

IN THE SUPREME COURT OF TEXAS

=====
No. 00-0191
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IN RE JANE DOE 2

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ON PETITION FOR REVIEW
=====

JUSTICE HECHT, joined by JUSTICE ABBOTT, dissenting.

The Court advances apace in its assault on the fundamental, constitutional rights of parents and families that the Legislature attempted to protect with the Parental Notification Act.¹ Last week, in its first *In re Doe*² opinion — which the Court has decided to rename *In re Doe 1* because it looks as if the Court is going to be reversing the lower courts’ denials of applications regularly enough that no one will know which *Doe* is which if the opinions are not differentiated by sequential Arabic numerals — the Court held that the Act’s requirement that a minor be “sufficiently well informed” to have an abortion without telling her parents means only that she have received minimal information about her decision.³ Any competent lawyer can lead a reasonably coherent minor through the Court’s simple checklist. A minor is “mature”, the other part of the Act’s requirement,

¹TEX. FAM. CODE §§ 33.001-.011. All statutory references are to the Family Code unless otherwise noted.

² ___ S.W.2d ___ (Tex. 2000).

³ *Id.* at ___.

if she is not impulsive and has given some thought to the information she has received.⁴ The Act's bar to teenage abortions without parental involvement is set ankle-high, according to the Court, and any minor who can hurdle it is, as a matter of law, entitled to have her application granted. This anemic law is all the Court says the Legislature conceived after months of labor to deliver a healthy statute. Before the Act a minor needed only a willing clinician to obtain an abortion without parental notification; now a minor needs only a State-paid attorney.

That, as I say, was *Doe 1*. This week along comes *Doe 2*, which holds that the Act's best-interest and abuse standards are no higher than the "mature and sufficiently well informed" standard construed and applied in *Doe 1*. What does the Act mean by requiring that it be in a minor's best interest not to tell her parents that she intends to have an abortion? According to the Court, really no more than that notification be potentially upsetting to the minor or her parents.⁵ Indeed. Imagine the household in which the junior high or high school daughter announces to unsuspecting parents, without upsetting anyone, that she is pregnant and getting an abortion. Catatonic parents may be told that their daughter is having an abortion, the Court says; the Act spares all others the shock. Also, according to the Court, any evidence that a parent has ever struck a child — whether in anger or in discipline, once years ago or more recently, it makes no difference — tends to prove that the parent may abuse the daughter if told that she wants an abortion. Parents be warned: by spanking your daughter at any point in her life, you may surrender any right you have to know that she will have an abortion before she is 18.

⁴ *Id.* at ____.

⁵ *Ante*, at ____.

But even less defensible than the Court’s devaluation of the statutory standards for obtaining an abortion without parental involvement is the Court’s demand, unsupported by the Act, that trial courts make detailed findings to support denying applications. The Act requires trial courts to make findings of fact and conclusions of law in connection with their rulings,⁶ but it strongly suggests that those findings track the statutory standards for granting and denying applications.⁷ And that was the position the Court took less than three months ago when it promulgated forms for the trial courts to use.⁸ But now that it turns out that tracking the statutory standards makes it too easy, in the Court’s view, for trial courts to deny applications, the Court requires that trial courts work harder. Not only must trial courts explain in detail why they consider a minor immature or why involving her parents would not be in her best interest, for the first time in the history of Texas jurisprudence, so far as I can tell, the Court insists that trial courts explain in detail why they choose to disbelieve all or any part of a minor’s testimony. The Legislature sometimes requires specific findings, but not in this Act. Specific findings are this Court’s invention to thwart the Legislature’s plain intent to encourage parental participation in a child’s decision whether to have an abortion, and to discourage teenage pregnancy and abortion.

The Act contemplates a higher standard than the Court sets for depriving parents of their right to counsel their minor daughter — and denying the daughter the benefit of that counsel —

⁶TEX. FAM. CODE § 33.003(h).

