

IN THE SUPREME COURT OF TEXAS

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No. 00-0317
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IN RE JANE DOE 4

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APPEAL UNDER SECTION 33.004(F), TEXAS FAMILY CODE
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OPINION

JUSTICE HANKINSON delivered the opinion of the Court in which CHIEF JUSTICE PHILLIPS, JUSTICE ENOCH, JUSTICE BAKER, JUSTICE ABBOTT, JUSTICE O'NEILL, and JUSTICE GONZALES joined.

JUSTICE HECHT filed a concurring opinion, in which JUSTICE OWEN joined.

This is an appeal from a denial of a minor's application for an order allowing her to consent to an abortion without notifying either of her parents. *See* TEX. FAM. CODE § 33.003. Here, the minor did not prove as a matter of law that she is mature and sufficiently well informed to have an abortion without notifying her parents. Nor did she establish that the trial court abused its discretion in failing to find that notifying her parents would not be in her best interests. Accordingly, we affirm the judgment of the court of appeals.

Jane Doe is a pregnant, unemancipated minor. This is our second review of her application for a judicial bypass. In *In re Jane Doe 4*, ___ S.W.3d ___ (Tex. 2000)(*Doe 4 (I)*), we concluded that Doe had not established any of the statutory requirements for a judicial bypass and accordingly did not grant her application. *See id.* at ___. But because neither Doe, her attorney, nor the trial court had the benefit of our recent opinions in *In re Jane Doe*, ___ S.W.3d ___ (Tex. 2000) (*Doe 1(I)*), and *In re*

Jane Doe 2, ___ S.W.3d ___ (Tex. 2000), which clarified the “mature and sufficiently well informed” and “best interests” requirements, we remanded to the trial court for another hearing. *See Doe 4(I)*, ___ S.W.3d at ___.

After our decision in *Doe 4(I)*, the trial court held another hearing, at which Doe claimed that: (1) she was mature and sufficiently well informed to have an abortion without notifying her parents; (2) notifying her parents would not be in her best interests; and (3) notifying either of her parents would lead to physical, sexual, or emotional abuse. *See* TEX. FAM. CODE § 33.003(i). The trial court denied her application, finding that she had not established any of the statutory grounds for a bypass by a preponderance of the evidence. The court also found that Doe was not a credible witness. Doe appealed to the court of appeals, which affirmed the trial court’s order without opinion.

Doe appeals to this Court on two grounds. First, she argues that she established as a matter of law that she is mature and sufficiently well informed to have an abortion without notifying her parents. Second, she argues that the trial court abused its discretion in determining that notification would not be in her best interests. We will examine each ground separately.

We review the trial court’s finding on the “mature and sufficiently well informed” issue under a legal sufficiency standard. *See Doe 1(I)*, ___ S.W.3d at ___. Because Doe has the burden of proof, we cannot reverse the trial court’s determination unless she establishes as a matter of law that she is mature and sufficiently well informed. *See id.* at ___.

In *Doe 1(I)*, we stated that a minor is mature and sufficiently well informed “when the evidence demonstrates that the minor is capable of reasoned decision-making and that her decision is not the product of impulse, but is based upon careful consideration of the various options available

to her and the benefits, risks, and consequences of those options.” *Doe 1(I)*, ___ S.W.3d at ___. At a minimum, a minor must make three showings to establish that she is sufficiently well informed. “First, she must show that she has obtained information from a health-care provider about the health risks associated with abortion and that she understands those risks.” *Id.* at ___. This includes an understanding of the general risks and risks specific to the minor because of her health and stage of pregnancy. *Id.* at ___. “Second, she must show that she understands the alternatives to abortion and their implications.” *Id.* at ___. “Third, she must show that she is also aware of the emotional and psychological aspects of undergoing an abortion” *Id.* at ___.

We conclude that Doe has not made the first of the three required showings. We therefore focus on the evidence relevant to that requirement and need not address the other two. Although Doe spoke to a doctor about abortion, her testimony does not demonstrate as a matter of law that she understands the risks of having an abortion. Specifically, Doe testified that because of a past medical problem, she would have to undergo a different type of abortion procedure involving different anesthesia and resulting in different risks. But she was unable to explain how or in what way the procedures and risks would be different, thus demonstrating a lack of comprehension about the specific risks of the procedure to her. On this record then, the trial judge could have reasonably found that Doe was not sufficiently well informed. Because Doe has not established the contrary as a matter of law, we need not consider whether she has met the further requirement of establishing that she is mature as a matter of law.

Doe also argues that the trial court abused its discretion in failing to find that notification would not be in her best interests. In making this determination, the “trial court should weigh the

advantages and disadvantages of parental notification in the minor's specific situation." *Doe 2*, ___ S.W.3d at ____. To aid in this determination, we have listed five factors for the trial court to consider: (1) the minor's emotional or physical needs; (2) the possibility of emotional or physical danger to the minor; (3) the stability of the minor's home and whether notification would cause serious and lasting harm to the family structure; (4) the relationship between the parent and the minor and the effect of notification on that relationship; and (5) whether notification may lead the parents to withdraw emotional and financial support from the minor. *Id.* at ____. Because the determination must be made based on the specific facts of each case, these factors are not exhaustive. The trial court should therefore consider all relevant circumstances, including the minor's credibility, in making the best-interests determination. *Id.* at ____; *Doe 4(I)*, ___ S.W.3d at ____.

Doe offered two reasons why it would not be in her best interests to tell her parents about her pregnancy: her medical record and her parents' reaction to her older sister's pregnancy. Doe testified that a medical condition for which she was treated in years past led her physician to advise her she should not have a child. She told the court that her treating physician had advised her that having children would be risky and not in her best interests. Later in her testimony, however, Doe stated that she would like to have a family in the future, making no mention of these health risks as a possible impediment to that desire. Still later, when the court asked her for more information on the specific risks associated with her prior medical treatment, Doe testified that she had not spent much time discussing these risks with any doctor who might perform the abortion. Doe provided little more information on the risks particular to her health condition other than to explain that her medical history might dictate the kind of anesthesia she could use. While Doe's pre-existing medical

problems may be probative of why an abortion may be in her best interests, the statute requires her to prove by a preponderance of the evidence that notifying her parents would not be in her best interests. *See* TEX. FAM. CODE § 33.003(i). If she does have a current health risk, then her physical needs and the potential physical dangers may weigh in favor of involving her parents in her decision.

On the other hand, Doe also testified that notifying her parents could cause harm to their family structure and potentially lead her parents to withdraw support. Doe testified that she feared her parents will cut off all financial and emotional support once they learn of her pregnancy because when her sister was in the same situation a number of years earlier, Doe's parents immediately ordered her to leave the home even though the sister was still a minor. Not only did her parents banish her sister from their home, but they have not spoken to her since. This type of potential disruption to Doe's family relationship may weigh against notifying her parents.

Considering all the circumstances, some of the evidence weighs in favor of Doe having to notify her parents, while some weighs against. The trial court could have determined that Doe's particular physical needs and the possibility of physical danger outweighed any potential disruption to Doe's family relationship. Keeping in mind that the factors we identified in *In re Jane Doe 2* are not exhaustive, on this record we cannot say that the trial court abused its discretion in failing to find that a judicial bypass was in Doe's best interests.

Doe did not conclusively establish that she is sufficiently well informed or that the trial court abused its discretion in failing to find that not notifying her parents was in her best interests. Because we have concluded that Doe has not established any of the statutory grounds for a judicial bypass, we need not review the trial court's credibility finding. We affirm the judgment of the court

of appeals.

Deborah G. Hankinson
Justice

Opinion delivered: April 11, 2000