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August 31, 2020

Re: Petitioner's Reply in Support of Petitioner's Emergency Motion to Expedite in *Cook Children's Medical Center v. T.L., a Minor, and Mother, T.L. on her behalf*, No. 20-0644

VIA E-FILING

Blake Hawthorne, Clerk
Supreme Court of Texas
201 West 14th Street, Room 104
Austin, TX 78701

Dear Mr. Hawthorne:

Respondents respectfully request leave to file this Letter in attempt to aid the Court by bringing the positions of the parties closer together and also to clarify the record in this case.

In its Reply in Support of Petitioner's Emergency Motion to Expedite ("Reply"), Petitioner implies that the trial judge in this case made a fact finding that T.L. is in agony. *See* Reply, at 2 (stating that the trial judge "accepted" evidence that T.L. is in "daily agony"). The issue is disputed.

Respondents inadvertently omitted the text from a footnote in their Response to Petitioner's Motion to Expedite. The footnote should have read:

Petitioner’s Motion is primarily a summary of its argument on appeal rather than an explanation of why it is entitled to such extreme “emergency” relief. If the issue is emergent, why did Petitioner wait a month to request relief? T.L. is stable. She is a candidate for a tracheostomy which would allow her the potential to be treated elsewhere. Petitioner refuses to perform one (despite it being the standard of care to have done so nearly a year ago) and also refuses to allow another doctor to come in and perform the routine procedure. Yet, it then complains about having to continue to treat T.L. and sees the only solution as euthanizing her against Mother T.L.’s will.

In the trial court, Mother T.L. testified that although some aspects of receiving medical care, such as being woken up from her sleep or having a new IV placed, do cause pain to T.L., her regular care, such as diaper changes, does not appear to cause her pain. *See* 2 R.R. 293. Additionally, Mother T.L. testified that many things bring joy to T.L. *See* 2 R.R. 19–21.

The trial judge did not make any explicit findings of fact, so the only fact-findings are those findings that are implied because they support the trial court’s order. *See Old Republic Nat’l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 558 (Tex. 2018). The trial court’s order denied the request of T.L. and Mother T.L. for a temporary injunction. To obtain a temporary injunction, T.L. and Mother T.L. needed to prove (1) a cause of action against the defendant, (2) a probable right to the relief sought; and (3) irreparable harm. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

The causes of action asserted by T.L. and Mother T.L. against Cook Children’s Medical Center related to whether Cook Children’s Medical Center’s decision to withdraw T.L.’s life-sustaining treatment pursuant to Texas Health and Safety Code section 166.046(a) violated the rights of T.L. and Mother T.L. to substantive and procedural due process of law. The specifics of T.L.’s current medical condition, beyond those establishing she will suffer irreparable harm from the withdrawal of life-sustaining treatment, are irrelevant for the purposes of a temporary injunction. Accordingly, T.L. and Mother T.L. did not develop an extensive record on those issues given the purpose and how quickly a hearing for a temporary injunction occurs. It takes time to develop such testimony.

The value of T.L.’s life cannot be overstated. Yet, although it is *T.L.’s life* that is at stake, and Petitioner asks this Court to answer the ultimate question for her, the issue this Court must decide to address the Petition for Review is even bigger

than T.L. The issues in this appeal affect *every Texan* who may find themselves in a hospital and their weight is heavy on all counsel and justices alike.

Respondents request that this Court not expedite the briefing schedule or preemptively determine that no extensions may be granted. Unforeseen circumstances often require extensions, such as pandemics and professional and family emergencies.

Respondents take Petitioner's statements regarding the inner conflicts of its employees seriously, and at face value. Accordingly, Respondents will act diligently. Respondents would request an extension only if necessary to serve Texas jurisprudence. Respondents appreciate that the Court will view with heightened scrutiny any request for an extension of time to filing briefing in this case and know the request would not be automatically granted.

Sincerely,

/s/ Jillian L. Schumacher
Jillian L. Schumacher

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that in accordance with the Texas Rules of Appellate Procedure a true and correct copy of the foregoing has been served on Defendant's counsel via their emails as noted below and through the Court's e-filing system on August 31, 2020.

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/s/Jillian L. Schumacher

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