⁷*Id.* § 33.003(i).

⁸TEX. PARENTAL NOTIFICATION RULES 2.5(a); TEX. PARENTAL NOTIFICATION FORM 2D.

concerning what the United States Supreme Court has called the “grave and indelible”⁹ decision to have an abortion. The Legislature gave trial courts greater discretion in deciding whether to require parental notification than the Court allows. I therefore remain in dissent.

I

Jane Doe, age 16, lives at home with both parents. She is a junior in high school and involved in typical extracurricular activities. The record does not reflect her academic standing or whether she has ever had a job. She has applied for authority to have an abortion without telling her parents. In her application, made on Form 2A as permitted by Rule 2.1(c)(1) of the Parental Notification Rules, she claims:

I am mature enough to decide to have an abortion without telling my parent(s)
I also know enough about abortion to make this decision.

Telling my parent(s) . . . that I want an abortion is not in my best interest.

Telling my parent(s) . . . that I want an abortion may lead to physical or emotional abuse of me.

Any one of these reasons, if proved by a preponderance of the evidence, is a basis for authorizing a minor to consent to an abortion without notice to her parents.¹⁰

As required by statute,¹¹ the trial court appointed an attorney to represent Doe, and as permitted by statute,¹² the court appointed that attorney to be Doe’s guardian ad litem as well. The

⁹ *Bellotti v. Baird*, 443 U.S. 622, 642 (1979) (*Bellotti II*) (plurality opinion).

¹⁰ EX. FAM. CODE § 33.003(i).

¹¹ *Id.* § 33.003(e).

¹² *Id.*

court then conducted a hearing attended by Doe, her attorney and guardian, and a friend. The following is a summary of Doe's testimony, the only evidence offered at the hearing.

Doe has been involved in a sexual relationship for some time. Doe did not state her partner's age or whether he is in school. She explained that she has taken birth control pills to keep from becoming pregnant. She knew they might not be completely effective but, as she told the trial court, "chose to accept that possibility and responsibility".

When Doe missed her period, she tested herself several times to confirm that she was pregnant. She did not consult a physician. After she missed a second period, she "spoke[] to many different facilities" that perform abortions. She has also discussed her situation with two friends, one a much older adult whom Doe has known all her life, and one whom she has known only a few years. Both agree that abortion, in Doe's words, "is the best way", and they intend to help her. Doe has told no one else that she is pregnant, including, presumably, the father of the child.

Doe has not been advised of any medical reason why she either should or should not have an abortion, but she also has not been told what risks the procedure poses to her. She testified:

Q So you understand that there might be some medical reason why it would be inadvisable for you to go through with this procedure?

A Yes.

Q And if you're advised of that before the procedure is done then you would not go through with it —

A Yes.

Q — is that correct?

A Correct.

Doe is a member of a denominational church but has not consulted her pastor and does not wish to do so. Concerning her church's views on abortion, Doe testified: "I've looked into the religious and what my religion says on it. . . . They don't — they don't promote it, but they don't — it's not completely against it." Doe thought she would not be prohibited from practicing her religion in the future if she went through with an abortion.

Doe stated that she has considered carrying her pregnancy to term and keeping the baby, but, she explained, "I think these would both have the consequences on both parents and everyone around me in my school and I just think that this [i.e., abortion] is a better decision." Concerning adoption, Doe's only testimony was as follows:

A I've looked into everything —

Q You've considered —

A — possible.

Q — adoption? You've considered keeping the baby?

A Yes, sir.

Doe did not state whether she had considered marrying the father of her child, or whether she had discussed with him what she should do, or as I have already stated, whether she has even told him that she is pregnant. Doe did not indicate whether she was aware of any financial assistance that might be available to her if she had her baby.

Doe does say she plans on marrying someday and that if she has an abortion she would tell her future spouse because "it's something that they should know." She stated that she recognizes

a future mate might have religious beliefs against abortion but concluded: “I believe there’s consequences against it [i.e., having an abortion] and it’s my responsibility to take them.”

