

No. 02-_____

**IN THE SECOND COURT OF APPEALS
FORT WORTH, TEXAS**

T.H. _____, as the mother of **P.S.** _____ and
J.S. _____, as the Father of **P.S.** _____ v. **COOK
CHILDREN'S MEDICAL CENTER**

Original Proceeding from Cause No. 017-303367-1
in the 17th Judicial District Court of Tarrant County, Texas
Honorable Melody Wilkinson, Judge Presiding

**RELATOR COOK CHILDREN'S MEDICAL CENTER'S
PETITION FOR WRIT OF MANDAMUS**

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EXPEDITED CONSIDERATION REQUESTED

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STATEMENT OF THE CASE

Cause No. 017-303367-18 is a petition for injunctive relief filed by Plaintiffs pursuant to Chapter 166 of the Texas Health and Safety Code pending in the 17th Judicial District Court of Tarrant County before the Honorable Melody Wilkinson. This petition for writ of mandamus seeks to require Judge Wilkinson to vacate her order purporting to extend a temporary restraining order initially entered by the trial court on October 1, 2018. Plaintiffs sought and obtained a temporary restraining order on October 1, 2018, enjoining Cook Children’s Medical Center from removing mechanical ventilation from P.S. pending a hearing on Plaintiffs’ application for temporary injunction (the “Initial TRO”) (App. Ex. “B”). The order set the hearing on the application for temporary injunction for October 5, 2018. (Id.). The Initial TRO expired, by its express terms, at the earlier of 1:20 p.m., October 15, 2018, or following the entry of an order after the October 5, 2018 temporary injunction hearing. (Id.). The court held a hearing on Plaintiffs’ application for temporary injunction on October 10, 2018 at 1:30 p.m.¹ At the conclusion of the evidence the trial court found that Plaintiffs had not met their burden to establish any right to injunctive relief and pronounced from the bench that she was denying the Plaintiffs’ application for temporary injunction; that, if an order was presented to her reflecting her ruling, she would execute that

¹ The trial court continued the October 5, 2018 hearing to October 10, 2018. (App. Ex. “C”).

order at 1:15 p.m. on October 15, 2018 (five minutes before the expiration of the Initial TRO), or if no order was presented to her for execution, the Initial TRO would expire by its terms at 1:20 pm. (*See* partial RR at p.p.6-8; App. Ex. “H”).² Both the Relator and the Attorney Ad Litem³ appointed by the trial court to represent the interests of **P.S.** at the hearing submitted for the court’s execution an order denying the Plaintiffs’ temporary injunction and dissolving the Initial TRO. (App. Ex’s “E”; “F”). At 11:51 a.m. on October 15, 2018, the Plaintiffs filed a Motion Requesting Extension of October 1, 2018 Temporary Restraining Order. The Court entered an Order granting this Motion and purporting to extend the Initial TRO until Monday, October 22, 2018 at 6:00 pm. (the “TRO Extension”). (App. Ex. “A”). This Order was executed at 7:45 p.m. on October 15, 2018, over 6 hours after the Initial TRO dissolved. (*Id.*).

² Relator has requested transcripts of the hearings applicable in this case and of the Court’s Record and will supplement the record with this information when it is received. However, we have obtained a partial copy of the record containing the court’s pronouncement. In light of the time sensitive nature of this request, this petition is being filed in advance of Relator’s receipt of the entire record. Nevertheless, considering the fact the trial court entered a facially invalid order, mandamus will lie even in the absence of the entire Reporter’s Record and Court Record. *See* App. Ex’s “A” and “B”.

³ The trial court appointed David L. Cook pursuant to Section 107 of the Family Code to represent the interests of **P.S.** (App. Ex. “D”). The court had no authority to make such an appointment, but that issue is not before this Court.

STATEMENT OF JURISDICTION

While a grant or denial of a temporary restraining order is generally not appealable, *see Del Valle Indep. Sch. Dist. v. Lopez*, 845 S.W.2d 808, 809 (Tex. 1992), mandamus relief is available under circumstances where, as here, its issuance is void or otherwise procedurally defective. *In re Office of the AG*, 257 S.W.3d 695, 698 (Tex. 2008); *see also In re 2500 W. Loop, Inc.*, No. 14-18-00770-CV, 2018 Tex. App. LEXIS 7735, at *5-6 (App.—Houston [14th Dist.] Sep. 21, 2018)(temporary restraining order issued in violation of the time limitations in Rule 680 are void and subject to mandamus relief); *In re Walkup*, 122 S.W.3d 215, 216 (Tex. App.—Houston [1st Dist.] 2003)(orig. proceeding)(mandamus relief available if a trial court purports to extend a temporary restraining order that has dissolved by its terms).

For the reasons addressed below, Relator requests expedited consideration of this request for mandamus relief.

ISSUE PRESENTED

The issue presented on mandamus is whether the trial court had authority to extend the Initial TRO, despite the fact that it had expired by its terms prior to the court's issuance of the TRO Extension, and after the parties had conducted an evidentiary hearing on the Plaintiffs' request for temporary injunction and found

that the Plaintiffs had not carried their burden to establish their right to injunctive relief.

STATEMENT OF FACTS

Plaintiffs are the mother and father of **P.S.**, a 9-year-old girl who is presently in the Pediatric Intensive Care Unit at Cook Children's Medical Center, where she has been since Tuesday, September 25, 2018. **P.S.** arrived at Cook unconscious and suffering from cardiac arrest. Prior to her arrival, she had received an hour of CPR at home and in the ambulance on the way to the Hospital. After arriving in Cook's Emergency Department, physicians and nurses were able to revive her heartbeat, but they were unsuccessful in resuscitating her breathing. **P.S.**'s breathing is currently being maintained through artificial means with the use of a mechanical ventilator. Unfortunately, **P.S.** suffered a complete and irreversible loss of her brain function due to her brain being without oxygen for over an hour. Tragically, it was also discovered that **P.S.**'s cardiopulmonary arrest was caused by the growth of a very large tumor in her chest that shut off her circulatory system.

As was exhaustively briefed in the trial court, and conclusively established by the evidence at the hearing on the Plaintiffs' application for temporary injunction, under Texas law a person is determined to be dead when they have suffered an irreversible loss of all brain function. As is standard medical practice,

Cook conducted a brain death exam on **P.S.** approximately 24 hours after she was admitted. The results were conclusive and showed zero brain activity or function, confirming **P.S.** is dead according to neurologic criteria. A pediatric neurologist also performed an electroencephalogram (EEG), which also showed no electrical activity in her brain.

Per Cook protocol and national pediatric medical standards, Cook was in the process of performing a second brain death exam with a different physician to again confirm her brain death and complete the administrative act of declaring **P.S.** deceased. Given that the circumstances were understandably upsetting for **P.S.'s** family, and because Cook empathized with their situation and always prefers to collaborate with families to serve the best interests of its patients, Cook agreed to delay the second test for four days, until October 1, 2018, to allow the family time to better understand these heartbreaking developments, as well as to provide the family an opportunity to explore transferring **P.S.** to another facility as they had requested. In fact, Cook undertook an exhaustive search of facilities to assist the family in trying to locate another facility that would accept **P.S.**, but those facilities refused because there is nothing any health care provider can do for her.

