

No. 11-0732

In The Supreme Court of Texas

Austin, Texas

---

In re: Stephanie Lee  
*Relator*

---

From the 309th Judicial District Court  
Harris County, Texas  
Trial Court Cause No. 2005-41798

---

**RELATOR, STEPHANIE LEE'S REPLY TO  
BENJAMIN JAY REDUS' RESPONSE TO RELATOR,  
STEPHANIE LEE'S PETITION FOR WRIT OF MANDAMUS**

---

**Scott Rothenberg  
State Bar No. 17316750  
Law Offices of Scott Rothenberg  
2777 Allen Parkway, Suite 1000  
Houston, Texas 77019-2165  
telephone: (713) 667-5300  
telecopier: (713) 667-0052  
*Appellate Counsel for Relator,  
Stephanie Lee***

**ORAL ARGUMENT REQUESTED**

**INDEX OF AUTHORITIES**

<b><u>CASES</u></b>	<b><u>PAGE</u></b>
<i>Beyers v. Roberts</i> , 199 S.W.3d 354 (Tex. App.– Houston [1 <sup>st</sup> Dist.] 2006, pet. denied). . . . .	7
<i>Molinet v. Kimbrell</i> , No. 09-0544, ___ S.W.3d ___ (Tex. January 21, 2011). . . . .	7

<b><u>STATUTES AND RULES</u></b>	<b><u>PAGE</u></b>
TEX. FAM. CODE. ANN. 153.002. . . . .	6, 7
TEX. FAM. CODE. ANN. 153.0071. . . . .	7, 8, 9
TEX. FAM. CODE. ANN. 153.0071(d). . . . .	4, 6
TEX. FAM. CODE. ANN. 153.0071(d)(1). . . . .	4
TEX. FAM. CODE. ANN. 153.0071(d)(2). . . . .	4
TEX. FAM. CODE. ANN. 153.0071(d)(3). . . . .	5, 6
TEX. FAM. CODE. ANN. 153.0071(e). . . . .	6, 7
TEX. FAM. CODE. ANN. 153.0071(e-1).. . . . .	8
TEX. R. CIV. P. 11. . . . .	7

**No. 11-0732**

**In The Supreme Court of Texas**

**Austin, Texas**

---

**In re: Stephanie Lee**  
*Relator*

---

**From the 309th Judicial District Court  
Harris County, Texas  
Trial Court Cause No. 2005-41798**

---

**RELATOR, STEPHANIE LEE'S REPLY TO  
BENJAMIN JAY REDUS' RESPONSE TO RELATOR,  
STEPHANIE LEE'S PETITION FOR WRIT OF MANDAMUS**

---

**TO THE HONORABLE SUPREME COURT OF TEXAS:**

Relator, Stephanie Lee files this Reply to Real Party in Interest, Benjamin Jay Redus' response to Stephanie Lee's Petition for Writ of Mandamus. Ms. Lee asks this Court to issue a writ of mandamus to Judge Sheri Y. Dean, Presiding Judge of the 309<sup>th</sup> Judicial District Court of and for Harris County, Texas, compelling Judge Dean to enter judgment based upon the mediated settlement agreement found under Tab 4 of the Appendix to her petition for writ of mandamus.

In support of this requested relief, Relator, Stephanie Lee would respectfully show this Honorable Court as follows.

### **Stephanie Lee's Reply**

Real Party in Interest, Benjamin Jay Redus attempts to scare this Court out of granting the relief sought in this original proceeding by expressing concern that the minor plaintiff would reside "with a registered sex offender." Redus' Response at 3. However, this argument flies in the face of the express provisions of the mediated settlement agreement itself.

In the mediated settlement agreement, Redus and Lee expressly agree that at all times Lee has physical custody of her minor daughter, the registered sex offender is enjoined from being within five miles of the minor plaintiff. Appendix Tab 4 at "Possession and Access" paragraph.

Further, the mediated settlement agreement contains a very specific provision permitting Redus to verify for himself or authorize third parties to verify on his behalf, that the "five mile safety zone" provision is being fully complied with at all times. Appendix Tab 4 at "Possession and Access" paragraph.

Finally, the question must be asked if the possession provisions of the mediated settlement agreement are purportedly so dangerous to the minor

child, then why did Redus himself (the minor child's father) agree to them in the first place? Redus' only— and less than satisfying— answer for this question is that he felt it was the best deal he would get under the circumstances. Appendix Tab 6 at 24.

