IN THE SUPREME COURT OF FLORIDA
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399-1925
(850) 488-0125
August 9, 2004
Lower Tribunal Case Number: 1D02-3026

Steve Scofield, as parent and natural guardian of Jessica Ilene Scofield, a minor, and Jessica Ilene Scofield, individually,	) :) :	CASE NO.: SC04-1398
Plaintiffs/Petitioners,	) :	
-vs-	) :	
PAUL SIBLEY, M.D., and ALL WOMEN'S HEALTH CENTER OF GAINESVILLE, INC.	) :) :	
Defendants/Respondents.	) :	
_____	)	

ON PETITION TO INVOKE DISCRETIONARY JURISDICTION
FROM FIRST DISTRICT COURT OF APPEAL OF FLORIDA
CASE NUMBER: 1D02-3026

RESPONDENTS' JURISDICTIONAL BRIEF

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PREFACE

Petitioners herein, Jessica Scofield and Steve Scofield will be referred to either by name or as Petitioner/Petitioners; the Respondents herein, Paul Sibley, M.D. and All Women's Health Center of Gainesville, Inc., will be referred to either as "Dr. Sibley", "Health Center" or as Respondent/Respondents. The symbol "APP" will be used to refer to the Appendix to Petitioners' Amended Jurisdictional Brief, and the symbol "R-AAP" will be used to refer to the Appendix to Respondents' Jurisdictional Brief.

ANSWER STATEMENT OF THE CASE AND THE FACTS

The Petitioners' Amended Jurisdictional Brief is partially inaccurate and, to that extent, Respondents file this Answer Statement of the Case and the Facts.

First, the Petitioners references to the allegations of the Amended Complaint that was dismissed with prejudice by the trial court are not completely accurate, but are merely paraphrased. Missing from the Petitioners' Statement of the Case and the Facts is the key fact that all counts of the Amended Complaint that were dismissed with prejudice by the trial court were based upon the ***alleged*** duty on the part of the Respondents to notify and obtain the consent of Jessica Scofield's father before performing an abortion procedure on Jessica Scofield.

At page 2 of their Amended Jurisdictional Brief, the Petitioners inaccurately state that "[t]he opinion sought to be reviewed was rendered on June 15, 2004." Two orders were rendered by the First District Court of Appeal on that date (see R-APP, tabs 1 and 2) but it is obvious that the only order to be reviewed herein is the opinion of the First District Court of the Appeal dated March 4, 2004 that is attached to the Petitioners' Amended Jurisdictional Brief.

The abortion in this case was performed on September 30, 1997. The primary issue ruled upon by the trial court and affirmed by the First District Court of Appeal was whether there was any duty owed by a doctor or medical clinic to a pregnant

minor or her father to notify the parent about an abortion requested and consented to by the minor at that time. Relying upon this Court's decision in ***In re: T.W.***, 551 So.2d 1186 (Fla. 1989), rather than directly conflicting with ***In re: T.W.*** as argued by Petitioners, both the trial court and the First District Court of Appeal held there was no such duty as a matter of law.

Thus, there is no conflict jurisdiction in this Court.

SUMMARY OF ARGUMENT

Contrary to the assertion of Petitioners, the First District Court of Appeal in its opinion here sought to be appealed expressly relied upon, and was not "expressly and directly" in conflict with, the Florida Supreme Court decision ***In re: T.W.***, 551 So.2d 1186 (Fla. 1989). In fact, the First District's opinion is based upon the holding and rationale of ***In re: T.W.*** Likewise, the Petitioners inaccurately state that the First District Court of Appeal expressly construed the provisions of Article I, Section 23, of the Constitution of the State of Florida (the privacy right guaranty), as the First District's opinion made no privacy right ruling except to the extent that it relied upon the Florida Supreme Court's opinions related to a pregnant minor's privacy rights as discussed ***In re: T.W.***, *id*. and ***North Florida Women's Health and Counseling Services, Inc. v. State of Florida***, 886 So.2d 612 (Fla. 2003). Those cases held the parental notice of abortion act to be unconstitutional as violative of a pregnant minor's right to privacy to choose her own abortion without parental notice or consent.

Thus, there being no conflict as claimed by Petitioners, and there is no legal basis for jurisdiction as claimed in this Court pursuant to Florida Rules of Appellate Procedure, Rule 9.030(A)(2)(A).

The argument by Petitioners that the First District Court of Appeal's opinion

expressly and directly conflicts with the decision of the Florida Supreme Court in ***In re: T.W.*** *supra*, is totally without factual or legal support. The opinion of the First District Court of Appeal below correctly applied the ***In re: T.W.*** decision to rule that there was no duty, whether based on negligence, intentional or quasi-intentional tort, for the Respondents to notify or obtain the consent of the pregnant minor's father before performing the abortion requested by the pregnant minor, Jessica Scofield. No duties or breach of duties based on any theory arose from the alleged failure to notify or obtain consent from Jessica Scofield's father. The ***In re: T.W.*** opinion clearly establishes a pregnant minor's right to choose an abortion without having to notify or obtain the consent of her parents, or either one of them. There is no conflict with legal precedent and no conflict jurisdiction in this Court.