On Monday, October 1, 2018, Plaintiffs filed this underlying action pursuant to the Advanced Directives Act, Section 166.046 of the Texas Health and Safety

Code, asking this Court to enjoin Cook from discontinuing **P.S.**'s ventilatory support and seeking additional time in which to have **P.S.** transferred to another facility. The Court issued its Initial TRO, which by its express terms expired at the earlier of 1:20 p.m., October 15, 2018, or following the entry of an order after the hearing on the Plaintiffs' application for temporary injunction. (App. Ex. "B").

The court held an evidentiary hearing on Plaintiffs' application for temporary injunction on October 10, 2018 at 1:30 p.m. At the hearing Plaintiffs failed to put forth any evidence that would support their claim for injunctive relief. To the contrary, the uncontroverted, conclusive evidence presented at the hearing established that **P.S.** suffered irreversible brain death on September 25, 2018, that there was no facility that would be willing to accept her as a patient, and there was no likelihood of this happening. The Attorney Ad Litem testified in open court and issued a written report confirming the evidence had established that **P.S.** was deceased as a matter of law, and that the Plaintiffs had not carried their burden to establish any right to injunctive relief.

At the conclusion of the evidence the trial court found the Plaintiffs failed to meet their burden to establish any right to injunctive relief and pronounced from the bench that she was denying the Plaintiffs' application for temporary injunction; that, if an order was presented to her reflecting her ruling, she would execute it at 1:15 p.m. on October 15, 2018, or if no order was presented to her for execution,

the Initial TRO would expire by its terms at 1:20 p.m. Both the Relator and the Attorney Ad Litem submitted identical proposed orders denying the Plaintiffs' temporary injunction and dissolving the Initial TRO for the court's execution.

At 11:51 a.m. on October 15, 2018, the Plaintiffs filed a last-minute "Motion Requesting Extension of October 1, 2018 Temporary Restraining Order." Rather than execute her order denying the temporary injunction as she had announced in open court, the trial court heard the Plaintiffs' last-minute motion at approximately 7 p.m. that evening, despite the fact the court had already announced its denial of the Plaintiffs' application for temporary injunction, and over 5 hours after the Initial TRO had expired by its express terms. Plaintiffs produced no evidence at this hearing. Nevertheless, the trial court entered the TRO Extension, which purports to extend the Initial TRO until Monday, October 22, 2018 at 6:00 pm. (App. Ex. "A"). This Order was executed at 7:45 p.m. October 15, 2018, over 6 hours after the Initial TRO dissolved. (Id.).

ARGUMENT

The trial court abused its discretion in granting an extension of the Initial TRO after it had expired and following a hearing on Plaintiffs' Application for Temporary Injunction and a ruling that the Plaintiffs had not met their burden for injunctive relief. As an initial matter, the TRO expired prior to the court's order purporting to extend it, and therefore the order is void on its face. Moreover, the

trial court failed to properly articulate in its order (as required under Rule 680 of the Texas Rules of Civil Procedure) any good cause for this extension. Second, there can be no legal or factual basis for extending a TRO following a hearing on the Application for Temporary Injunction in which the court expressly found that the Plaintiffs had failed to meet their burden for injunctive relief.

While the Plaintiffs' circumstances are tragic, there is no legal or equitable justification for the trial court's actions. The evidence in this case is clear and uncontroverted. **P.S.** suffered irreversible brain death on September 25, 2018. This is not an open question or an issue on which reasonable people may differ. While Plaintiffs contend that **P.S.** is alive, their contention does not make it so. And the trial court's disregard for the law and the facts in an apparent effort to accommodate Plaintiffs' inability to face this reality, regardless of how well intentioned it may be, is an abuse of discretion.

While the TRO Extension expires Monday, October 22, 2018, immediate action by this Court is necessary to vacate this order. In abusing its discretion, the trial court apparently fails to appreciate the grim reality that, by judicial fiat, it is compelling the health care providers at Cook to maintain a deceased person, whose body is deteriorating (and skin degrading), on mechanical ventilation – as has been the case for the last three weeks. There is no rational philosophical, moral, ethical, theological, or medical question about whether **P.S.** is alive. She is not. To

maintain a dead person on mechanical ventilation and insist – in fact order – that health care providers continue treating a deceased, deteriorating body is, however, medically, ethically, and morally repugnant. More importantly for this Court’s consideration, there is absolutely no legal justification for the trial court’s actions. For this reason, Cook requests this Court expedite its review of this mandamus and issue an order compelling the trial court to vacate its TRO Extension.

I. THE TRIAL COURT’S PURPORTED EXTENSION OF THE INITIAL TRO IS VOID, AS IT WAS ISSUED AFTER THE INITIAL TRO HAD EXPIRED.

As addressed in Section II, *infra*, the trial court conducted an evidentiary hearing and denied the Plaintiffs’ application for temporary injunction. The Initial TRO was dissolved as of that ruling. Nevertheless, even assuming the temporary injunction hearing did not affect the status of the Initial TRO, *by its own terms* it expired at 1:20 p.m. on October 15. (App. Ex. “B”). The trial court did not even conduct a hearing on the TRO Extension until after the Initial TRO had expired, and it did not enter a written order until 7:45 p.m. – over 6 hours later. (App. Ex. “A”). This order is void on its face, as it could not extend a TRO that was no longer in effect.

A temporary restraining order may be extended only by written order. The plaintiff may ask the trial court to extend the order by filing a motion before the order expires and showing good cause. Tex. R. Civ. P. 680; *In re Texas Nat. Res.*

Conserv. Comm'n, 85 S.W.3d 201, 203 (Tex. 2002). An oral extension is not effective. *In re Lesikar*, 899 S.W.2d 654 (Tex. 1995); *Ex parte Conway*, 419 S.W.2d 827, 828 (Tex. 1967). For example, a trial court may not orally extend a temporary restraining order at the end of a temporary injunction hearing for any period of time. *In re Edward D. Jones & Co.*, No. 03-98-00545-CV, 1999 Tex. App. LEXIS 1229 (Tex. App.—Austin February 25, 1999, original proceeding).

Plaintiffs argued at the hearing that the Initial TRO did not expire until midnight on October 15, and therefore the trial court was within its authority to extend the TRO, relying on *In re Walkup*, 122 S.W.3d 215, 216 (Tex. App.—Houston [1st Dist.] 2003)(orig. proceeding). *Walkup* does not support the Plaintiffs' argument. In *Walkup*, the TRO at issue only stated the specific *day* on which it would expire; it was silent as to what *time* on that date that it would expire. *Id.* at 216. Because no specific time was noted in that order, the court held that it expired on midnight of the date specified in the order. *Id.*

Here, the Initial TRO expressly set a date *and time* for expiration – 1:20 p.m., October 15, 2018. Rule 680 of the Texas Rules of Civil Procedure, expressly provides that a temporary restraining order, shall expire *by its terms* within such time after signing, not to exceed 14 days, as the court fixes, unless *within the time so fixed* the order, for good cause shown, is extended for a like period . . .” Tex. R. Civ. P. 680. (App. Ex. “G”). The express language of the Initial TRO is clear, as is

the express language of Rule 680. The Initial TRO expired at 1:20 p.m. on October 15, 2018. At 1:21 p.m. there was no longer a TRO for the trial court to extend. Therefore, the trial court's TRO Extension executed at 7:45 p.m. did not, and could not, extend anything. This order is void and the trial court abused its discretion by issuing it.

