

IN THE SUPREME COURT OF TEXAS

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No. 00-0213
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IN RE JANE DOE 4

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ON APPEAL OF A PARENTAL NOTIFICATION PROCEEDING
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Opinion

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

JUSTICE HECHT filed a dissenting opinion.

JUSTICE OWEN filed a dissenting opinion, in which JUSTICE HECHT and JUSTICE ABBOTT joined.

This is a confidential appeal from a sealed order denying a minor's application for a court order authorizing her to consent to an abortion without notifying either parent. *See* TEX. FAM. CODE § 33.003. The court of appeals affirmed the trial court's judgment denying the application. We vacate the judgments of the court of appeals and the trial court and remand to the trial court for further proceedings.

I

Jane Doe is a pregnant, unemancipated minor. Doe applied to the trial court for an order allowing her to consent to an abortion without notifying her parents. *See id.* Doe alleged in her application that: (1) she was mature and sufficiently well informed to make the decision to have an abortion performed without notifying her parents; (2) parental notification would not be in her best

interests; and (3) notification may lead to her being physically or emotionally abused. *See id.* § 33.003(i). The trial court appointed her an attorney and also designated the attorney to serve as her guardian ad litem. *See id.* § 33.003(e).

The trial court held a hearing on Doe's application. *See id.* § 33.003(g). Doe was the only witness at this hearing. Her testimony largely consisted of monosyllabic responses to leading questions. The trial court denied Doe's application and found: (1) the minor is not mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents; (2) notifying the minor's parents would not be in her best interest; and (3) notifying either of the minor's parents would not lead to her being physically, sexually, or emotionally abused. Doe's attorney filed a motion for reconsideration, which the trial court also denied.

At some point, the trial court issued what it termed a "Nunc Pro Tunc Judgment," which amended the second finding to say that notifying either of her parents *would* be in Doe's best interests. The record is unclear about when the trial court issued this judgment.

Because of our disposition, we express no opinion on the propriety of this "Nunc Pro Tunc Judgment." But we do note, as we stated in *In re Jane Doe 2*:

[A trial court's conclusion that] it would be in Doe's best interest to notify her parents. . . . is not the proper inquiry under the statute, which directs the court to consider whether "notification *would not* be in the best interest of the minor"

___ S.W.3d ___, ___ (Tex. 2000)(emphasis in original)(quoting TEX. FAM. CODE § 33.003(i)).

Doe sought review from the court of appeals, which affirmed the trial court without opinion. In her appeal to this Court, Doe argues that she is mature and sufficiently well informed to decide

to have an abortion without notifying either of her parents and that she established in the trial court that notifying either of her parents of her intent to have an abortion would not be in her best interests. We consider each in turn.

II

Doe's evidence that she is mature and sufficiently well informed is very limited, consisting almost entirely of monosyllabic answers to conclusory questions posed by her counsel. When asked if she realized that what she planned to do was, as her counsel put it, to end a life, she responded affirmatively. She also answered "yes" when asked whether she realized that there "are certain inherent dangers in performing any type of surgical procedure, including abortion." When asked if she has had sufficient time to think about what she plans to do, she said she thought so. This was the only evidence to show that she had considered the ramifications of her decision to have an abortion. This effort to demonstrate that she is mature and sufficiently well informed falls short of the requirements we announced in *In re Jane Doe 1*. *In re Doe*, ___ S.W.3d ___, ___ (Tex. 2000)(*Doe 1*).

In *Doe 1*, we set out three showings that a minor must make 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 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." *Id.* Second, "she must show that she understands the alternatives to abortion and their implications." *Id.* Third, "she must show that she is also aware of the emotional and psychological aspects of undergoing an abortion" *Id.* We did not attempt to set forth a bright-line test for

maturity, although we did list certain facts that a trial court can and cannot consider in determining maturity. *See id.* The minor in this case did not have the benefit of our opinion in *Doe 1* because it was issued on the same day as the hearing on her application. We therefore remand to the trial court to afford Doe an opportunity to present evidence that she is “mature and sufficiently well informed” in light of *Doe 1*.

III

Doe also asserts that the trial court erred in failing to find that notification would not be in her best interests. We review the trial court's determination about whether notification would not be in the minor's best interests under the abuse of discretion standard. *See Doe 2*, ___ S.W.3d at ___. Doe claims that the trial court abused its discretion because her testimony established that notifying her parents that she was pregnant and wanted an abortion would lead her parents to expel her from their home and sever all ties with her.

In *In re Jane Doe 2*, we established a non-exhaustive list of four factors for courts to consider in determining a minor's best interests in a parental notification proceeding: (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; and (4) the relationship between the parent and the minor and the effect of notification on that relationship. *Id.* at ___. As a matter of law, the minor's emotional well-being, the family structure, and the parent-child relationship would be adversely affected if her parents withdrew support and severed all contact with her. If the minor's uncontroverted testimony to this effect were clear, positive, and direct, and not impeached or discredited by other circumstances, the trial court

would have to accept it as fact. And, in light of such facts, the trial court would abuse its discretion if it then denied the minor's application.

But because trial courts can view a witness's demeanor, they are given great latitude in believing or disbelieving a witness's testimony, particularly when the witness is interested in the outcome. Acting as factfinder, a trial judge can, therefore, reject the uncontroverted testimony of an interested witness unless it is readily controvertible, it is clear, positive, direct, and there are no circumstances tending to discredit or impeach it. *See Lofton v. Texas Brine Corp.*, 777 S.W.2d 384, 386 (Tex. 1989); *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 697 (Tex. 1986); *Anchor Cas. Co. v. Bowers*, 393 S.W.2d 168, 169 (Tex. 1965); Powers & Ratliff, *Another Look at "No Evidence" and "Insufficient Evidence,"* 69 TEXAS L. REV. 515, 524 (1991).¹ The readily-controvertible prong of this test is not applicable to a parental notification proceeding under Chapter 33. Because the hearing is unopposed, the minor's testimony will rarely, if ever, be readily controvertible. The other parts of this test, however, apply to a notification proceeding as they would in any other proceeding in which the trial court acts as a factfinder.

