

# IN THE SUPREME COURT OF TEXAS

---

---

No. 00-0213

---

---

IN RE JANE DOE 4

---

---

APPEAL UNDER SECTION 33.004(F), TEXAS FAMILY CODE

---

---

JUSTICE OWEN, joined by JUSTICE HECHT and JUSTICE ABBOTT, dissenting.

This Court has once again been asked to review the denial of a minor’s application to have an abortion without notifying either of her parents. The Court does not and cannot find error in the trial court’s judgment or in the court of appeals’ judgment affirming it, but the Court nevertheless remands this case for another hearing. The Court does so even though it concludes that Jane Doe 4 “falls short” of demonstrating that she is mature and sufficiently well informed to make the decision to have an abortion and that her testimony regarding her best interest is “brief [and] leaves many questions unanswered.” \_\_ S.W.3d at \_\_. The interests of justice do not require a remand in this case, and I dissent.

More fundamentally, I disagree that this Court has the authority, statutory or otherwise, to decide that parents will not be permitted to exercise their right to withdraw support from their children when those children become adults in the eyes of the law. If parents strongly disapprove of the conduct of their children when they were minors, parents are entitled to determine that there will be consequences when the children attain majority. While it is my fervent hope that no matter

what the transgressions of the child have been, no parent would sever all contact with an adult child, it is not the business of courts to interject their own values into the lives of the citizens of this State.

## I

Jane Doe 4 is seventeen years old and lives at home with her parents. She is a senior in high school with good grades, and expects to graduate this spring and attend college in the fall. She testified that several years ago, her older sister became pregnant when she was seventeen or eighteen and that her parents “basically kicked her [sister] out of the house” and “[t]old her that she is on her own.” Jane Doe 4 also testified that neither she nor her parents have spoken to her sister since, and she does not know where her sister now lives. Based on this testimony, Jane Doe 4 argues that she has established as a matter of law that it is in her best interest to have an abortion without notifying one of her parents.

I agree with the Court that Jane Doe’s testimony was brief and vague, and that she did not conclusively establish that notification of one of her parents of her intent to have an abortion would not be in her best interest. \_\_\_ S.W.3d at \_\_\_. The Court says, however, that if Jane Doe 4 were able to establish conclusively that her parents would withdraw their support and sever all contact, she would establish her right to an abortion without notification as a matter of law. \_\_\_ S.W.3d at \_\_\_.

The Court seems to say, although it is not clear, that it would not matter if Jane Doe 4’s parents withdrew their support *after* she attained majority and her parents no longer had any legal obligation to support her. To the extent that the Court’s opinion may be so read, it is in error.

Section 33.003(i) of the Family Code provides that if a trial court determines that it would not be in the best interest of a minor to notify one of her parents that she intends to have an abortion,

the trial court should authorize her to proceed without notification. TEX. FAM. CODE § 33.003(i). In applying this provision, it is important to bear in mind what may and may not be considered as part of a “best interest” analysis. As a general proposition, parents are only obligated under our laws to support their children until they reach the age of eighteen, and until they graduate from high school, as long as they are fully enrolled in school. *See id.* § 151.003(b).<sup>1</sup> Accordingly, although I would hope that parents continue to provide love and support to their children beyond the age of eighteen and to provide funds for an education beyond high school if the parents are able to do so, the law does not impose those obligations. Whether parents do or do not provide support for their children who are considered adults in the eyes of the law is a parental call, not a call for the courts in determining the best interest of a child.

Because the Legislature has drawn a clear line as to when parental obligations of support end, neither the trial court nor this Court may properly consider whether Jane Doe 4’s parents would withdraw their emotional or financial support after she turns eighteen and graduates from high school if they were notified of her intent to have an abortion while she is a minor. Jane Doe 4 has no legal entitlement to her parents’ support once she reaches eighteen years of age and receives her high school diploma. Conversely, her parents would be within their legal rights to express their disapproval of her conduct by withdrawing further support once she is considered an adult. I cannot

---

<sup>1</sup> The Family Code provides:

(b) The duty of a parent to support his or her child exists while the child is an unemancipated minor and continues as long as the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma until the end of the school year in which the child graduates.

TEX. FAM. CODE § 151.003(b).

countenance a rule of law that would permit a minor to deceive her parents in order to avoid their expression of disapproval when those acts of disapproval are wholly within the parents' rights.

The Legislature has also clearly expressed that it is this State's policy that at least one of a minor's parents has the right to know when his or her child is about to undergo an abortion, with certain limited exceptions. *See id.* §§ 33.002, 33.003(i). That parental right continues until the child reaches her eighteenth birthday.

## II

Turning to the record in this case, more than one reasonable conclusion about how Jane Doe 4's parents would react if notified of her desire to have an abortion can be reached from her testimony that her parents withdrew their support of her sister when she was "seventeen or eighteen." A trial court could reasonably infer that Jane Doe 4's parents ceased supporting her sister while her sister was still a minor (seventeen), but an equally reasonable inference is that her sister was no longer a minor (eighteen) and had graduated from high school when her parents told her that she was on her own. Thus, the trial court was not required to conclude from the evidence that Jane Doe 4's parents would abandon her while she remains a minor. Accordingly, if this Court is to properly apply the abuse of discretion standard of review, it must uphold the trial court's failure to find by a preponderance of the evidence that notification of one of Jane Doe 4's parents would not be in her best interest.