II. THE TRIAL COURT ABUSED ITS DISCRETION BY GRANTING THE TRO EXTENSION AFTER CONDUCTING A TEMPORARY INJUNCTION HEARING AND DETERMINING THE EVIDENCE DID NOT SUPPORT PLAINTIFFS' APPLICATION FOR INJUNCTIVE RELIEF.

Rule 680 of the Texas Rules of Civil Procedure requires that the reasons for any extension of a temporary restraining order for "good cause" be entered of record. Tex. R. Civ. P. 680. There is no good cause here. A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be had on a temporary injunction. *Cannan v. Green Oaks Apts., Ltd.*, 758 S.W.2d 753, 755 (Tex. 1988); *Texas Aeronautics Commission v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971). The parties in this case held a hearing on the Plaintiffs' Application for Temporary Injunction. There is no more status quo to preserve. Evidence was heard. Plaintiffs did not put forth any evidence that would support their claim for injunctive relief. To the contrary, the uncontroverted, conclusive evidence presented at the hearing established that **P.S.** suffered irreversible brain death on September 25, 2018, and that Plaintiffs were

not entitled to injunctive relief under Chapter 166 of the Texas Health. There is simply no legal or equitable basis for attempting to resurrect a temporary restraining order after an evidentiary hearing has determined that Plaintiffs do not have a right to injunctive relief.

The only “good cause” noted in the TRO Extension is that the Plaintiffs claim potential facilities that may be willing to accept **P.S.** “have become apparent to Plaintiffs following the October 10, 2018.” (App. Ex. “A”). As an initial matter, there is no support for this proposition. The sad reality is that there are no facilities that are willing to accept **P.S.** . She is deceased. This was already addressed at the temporary injunction hearing. Plaintiffs continue under the mistaken belief, and hope, that all they need is a little more time to find a place that will take her. None will. Relative to this Court’s inquiry, however, is the fact that Plaintiffs are not entitled to injunctive relief under Chapter 166 of the Health and Safety Code, and therefore are not entitled to an extension of a temporary restraining order that should never have been issued in the first place.

Injunctive relief under Texas Rule of Civil Procedure 680 requires evidence at the hearing on irreparable injury and probable recovery. *Prappas v. Entezami*, 2006 Tex. App. LEXIS 2157 (Tex. App.—San Antonio Mar. 22, 2006, no pet.). The applicant has the burden of production to introduce competent evidence to support a probable right and a probable injury. *True Blue Animal Rescue, Inc. v.*

Waller Cnty., No. 01-16-00967-CV, 2017 Tex. App. LEXIS 3557 (Tex. App.—Houston [1st Dist.] April 26, 2017, no pet); *Bay Fin. Sav. Bank, FSB v. Brown*, 142 S.W.3d 586 (Tex. App.—Texarkana 2004, no pet.). If the applicant does not meet that burden, then it is not entitled to any injunctive relief. *True Blue Animal Rescue, Inc.*, 2017 Tex. App. LEXIS 3557.

We have already held an evidentiary hearing. The evidence was clear, uncontroverted and conclusive. Plaintiffs failed to put forth *any* evidence to establish: (1) they have a cause of action against Cook; (2) a probable right to the relief sought; or (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). To that end, because Plaintiffs failed to present evidence that would entitle them to injunctive relief, the trial court abused its discretion by attempting to reinstate a temporary restraining order under circumstances where the evidence has been heard and found wanting.

A. Plaintiffs Do Not have a Valid Cause of Action or Probable Right of Recovery Because the Advanced Directives Act Does Not Apply and Does not Authorize the Granting of Injunctive Relief

Plaintiffs sought injunctive relief under the Advance Directives Act to require Cook to maintain **P.S.** on mechanical ventilation while they continued to look for a facility that will accept **P.S.** as a patient. The Advance Directives Act is found in Chapter 166 of the Texas Health & Safety Code and governs, among other things, the delegation of authority to make health care decisions under a

medical power of attorney and an instruction to administer, withhold, or withdraw life-sustaining treatment for patients with a terminal or irreversible condition. *See* Tex. Health & Safety Code §§ 166.001-209.

The specific relief Plaintiffs sought is under Section 166.046(g), which provides a mechanism to seek a judicial extension of the time period under the Advance Directives Act to find alternative treatment for a patient who is terminally ill or who may have an irreversible condition, when the treating physicians have determined that life-sustaining treatment is inappropriate for that patient. This Section provides:

At the request of the patient or the person responsible for the health care decisions of the patient, the appropriate district or county court shall extend the time period provided under Subsection (e) [10 days after the written decision by the hospital's ethics committee is provided to the patient or responsible person] only if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive [regarding life-sustaining treatment] will be found if the time extension is granted.

Tex. Health & Safety Code § 166.046(g). As addressed below, and as was conclusively established at the temporary injunction hearing, **P.S.** unfortunately has suffered irreversible brain death. There are no longer any treatment decisions to be made. She is no longer a patient. She is deceased. Therefore, the Advanced Directives Act is not applicable in this case. Any further treatment or continued use of mechanical ventilation for **P.S.** is not appropriate life sustaining treatment

as contemplated under this Act.⁴ The attorney ad litem recognized this fact based on the evidence at the hearing and included this in his testimony at the hearing and his report to the trial court.

Section 166.002(10) specifically defines “life-sustaining treatment” to mean, “treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die.” Tex. Health & Safety Code § 166.002(10). Because **P.S.** is brain dead, there is no care that can be provided to her that would sustain, or prolong, her life. The family does not believe this. They believe **P.S.** is alive, and with that belief they continue to hold out hope that there are facilities willing to continue treatment for **P.S.**. That was the basis for the Initial TRO and Plaintiffs’ application for temporary injunction. The evidence did not support their belief. The TRO Extension inexplicably entered by the trial court following the temporary injunction hearing does nothing more than feed Plaintiffs’ continuing efforts to delay the inevitable, without evidence or legal justification. The trial court is tasked with following the law. The court did not do so and therefore abused its discretion.

⁴ The 96th Judicial District Court of Tarrant County, in the case of *Munoz, et. al. v. John Peter Smith Hosp., et.al.*, Cause No: 096-270080-14, has expressly held that the provisions of Section 166.049 of the Advanced Directives Act, do not apply to a deceased person under the determination standards set forth in Section 671.001 of the Texas Health and Safety Code.

