

CAUSE NO. 2020-61396

MARIO TORRES and ANA PATRICIA	§	IN THE DISTRICT COURT
TORRES individually and A/N/F/ of N.T., a	§	
Minor,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
TEXAS CHILDREN’S HOSPITAL and DR.	§	
JOHN DOE and DR. JANE DOE,	§	
	§	
<i>Defendants.</i>	§	234TH JUDICIAL DISTRICT

DEFENDANT TEXAS CHILDREN’S HOSPITAL’S RESPONSE TO PLAINTIFFS’ MOTION TO EXTEND “STAY” OF ORDER DENYING TEMPORARY INJUNCTION FOR 24 ADDITIONAL HOURS UNTIL OCTOBER 6, 2020 AT 12:00 P.M.

Defendant Texas Children’s Hospital (“TCH”) files this Response to Plaintiffs’ Motion to Extend “Stay” of Order Denying Temporary Injunction For 24 Additional Hours Until October 6, 2020, at 12:00 P.M. For the reasons set forth below, TCH respectfully requests that this Court deny Plaintiffs’ motion because Plaintiffs have failed to demonstrate good cause for such an extension. In support thereof, TCH respectfully shows this Court the following:

1. On Friday, October 2, 2020, at approximately 3:40 p.m., this Court, in open court and on the record, orally denied Plaintiffs’ Application for Temporary Injunction in full. TI Hearing Tr. at 116. Plaintiffs’ counsel orally requested a stay of this Court’s order “for another 48 hours so that we could seek emergency relief before the Court – just 48 hours, so that I can meet with the clients and let them make a decision as to whether they want to insist on an emergency relief order some – somewhere else ...” *Id.* This Court orally granted the motion to stay but actually stayed its order for **20 hours longer** than requested by Plaintiffs – **68 hours** – “until Monday [October 5, 2020] at noon.” *Id.* The Court stated that its denial of Plaintiffs’ Application for Temporary Injunction would enter into effect at that time unless Plaintiffs “come back to this

Court for additional time.” *Id.* at 118. Plaintiffs did not object to the length of the Court’s stay or inform the Court that additional time would be needed at the time the stay was granted. *Id.*

2. Later the same day, this Court signed a written order memorializing its oral denial of Plaintiffs’ Application for Temporary Injunction in full. TI Order (Signed on 10/2/20). The order further stated that the Court’s order “is stayed until Monday, October 5, 2020 at noon during which time the Court’s previously [granted] TRO will remain in place.” *Id.*

3. To the best of TCH’s knowledge, Plaintiffs took no action to either appeal or seek any modification of this Court’s order for approximately 51 hours after it was first announced in open court. If any such action were taken by Plaintiffs, it is not reflected in their “Urgent” motion. Likewise, to the best of TCH’s knowledge, as of the date and time of this response, no medical facility has agreed to accept the body of N.T. If any medical facility has in fact agreed to accept the body of N.T. that fact is not reflected in Plaintiffs’ “Urgent” motion as well.

4. On Sunday, October 4, 2020, at 6:28 p.m., Plaintiffs filed: (1) a notice of accelerated appeal seeking review of this Court’s October 2, 2020 temporary injunction order; and (2) a motion asking this Court to extend this Court’s stay of its order for 24 hours until Tuesday, October 6, 2020, at 12:00 p.m. (“Motion to Extend Stay”). In their Motion to Extend Stay, Plaintiffs stated that they would be filing “an urgent plea to the Texas Court of Appeals seeking emergency relief from the interlocutory order issued by this Court on Friday” but – at the time of the filing of this response – has not yet done so or served a copy of same on TCH.

5. In their Motion to Extend Stay, Plaintiffs argue that a 24 hour extension of this Court’s stay is justified on the following grounds: (1) the Court of Appeals will not have time to consider Plaintiffs’ “emergency plea” before the original stay expires on Monday, October 5, 2020, at 12:00 p.m.; (2) Plaintiffs “need a bit more time to review the record documents, including the

transcript which we are obtaining, and prepare a proper appeal addressing the merits of the issues before this Court”; (3) Plaintiffs’ counsel are busy with other matters pending in other courts that will preclude them from working on this case; and (4) a 24-hour extension of the original stay “shall in no way cause prejudice to the parties” and are in Plaintiffs’ best interests. Mot. at 2-3.

6. As a general matter, none of the above arguments constitute good cause for extending the original stay because all of the arguments could have been asserted at the temporary injunction hearing on Friday, October 2, 2020, yet Plaintiffs did not object to the length of the stay ordered by this Court or advise the Court of the above issues at that time. Plaintiffs could have apprised the Court of the above arguments for an extension of the stay and should not be allowed to raise them for the first time at 6:28 p.m. the evening before the stay is set to expire.

