

No. 20-0644

IN THE SUPREME COURT OF TEXAS

COOK CHILDREN'S MEDICAL CENTER,
Petitioner,

v.

T.L., A MINOR AND MOTHER, T.L., ON HER BEHALF,
Respondents.

On Petition for Review from the
Second Court of Appeals at Fort Worth, Texas
No. 02-20-00002-CV

SUPPLEMENT TO EMERGENCY MOTION TO EXPEDITE

In its Emergency Motion to Expedite and supporting Reply, Petitioner Cook Children's Medical Center asked this Court to expedite the parties' briefing and the Court's review because of the ongoing, daily agony of the child involved. T.L.'s futile pain and suffering at the unwilling hands of her doctors and nurses was undisputed by any medical testimony. Since the temporary injunction hearing in December 2019, T.L.'s suffering has only increased, as her incurable disorders, combined with the effects of forced paralysis for months on end, have ravaged her small body. *See* Declarations of Jay M. Duncan, M.D., and Colin O'Donnell, R.N., attached as Apps. 1 and 2.

Cook Children's submits this information to further urge the Court to expedite review.

PRAYER

For these reasons, Petitioner Cook Children's Medical Center respectfully requests that this Court expedite this appeal.

Respectfully submitted,

/s/ Wallace B. Jefferson

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF CONFERENCE

I certify that on September 29, 2020, I conferred with John F. Luman, III, counsel for Respondents, and he stated that his clients oppose the relief sought in this Supplement to Emergency Motion to Expedite.

/s/ Amy Warr
Amy Warr

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2020, a true and correct copy of this supplement, including any and all attachments, is served via electronic service through eFile.TXCourts.gov on parties through counsel of record, listed below:

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APPENDIX 1

No. 20-0644

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SUPPLEMENT TO MOTION TO EXPEDITE

DECLARATION OF JAY M. DUNCAN, M.D.

I, Jay M. Duncan, M.D., declare as follows:

I am over the age of 21 and fully competent to make this declaration. I have personal knowledge of the facts and statements contained in this declaration and I declare under penalty of perjury that the following is true and correct.

I am an Attending Physician and the Co-Medical Director of the Cardiac Intensive Care Unit ("CICU") at Cook Children's Medical Center, the Defendant in this case. I, and my team, have been the primary doctors treating T.L. since she was born. In that capacity, I have knowledge of the facts described below.

I graduated from the University of Missouri at Kansas City with a combined B.A. and M.D. in 1999, I did my residency at The Children's Mercy Hospital in Kansas City followed by a fellowship at Arkansas Children's Hospital. I am board certified in Pediatric Critical care Medicine and 100% of my practice has been in the field of cardiac intensive care for the last 8-9 years.

The CICU team has cared for T.L. since birth. Since December 2019, T.L.'s underlying condition and prognosis have not changed. All surgical options have been exhausted, and there is no way to cure or alleviate T.L.'s severe chronic lung disease, ventilator dependence, pulmonary hypertension, and bronchiectasis. She cannot recover from these disorders and has no chance of long-term survival. Her medical problems and daily suffering, however, have only increased since last year.

Contracture of T.L.'s limbs: T.L. has required deep sedation and chemical paralysis for over a year to facilitate mechanical ventilation, decrease the pain caused by daily cares, and mitigate events that can lead to significant deterioration in her condition. T.L. has not had significant periods of purposeful movement and development since July 2019. As a result, her limbs—including feet and hips—are severely contracted, and she does not tolerate manipulation of her body without significant pain. She is on five different types of medications to attempt to keep her comfortable. Due to increased tolerance of medication over time, T.L.'s doses of pain medication are ever-increasing, and still she sometimes suffers breakthrough pain. Methadone and Ativan are astronomically high—3-4 times the normal dose for pediatric patients. The same dosage could cause an average adult to stop breathing when given in combination with the other medications she receives. T.L. has not tolerated any significant weaning of these medications without severe pain and discomfort. I viewed a video of T.L. that was recently posted on Texas Right to Life's website. The arm flailing and other movements reflected on that video occur when

we attempt to wean her off paralytics. These movements are not purposeful, and all efforts to wean T.L. off paralytics have been unsuccessful.

Bronchiectasis: Because of TL's prolonged mechanical ventilation, chronic debilitated state, multiple infections, and chronic lung disease, she has developed bronchiectasis. Bronchiectasis is the destruction of some of the airway passages in the lungs. It leads to chronic infections, inflammation, and airway obstruction. This is the likely source of many of T.L.'s chronic infections, which have further injured her already severely damaged lungs. Since November 1, 2019, T.L. has been on antibiotics for an active infection 232 of 328 days, or 70.7 percent of the time. The recurrent fevers she suffers as a result of these chronic infections cause significant discomfort for T.L. Combined with chronic inflammation and infection, bronchiectasis prevents further palliative cardiac surgery. Her existing chronic lung disease also makes her lungs more susceptible to small changes in her fluid status. Her lungs can become "wet" or filled with fluid easily, complicating the titration of medication (*i.e.*, adjustment of medication to achieve maximum benefit with fewest adverse effects) to help eliminate that fluid.