B. P.S. Suffered Irreversible Death of her Whole Brain

What constitutes “death” involves issues of both medical and legal concern. The medical and legal communities have attempted to define death in a manner that takes into consideration these underlying medical, legal, and societal concerns that necessarily impact that definition. *See Capron & Kass, A Statutory Definition of the Standards for Determining Human Death: An Appraisal and a Proposal*, 121 U. Pa. L. Rev. 87, 92-93 (1972). The Texas legislature has adopted a definition of death and has turned to physicians for the criteria by which the standard is met. *Id.*

Texas has enacted Section 671.001 of the Texas Health and Safety Code, entitled “Standard Used in Determining Death,” which provides the legal definition of death under Texas law, and the standards applied by physicians, based on their medical judgment, in determining when death has occurred. *Tarrant County v. Dobbin*, 919 S.W.2d 877, 883 (Tex. App.--Fort Worth 1996, writ denied); *see also Grotti v. State*, 273 S.W.3d 273, 282 (Tex. Crim. App. 2008). That section provides, in pertinent part:

- (a) A person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person’s spontaneous respiratory and circulatory functions.
- (b) If artificial means of support preclude a determination that a person’s spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, there is irreversible cessation

of all spontaneous brain function. Death occurs when the relevant functions cease.

- (c) Death must be pronounced before artificial means of supporting a person's respiratory and circulatory functions are terminated.

Tex. Health & Safety Code § 671.001. This provision is based on the language of the Uniform Determination of Death Act, which has been adopted by all 50 states and the District of Columbia. This Act provides two circumstances under which an individual is considered legally dead:

1. Section 671.001(a): where there is an irreversible cessation of circulatory and respiratory functions ("cardiopulmonary death"); or
2. Section 671.001(b): if cardiopulmonary function is being maintained by mechanical means, where there is an irreversible cessation of all functions of the entire brain ("brain death").

Id; *Grotti v. State*, 209 S.W.3d 747, 760 (Tex. App.--Fort Worth 2006), *aff'd*, 273 S.W.3d 273, 282 (Tex. Crim. App. 2008).

Historically, the most common type of death is cardiopulmonary death, in which the heart stops beating and/or the patient is no longer breathing, after which brain death shortly follows. However, it is also universally recognized, medically and legally, that where a person suffers a complete loss of brain function, brain death occurs even under circumstances where, as here, mechanical ventilation is still artificially maintaining heart and lung action. A person whose cardiopulmonary system is being artificially maintained, but nevertheless has no brain function, has still suffered brain death.

Generally, the brain consists of the main cerebral hemispheres, which are the center of intelligence, cognition, emotion, consciousness, and the higher perceptions, etc.; and the brain stem, which is the lower middle part of the brain, connecting to the spinal cord and that controls respiration, blood pressure, and other biological functions. “Brain death,” as that term is used here, and in the medical community generally, means the entire brain, including the brain stem, is dead. There is no brain function at all. In that state, spontaneous respiration ceases, because the vital respiratory centers of the brain have been destroyed. The patient depends entirely on mechanical support to maintain cardiorespiratory function. Normal cardiac functioning can be achieved mechanically, even in the presence of total brain destruction, and can continue for as long as an hour after a patient is pronounced dead and the respirator discontinued. However, mechanical maintenance of heartbeat and circulation can be continued only for a limited time following complete brain death.

This condition is not the same as, and is distinguishable from, what is known as a “persistent vegetative state,” where the person is in an irreversible coma, but there is still at least some residual brain activity. A person in a persistent vegetative state is still considered living, and considerations involved in dealing with this condition, including the removal of mechanical ventilation or other life support, are entirely different from those involved in brain death. Removal of mechanical

ventilation or other life support of a brain-dead patient, on the other hand, is considered removal of the support system from a person who is already deceased, even if that person's cardiopulmonary function is temporarily, through artificial means, being supported by mechanical ventilation.

P.S. unfortunately suffered a complete, irreversible destruction of her entire brain, including her brain stem. She cannot maintain cardiorespiratory function. Under clear Texas law, and the laws of every other state, **P.S.** suffered clinical brain death. As such, there is no treatment that can be provided for her, at Cook or at any other facility, that will keep **P.S.** alive. She is already deceased. Again, this is not a close call. It is not one on which people of differing moral, ethical or theological beliefs can reasonably differ. **P.S.** is not in a persistent vegetative state. There is no brain function at all. Under clear Texas law, and the laws of every other state, **P.S.** is already deceased.

Considering the physiological condition and attendant decomposition that occurs in a brain-dead patient, recognized and legitimate medical and ethical considerations militate against continuing the futility of maintaining mechanical ventilation of a patient with brain death. “[T]he duty of the medical profession is to treat the living; to maintain artificially an appearance of life in a dead body is an affront to human dignity and exacts a heavy emotional toll on the patient's family and the hospital nurses and staff.” *State v. Olson*, 435 N.W.2d 530, 533 (Minn.

1989). Yet the TRO Extension entered by the trial court maintains the fiction that **P.S.** is alive (despite conclusive evidence to the contrary) and in the process compels, by court order, the health care providers at Cook to engage in conduct that is anathema to their ethical canons of the medical profession.

C. Plaintiffs Failed to Establish Their Right to An Extension of Time Under Section 166.046(g)

While Section 166.046(g) authorizes a court to extend the time frame under which a potential transfer of a patient may take place under this Section, as addressed above, and was addressed that the temporary injunction hearing, this provision does not apply to **P.S.**, and therefore, cannot serve as a basis for injunctive relief. Even assuming, arguendo, that this Section was applicable, to be entitled to any extension, Plaintiffs were required to prove, “by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive will be found if the time extension is granted.” Tex. Health & Safety Code § 166.064(g); *see also Hudson v. Tex. Children's Hosp.*, 177 S.W.3d 232, 234 (Tex. App.--Houston [1st Dist.] 2005, no pet.). Plaintiffs had an opportunity, at an evidentiary hearing, to put forth their evidence to establish their right to relief under this Section. They did not meet this burden. Plaintiff produced no evidence whatsoever of any facility willing to accept **P.S.** in her condition.

Again, Cook sympathizes with the family and, in fact, has attempted to assist the Plaintiff in her efforts to have **P.S.** transferred to another facility. Cook contacted over 28 facilities throughout the country, some of them on numerous occasions, to see if they would be willing to take **P.S.**. The facilities have declined to accept **P.S.**, because they could not do anything for her, as any care would be futile in light of her brain death. The reality is that no facility is willing to accept a deceased person as a patient.

Again, this was all addressed and established at the temporary injunction hearing. **P.S.** is not alive. There is not another facility that will take **P.S.**. **P.S.** is gone. This is clear. This is incontrovertible. This is reality. Nevertheless, despite the fact an evidentiary hearing was held on this very issue, at which Plaintiffs failed to present any evidence, they came to the trial court, again, asking for the same relief that was denied at the temporary injunction hearing -- more time to secure a potential transfer of **P.S.** to another facility -- and again they came without any evidence. The trial court abused its discretion by entertaining this request and extending a temporary restraining order that: 1) by its express terms had already expired; and 2) has already been adjudicated at a temporary injunction hearing and found to be unsupportable.

CONCLUSION

Plaintiffs are not entitled to an extension of the Initial TRO. The Initial TRO has expired and therefore the trial court's purported extension is void. Moreover, there has already been an evidentiary hearing on this matter, and the evidence conclusively established the Plaintiffs are not entitled to any further injunctive relief. There is no equitable, legal, or factual basis for extending the Temporary Restraining Order.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Cook Children's Medical Center respectfully prays that this Court grant this Petition for Writ of Mandamus and issue an order compelling the Honorable Melody Wilkinson to vacate her Order Granting Plaintiffs' Motion Requesting Extension of October 1, 2018 Temporary Restraining Order and for such other and further relief, at law or in equity, to which it may show itself justly entitled.

