

IN THE SUPREME COURT OF TEXAS

No. 00-0140

IN RE JANE DOE

ON PETITION FOR REVIEW

OPINION

CHIEF JUSTICE PHILLIPS delivered the opinion of the Court as to Parts I-VI and a concurring opinion as to Part VII, all of which JUSTICE GONZALES joins. JUSTICE ENOCH, JUSTICE BAKER, JUSTICE HANKINSON, and JUSTICE O'NEILL join in Parts I, II, and IV-VI of the Court's opinion and in the judgment. JUSTICE OWEN joins in Parts I, II, and III of the Court's opinion and in the judgment. JUSTICE HECHT and JUSTICE ABBOTT join in Parts II and III of the Court's opinion.

JUSTICE ENOCH filed a concurring opinion, in which JUSTICE BAKER, JUSTICE HANKINSON, and JUSTICE O'NEILL join.

JUSTICE OWEN filed a concurring opinion, in which CHIEF JUSTICE PHILLIPS joined as to Parts I and III.

JUSTICE HECHT filed a dissenting opinion, in which JUSTICE ABBOTT joins.

This is a confidential appeal from a court of appeals' decision affirming a trial court's denial of a minor's application for a court order authorizing her to consent to an abortion without notifying her parents. Our Court is called upon to determine what the Legislature intended in Texas's parental notification statute when it wrote that a court "shall enter an order" that a minor is "authorize[d] . . . to consent to the performance of [an] abortion" if she demonstrates "by a preponderance of the evidence [that she] is mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents. . . ." TEX. FAM. CODE § 33.003(i). We are

not called upon to decide the constitutionality or wisdom of abortion. Arguments for or against abortion do not advance the issue of statutory construction presented by this case. Instead, our sole function in this case is to interpret and apply the statute enacted by our Legislature.

The trial court in this case concluded that although the minor “shows signs of being mature, she has not demonstrated that she is sufficiently well informed about the medical procedures and the emotional impact of the procedure.” The court of appeals affirmed, and the minor has appealed to this Court. We conclude that in this case, the minor has not met the statutory standard. Because this Court has not previously provided guidance to trial and appellate courts about what a minor must show under section 33.003 of the Texas Family Code to demonstrate that she is mature and sufficiently well informed, we remand this case to the trial court in the interest of justice. In so doing, we direct that upon remand, the proceedings in the trial court must be concluded as if Doe’s application had been filed the day after our opinion issues. *See* TEX. FAM. CODE § 33.003(h). In the event that the minor requires additional time after issuance of this opinion to prepare for a hearing, she may, of course, request an extension of time. *See id.*

I

Jane Doe is a pregnant, unmarried minor. Her eighteenth birthday will occur within a few months. She lives at home with her parents, and she has not been emancipated. Pursuant to Family Code section 33.003, she sought an order from the trial court allowing her to consent to an abortion without having to notify either of her parents. *See* TEX. FAM. CODE § 33.003.

Jane Doe was represented by counsel of her choice, and as the Family Code requires, the trial court appointed a guardian ad litem. *See id.* § 33.003(e). At the conclusion of a hearing, the trial

court denied Jane Doe's application and issued written findings and conclusions in accordance with Texas Family Code section 33.003(h). Jane Doe appealed to the court of appeals, which affirmed the trial court's judgment without an opinion. She now appeals to this Court. *See id.* § 33.004(f). She contends that she has conclusively established that she is mature and is sufficiently well informed to make a decision about terminating her pregnancy without notifying her parents. She also has presented a limited argument that the trial court erred in failing to conclude that notification would not be in her best interest. *See id.* § 33.003(i). Because she did not present this latter issue to the court of appeals, we will not consider it.

Before we turn to the merits of the issues before us, however, there are two significant procedural matters that we must resolve. The first is whether the Family Code prohibits us from releasing our opinions to the public in these types of matters. The second is what standard of appellate review applies in cases arising under sections 33.003 and 33.004 of the Family Code.

II

Family Code sections 33.003 and 33.004 contain many provisions designed to ensure the minor's anonymity and the confidentiality of the judicial bypass proceeding. Among these are provisions that, in effect, direct the trial court and the court of appeals not to publicly disseminate their rulings. *See* TEX. FAM. CODE §§ 33.003(k),(l); 33.004(c).