7. More specifically, as to their first argument, Plaintiffs could have anticipated a potential adverse ruling by this Court, prepared a brief notice of accelerated appeal and emergency motion for temporary relief prior to the hearing, and filed the notice and motion on Friday afternoon (which could have been withdrawn if Plaintiffs ultimately decided not to appeal), but they did not do so. Alternatively, Plaintiffs could have inquired with the Houston Courts of Appeals regarding what steps could be taken over the weekend to ensure timely consideration of any matters they wished to raise with the Court of Appeals, but there is no indication they did so.

8. As to their second argument, Plaintiffs’ counsel were present at the temporary injunction hearing and, thus, would have been able to relate to the Court of Appeals whatever testimony or events occurred at that hearing that might be needed to seek emergency relief from that Court. Plaintiffs’ opening brief on the merits in the interlocutory appeal they have perfected does not need to be filed on Monday, so it is unclear why an extension of the stay is necessary for Plaintiffs to “prepare a proper appeal addressing the merits of the issues before this Court.”

9. As to their third argument, Plaintiffs, again, could have but failed to apprise this Court of their other commitments in other cases during the temporary injunction hearing when this Court set the expiration date for its original stay. TCH generally is not adverse to making professional accommodations for opposing counsel when other conflicting commitments exist that may require an extension of a purely procedural deadline. However, the deadline in question here is far from procedural. Furthermore, Plaintiffs' counsel have not indicated whether any effort was made to reschedule or arrange coverage of their other commitments, particularly given the importance Plaintiffs have accorded the deadline in question.

10. As to their fourth argument, Plaintiffs' argument that a 24-hour extension "shall in no way cause prejudice to the parties" is directly refuted by the fact that – as TCH established in its offer of proof during the temporary injunction hearing – there are living children who are on a waitlist for the bed in TCH's Pediatric Intensive Care Unit that is currently occupied by N.T. – whom the undisputed evidence conclusively establishes has been deceased for at least eight days. While this Court excluded such evidence from the record (TI Hearing Tr. at 66-67), TCH respectfully submits that the Court's ruling does not mean the fact is not true.

11. Finally, it is an indisputable medical fact that N.T.'s body is already showing signs of postmortem deterioration. Since the conclusion of the Temporary Injunction Hearing on Friday N.T. has developed progressive signs of organ failure, including cardiac failure. These physiological changes have nothing to do with the body's oxygenation, and can be neither stopped nor slowed by the ventilator. They are, instead, a natural and unavoidable part of the inherent process of postmortem bodily decay. They will only increase over time. Dr. Matt Musick, who provided testimony at both the Temporary Restraining Order hearing and the Temporary

Injunction hearing, will provide evidence of this fact at a hearing on Plaintiffs' Motion, if a hearing is granted, or otherwise by declaration.

CONCLUSION

For the reasons above, TCH respectfully requests that this Court deny Plaintiffs' Motion to Extend "Stay" of Order Denying Temporary Injunction For 24 Additional Hours Until October 6, 2020, at 12:00 P.M. Alternatively, to the extent this Court is considering granting Plaintiffs' Motion, TCH respectfully requests that this Court grant a hearing by videoconference for TCH to more fully present its position. TCH further requests all other relief to which it is entitled.

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

By Kevin Yankowsky

Kevin Yankowsky

State Bar No. 00791967

kevin.yankowsky@nortonrosefulbright.com

Warren Huang

State Bar No. 00796788

warren.huang@nortonrosefulbright.com

Jaqualine McMillan

State Bar No. 24082955

jaqualine.mcmillan@nortonrosefulbright.com

1301 McKinney, Suite 5100

Houston, Texas 77010-3095

Telephone: (713) 651-5151

Facsimile: (713) 651-5246

Counsel for Defendant Texas Children's Hospital

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of Defendant Texas Children Hospital's Response to Plaintiffs' Motion to Extend "Stay" of Order Denying Temporary Injunction For 24

Additional Hours Until October 6, 2020, at 12:00 P.M. was served in compliance with the Texas Rules of Civil Procedure via electronic filing on October 4, 2020, upon the following:

Mr. Kevin Acevedo
kevin@gonzalezlawgroup.net
Mr. Matthew Quiroz
THE GONZALEZ LAW GROUP, PLLC
7151 Office City Drive, Suite 200
Houston, Texas 77087
(Counsel for Plaintiffs)

/s/ Jaqueline McMillan
Jaqueline McMillan

Unofficial Copy Office of Marilyn Burgess District Clerk