Respectfully submitted,

BLAIES & HIGHTOWER, L.L.P.
421 W. Third Street, Suite 900
Fort Worth, Texas 76102
817-334-0800 (Telephone)
817-334-0574 (Facsimile)

By: 

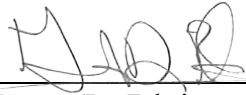
GRANT D. BLAIES
State Bar No. 00783669
grantblaies@bhilaw.com

GREGORY P. BLAIES
State Bar No. 02412650
gregblaies@bhilaw.com

ATTORNEYS FOR RELATOR
COOK CHILDREN'S MEDICAL
CENTER

CERTIFICATE OF COMPLIANCE


Pursuant to the requirements of Tex. R. App. P. 9.4(i)(3), I hereby certify Relator's Petition for Writ of Mandamus contains 4,538 words.



Grant D. Blaies

CERTIFICATION

Pursuant to Tex. R. App. P. 52.3(j), the undersigned hereby certifies that he has reviewed the Petition for Writ of Mandamus and has concluded that every factual statement herein is supported by competent evidence included in the appendix or record.



Grant D. Blaies

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 16, 2018 a true and correct copy of the attached Petition for Writ of Mandamus document was served in accordance with the provisions of Tex. R. App. P. 9.5, as follows:

The Honorable Melody Wilkinson
17th Judicial District Court
Tom Vandergriff Civil Courts Bldg., 3rd Floor
100 North Calhoun Street
Fort Worth, Texas 76196
(Respondent)

FACSIMILE
 CERTIFIED MAIL, RRR
 U.S. FIRST CLASS MAIL
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 ELECTRONIC SERVICE

Justin A. Moore
1801 North Hampton Road, Suite 333
DeSoto, Texas 75115
214-794-1069 (telephone)
972-282-8812 (facsimile)
E-mail: justin@moorejustice.net


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 U.S. FIRST CLASS MAIL
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 ELECTRONIC SERVICE

Paul K. Stafford
THOMPSON & KNIGHT LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
214-969-1106 (telephone)
214-999-1500 (facsimile)
E-mail: paul.stafford@tklaw.com

FACSIMILE
 CERTIFIED MAIL, RRR
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 ELECTRONIC SERVICE

David L. Cook
Harris ★ Cook
309 E. Broad Street
Mansfield, Texas 76063
E-mail: eservicemans@harriscooklaw.com

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 U.S. FIRST CLASS MAIL
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Grant D. Blaies

APPENDIX

Order Granting Plaintiffs’ Motion Request Extension of October 1, 2018
Temporary Restraining Order Exhibit A

Order for Issuance of Temporary Restraining Order and Setting Hearing
on Application for Temporary Injunction..... Exhibit B

Order Resetting Hearing on Application for Temporary Injunction Exhibit C

Order Appointing Attorney Ad Litem Exhibit D

Proposed Order Denying Application for Temporary Injunction
(filed by counsel for Relator)..... Exhibit E

Proposed Order Denying Application for Temporary Injunction
(filed by Attorney Ad Litem).....Exhibit F

Tex. R. Civ. P. 680.....Exhibit G

Excerpt of Temporary Injunction Hearing Ruling by the Court..... Exhibit H

APPENDIX "A"

TIFFANY HOFSTETTER, as the Mother of
[REDACTED], and
[REDACTED], as the Father of
[REDACTED]
Plaintiffs,

v.

COOK CHILDREN'S MEDICAL CENTER
a/k/a COOK CHILDREN'S HOSPITAL
Defendant.

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IN THE DISTRICT COURT

17TH JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

**ORDER GRANTING PLAINTIFFS' MOTION REQUESTING EXTENSION OF
OCTOBER 1, 2018 TEMPORARY RESTRAINING ORDER**

On the 15th day of October, 2018, came on for consideration the Plaintiffs' Motion Requesting Extension of October 1, 2018 Temporary Restraining Order (the "Motion") filed by Plaintiffs, **T.H.** [REDACTED] and **J.S.** [REDACTED], as the Mother and Father of **P.S.** [REDACTED] ("Plaintiffs"). Having considered the Motion and the arguments of counsel and the Ad Litem, the Court holds that the Motion should be GRANTED as follows:

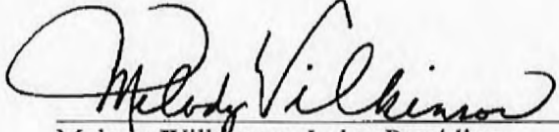
- Good cause exists for the extension of the October 1, 2018 Temporary Restraining Order, based upon facilities and medical providers that have become apparent to Plaintiffs following the October 10, 2018 Temporary Injunction hearing;
- According to the filings, the evidence presented at the October 15, 2018 hearing, and the arguments of counsel, the October 1, 2018 Temporary Restraining Order is extended until 6:00 p.m. C.S.T. on Monday, October 22, 2018.



E-MAILED
10-16-18

IT IS THEREFORE ORDERED that Plaintiffs' Motion Requesting Extension of October 1, 2018 Temporary Restraining Order be GRANTED, and that the Temporary Restraining Order is hereby extended until Monday, October 22, 2018 at 6:00 p.m. CST.

SIGNED this 15th day of October, 2018 @ 7:45 p.m.


Melody Wilkinson, Judge Presiding



A CERTIFIED COPY
ATTEST: 10-16-18
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: Jennie Thomas
DEPUTY
JENNIE THOMAS

APPENDIX "B"

CAUSE NO. _____

TIFFANY HOFSTETTER, AS THE
MOTHER OF [REDACTED]
PLAINTIFF,

§
§
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§

IN THE _____ COURT

V.

OF TARRANT COUNTY, TEXAS

COOK CHILDRENS
DEFENDANT.

_____ JUDICIAL DISTRICT

**ORDER FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER AND SETTING
HEARING ON APPLICATOIN FOR TEMPORARY INJUNCTION**

At the hearing on Plaintiff's Application for Temporary Restraining Order and Temporary Injunction, Plaintiff appeared by and through her attorney of record. The hearing was conducted without ^{AW} notice to Defendant ^{AW} and the ^{AW} application for t.r.o. ^{AW} was argued by counsel for Defendant. ^{AW}
The Court finds that-

1. It clearly appears from specific facts shown by Plaintiff's verified application that immediate and irreparable injury, loss, or damage will result to Plaintiff ^{AW} before notice can be served on Defendant and before a hearing can be held on Plaintiff's application for a temporary injunction because ^{AW} unless disconnecting the life sustaining support from Payton is immediately restrained, Plaintiff will die. This injury will be irreparable unless this restraint is ordered because no monetary amount can replace loss of life. If life sustaining treatment, ^{AW} ^{AW} consisting of ^{AW} maintenance of ventilator support ^{AW} including but not limited to, ventilator with 100% oxygen, is removed, [REDACTED] will die. [REDACTED] is 9 years old. ✓

2. Unless this restraint is ordered immediately, ^{AW} without notice to Defendant, Plaintiff will suffer irreparable injury immediately, because no other legal remedy can be obtained and effected before the injury occurs;

1| Order and Notice of hearing



E-MAILED
10-1-18

Handwritten initials

P.S.