Doe’s reasons for not telling her parents are, in their entirety, as follows:

Q Why do you not want to tell your mother that you’re getting an abortion?

A Worried about the consequences it would have towards her and her health and in the previous two years she’s had [health problems from worrying].

Q And what has she been worrying about? What has brought on her condition?

A Mainly me.

Q Okay. Any specific thing about you?

A The relationship with — I’ve been in a relationship for [some time] and she’s — it’s been hard on her.

Q And this is a relationship with the baby’s father?

A Yes, sir.

Q Okay. Why do you not want to tell your father that you’re getting an abortion?

A I’m scared of him. He’s never beat me, he’s hit me. He has a — he has just like slapped me and he has a temper and he might, I don’t know, kick me out of the house or something.

Doe did not give any further explanation about when, how often, or under what circumstances her father had hit or slapped her.

Doe and her attorney then summarized for the court:

Q So you feel that this is a decision that you’ve made after careful and thoughtful consideration?

A I think it's to the best interest. I think it's to the best interest of the ones that it will affect.

Q And you're certain in your mind that you have no unanswered questions about your options or about the consequences of your decision?

A No, sir.

It appears that Doe intended to respond affirmatively to the last question.

Following Doe's testimony, the trial court expressed concern that Chapter 33 is unconstitutional, although Doe had not raised any such issue herself, and then stated: "I'm going to make a ruling to deny your application and declare it [i.e., the statute] is unconstitutional" The trial court made the following written findings:

1. That applicant is not mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents.
2. It is in applicant's best interest to notify her parents.
3. There is no evidence that notification of applicant's parents may lead to physical, sexual or emotional abuse of applicant.

The Court also stated written conclusions that Chapter 33 is unconstitutional on its face for the following reasons:

1. The statute forces unreasonable two day deadlines upon a court in acting in a judicial function. The automatic waiver provisions which deem an application to be granted without court action takes the discretion to act away from a court. The legislature has violated Article II, section 1 of the Texas Constitution by imposing its will upon the discretionary duty of the court to decide life or death matters resulting in a major infringement upon the judicial function.
2. The provisions of the statute making court rulings in secret violates the open court doctrine of the Texas Constitution.

3. The statutes violate fundamental due process by requiring proceedings in such a short period of time (2 days) that the legal safeguards of a full hearing are impossible. For example the right to subpoena witnesses or seek expert opinions is abrogated. A court may not exercise appropriate discretion without having such judicial tools available.

II

In *Doe I*, the Court reversed the court of appeals' judgment without finding any error in that judgment and remanded the case for a new trial. The Court forgot that it is virtually hornbook law in Texas that "[a] reviewing court can reverse only when there is error in the judgment of the court below."¹³ "[A]n errorless judgment of a trial court cannot be reversed in the interest of justice or to permit the losing party to have another trial."¹⁴ As former Chief Justice Calvert bluntly put it: "Attorneys frequently interpret [the rules and cases] as authorizing the supreme court to *reverse* trial court judgments in the interest of justice. Not so."¹⁵ The same year Chief Justice Calvert wrote that statement he also authored the Court's opinion in *Morrow v. Shotwell*, which appeared to reverse an errorless judgment of the court of appeals and remand to the trial court for a new trial in the interest of justice because the case was tried on the wrong legal theory.¹⁶ But *Morrow* has never been cited by this Court as authority for remanding a case simply to allow a party to try again.

¹³ *Davis v. Bryan & Bryan, Inc.*, 730 S.W.2d 643, 644 (Tex. 1987) (per curiam) (citing *City of Houston v. Blackbird*, 394 S.W.2d 159 (Tex. 1965), and *Chevalier v. Lane's, Inc.*, 213 S.W.2d 530 (Tex. 1948)).