Renal disease: T.L. suffered kidney damage during severe bouts of shock. This, combined with her heart and lung problems, has resulted in abnormal renal function. While her renal malfunction, by itself, is not severe, it complicates her treatment. The frequent titration of diuretic medications (which remove fluid from the body) is necessary to help her lungs, but it can injure her kidneys. To allow them to heal, we often must temporarily reduce her diuretic medication. This causes her body to swell (because of fluid accumulation) and worsens her lung dysfunction. Both add more pain and discomfort to someone who is already in severe pain.

Given the injunction and opinion issued by the court of appeals – as well as her family's unwillingness to limit aggressive ICU care and ease her suffering – the CICU teams continue to

keep T.L. deeply sedated and mechanically ventilated, with aggressive management of her heart failure and pulmonary hypertension. We react immediately to any hint of clinical deterioration. We titrate her diuretic medications to attempt to balance the additional pain and discomfort of increasing swelling against kidney damage. We cluster painful procedures with the administration of high-dose sedative and pain medications to attempt to alleviate her suffering when we touch her. T.L.'s life is full of misery, pain, discomfort, and loneliness. She lies in her hospital bed day in and day out with very little interaction from family. The CICU team has become her family, and we experience significant distress in watching this small toddler suffer daily.

My name is Jay M. Duncan, M.D., my date of birth is November 5, 1974, and my work address is 1500 Cooper St., Fort Worth, TX 76104. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Tarrant County, State of Texas, on the 28 day of September, 2020.


Jay M. Duncan, M.D.

APPENDIX 2

IN THE SUPREME COURT OF TEXAS

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SUPPLEMENT TO MOTION TO EXPEDITE

DECLARATION OF COLIN O'DONNELL, R.N.

I, Colin O'Donnell, R.N., declare as follows:

I am over the age of 21 and fully competent to make this declaration. I have personal knowledge of the facts and statements contained in this declaration and I declare under penalty of perjury that the following is true and correct.

I graduated from Midwestern State University in 2013 with a Bachelor of Science in Nursing. In June of 2013, I entered the nurse residency program at Cook Children's Medical Center. Upon completion of the nurse residency program, I began working in the Cook Children's Cardiac ICU in January of 2014, and have remained in this position ever since. I have cared for T.L. since her birth. In that capacity, I have knowledge of the facts described below.

Because T.L. cannot sufficiently oxygenate her body on her own, she has spent most of her life sedated and paralyzed in order to limit the amount of oxygen her body has to expend to keep her alive. This treatment – which I understand the court has ordered that we continue – has caused T.L.’s body to significantly deteriorate. T.L.’s limbs have become severely contracted. She has developed irreversible drop foot. She is now locked into a “frog-legged” position, and her hips cannot rotate or bend. When I try to draw T.L.’s knees together for therapy, it causes her significant pain. This contracture is so severe that it is impossible for some nurses to change her diaper without assistance, because they cannot grasp her ankles with one hand. We have placed splints on T.L.’s hands to prevent her from making fists.

Because of her treatment, T.L. has never eaten solid food. As a result, her teeth have been unable to erupt normally. She has only one or two teeth. Teeth that cannot erupt have caused cysts and pustules that rupture and bleed.

Her treatment has caused other issues: T.L.’s stomach is swollen with fluid. It is the size of a bowling ball—very abnormal on an 18-month-old toddler. She has significant cyanosis of her extremities. As a result, her skin in those areas is a blue-purple tint and is often mottled.

Because T.L. is isolated—alone 99% of the time (except for medical staff)—afraid, and in pain, I always talk to her when I am caring for her. When I perform a routine neurological assessment, T.L.’s pupils are reactive but she cannot track and follow movement. However, when I touch her, she jolts—her eyes wide—and is panicked, anxious, and agitated. The first thing I say is always, “I’m sorry,” because I know I am causing her pain by touching her. Tears run down her cheeks, but due to the paralytics she is on, her face cannot contort, and she cannot actively cry. If her pain persists, we give her additional medication to try and alleviate this discomfort.

I viewed a video of T.L. that was recently posted on Texas Right to Life’s website. Based on my experience caring for T.L., I believe this video shows the non-purposeful movements that occur on the occasions we have attempted to wean her off paralytics. I have cared for her on these

occasions and personally observed the arm flailing and other movements that result from the weaning of the paralytics. These are not purposeful movements.

My name is Colin O'Donnell, R.N., my date of birth is December 4, 1989, and my work address is 1500 Cooper St., Fort Worth, TX 76104. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Tarrant County, State of Texas, on the 25th day of September, 2020.



Colin O'Donnell, R.N.