dtlawyers.com	9/14/2020 1:48:35 PM	SENT
Emily Cook		emily@emilycook.org	9/14/2020 1:48:35 PM	SENT