¹⁴ *Useton v. State*, 499 S.W.2d 92, 99 (Tex. 1973); accord *Scott v. Liebman*, 404 S.W.2d 288, 294 (Tex. 1966) (citing cases).

¹⁵ Robert W. Calvert, ". . . in the Interest of Justice", 4 ST. MARY'S L.J. 291, 300-301 (1972) (emphasis in original).

¹⁶ 477 S.W.2d 538, 541-542 (Tex. 1972).

Now, a week after *Doe I*, the Court decides that it was in error. It should, instead, have vacated the court of appeals' judgment, not reversed it. So that is now the approach *du jour*. The Court finds authority for this procedure in Rule 60.2(f) of the Texas Rules of Appellate Procedure, which permits the Court to "vacate the lower court's judgment and remand the case for further proceedings in light of changes in the law". The rule does not exactly say that a new trial can be ordered, and we have never used the rule except to require the court of appeals to reconsider its ruling,¹⁷ not to order a new trial. But as the Court subtly states, "the rule's plain language does not *preclude* us" from ordering a new trial.¹⁸ Perhaps not, but judicial restraint should. The Court should not be ordering new trials just because it would like to see a different result. What "changes in the law" did *Doe I* make? The Court went to great pains to base its analysis on existing law and cases from other states.¹⁹ The only thing new in *Doe I* is the Court's pronouncement that the Parental Notification Act means almost nothing, which was new indeed, and even startling, but can hardly be thought to have taken unfair advantage of minors applying under it. If anything, *Doe I* makes it easier, not harder, for a minor to obtain a judicial waiver of parental notification. Dozens of states have had parental notification and consent statutes for decades. Many, as the separate opinions in *Doe I* noted, have been construed by the United States Supreme Court. The Texas law was derived from those other states' laws, and there is nothing unique or unusual about it to justify a new trial in this case based on changes in the law.

¹⁷ *E.g.*, *Welex v. Broom*, 816 S.W.2d 340 (Tex. 1991) (per curiam).

¹⁸ *Ante*, at ____ (emphasis added).

¹⁹ *Doe I*, ____ S.W.2d at ____.

The Court's interest in achieving a particular result in parental notification cases is distorting its jurisprudence. If the Legislature adds a new provision to the Deceptive Trade Practices Act, will the Court vacate the judgment in every case tried under the provision and order a new trial until it has had an opportunity to construe the new statute? No. If the Legislature creates a new cause of action or a new defense, will the Court remand every case tried on the new issues until it has issued an opinion in a case construing the new law? No, not even if there were no counterpart to the new law in American jurisprudence. It has never done so, and I am confident it never will. So what is the point of the Court's new remand procedure? In the Court's words: "This rule is particularly well-suited to situations such as this one, where courts must apply the requirements of a unique or novel statutory scheme."²⁰ It is the "such as" part of this sentence that I wonder about. Has there ever been another example "such as" this one in the history of Texas jurisprudence? No. What will one look like if it ever comes along? Can't say. Any clues? No. The remand in this case and in *Doe I* is a very unique procedure, so unique in fact that it will never be followed except in parental notification cases, just as the Court's complete lack of deference to the trial court's ruling will be unique to these cases.

Repeatedly, the Court states that the trial court did not err in denying Doe's application, and if the trial court did not err in its ruling, the court of appeals certainly did not err in affirming it. When the Court reverses a judgment, it may remand in the interest of justice to give the parties an opportunity to present their case in light of the Court's opinion, as for example in *Boyles v. Kerr*²¹

²⁰ *Ante*, at ____.

²¹ 855 S.W.2d 593, 603 (Tex. 1993).

and *Transportation Insurance Co. v. Moriel*.²² But the Court cannot say that there is anything wrong with the judgments in this case. On the evidence before them, the lower courts reached the right decisions. Nevertheless, the Court holds that Doe is entitled to a second opportunity to prove each of the three statutory bases she asserts for authorization to have an abortion without telling her parents. I examine the Court's holding as to each in turn.

