No. 11-0732

In the Supreme Court of Texas

IN RE STEPHANIE LEE,
Relator,

On Petition for Writ of Mandamus
to the 309th Judicial District Court, Harris County

BRIEF OF THE STATE OF TEXAS AS AMICUS CURIAE

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TO THE HONORABLE SUPREME COURT OF TEXAS:

This brief responds to the Court's call for the views of the Solicitor General. In the State's view, the overarching purpose of Texas Family Code chapter 153 is to ensure trial courts' ability to act in the best interests of minor children—even when their parents do not. In refusing to render judgment on a mediated settlement agreement that was not in a child's best interest, the trial court effected that legislative intent. Contrary to relator's assertions, the language in one specific provision of chapter 153 addressing judgments on mediated settlement agreements cannot be read in isolation to overcome the strong public policy stated in earlier portions of the statute that govern the chapter as a whole. Accordingly, in the State's view, the court of appeals properly declined to issue a writ of mandamus, and this Court should do the same.

STATEMENT OF FACTS

Relator Stephanie Lee and real party in interest Benjamin Redus are the divorced parents of a seven-year-old girl. *See* 1.MR.1-2; 3.MR.1-2.[1] After Redus petitioned the trial court to modify the parent-child relationship and allow him to recover excess child-support payments, 3.MR, he and Lee entered into a mediated settlement agreement concerning their daughter's custody. 4.MR.

When Redus signed the agreement, he thought it was the most favorable resolution he could hope for as a father. 6.MR.24. But he later realized the agreement was not in his daughter's best interest, and he therefore objected when Lee asked the trial court to render judgment on it. 6.MR.24-26; 7-8.MR.

The agreement allowed Lee's daughter to stay with her some days even though Lee is now married to, and lives with, a convicted sex offender. 5.MR.6-8. Although Lee knew it was a violation of her new husband's probation for him to be in her daughter's presence, she allowed it. 6.MR.17. Indeed, she let him sleep naked in bed with her daughter. 5.MR.9.

Upon learning these facts, the trial court did not mince words: "I'm not going to put a kid in a house with a sex offender who violates a child. Not accepted. Appeal me." 5.MR.7 (statement of Associate Judge Charley Prine, Jr.). After additional evidence confirmed that the agreement was not in the child's best interest, the court issued an order refusing to render judgment on it. 2.MR; 6.MR.38, 39 (per Sheri Y. Dean, J.).

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1. "MR" ("mandamus record") refers to the appendix to Lee's September 15, 2011 mandamus petition. In "MR" citations, the first number identifies tabs, the second pages.

Lee petitioned the Fourteenth Court of Appeals for a writ of mandamus. *See* 1.MR.1. The court of appeals denied relief, citing other courts' recognition of Texas trial courts' paramount responsibility to act in the best interests of minor children. 1.MR.2-4 (per Brown, Boyce, and McCally, JJ.).

Lee sought mandamus relief from this Court. After the parties filed petition-stage briefs, the Court requested full briefing and called for the views of the Solicitor General.

ARGUMENT

I. TEXAS FAMILY CODE SECTION 153.0071 CANNOT REASONABLY BE READ TO FORCE TRIAL COURTS TO DISREGARD CHILDREN'S BEST INTERESTS.

Texas Family Code section 153.0071 provides that

> (d) A mediated settlement agreement is binding on the parties if the agreement:
>
> (1) provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation;
>
> (2) is signed by each party to the agreement; and
>
> (3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.
>
> (e) 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.
>
> (e-1) Notwithstanding Subsections (d) and (e), a court may decline to enter a judgment on a mediated settlement agreement if the court finds that:
>
> (1) a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions; and
>
> (2) the agreement is not in the child's best interest.

TEX. FAM. CODE § 153.0071(d)-(e-1).

Here, the agreement contained the statement required by section 153.0071(d)(1), and it was signed by Lee, Redus, and their attorneys as required by section 153.0071(d)(2)-(3). 4.MR.3.[2] Additionally, Redus testified that he was not a victim of family violence, so section 153.0071(e-1)(1) could not be satisfied. 6.MR.27. Accordingly, if section 153.0071 were the only relevant statutory text, Lee's mandamus petition might have merit. *See* Lee Br. at 12 (asserting that the use of "and," rather than "or," in section 153.0071(e-1)(1) makes a trial court's finding that an agreement is not in a child's best interest irrelevant when section 153.0071(d) is satisfied and section 153.0071(e-1)(1) is not).