3. Plaintiff is likely to succeed on the merits ^{of locating a new facility for} however, Plaintiff has no adequate remedy at law ^{unless this application for t.r.o. is granted;}

4. Plaintiff has exercised due diligence in prosecuting the underlying claim in this cause;

5. Plaintiff's injury will outweigh any injury to Defendant that may occur on issuance of this restraining order;

6. The restraining order will not disserve the public interest;

7. The status quo should be maintained, in the public interest; and

8. Plaintiff's bond in the amount of \$ 1.00 will fully protect Defendant's rights until a hearing can be held on Plaintiff's application for a temporary injunction.

9. It is therefore ORDERED that a temporary restraining order issue, operative until the date of the hearing hereinafter ordered, restraining and enjoining Cook Children's Hospital from disconnecting the life-sustaining ventilator from **P.S. [REDACTED]**, provided that, before the issuance of the restraining order, Plaintiff must post bond in the amount of \$ 1.00, payable to Defendant, conditioned and approved as required by law.

10. The Court Orders the clerk to issue notice to defendant, Cook Children's Hospital, that the hearing on Plaintiff's application for temporary injunction is set for October 5, 2018, at 9:30 a.m. The purpose of the hearing will be to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits.

11. This order expires on October 15, 2018, ~~subject to renewal by the Court.~~

SIGNED on October 1, 2018, at 1:20 p.m.

Melody Wilkinson
JUDGE PRESIDING

✓ CERTIFIED COPY
WITNESSE: 10/10/18
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS

BY: *Jennie Thomas*
DEPUTY
JENNIE THOMAS
APPROVED AS TO FORM:



or following the entry of the order subsequent to the October 5, 2018 hearing on the temporary injunction.

By: /s/ Justin A. Moore

Justin A. Moore
State Bar No. 24088906
1801 N. Hampton Rd, Suite 333
DeSoto, TX 75115
(214) 794-1069
(972) 228-8812
Justin@moorejustice.net

Attorney for Plaintiff



CERTIFICATE OF SERVICE

On the August _____, 2018, a copy of the foregoing instrument was served upon all counsel of record under the Texas Rules of Civil Procedure by electronic e-service, fax or certified mail, as follows:

/s/ Justin A. Moore



APPENDIX "C"

CAUSE NO. 017-303367-18

T.H. AS THE
MOTHER OF **P.S.**
Plaintiff

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IN THE DISTRICT COURT

OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

v.

COOK CHILDREN'S HOSPITAL,
Defendant

**ORDER RESETTING HEARING ON APPLICATION
FOR TEMPORARY INJUNCTION**

The hearing on Plaintiff's application for temporary injunction set for October 5, 2018 at 9:30 a.m. has been reset by the Court for Wednesday, October 10, 2018, at 1:30 p.m. Counsel for the parties and the parties are to appear on October 10, 2018 at 10:30 a.m. to conduct any pre-hearing or other matters that may be necessary. ^{*~~at~~} Subject to this resetting, the terms of the Temporary Restraining Order issued on October 1, 2018, shall remain unchanged.

SIGNED this 9th day of October, 2018.

Melody Wilkinson
Melody Wilkinson, Judge Presiding

^{atv} * Counsel shall bring to the hearing no later than 10:30am any proposed orders requested by any party to be entered following the hearing on the temporary injunction. ^{atv}



A CERTIFIED COPY
ATTEST: 10.16.18
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS

BY: *Jennie Thomas*
DEPUTY
JENNIE THOMAS

Order Resetting Hearing Date on Application for Temporary Injunction



E-MAILED
10-9-18

APPROVED AS TO FORM

/s/Paul K. Stafford

Paul K. Stafford

E-mail: paul.stafford@tklaw.com

State Bar No. 007917916

Thompson & Knight LLP

1722 Routh Street, Suite 1500

Dallas, Texas 75201

E-mail: paul.stafford@tklaw.com

Justin A. Moore

E-mail: justin@moorejustice.net

State Bar No. 24088906

1801 North Hampton Rd., Suite 333

DeSoto, Texas 75115

E-mail: justin@moorejustice.net

ATTORNEYS FOR PLAINTIFF **T.H.**
AS MOTHER OF **P.S.**

/s/ Gregory P. Blaies

Gregory P. Blaies

gregblaies@bhilaw.com

State Bar No. 02412650

Grant D. Blaies

grantblaies@bhilaw.com

State Bar No. 00783669

BLAIES & HIGHTOWER, L.L.P.

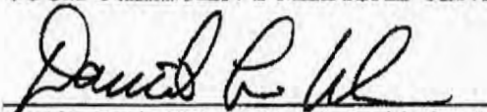
421 W. 3rd Street, Suite 900

Fort Worth, Texas 76102

817-334-0800 telephone

817-334-0574 facsimile

ATTORNEYS FOR DEFENDANT
COOK CHILDREN'S MEDICAL CENTER



David L. Cook, SBN: 00798116, David@harriscooklaw.com

ATTORNEY AD LITEM FOR **P.S.**, A MINOR CHILD

Order Resetting Hearing Date on Application for Temporary Injunction

Page 2



APPENDIX "D"



CAUSE NO. 017-303367-18

T.H.	AS THE	§	IN THE DISTRICT COURT
MOTHER OF P.S.		§	
		§	
VS.		§	TARRANT COUNTY, TEXAS
		§	
COOK CHILDRENS		§	17 TH JUDICIAL DISTRICT

ORDER APPOINTING ATTORNEY AD LITEM

ON THIS DATE, for good cause and in the best interest of the minor, under Tex. Fam. Code, Section 107.021(a)(2), (b)(2), the Court **HEREBY ORDERS** that

David Cook, SBN 00798116
 309 E. Broad Street
 Mansfield, Texas 76063
 817-473-3332
tammy@harriscooklaw.com

an attorney and member in good standing of the Bar of the State of Texas, be, and is hereby, appointed as attorney ad litem. Good cause exists because the matter in question involves serious and complex issues affecting the best interests of the minor in question and the attorney ad litem:

- 1. Possesses relevant specialized education, training, certification skill, language proficiency, or knowledge of the subject matter of the case;
- 2. Has relevant prior involvement with the parties or cases; or
- 3. Is in a relevant geographic location.

IT IS FURTHER ORDERED that said ad litem be awarded a reasonable and customary fee which shall be determined by the Court on the conclusion of his appointment.

SIGNED this the 5th day of October, 2018.



A CERTIFIED COPY

ATTEST: 10-16-18
THOMAS A. WILDER
 DISTRICT CLERK
 TARRANT COUNTY, TEXAS

Melody Wilkinson
 MELODY WILKINSON, JUDGE PRESIDING

BY: Jennie Thomas
 DEPUTY
 JENNIE THOMAS



E-MAILED
10-5-18

APPENDIX "E"

Chris Harris (1948-2015)
David L. Cook
Rachel L. Wright
Patrick L. Dooley

Harris  Cook
A Limited Liability Partnership
Attorneys & Counselors at Law

Pyles Hubbard House, Est 1886
309 East Broad • Mansfield, Texas 76063

Tel: 817.473.3332
Fax: 817.473.3904
www.harriscooklaw.com

October 12, 2018

017-303367-18

FILED
TARRANT COUNTY
10/12/2018 3:39 PM
THOMAS A. WILDER
DISTRICT CLERK

Judge Melody Wilkinson
Tom Vandergriff Civil Court Building
100 North Calhoun Street, 3rd Floor
Fort Worth, Texas 76196

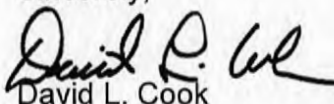
Re: **T.H.**, et al v. Cook Children's Hospital
Cause No. 017-303367-18

Dear Judge Wilkinson,

As requested, enclosed is the Attorney Ad Litem's proposed Order Denying Plaintiff's Application for Temporary Injunction.