Family Code section 33.003 directs that a minor's application to the trial court, all other documents pertaining to the proceedings, and the trial court's ruling are confidential and privileged. *See* TEX. FAM. CODE §§ 33.003(k), (l). The statute is explicit about those who may receive notice of the trial court's ruling:

(l) An order of the court issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The order may not be released to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, another person designated to receive the order by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor.

TEX. FAM. CODE § 33.003(l).

Similarly, Family Code section 33.004(c) prohibits the court of appeals from publishing its ruling:

(c) A ruling of the court of appeals issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The ruling may not be released to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, another person designated to receive the ruling by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor.

TEX. FAM. CODE § 33.004(c).

The Code's judicial bypass provisions concerning appeals in this Court do not, however, contain directives regarding dissemination of opinions or rulings. The Family Code requires only that a “confidential appeal” shall be available to any pregnant minor to whom a court of appeals denies consent:

(f) An expedited confidential appeal shall be available to any pregnant minor to whom a court of appeals denies an order authorizing the minor to consent to the performance of an abortion without notification to either of her parents or a managing conservator or guardian.

TEX. FAM. CODE § 33.004(f). The requirement of a “confidential appeal” is not an impediment to publishing our opinions. We can do so without disclosing the identity of the minor, the court of

appeals, or the trial court.

As the head of the third branch of government with regard to civil matters, this Court has an obligation to provide guidance to lower courts through its published opinions. There would be no means of insuring consistency, uniformity, and predictability of the law if the court of last resort could not commit its analyses, reasoning, and decisions to writing in opinions and disseminate those opinions to the public. Without some explication from this Court of the meaning of “mature and sufficiently well informed,” different courts around the state at both the trial and appellate level would surely arrive at very different constructions of what the statute requires. This result would undermine the rule of law that undergirds our whole system of justice.

By publicly announcing our construction of this statute, the Legislature and the public will know the meaning that we have ascribed to it, and can order their behavior accordingly. In particular, the people, through their elected representatives, will have full opportunity to change the law, if they so desire, in light of the way the judiciary is interpreting and applying it.

We note that we are not called upon to express an opinion about the constitutionality of the provisions of the Family Code that prohibit the lower courts from making their rulings publicly available. Those questions must be decided another day.

III

The second important procedural issue involves the standard of review that appellate courts are to apply in reviewing trial court rulings. Because section 33.004 is silent on this issue, we look to the standards of review we apply to other trial court decisions.

First, we must determine whether the “mature and sufficiently well informed” requirement

is a question of fact or of law. Section 33.003 provides that the trial judge should determine these questions by “a preponderance of the evidence.” TEX. FAM. CODE § 33.003(i). This requirement implies that the trial judge is to weigh the evidence and determine the credibility of the minor or any other witnesses. These are typical fact-finding functions, performed by a trial court only after hearing the minor's live testimony and viewing her demeanor.

Next, we determine whether the trial court's factual findings on these issues are subject to an abuse of discretion review standard or a legal and factual sufficiency review standard. The abuse of discretion standard applies when a trial court has discretion either to grant or deny relief based on its factual determinations. *See Bocquet v. Herring*, 972 S.W.2d 19, 20-21 (Tex. 1998). This standard is especially appropriate when the trial court must weigh competing policy considerations and balance interests in determining whether to grant relief. *See General Tire, Inc. v. Kepple*, 970 S.W.2d 520, 526 (Tex. 1998). Thus, the abuse of discretion standard is typically applied to procedural or other trial management determinations. *See, e.g., National Med. Enters., Inc. v. Godbey*, 924 S.W.2d 123, 128 (Tex. 1996)(attorney disqualification); *City of Brownsville v. Alvarado*, 897 S.W.2d 750, 753-54 (Tex. 1995)(admission of evidence); *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 852 (Tex. 1992)(discovery sanctions).

By contrast, in this case the trial court has no discretion over the order. The statute provides that if the court finds that the minor is “mature and sufficiently well informed,” it “*shall* enter an order authorizing the minor to consent to the performance of the abortion without notification to either of her parents” TEX. FAM. CODE § 33.004(i)(emphasis added). Furthermore, in determining whether a minor is “mature and sufficiently well informed,” the trial court is not to

weigh policy considerations; it simply makes a factual determination. When the trial court acts primarily as a factfinder, appellate courts normally review its determinations under the legal and factual sufficiency standards. *See Bocquet*, 972 S.W.2d at 21; *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994). We therefore apply that standard of review to this appeal.¹

Unlike the courts of appeals, our Court may only engage in legal sufficiency review. *See* TEX. CONST. art. V, § 6. In reviewing legal sufficiency, however, we may set forth factors and principles for lower courts to follow in determining and reviewing whether a minor is “mature and sufficiently well informed” to make this decision without parental notification. *See Bocquet*, 972 S.W.2d at 21 (reasonableness and necessity of attorney's fees); *Transportation Ins. Co. v. Moriel*, 879 S.W.2d 10, 30-31 (Tex. 1994)(gross negligence).