A

The Court reiterates its holding in *Doe I* that a minor is “sufficiently well informed” to have an abortion without notice to her parents, within the meaning of the Act, if she has a modicum of information and understanding. She need only show that: (1) “she has obtained information from a health-care provider about the health risks associated with an abortion and that she understands those risks”; (2) “she understands the alternatives to abortion and their implications”; and (3) “she is also aware of the emotional and psychological aspects of undergoing an abortion”.²³ The Court makes no mention of what evidence is necessary to show maturity.

As in *Doe I*, the Court does not say whether Doe offered sufficient evidence or not. This omission, as I noted in *Doe I*,²⁴ is purposeful. The Court did not apply its standard to the circumstances in *Doe I* and does not do so in this case because the MEMBERS of the Majority cannot agree on what the minor has and has not proved. The minor and the trial court are directed to try

²² 879 S.W.2d 10, 26 (Tex. 1994).

²³ *Ante*, at ___ (quoting *Doe I*, ___ S.W.2d at ___).

²⁴ *Doe I*, ___ S.W.2d at ___ (Hecht, J., dissenting).

again to do what this Court itself cannot do: decide whether Doe is entitled to an abortion without telling her parents. This is what the Court calls “guidance”.²⁵

On remand, Doe and her attorney can follow the Court’s checklist in *Doe I* and attempt to meet their burden of proof. The trial court may yet determine that Doe is not fully credible or that she does not have even the minimal information and understanding the Court says the Act requires.

B

The Court holds that a trial court’s determination whether parental notification is not in a minor’s best interest should be reviewed for abuse of discretion, and prescribes several factors to guide the trial court’s determination.

1

I do not disagree with the Court that appellate review of a trial court’s assessment of a minor’s best interest should be for abuse of discretion, although I also agree with JUSTICE OWEN that the sufficiency of the evidence plays an important role in deciding whether a trial court has abused its discretion. It is an abuse of discretion, of course, for a court to rule without supporting evidence.²⁶

I do not agree with the Court that this case must be reversed and remanded merely because the trial court did not have the benefit of today’s opinion when it ruled. Just as a court that errs on

²⁵ *Id.* at ____.

²⁶ *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998) (“It is an abuse of discretion for a trial court to rule arbitrarily, unreasonably, or without regard to guiding legal principles, *e.g.*, *Goode v. Shoukfeh*, 943 S.W.2d 441, 446 (Tex. 1997), or to rule without supporting evidence, *Beaumont Bank v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991).”).

the law abuses its discretion even when the law is unsettled,²⁷ a court that rules correctly has not abused its discretion simply because the law was not fully developed at the time. This Court does not hold that the trial court erred or abused its discretion, yet it reverses and remands the case for the trial court to re-evaluate Doe’s best interest, now that the Court has provided enlightenment.²⁸ Notably, the Court does not suggest that Doe offer any additional evidence. The Court does not explain why it cannot reassess the evidence in light of its factors as well as the trial court — something it will certainly do in the next case. If the trial court on remand concludes, yes, it is still not in Doe’s best interest not to notify her parents, and Doe again appeals, this Court will have to make the very determination it now directs the trial court to remake. Given the delay necessitated by a remand, the Court simply ought to say whether on this record Doe’s proof satisfies its four factors, but it refuses to do so, apparently in hopes that the trial court will be pressured into granting Doe’s application, sparing this Court the responsibility of a decision.

I would review the trial court’s decision and hold that there was no abuse of discretion.

2

The Court derives from its opinion in *Holley v. Adams*,²⁹ a case involving the termination of a spouse’s parental rights, four factors that trial courts should consider in deciding whether parental notification of a minor’s wish to have an abortion is not in the minor’s best interest. Any connection

²⁷ *In re Missouri Pacific R.R. Co.*, 998 S.W.2d 212, 216 (Tex. 1999) (“A trial court does not have the discretion to make an erroneous legal conclusion even in an unsettled area of law.”); *Huie v. DeShazo*, 922 S.W.2d 920, 927-928 (Tex. 1996) (“Consequently, the trial court’s erroneous legal conclusion, even in an unsettled area of law, is an abuse of discretion.”).