Please let me know if you have any questions.

Sincerely,


David L. Cook

DLC:kb

cc: Grant D. Blaies
Justin Moore
Paul Stafford



A CERTIFIED COPY

ATTEST: 10.16.18
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS

BY: Jennie Thomas
DEPUTY
JENNIE THOMAS

NO. 017-303367-18

T.H. [REDACTED], as the Mother of	§	IN THE DISTRICT COURT
P.S. [REDACTED], and	§	
J.S. [REDACTED], as the Father of	§	
P.S. [REDACTED]	§	
Plaintiffs,	§	
	§	
v.	§	17 TH JUDICIAL DISTRICT
	§	
COOK CHILDREN'S MEDICAL CENTER	§	
a/k/a COOK CHILDREN'S HOSPITAL	§	
Defendant.	§	TARRANT COUNTY, TEXAS

ORDER DENYING PLAINTIFFS' REQUEST FOR TEMPORARY INJUNCTION

On October 10, 2018, the parties and the Attorney Ad Litem for **P.S.** [REDACTED] appeared for a hearing on Plaintiffs' Application for a Temporary Injunction Pursuant to Health and Safety Code Section 166.046(g) ("the Application"). Plaintiffs **T.H.** [REDACTED], as the Mother of **P.S.** [REDACTED], and **J.S.** [REDACTED], as the Father of **P.S.** [REDACTED], and Defendant Cook Children's Medical Center a/k/a Cook Children's Hospital also appeared by and through their respective counsel.

Having considered the Application, Defendant's Response to the Application, as well as the report and statements of the attorney ad litem, the Court finds that Plaintiffs have failed to establish a probable right of recovery of the relief sought and therefore are not entitled to the requested injunctive relief.

IT IS THEREFORE ORDERED that Plaintiffs' request for a Temporary Injunction is hereby DENIED.

SIGNED THIS ____ OF October, 2018.

A CERTIFIED COPY

ATTEST: Melody Wilkinson, Judge Presiding

**THOMAS A. WILDER
DISTRICT CLERK**

TARRANT COUNTY, TEXAS Solo Page

BY: Jennie Thomas
**DEPUTY
JENNIE THOMAS**



APPENDIX "F"

017-303367-18

B&H

BLAIES & HIGHTOWER, L.L.P.

FILED
TARRANT COUNTY
10/12/2018 2:45 PM
THOMAS A. WILDER
DISTRICT CLERK

Grant D. Blaies

421 W. 3rd Street, Suite 900
Fort Worth, Texas 76102
Telephone: 817-334-0800
Fax: 817-334-0574
www.bhilaw.com

Direct: 817-334-8294
grantblaies@bhilaw.com

October 12, 2018

Judge Melody Wilkinson
Tom Vandergriff Civil Court Building
100 North Calhoun Street, 3rd Floor
Fort Worth, Texas 76196

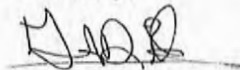
RE: **T.H.**, et al. v. Cook Children's Hospital
Cause No. 017-303367-18

Dear Judge Wilkinson,

As requested, enclosed is Defendant's Proposed Order denying Plaintiff's Application for Temporary Injunction.

Please let me know if you have any questions.

Sincerely,



Grant D. Blaies

GDB/cb/ccm-0086



A CERTIFIED COPY
ATTEST: 10.16.18
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: Jennie Thomas
DEPUTY
JENNIE THOMAS

CAUSE NO. 017-303367-18

T.H. [REDACTED], AS THE
MOTHER OF **P.S.** [REDACTED]
Plaintiff

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IN THE DISTRICT COURT

OF TARRANT COUNTY, TEXAS

v.

COOK CHILDREN'S HOSPITAL,
Defendant

17TH JUDICIAL DISTRICT

ORDER DENYING APPLICATION FOR TEMPORARY INJUNCTION

CAME TO BE HEARD on October 10, 2018, Plaintiff's Application for Temporary Injunction Pursuant to Health and Safety Code Section 166.046(g) (the "Application"). Having considered the Application, Defendant's response to the Application, the arguments and evidence presented by counsel both in support of and in opposition to the Application, as well as the report and statements of the attorney ad litem the Court finds that Plaintiff has failed to establish a probable right of recovery of the relief sought and therefore is not entitled to the requested injunctive relief.

IT IS THEREFORE ORDERED that Plaintiff's Application for Temporary Injunction is DENIED, and the Temporary Restraining Order issued by the Court on October 1, 2018 is hereby DISSOLVED.

All relief not expressly granted herein is denied.

SIGNED this _____ day of October, 2018.

A CERTIFIED COPY

ATTEST: 10-16-18
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS

Melody Wilkinson, Judge Presiding



BY: Jennie Thomas
DEPUTY
JENNIE THOMAS

APPENDIX "G"

Tex. R. Civ. P. 680

This document is current through September 3, 2018

***Texas Court Rules > STATE RULES > TEXAS RULES OF CIVIL PROCEDURE > PART VI.
RULES RELATING TO ANCILLARY PROCEEDINGS > SECTION 5. Injunctions***

Rule 680 Temporary Restraining Order

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after signing, not to exceed fourteen days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. No more than one extension may be granted unless subsequent extensions are unopposed. In case a temporary restraining order is granted without notice, the application for a temporary injunction shall be set down for hearing at the earliest possible date and takes precedence of all matters except older matters of the same character; and when the application comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Every restraining order shall include an order setting a certain date for hearing on the temporary or permanent injunction sought.

APPENDIX "H"

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REPORTER'S RECORD

VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. 017-303367-18

T.H. [REDACTED], ET) IN THE DISTRICT COURT
AL.,)

Plaintiffs,)

VS.) TARRANT COUNTY, TEXAS

COOK CHILDREN'S HOSPITAL,)

Defendants.) 17TH JUDICIAL DISTRICT

EXCERPT OF TEMPORARY INJUNCTION HEARING
RULING BY THE COURT

On the 10th day of October, 2018, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Melody Wilkinson, Judge presiding, held in Fort Worth, Tarrant County, Texas;

Proceedings reported by machine shorthand.

A P P E A R A N C E S

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{Excerpt of Proceedings}

07:20PM 1
07:20PM 2 THE COURT: Well, it is certainly a tragic
07:21PM 3 set of circumstances that brings us all together today,
07:21PM 4 and I can tell from the outpouring of support that this
07:21PM 5 family has received that **T.H.** **[REDACTED]**, and as -- I
07:21PM 6 know that you were added to the suit today, **J.S.**
07:21PM 7 **[REDACTED]**. I know from your friends and relatives that
07:21PM 8 you are loved and I know that your daughter that you had
07:21PM 9 together, **P.S.** **[REDACTED]**, was very much loved. It's
07:21PM 10 very obvious to the Court. I know that you are caring
07:21PM 11 parents who want to leave no stone unturned.