IV

We turn next to the standard of proof the Legislature intended to require in the parental notification statute. The Texas parental notification statute was enacted against a backdrop of over two decades of decisions from the United States Supreme Court. One of the seminal opinions regarding minors and abortion is *Bellotti v. Baird*, 443 U.S. 622 (1979) (*Bellotti II*). In *Bellotti* a state had enacted a statute that required parental consent before a physician could perform an abortion on a minor, with certain limited exceptions. A plurality of the Court reiterated in *Bellotti*

¹ Justice Enoch's concurrence argues that the proper standard of review is abuse of discretion. Much of his argument is based on the premise that the facts will be undisputed. Although the hearing is unopposed, the testimony presented by the minor may be inconsistent, either on direct or after the trial court has posed questions. Therefore, rather than simply applying the law to undisputed facts, the trial court must weigh all the evidence before it, including demeanor and credibility, to determine if the minor, by a preponderance of the evidence, has demonstrated that she is mature and sufficiently well informed.

II what a majority of the Court had previously held in *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 74 (1976): “[T]he State may not impose a blanket provision . . . requiring the consent of a parent . . . as a condition for abortion of an unmarried minor,” and that it would be “inappropriate ‘to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient’s pregnancy, regardless of the reason for withholding the consent.’” *Bellotti II*, 443 U.S. at 643 (plurality opinion) (quoting *Danforth*, 428 U.S. at 74). The *Bellotti II* plurality further concluded that parental consent statutes would not pass constitutional muster unless the state provided an alternative procedure in which a minor could receive authorization for an abortion. *Id.* (plurality opinion).

Thus, the plurality concluded that a minor must be permitted an opportunity to show “either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents’ wishes; or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests.” *Id.* at 643-44 (plurality opinion). With regard to the determination of maturity, “the peculiar nature of the abortion decision requires the opportunity for case-by-case evaluations of the maturity of pregnant minors.” *Id.* at 643 n.23 (plurality opinion). The *Bellotti II* plurality also concluded that a parental bypass proceeding must maintain the anonymity of the minor and must be completed with “sufficient expedition to provide an effective opportunity for an abortion to be obtained.” *Id.* at 644 (plurality opinion). A majority of the United States Supreme Court has subsequently approved the *Bellotti II* parental bypass requirements. See *City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 439-442 (1982) (*Akron I*) (holding parental consent statute unconstitutional in

light of *Bellotti II*); *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 511-13 (1989) (*Akron II*) (declining to decide whether parental bypass was constitutionally required in a notification rather than a consent statute, but applying *Bellotti II* requirements). Our Legislature was obviously aware of this jurisprudence when it drafted the statute before us.

V

Against this backdrop our Legislature, like the legislatures of a number of other states, has chosen to require only parental *notification*, not parental *consent*. And like the other states that require only parental notification, our Legislature did not specify the particular information a minor must have before she can be considered "sufficiently well informed" to make the decision independently.²

The parental notification statute forbids a physician from performing an abortion on a pregnant, unemancipated minor without giving notice to the minor's parents at least 48 hours before the procedure. See TEX. FAM. CODE § 33.002(a). But the act allows a pregnant minor who wants to have an abortion without notifying one of her parents to "file an application for a court order authorizing the minor to consent to the performance of an abortion without notification to either of her parents" TEX. FAM. CODE § 33.003(a). When a minor files such an application, the court "shall determine by a preponderance of the evidence" whether:

² See ARK. CODE ANN. § 20-16-804(1)(A)(Michie 1999); COLO. REV. STAT. ANN. § 12-37.5-107(2)(a)(1999); FLA. STAT. §§ 390.01115(3)(a) & (4)(c)(1999); GA. CODE ANN. § 15-11-114(c)(1999); 750 ILL. COMP. STAT. 70/25-25(d) (West 1999); KAN. STAT. ANN. §§ 65-6705 (a) & (d) (1998); MD. CODE ANN., HEALTH §§ 20-103(a) & (c) (1991); MINN. STAT. § 144.343(6) (1998); MONT. CODE ANN. §§ 50-20-212(4) & (5) (1999); NEB. REV. STAT. § 71-6903(1) (1999); NEV. REV. STAT. § 442.255(2) (1997); N.J. STAT. ANN. § 9:17A-1.7(d) (West 1999); OHIO REV. CODE ANN. §§ 2151.85(A)(4) & (C)(1) (Banks-Baldwin 1999); S.D. CODIFIED LAWS §§ 34-23A-7(3) & 34-23A-7.1 (Michie 1999); VA. CODE ANN. § 16.1-241(V) (Michie 1999); W. VA. CODE § 16-2F-4(f) (1999); WYO. STAT. ANN. § 35-6-118(b)(v)(B) (Michie 1999).

1. The minor is “mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents;” or
2. Notification would not be in the best interest of the minor; or
3. Notification may lead to physical, sexual, or emotional abuse of the minor.

TEX. FAM. CODE § 33.003(i). If the court makes any of these determinations, the court “*shall* enter an order authorizing the minor to consent to the performance of the abortion without notification to either of her parents” *Id.* Because the Legislature used the imperative word “shall,” we conclude that when a minor meets the statutory threshold, the trial court must grant the application. *See* TEX. GOV’T CODE § 311.016(2).

Our focus in construing this statute is to determine the Legislature’s intent; this we discern primarily from the plain meaning of the words chosen. *See, e.g., Surgitek, Bristol-Myers Corp. v. Abel*, 997 S.W.2d 598, 602 (Tex. 1999); *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865 (Tex. 1999); *Liberty Mutual Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex. 1998). In section 33.003(i), the Legislature has succinctly stated that the minor must be “mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents” TEX. FAM. CODE § 33.003(i). The brevity of the requirement does not, however, mean that it is insubstantial. The Legislature undoubtedly intended the bypass procedure to be a meaningful one. In requiring that a minor demonstrate that she is mature and sufficiently well informed, the Legislature took into account the gravity and potential consequences of the irreversible decision to terminate a pregnancy, and sought to assure that the minor’s decision was thoughtful and informed.

Thus, we conclude that a minor is "mature and sufficiently well informed to make the decision to have an abortion without notification to either of her parents" 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. See *In re Anonymous*, 711 So. 2d 475, 477 (Ala. Civ. App. 1998); *In re Petition of Anonymous 1*, 558 N.W.2d 784, 788 (Neb. 1997); *In re Petition of Anonymous 2*, 570 N.W.2d 836, 838-39 (Neb. 1997); *In re Jane Doe*, 485 S.E.2d 354, 365 (N.C. App. 1997). The decisions of a number of other state courts construing similar statutes, which were available to the Legislature at the time they enacted section 33.003(i), inform our interpretation. See *Ex Parte Anonymous*, 618 So. 2d 722, 725 (Ala. 1993); *In re Petition of Jane Doe for Waiver of Notice*, 866 P.2d 1069, 1074-75 (Kan. App. 2d 1994); *In re Mary Moe*, 469 N.E.2d 1312, 1315 (Mass. App. Ct. (1984)); Cf. *In re Anonymous*, 674 So.2d 1317, 1318 (Ala. Civ. App. 1995); *In re Anonymous*, 655 So. 2d 1052, 1054 (Ala. Civ. App. 1995).

Obviously, whether a minor is mature and sufficiently well informed is a highly individualized decision that must take into account the diverse background and circumstances of each applicant for waiver of parental notification. An examination of decisions from other states' courts reveals consistent themes. All of the decisions wrestle with "mature" and "informed," two concepts that overlap to some extent, but which are also distinct. States make a distinction between the information, and the minor's ability to understand that information and deal with it responsibly.

The states that have written on this issue, including Alabama, Kansas, Massachusetts, Nebraska, North Carolina, and Ohio require that the minor has been informed as to the alternatives

to abortion, to the nature of the abortion procedure and its risks, and the physical, emotional, and social consequences of either abortion or bringing the pregnancy to term. The Alabama Court of Civil Appeals has suggested that the information about the risks and options should be targeted to an individual's specific circumstances. *See In re Anonymous*, 650 So.2d 923, 925 (Ala. Civ. App. 1994). But the courts are also careful to ensure that the minor understands that information, and has assimilated it in a mature way. To this end, they have inquired into how a minor might respond to certain contingencies, particularly assessing whether the minor will seek counseling in the event of physical or emotional complications. Many courts have assessed the minor's school performance and activities, as well as the minor's future and present life plans. A few courts have explicitly assessed the minor's character and judgment directly. Most of the decisions have also considered the minor's job experience and experience handling finances, particularly assessing whether the minor is aware of the financial obligations inherent in raising a child. Almost all courts conduct the maturity inquiry, either explicitly or implicitly, against the background circumstances of the minor's experience. These include the minor's relationship with her parents, whether she has social and emotional support, particularly from the male who would be a father, and other relevant life experiences.