Simply put, for the further reasons stated below, it is entirely unnecessary for this Court to address in any manner whether the mediated settlement agreement is in the “best interests of the child” in order to grant the relief sought by Stephanie Lee in this original proceeding. However, the inclusion of the “five mile safety zone” protective language in the mediated settlement agreement and Benjamin Jay Redus' signature on that agreement plainly cast doubt upon the validity of Redus' “best interests of the child” argument as a whole.

Redus next tells this Court that “the mediated agreement fails to satisfy the requirements for a binding agreement” because “the approval signature of the Office of the Attorney General for the State of Texas, a party to this litigation, is conspicuously absent.” Redus' Reply at 3.

Redus is absolutely correct that the approval signature of the Office of the Attorney General for the State of Texas is absent from the mediated settlement agreement. Redus is absolutely incorrect that— under the statute

in question– the signature of the Office of the Attorney General for the State of Texas, a party to this litigation– is necessary for the mediated settlement agreement to be legally enforceable and binding on Redus and Lee.

In section 153.0071(d) of the Texas Family Code Annotated, the Texas Legislature instructs courts that “[a] mediated settlement agreement is binding on the parties if the agreement” meets three criteria.

First, the mediated settlement agreement must provide “in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation.” Tex. Fam. Code Ann. § 153.0071(d)(1). Redus does not– and cannot– dispute that the mediated settlement agreement in question fully meets this requirement.

The very first page of the mediated settlement agreement, states in **bolded type** and CAPITAL LETTERS and underlined language as follows: **“THE PARTIES ALSO AGREE THAT THIS MEDIATION AGREEMENT IS BINDING ON BOTH OF THEM AND IS NOT SUBJECT TO REVOCATION BY EITHER OF THEM.”** Appendix Tab 4 at 1 (bold, capitalized and underlined emphasis in original).

Second, the mediated settlement agreement must be “signed by each party to the agreement.” Tex. Fam. Code Ann. § 153.0071(d)(2). Redus

does not– and cannot– dispute that the mediated settlement agreement at issue in this original proceeding is signed by each party to the agreement. Appendix Tab 4 at 3; Appendix Tab 6 at 11 and 23.

Third, the mediated settlement agreement must be “signed by the party’s attorney, if any, who is present at the time the agreement is signed.” Tex. Fam. Code Ann. § 153.0071(d)(3).

Redus tells this Court that the mediated settlement agreement is not binding because the Office of the Attorney General for the State of Texas did not sign the mediated settlement agreement. Redus’ Reply at 3. Redus’ argument is based upon either a flawed reading of the statute in question or a flawed reading of the mediated settlement agreement in this case. In either instance, it is wrong.

John Anthony Ramirez was the attorney for the Attorney General of the State of Texas in the trial court. Appendix Tab 6 at 2. The Office of the Attorney General of the State of Texas admitted at the prove-up hearing on the mediated settlement agreement that neither it nor its attorney was present at the mediation purportedly because it did not receive notice of the mediation. Appendix Tab 6 at 29. The mediated settlement agreement does not include the Office of the Attorney General of the State of Texas as being

present at the mediation and does not state that it was a party to the settlement reached at the mediation. Appendix Tab 4.

Contrary to Redus' argument to this Court, the family court mediation settlement statute does not require a mediated settlement agreement to contain the signature of all counsel for all parties *in the lawsuit*. The statute requires the signature of "the party's attorney, if any, who is **present at the time the agreement is signed.**" Tex. Fam. Code Ann. § 153.0071(d)(3). (emphasis added).

Since neither Mr. Ramirez, nor any other attorney on behalf of the Office of the Attorney General of the State of Texas was **present at the mediation at the time the agreement was signed**— Appendix Tab 6 at 28-29; Appendix Tab 4— neither his signature, nor that of any other person (other than Redus, Lee, and their respective counsel who **were** present at the mediation) was necessary to make the mediated settlement agreement binding under section 153.0071(d) of the Texas Family Code Annotated.

This brings us to Redus' final argument— that the "best interest of the child" language contained in section 153.002 of the Texas Family Code somehow trumps the "mediated settlement agreement conclusivity" language contained in Texas Family Code section 153.0071(d).



The fallacy of this argument is conclusively established by the express language of Texas Family Code section 153.0071(e), which states: “If a mediated settlement agreement meets the requirements of Subsection (d), a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.”