More importantly, appellate courts cannot conclude in each and every case in which a minor takes the stand and says that her parents will withdraw their support if notified of her intent to have an abortion that she has established as a matter of law that notification of a parent would not be in

her best interest. Otherwise, there would be no need for the minor to attend a hearing before a trial court as our rules require. Indeed, there would be no need for a trial court or for a hearing of any kind. A minor could simply sign an affidavit, send it to a court, and her application would be granted instant. That is not what the Legislature intended.

While I agree that a court cannot reject uncontroverted testimony from an interested witness that it is readily controvertible, clear, positive, direct, and when there are no circumstances tending to discredit or impeach it, the evidence in this case was not clear, it was not positive, and the circumstances certainly tend to discredit it. This was not the case in *Griffin Industries, Inc. v. Thirteenth Court of Appeals*, 934 S.W.2d 349, 352 (Tex. 1996), in which an appellant established her indigence by offering evidence that she subsisted on government assistance with no other income and no evidence was offered to the contrary.

A trial court is uniquely situated to observe the demeanor of a minor seeking an abortion in a bypass proceeding. A trial court can observe her gestures, the inflections in her voice, and whether she believes her own assertions. *See, e.g., In re Jane Doe 1*, 566 N.E.2d 1181, 1184 (Ohio 1991) (noting that “[a]bove all, a reviewing court should be guided by a presumption that the findings of a trial court are correct, since the trial judge ‘is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony’”). Trial courts must be given latitude to make weight and credibility determinations, particularly in a bypass proceeding, because a minor’s testimony will often be readily controvertible. It is just that the law in most circumstances will foreclose any means for that testimony to be controverted.

The trial court saw and heard Jane Doe 4 testify. The court concluded that she had not met her burden of proof. This Court's decision in *In re Jane Doe 2*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000), regarding "best interest" within the meaning of section 33.003(i), did not announce any legal principles that would have changed the evidence Jane Doe 4 offered. Through her counsel, she clearly was attempting to establish that "notification would cause serious and lasting harm to the family structure" and that notification would affect "the relationship between the parent and the minor." *Id.* at \_\_\_. She simply failed to make the required showing. The shortcomings in her evidence do not justify a new trial:

[R]emand in the interest of justice was not within [the court of appeals'] discretion. Under either [former] Rule 434 or Rule 505 Tex.R.Civ.P., it is well settled that an errorless judgment of a trial court cannot be reversed in the interest of justice. *An appellate court is not authorized to reverse the judgment of a trial court on the ground that the case has not been fully developed.* It may only reverse for error committed at trial. Once an appellate court has concluded there is no evidence to support a necessary finding, *it is not within its power to reverse the judgment and remand for further development of the same or similar evidence without finding some error in the judgment.*

*Sears, Roebuck & Co. v. Marquez*, 628 S.W.2d 772, 773 (Tex. 1982) (citations omitted) (emphasis added). The evidence in this case supports the trial court's failure to find that an abortion without notification of one of her parents would not be in Jane Doe 4's best interest. I would affirm the trial court's judgment.

### III

Jane Doe 4 also contends that she conclusively established that she is mature and sufficiently well informed to make the decision to have an abortion without notifying either of her parents. *See* TEX. FAM. CODE § 33.003(i). I agree with the Court that she did not do so. But I would affirm the trial court’s failure to find that Jane Doe 4 is mature or that she is sufficiently well informed. Jane Doe 4 offered virtually no evidence on this issue.

As the Court explains, her testimony consisted almost exclusively of monosyllable responses to leading questions. She answered affirmatively when asked by her counsel if she realized that “in essence, what you are going to do is end a— a life that is already starting now.” She also answered “yes” when asked whether she realized that there “are certain inherent dangers in performing any type of surgical procedure, including abortion.” The only other evidence regarding her consideration of the ramifications of her decision to have an abortion was her response “I think so” when asked if she has had sufficient time to think about what she plans to do. Her efforts to demonstrate that she is mature or that she is sufficiently well informed fall so far short that a remand is not required in the interest of justice. It is clear from the record that she was proceeding virtually exclusively on the “best interest” ground in section 33.003(i) and that she was not making a serious effort to establish her maturity or that she was sufficiently well informed.

\* \* \* \* \*

Because Jane Doe 4 did not conclusively establish any basis under section 33.003(i) for proceeding with an abortion without notification of either of her parents, the trial court’s judgment

was correct, as was the court of appeals' judgment affirming it. The record in this case requires that this Court affirm the judgment of the court of appeals. Because it does not, I dissent.

---

Priscilla R. Owen  
Justice

OPINION DELIVERED: March 22, 2000