Our cases also establish, however, that if an interested witness's uncontroverted testimony meets this test, the trial court is not free to disregard it merely because the court does not believe the witness to be credible. For example, in *Griffin Industries, Inc. v. Thirteenth Court of Appeals*, 934 S.W.2d 349 (Tex. 1996), we held that a trial court has no discretion to sustain a contest to an affidavit of inability to pay costs on appeal when the movant offered uncontroverted testimony that

¹ If the trial court denies the minor's application based on circumstances tending to discredit the minor's testimony that are not apparent from the record, the trial court should make written findings detailing these circumstances. *See generally Doe 2*, __ S.W.3d at __; *Doe 1*, __ S.W.3d at __.

her entire income came from federal disability and supplemental security benefits. *Id.* at 352. Against the dissenting Justices' contention that the trial judge could reject the movant's testimony because she may have previously obtained government benefits by fraud, we said:

Apparently the dissent is of the view that even after a witness testifies that he or she is dependent on public assistance and thereby establishes a prima facie case of indigence, the trial court simply may refuse to believe that the witness is credible and may conclude that the witness is not in fact indigent. The dissent misapprehends the effect of establishing a prima facie case. To overcome a prima facie showing, an opposing party must offer *evidence* to rebut what has been established. The trial court is not free to disbelieve the direct, positive evidence that establishes the prima facie case.

Id. (emphasis in original). Likewise, in *Ex parte Dustman*, 538 S.W.2d 409 (Tex. 1976), after the trial court issued a contempt order confining the relator for failing to pay child support, we ordered the relator discharged when his uncontroverted testimony demonstrated that he was unable to pay the amount in arrears. *Id.* at 410. Because the relator's testimony was "'clear and positive, and there are no circumstances in evidence tending to discredit or impeach [it]," we found that the relator had established his inability to pay as a matter of law. *Id.* (quoting *McGuire v. City of Dallas*, 170 S.W.2d 722, 728 (Tex. 1943)). Accordingly, we held that the trial court exceeded its authority by ordering him confined. *Id.*

Here, the minor's testimony appears to be direct and positive, and does not appear to be self-contradictory or otherwise suspect. But it does not clearly establish that the minor's parents would abandon her and cut off all contact if they were notified. The minor's explanation of why she believes her parents will expel her and sever contact is not very detailed. It can be summarized as

follows: some years ago,² at age seventeen or eighteen, Doe's sister found herself in a similar situation. After the sister told their parents, the parents "kicked her out of the house." Neither the parents nor Doe have spoken to the sister since the incident. Doe believes that her parents would treat her similarly if notified that she is pregnant and seeking an abortion.

The minor's brief testimony leaves many questions unanswered. We know that Doe's sister experienced these circumstances, but we do not know whether other problems may have contributed to Doe's parents' decision to expel her sister from the home. We know nothing about Doe's relationship with her parents, which may be quite different from her sister's. In fact, it is not clear from Doe's testimony whether her parents, her sister, or both, are responsible for their long estrangement.³ Because the minor's testimony does not elaborate at all on the circumstances surrounding the rift between her sister and her parents, there is not clear evidence that the minor would suffer the same fate as her sister should she tell her parents.

Because it is not clear from the minor's testimony that her parents would react to notification by expelling her from their home and severing all ties, the trial court did not abuse its discretion by failing to find that notification would not be in the minor's best interests.

IV

Because Doe did not establish as a matter of law that she was mature and sufficiently well

² Although the exact number of years is in the record, we do not reveal it in order to ensure the minor's anonymity. See TEX. FAM. CODE § 33.003(k).

³ The minor's lawyer stated in a motion for reconsideration that the minor's parents forbade the minor from speaking to her sister. This unsworn testimony was not evidence, however. See, e.g., *Banda v. Garcia*, 955 S.W.2d 270, 272 (Tex. 1997); *United States Gov't v. Marks*, 949 S.W.2d 320, 326 (Tex. 1997).

informed or that notification would not be in her best interests, we cannot render a judgment granting her application. But because the hearing in this case was held on the day we issued our opinion in *Doe 1* and before we issued our opinion in *Doe 2*, we vacate the lower courts' judgments and remand to the trial court for another hearing in light of those opinions. See TEX. R. APP. P. 60.2(f)(providing that this Court may "vacate the lower court's judgment and remand the case for further proceedings in light of changes in the law"); *Doe 2*, ___ S.W.3d at ___; *In re Doe 3*, ___ S.W.3d ___, ___ (Tex. 2000)(Gonzales, J., concurring in the judgment). As neither the minor nor her lawyer were aware of our explanations of the "mature and sufficiently well informed" and "best interests" requirements in *Doe 1* and *Doe 2*, the minor should be allowed another hearing to present her case in light of these decisions. Similarly, the trial court should be allowed the opportunity to decide this case based on the standards articulated in *Doe 1* and *Doe 2*. Neither the minor nor the trial court should be deprived of our clarification of the law in these cases merely because the hearing occurred before the trial court, the minor, or her lawyer were aware of this Court's holdings.

For the reasons stated above, we vacate the lower courts' judgments and remand to the trial court for another hearing in light of *Doe 1* and *Doe 2*. 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 next business 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.*

Thomas R. Phillips
Chief Justice

Opinion delivered:
March 22, 2000