ARGUMENT

There is no basis for the Florida Supreme Court to accept discretionary jurisdiction in this case pursuant to the provisions of the Florida Rules of Appellate Procedure, Rule 9.030(A)(2)(A). The consented to abortion in this case was performed by Dr. Sibley at the Health Center on September 30, 1997. At that time, the ***In re: T.W.*** decision had been the law of the land in the state of Florida for approximately eight years. In 1988, the Florida legislature passed legislation attempting to impose a parental notice and consent requirement. Such legislation was the subject of the ***In re: T.W.*** decision, which held the parental consent legislation was unconstitutional and violated a pregnant minor's right to privacy. Pursuant to ***In re: T.W.'s*** holding, there was no legal requirement that the parents of a pregnant minor be notified or their consent obtained at anytime before a doctor could perform an abortion requested by a pregnant minor.

Following the ***In re: T.W.*** ruling in 1989, Florida's abortion consent law was amended to reflect the ***In re: T.W.*** decision and delete any parental notice or consent requirement, as set forth in Florida Statutes §390.0111, which provided:

> **390.0111 Termination of Pregnancy**
>
> * * *
>
> (3) CONSENTS REQUIRED. – a termination of

> pregnancy may not be performed or induced except with the voluntary and informed written consent of the pregnant woman or, in the case of a mental incompetent, the voluntary and informed written consent of her court-appointed guardian.

There was no further attempt by the legislature to try to impose a parental notification or consent requirement for the termination of pregnancy of a pregnant minor in the wake of the ***In re: T.W.*** decision until after the abortion in this case was performed.

After Jessica Scofield's abortion in 1997, a legislative attempt at a new parental notification statute was subsequently passed and became law in 1999. This law was addressed by the Florida Supreme Court in the case of ***North Florida Women's Health and Counseling Services, Inc. v. State of Florida***, 886 So.2d 612 (Fla. 2003). Once again, the attempt to impose a parental notification (or consent) requirement for a pregnant minor's abortion was struck down by the Florida Supreme Court. As noted by that Court in discussing the ***In re: T.W.*** holding:

> "The Court determined that a woman has a reasonable expectation of privacy in deciding whether to continue her pregnancy, more so than in virtually any other decision, and that the right or privacy is implicated in the decision. Significantly, the Court held that both the expectation and right applied to pregnant minors . . ." 866 So.2d at 621.

Thus, at all material times since the abortion in this case through the time of this appeal, there has been no legal requirement on the part of a physician or medical clinic to notify or obtain the consent of parents before a doctor may perform an abortion on a consenting pregnant minor. The law has only required the consent of the minor, a matter not in question on the allegations or the facts of this case.

In dismissing the Amended Complaint with prejudice after several attempts to allege a cause of action against Dr. Sibley and the Health Center, the trial court and the First District Court of Appeal below correctly found there was no duty to notify or obtain the consent of the father, Steve Scofield, of the abortion requested and consented to by Jessica Scofield (see R-APP, tab 3 and APP page 1). There is no conflict with ***In Re: T.W.*** or any other Florida decision and, since the appeal to this Court is predicated upon the existence of conflict, there is no conflict jurisdiction pursuant to Rule 9.030(A)(2)(A), Florida Rules of Appellate Procedure. As such, the appeal to this Court should be dismissed and the cause remanded for further proceedings still pending below at the trial level pursuant to the mandate from the First District Court of Appeal.

With respect to the Petitioners' contention that discretionary jurisdiction lies in this Court by virtue of Jessica Scofield's alleged right to rescind or disavow her prior consent for the abortion which had already occurred, Petitioners state no basis for

conflict jurisdiction by identifying a decision with which the First District Court of Appeal opinion is in conflict. The plain fact is, as held by the trial court addressing such argument, "following the announcement of the ***In re: T.W.*** decision finding the parental consent requirement unconstitutional, Florida Statutes §743.065 specifically enabled pregnant minors to consent to medical procedures; and the Court finds that abortion is such a medical procedure to which a pregnant minor could validly consent." R-APP, tab 4.

The plain simple fact remains – the abortion which Jessica Scofield originally asked for and consented to had already been successfully performed. Allegations purporting to rescind that consent are a factual and legal nullity. The plain fact is the First District Court of Appeal did not need to reach that argument in order to correctly affirm the trial court's ruling dismissing the Amended Complaint based on the absence of any legal duty to notify or obtain consent from the parent for the abortion.

Obviously, there is no jurisdiction before this Court on any basis.

CONCLUSION

The First District Court of Appeal correctly affirmed the trial court's dismissal of the Petitioners' Amended Complaint because there is no requirement for a physician or medical clinic to notify or obtain the consent of a parent before performing a requested and consented to abortion on a pregnant minor. The First District Court of Appeal Opinion is not in conflict with the law of this state on that issue and there is no conflict jurisdiction in this Court.

Respectfully submitted,

_____

Samuel H. Lanier
Attorney for Defendants/Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and five (5) copies of Respondents' Jurisdictional Brief and Appendix have been furnished to the Clerk of the Supreme Court of Florida, and two (2) copies of Respondents' Jurisdictional Brief and Appendix have been furnished to Milton H. Baxley, II, attorney for Plaintiffs/Petitioners, 1929 N.W. 12th Terrace, Gainesville, Florida 32609, by U.S. Mail, this _____ day of August, 2004.

DORE, LANIER & NOEY, Chartered

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that Respondents' Jurisdictional Brief has been prepared using Times New Roman 14-point font as required by Rule 9.210, Florida Rules of Appellate Procedure.

Samuel H. Lanier
Attorney for Defendants/Respondents