A court’s consideration of the “best interest of the child” language contained in section 153.002 is negated by the “entitled to judgment. . . notwithstanding. . . another rule of law” provision contained in section 153.0071(e) as a matter of law. See *Beyers v. Roberts*, 199 S.W.3d 354, 359 (Tex. App.— Houston [1<sup>st</sup> Dist.] 2006, pet. denied) (section 153.0071, as a specific statute pertaining to moderated settlement agreements, controls over more general provisions of Texas Family Code Annotated). In *Molinet v. Kimbrell*, No. 09-0544, \_\_\_ S.W.3d \_\_\_ (Tex. January 21, 2011), this Court held that when the Legislature includes a “notwithstanding” provision in a statute, the specific statute including that provision trumps any other arguably conflicting statute. In the words of this Court, under these circumstances, “the Legislature has resolved the otherwise-conflicting provisions” of the two statutes. *Id.* at 5.

Simply put, in order to exercise judicial discretion to "decline to enter judgment" on the "mediated settlement agreement" at issue in this original proceeding, Judge Dean was required to find that Benjamin Redus was "a victim of family violence" and that circumstance impaired his "ability to make decisions." Tex. Fam. Code Ann. § 153.0071(e-1). Judge Dean did not do so— and she could not properly do so— because the evidence before her conclusively foreclosed the making of any such findings. Appendix Tab 6 at 27-28. Therefore, the mediation settlement agreement in question is valid, binding and enforceable pursuant to the express terms of section 153.0071 of the Texas Family Code Annotated.

In this case, Judge Dean was absolutely entitled to find that the mediated settlement agreement in question is not in the best interest of the minor child. What Judge Dean was prohibited from doing was to refuse to enter judgment based upon the mediated settlement agreement in the absence of any evidence whatsoever that Benjamin Jay Redus was "a victim of family violence" and that the family violence in question impaired his "ability to make decisions." Tex. Fam. Code Ann. § 153.0071(e-1). By doing that, respectfully, Judge Dean clearly abused her discretion as a matter of law.

If this court does not rectify Judge Dean's error by issuing a writ of mandamus, Stephanie Lee will lose the statutory protection that the Texas Legislature granted to her in section 153.0071 of the Texas Family Code Annotated.

### **Prayer**

WHEREFORE, PREMISES CONSIDERED, Relator, Stephanie Lee respectfully prays that this Honorable Court grant a writ of mandamus requiring Judge Sheri Y. Dean, Presiding Judge of the 309<sup>th</sup> Judicial District Court of and for Harris County, Texas, to enter judgment based upon the April 18, 2011 mediated settlement agreement between Stephanie Lee and Benjamin Redus. Relator further prays that the costs of this original proceeding be taxed against Respondent, Benjamin Jay Redus.

Respectfully submitted,

LAW OFFICES OF SCOTT ROTHENBERG

/s/ Scott Rothenberg

SCOTT ROTHENBERG  
State Bar No. 17316750  
2777 Allen Parkway, Suite 1000  
Houston, Texas 77019-2165  
(713) 667-5300 - telephone  
(713) 667-0052 - telecopier  
**APPELLATE COUNSEL FOR  
RELATOR, STEPHANIE LEE**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing petition for writ of mandamus with attached appendix was served via facsimile or e-service on September 21, 2011, to the following:

**Counsel for Real Party in Interest, Benjamin Jay Redus:**

Mr. Clinton F. Lawson  
Law Offices of Clinton F. Lawson  
755 E. Mulberry, Suite 200  
San Antonio, Texas 78212  
email [clintonlawson@gmail.com](mailto:clintonlawson@gmail.com)

**Counsel for State of Texas:**

Mr. Rande Herrell  
Office of the Texas Attorney General  
Post Office Box 12017  
MC 038-1  
Austin, Texas 78711-2017  
(512) 460-6612 telecopier  
[rande.herrell@cs.oag.state.tx.us](mailto:rande.herrell@cs.oag.state.tx.us)

**Trial Court Judge (Respondent):**

Honorable Judge Sheri Y. Dean  
309<sup>th</sup> Judicial District Court  
Harris County Courthouse  
1115 Congress, 7th Floor  
Houston, Texas 77002  
[sheri\\_dean@justex.net](mailto:sheri_dean@justex.net)

          /s/ Scott Rothenberg            
SCOTT ROTHENBERG