07:21PM 12 And I know, as a mother of three children
07:21PM 13 myself, I think that I would want to make sure that I
07:22PM 14 had left no stone unturned, and I think that we all
07:22PM 15 agree that this is a situation as a parent that we hope
07:22PM 16 never comes, but unfortunately, there was a tragic
07:22PM 17 circumstance that -- that did occur in Payton's life on
07:22PM 18 September 25th, and I know that it has just been a very
07:22PM 19 difficult and challenging time for you as family members
07:22PM 20 trying to be there for your daughter and do everything
07:22PM 21 that you can.

07:22PM 22 And, in fact, the Court first learned about
07:22PM 23 this case on -- exactly 10 days ago when on October
07:22PM 24 the 1st Ms. Hofstetter's lawyers at that time,
07:22PM 25 Mr. Moore, came to the Court--and the hospital counsel

07:22PM 1 was here--requesting relief through the application for
07:22PM 2 the temporary restraining order because of the concerns
07:23PM 3 that the family had that the ventilation system that was
07:23PM 4 keeping **P.S.** in the state that she was was perhaps
07:23PM 5 going to be terminated, and that's, of course, the facts
07:23PM 6 that brought us here.

07:23PM 7 And at that time -- at that hearing on
07:23PM 8 October 1st, what Mr. Moore argued to the Court was more
07:23PM 9 time to find a facility for **P.S.**, and it appears,
07:23PM 10 based upon the evidence that the Court has seen, that at
07:23PM 11 least 28 places have been looked at to see if that would
07:23PM 12 perhaps be a facility for **P.S.**.

07:23PM 13 I know that the family brought this
07:23PM 14 application for TR0. We've talked about 166. We've
07:23PM 15 talked about 671, but when you look at the pleadings
07:24PM 16 themselves and the pleadings that existed at the time
07:24PM 17 the application for the TR0 was granted, the relief that
07:24PM 18 was requested was pursuant to -- and the Court had a
07:24PM 19 hearing -- temporary injunction hearing today based on
07:24PM 20 those pleadings and, again, the temporary restraining
07:24PM 21 order that was granted on October the 1st.

07:24PM 22 I want to be very careful in how I word
07:24PM 23 this, but at that time the Court wanted to make sure
07:24PM 24 that the family had every opportunity to explore a new
07:24PM 25 facility for **P.S.**, because, again, that's the relief

07:24PM 1 that was requested by the Court and, in fact, on the
07:24PM 2 temporary restraining order that was signed on
07:24PM 3 October 1st of 2018 at 1:20 p.m., the last paragraph in
07:24PM 4 that order provides that the order expires on
07:25PM 5 October 15th of 2018 at 1:20 p.m. or following the entry
07:25PM 6 of the order subsequent to the October 5th, 2018--but
07:25PM 7 that hearing was moved to today, October 10,
07:25PM 8 2018--hearing on the temporary injunction.

07:25PM 9 So as of right now, there still is the
07:25PM 10 temporary injunction [sic] in place. And it's the
07:25PM 11 Court's belief that this temporary injunction will
07:25PM 12 remain in place until it expires either on its own or
07:25PM 13 upon the entry of an order on October 15th of 2018 at
07:25PM 14 1:20.

07:25PM 15 It is the Court's belief that the
07:25PM 16 Plaintiffs have not met their burden of proof to
07:25PM 17 establish their injunctive relief. The Court no longer
07:25PM 18 believes that there is a likelihood of success on the
07:26PM 19 merits of obtaining a new facility for **P.S.**. Nor does
07:26PM 20 the Court believe that there's a probable right to
07:26PM 21 relief for the Plaintiffs, based upon the pleadings that
07:26PM 22 were the basis of the application for TR0 at the time
07:26PM 23 the Court heard the TR0.

07:26PM 24 I want to be careful that the Court is not
07:26PM 25 making a pronouncement of its ruling so that it's not

07:26PM 1 interpreted that the ruling takes place immediately and
07:26PM 2 that the TRO is dissolved immediately. Instead, what I
07:26PM 3 heard Dr. Fine say, among other things, is that it's
07:26PM 4 important for the families to say, "Good-bye," and I
07:26PM 5 don't know what will happen when that TRO expires or the
07:27PM 6 order is entered. I don't know, but I want to make sure
07:27PM 7 that the family has an opportunity to say, "Good-bye,"
07:27PM 8 in the event that when the TRO expires, if there is
07:27PM 9 action that is taken by the hospital.

07:27PM 10 The Court does not know what action the
07:27PM 11 hospital will take, but it is the Court's intent to
07:27PM 12 allow either the TRO to expire by operation of law or
07:27PM 13 entry upon the Court's order, and it is the Court's
07:27PM 14 intent to sign an order consistent with the ruling that
07:27PM 15 the Plaintiffs have not met their burden of proof to
07:27PM 16 establish the injunctive relief, and the Court will
07:27PM 17 entertain signing that order on Monday, October the 15th
07:28PM 18 at 1:15 p.m.

07:28PM 19 So counsel may present an order to the
07:28PM 20 Court on Monday, October the 15th at 1:15 p.m. If no
07:28PM 21 order is presented to the Court by counsel, then the TRO
07:28PM 22 will dissolve by operation of law on October the 15th
07:28PM 23 2018 at 1:20 p.m.

07:28PM 24 Are there any other matters that need to
07:28PM 25 come before the Court?

07:28PM 1 MR. MOORE: Nothing further, Your Honor.

07:28PM 2 MR. GREG BLAIES: Nothing further, Your
07:28PM 3 Honor.

07:28PM 4 THE COURT: I will -- would like to talk
07:28PM 5 with counsel and the ad litem afterwards so that we can
07:28PM 6 talk about the order, and also I do need to talk to
07:28PM 7 y'all and perhaps set up a -- I need to talk about the
07:28PM 8 ad litem's fees too, so I want to talk to you about
07:28PM 9 that.

07:28PM 10 If there is nothing further, do I have
07:28PM 11 everyone's permission to go off of the record at this
07:29PM 12 time?

07:29PM 13 MR. MOORE: Yes, Your Honor.

07:29PM 14 MR. COOK: Yes, Your Honor.

07:29PM 15 MR. GREG BLAIES: Yes, Your Honor.

07:29PM 16 THE COURT: Then we are off the record.
17 (Proceedings adjourned.)

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1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS)
3 COUNTY OF TARRANT)4 I, Deana F. Scobee, Official Court Reporter in and
5 for the 17th District Court of Tarrant County, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all
8 portions of evidence and other proceedings requested in
9 writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.16 WITNESS MY OFFICIAL HAND this the 16th day of
17 October, 2018.18
19
20 /s/ Deana F. Scobee
21 DEANA F. SCOBEE, CSR, RMR, CRR
22 Texas CSR 5509
23 Expiration: 12/31/2018
24 Official Court Reporter
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