²⁸ *Ante*, at ____.

²⁹ 544 S.W.2d 367 (Tex. 1976).

between a termination of parental rights and parental notification is not immediately apparent, and the Court does not bother to explain its rationale. The Court has simply sought out its only prior decision in any context listing “best interest” factors and attempted to apply it here. The factors the Court requires trial courts to consider are the following:

(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 irreparable harm to the family structure; and (4) the relationship between the parent and the minor and the effect of notification on that relationship. An additional factor that courts in other jurisdictions have considered is whether notification may lead the parents to withdraw emotional and financial support from the minor.

The Court’s factors weigh heavily in favor of denying parents notice that their child is about to have an abortion. A minor who does not want her parents to know will almost always claim, as Doe has in this case, that her parents will be stunned to know that she is pregnant and considering an abortion, that she’s afraid of how they will react, that she doesn’t want to hurt them, that telling them will change their relationship. Are these emotional needs of the minor and this effect on the family relationship enough to show that notification is not in her best interest? The Court does not answer. But it is plain that almost any minor who wants an abortion without notifying her parents will, simply because of circumstances common to everyone in her position, be able to prove or go a long way toward proving that it is not in her best interest to notify her parents.

Indicative of the low standard the Court sets is its observation: “a minor’s generalized fear of telling her parents does not, *by itself*, establish that non-notification would be in the minor’s best

interest.”³⁰ The clear suggestion is that a minor’s generalized fear of telling her parents, coupled with any other evidence, is enough to establish that non-notification would be in her best interest.

A minor’s interests in these circumstances are not only immediate; they are profound and long-term. Her emotional distress in learning that she is pregnant when she does not wish to be, and her turmoil over trying to decide what to do, are certainly compounded by having to disclose her circumstances to her parents. For the short-term, keeping things secret may seem very attractive. But an abortion does not make the entire episode disappear as if it never happened. A minor must live with the knowledge that she excluded her parents from perhaps the most significant decision she made before adulthood. She may come to regret the decision, but even if she does not, excluding her parents from this very difficult part of her life necessarily affects the relationship. The long-term consequence to the familial relationship is far more significant in determining a minor’s best interest than the likelihood that her parents’ immediate reactions will be disappointment and even anger. A minor’s best interest is difficult to define or predict, but it must be informed by deeper sensitivities than the factors the Court employs.

C

The Court holds that Doe offered some evidence that telling her parents about her decision to have an abortion may lead to her physical or emotional abuse. That evidence consists entirely of the following three sentences of Doe’s testimony concerning her father: “I’m scared of him. He’s never beat me, he’s hit me. He has a — he has just like slapped me and he has a temper and he

³⁰ *Ante*, at ___ (emphasis added).

might, I don't know, kick me out of the house or something.” Doe did not say when her father hit or slapped her, whether recently or years before. She does not say on how many occasions he struck her, but leaves the distinct impression that it was not often. She does not say whether her father hit her out of anger or in disciplining her. For this testimony to be legal evidence that Doe's father may physically or emotionally abuse her if he is told of her desire to have an abortion shows again the low standards that this Court is convinced the Act contains.

Even assuming that Doe's brief testimony was some evidence of possible paternal abuse, surely it is no evidence of possible maternal abuse. The Act does not require that both parents be notified, only that one be told.³¹ Thus, the Court holds that if one parent may be abusive, neither should be told. There is absolutely no basis for this holding anywhere in the statute.

I would hold that the trial court was correct in concluding that Doe offered no evidence of possible abuse.