VI.

We conclude that a trial court should take into account the totality of circumstances the minor presents in determining whether she is mature and sufficiently well informed. In order to establish that she is sufficiently well informed, the minor must make, at a minimum, three showings.

First, she must show that she has obtained information from a health-care provider about the

health risks associated with an abortion and that she understands those risks. That would include an understanding of the risks associated with the particular stage of the minor's pregnancy.

Second, she must show that she understands the alternatives to abortion and their implications. As with any medical procedure, part of making an informed decision is knowing the available alternatives. A minor should be able to demonstrate that she has given thoughtful consideration to her alternatives, including adoption and keeping the child. She should also understand that the law requires the father to assist in the financial support of the child. *See* TEX. FAM. CODE § 154.001; *see also* TEX. CONST. art. XVI, § 28 (garnishment of wages for court-ordered child support payments). She should not be required to justify why she prefers abortion above other options, only that she is fully apprised of her options.

Third, she must show that she is also aware of the emotional and psychological aspects of undergoing an abortion, which can be significant if not severe for some women. She must also show that she has considered how this decision might affect her family relations. Although the minor need not obtain this information from licensed, professional counselors, she must show that she has received information about these risks from reliable and informed sources, so that she is aware of and has considered these aspects of the abortion procedure.

While a minor must demonstrate a knowledge and appreciation of the various considerations involved in her decision, she should not be required to obtain information or other services from any particular provider. Nor should she be required to meet with or review materials that advocacy or religious groups provide. The inquiry is whether she has obtained information on the relevant considerations from reliable sources of her choosing that enable her to make a thoughtful and

informed decision.

A determination of maturity necessarily involves more trial court discretion. However, if a court determines that a minor has not demonstrated that she is mature enough to make a decision to undergo an abortion, then the court should make specific findings concerning its determination so that there can be meaningful review on appeal. Similarly, if a court concludes that a minor is not credible in some respect that directly relates to its determination of maturity, the court should make specific findings in that regard as well.

A minor who can show that she is sufficiently well informed may also establish in the process that she is mature. In making a determination of maturity, there are, however, some criteria that should not be relied upon as conclusively showing *immaturity*. The United States Supreme Court has said that one of those is the fact, standing alone, that the pregnant female is a minor. That Court has also admonished that states and courts “may not make a blanket determination that *all* minors . . . are too immature to make this decision or that an abortion never may be in the minor’s best interests without parental approval.” *Akron I*, 462 U.S. at 440. A child’s age, educational background or grades in school, while indicative of some level of maturity, are not conclusive on the issue of maturity. Nor is participation in extra-curricular activities. It should also go without saying that a minor’s socio-economic status should not bear on the decision.

VII

As discussed earlier in this opinion, the standard of review is legal sufficiency. Thus, unless Jane Doe has shown as a matter of law that she is mature and sufficiently well informed, we would ordinarily affirm the judgment of the court of appeals. After reviewing this record, we conclude that

she has not established as a matter of law that she is sufficiently well informed to make the decision to have an abortion performed without notifying her parents. But because this is a matter of first impression, in the interests of justice, we remand to the trial court for further hearing and consideration.³

CONCLUSION

For the reasons we have discussed, we reverse the judgment of the court of appeals and remand this case to the trial court for further hearing and consideration. We have already indicated the time stricture within which further proceedings in the trial court must be concluded. Importantly, the court should schedule its proceedings with the additional consideration that it must maintain the minor's confidentiality. Section 33.003 allows the trial court to give proceedings of this type "precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly." TEX. FAM. CODE § 33.003(h).

Thomas R. Phillips
Chief Justice

Opinion delivered: February 25, 2000

³ Although Texas Parental Notification Rule 3.3(b) does not allow a court of appeals to remand, the rules are silent regarding this Court. Consequently, we are not prohibited from remanding.