But section 153.0071 is not the only relevant statutory text. The very first provision of chapter 153 establishes that "[t]he public policy of this state is to . . . provide a safe . . . environment for the child." TEX. FAM. CODE § 153.001(a)(2). And the next section reflects trial courts' critical role in advancing that policy; it states that "[t]he best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child." *Id.* § 153.002; *see also* Act of May 15, 1935, 44th Leg., R.S., ch. 39, § 1, 1935 Tex. Gen. Laws 111, 112 (first predecessor to current section 153.002 reflecting that the Legislature has empowered trial courts to protect children's best interests since at least 1935); Act of May 25, 1973, 63d Leg., R.S., ch.

2. Redus asserts that the absence of a signature for the State prevents Lee from showing compliance with section 153.0071(d)(2)-(3). Redus Br. at 5. But the statute does not require the State to be a party to a mediated settlement agreement. And where, as here, the agreement does not involve state money, the State has no financial interest in the agreement and is not required to sign it. That a different type of mediated settlement agreement might require the State's signature does not affect the analysis here.

543, § 1, 1973 Tex. Gen. Laws 1411, 1425 (next version of the statute, in which the Legislature strengthened the point by providing, like the language of section 153.002 does today, that "the best interest of the child shall *always* be the primary consideration of the court" (emphasis added)).[3]

The Court considers statutes as a whole, not merely their isolated provisions. *E.g.*, *Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex. 2004). And in light of sections 153.001 and .002, the statute as a whole supports the lower courts' decisions, not Lee's argument against them. The statute reflects the Legislature's well-justified concern for the best interests of children of divorced parents, instructing trial courts that they shall *always* make that concern their primary consideration in this setting. TEX. FAM. CODE §§ 153.001-.002; *see also Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982) (recognizing that Texas trial courts generally enjoy "wide latitude in determining the best interests of a minor child"). Yet under Lee's reading of section 153.0071(e-1), a court could *never* consider the best interest of the child unless "a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions." TEX. FAM. CODE § 153.0071(e-1)(1).

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3. Although Lee claims to find competing legislative intent in a statute addressing alternative dispute resolution more generally, *see* Lee Br. at 11, 15 (citing TEX. CIV. PRAC. & REM. CODE § 154.002), chapter 153 of the Texas Family Code is the best reflection of the legislative intent applicable here. And notably, that chapter makes fulfillment of other policy objectives subservient to the primary goal of protecting the interests of children. *See, e.g.*, TEX. FAM. CODE § 153.001(a)(1) (reflecting that it is the public policy of the State to "assure that children will have frequent and continuing contact with parents *who have shown the ability to act in the best interest of the child*" (emphasis added)).

Accepting Lee's reading of section 153.0071 and her argument that it should control over the earlier-enacted section 153.002, Lee Br. at 14-15, would effectively recognize a partial implied repeal of sections 153.001-.002—a ruling that would require unmistakably clear language reflecting the Legislature's intent to subordinate the best interests of Texas children to the self-interested, or simply ill-advised, decisions divorced parents often make. Here, there is no such language, and embracing Lee's position would yield results conspicuously at odds with the Legislature's overarching policy objective.

For example, if Lee's reading of the statute were correct, divorced parents could agree to allow a convicted child rapist to have sole custody of a minor child. And as long as the requirements of section 153.0071(d) were satisfied and neither party's ability to make decisions was impaired by family violence, a trial court would have no choice but to reduce the agreement to judgment. The trial court's hands would likewise be tied if, in another case, the mother's drug dealer (of no relation to either party) coerced the father to sign an agreement obligating him to pay large amounts of child support that everyone understood would go directly to the drug dealer's pocket.

These would be absurd, unjust results. They would violate public policy not only in the abstract, but also under the express language of the same subchapter of the statute on which Lee relies. Lee's argument thus fails under settled rules of statutory construction. *See, e.g.*, TEX. GOV'T CODE §§ 311.021, .023; *Tex. Dep't of Protective & Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 177 (Tex. 2004).

II. BECAUSE SHE CANNOT SHOW A CLEAR ABUSE OF DISCRETION, LEE IS NOT ENTITLED TO MANDAMUS RELIEF.

As already noted, Lee's statutory-construction argument is not without some force—and, were section 153.0071 the only relevant statutory text, would arguably entitle her to mandamus relief. But in light of Texas Family Code sections 153.001 and .002, the trial court did not clearly abuse its discretion in refusing to render judgment on a mediated settlement agreement that was not in the interest of the child and, as such, violated unquestionably sound legislative policy. Because clear abuse of discretion is the standard Lee must meet, *see, e.g.*, *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135 (Tex. 2004) (orig. proceeding), she is not entitled to relief.

PRAYER

The petition for writ of mandamus should be denied.

Respectfully submitted,

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