III

To make it more difficult for trial courts to deny applications under the Parental Notification Act, the Court insists that *specific* findings of fact and conclusions be made. This requirement is not in the statute, which states only that trial courts “shall issue written findings of fact and conclusions of law”.³² The Legislature knows how to require trial courts to make specific findings. For example, section 161.002 of the Family Code requires a trial court to make “specific findings” concerning a

³¹ EX. FAM. CODE § 33.002(a)(1)(A) (stating that a physician may not perform an abortion for a minor without, among other things, notice to “a parent”); § 33.003(a) (allowing a minor to apply for authorization to have an abortion “without notification to one of her parents”).

³² EX. FAM. CODE § 33.003(h).

mother's efforts to locate and serve her child's biological father before his parental rights can be terminated. A trial court that denies relief in a child support review proceeding must explain its reasons with "specific findings".³³ A trial court can retain jurisdiction over a child who has been in the care of the Department of Protective and Regulatory Services if it makes "specific findings" regarding the grounds for the order.³⁴ The Parental Notification Act imposes no such requirement; it is entirely an invention of a Court that does not approve of trial courts' denying applications.

The Court even goes so far as to require trial courts to make findings regarding a minor's credibility. I am not aware that such a requirement has ever been imposed in any other area of Texas jurisprudence. It is ordinarily the province of the finder of fact to determine, without explanation, the credibility of witnesses. Must a court or jury explain why it chose to disbelieve a witness in any other proceeding? Of course not. Only in parental notification proceedings does the Court impose this unique requirement. The Court, of course, cites no authority for the requirement.

Less than three months ago the Court promulgated Form 2D attached to the Parental Notification Rules, which Rule 2.5(a) expressly permits trial courts to use in making their rulings. The form allows a trial court to check any basis found for granting the application and to add comments; it does not require findings for denying an application. At the time the Court issued the rules and forms it thought nothing more was required. But now that trial courts are actually denying applications, the Court insists on more details.

³³ *Id.* § 233.027.

³⁴ *Id.* § 263.402.

It is not at all clear what details the Court is calling for. What do findings on credibility look like, since they have never been made before? Will something like this do: “Doe squirmed in her chair. She seemed ill at ease. Her eyes shifted several times at critical points in her testimony. She seemed evasive.” Is that what the Court means? How about: “By her youthful demeanor she did not seem to really understand the gravity of the situation. She seemed willing to say what it took to have her application granted.” I am no more clear on what findings on maturity, well-informed, and abuse must contain. If a trial court determines that a minor’s demeanor reflects an immaturity not apparent in her answers to questions, what does the court say? If a trial court concludes that a minor does not appear to have given careful thought to her decision even though she says she has and is able to recite a modicum of information, may the trial court make that finding? Will it be specific enough?

Without guidance to the trial courts, the Court ensures a steady flow of these cases onto its docket.

IV

Although I share the trial court’s concerns about constitutional problems with portions of the Parental Notification Act, I agree with the Court that the trial court erred in holding the Act unconstitutional on its own initiative. However, the as yet unchallenged secret nature of the proceedings is very troublesome. The Court has now construed the Act twice without more than a few pages of briefing hurriedly faxed to us by the minors’ attorneys. The Court has had no input from the Attorney General or others involved in the passage of the Act. The Court is doing what it would not even consider in any other context: construing a statute without briefing and argument, without thoroughly researching the legislative history, and without affording interested parties to

comment as amicus curiae. While I see no immediate solution to these problems, I think the Court will prove ill-served by having made its decisions in a vacuum.

* * * * *

It is fast becoming apparent, now with *Doe 1* and *Doe 2*, that this Court does not intend to allow trial courts much discretion in denying applications under the Parental Notification Act. The Court has yet to mention the purposes of the Act or how its decisions further them. The emerging truth is that minors in Texas will obtain abortions without notice to their parents as often as the Court wants them to, not when the Legislature has said they should.

Nathan L. Hecht
Justice

Opinion delivered: March 7, 2000