

[Cite as *In re Doe*, 2010-Ohio-2075.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

IN RE: JANE DOE : APPEAL NO. C-100217
 : TRIAL NO. AB10-1X
 :
 :
 : *DECISION.*
 :
 :

Civil Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Reversed and Application Granted

Date of Judgment Entry on Appeal: April 14, 2010

Newman & Meeks and Lisa Meeks, for Appellant Jane Doe

HILDEBRANDT, Judge.

{¶1} Under R.C. 2505.073, the appellant, Jane Doe, appeals the judgment of the Hamilton County Juvenile Court denying her application to have an abortion without parental notification. Under R.C. 2151.85(A)(4)(a) and (C)(1), our review is limited to the following issue: whether Doe presented clear and convincing evidence that she “is sufficiently mature and well enough informed to decide intelligently whether to have an abortion without notification of her parents.” We hold that the record clearly and convincingly supports her contention that she is sufficiently mature, and we accordingly reverse the judgment of the Hamilton County Juvenile Court and grant her application.

{¶2} Doe filed a complaint with the juvenile court on April 6, 2010, seeking an abortion without parental notification. At the hearing, Doe testified as follows: She is currently 16 years old, but will turn 17 in less than three months. At the time of the hearing, she was nine weeks’ pregnant and living with her mother. Doe’s parents are divorced, and her mother has legal custody of her. She does not have a good relationship with her father—she rarely sees or communicates with him—and thus does not want to discuss her situation with him. Doe does not want to tell her mother about her pregnancy and her decision to seek an abortion, because her mother is vehemently opposed to abortion. Her mother thought that it was wrong when Doe’s cousin, who had become pregnant as a result of an incestuous rape, had an abortion.

{¶3} Doe is completing her junior year in high school. Her grades are mostly Bs and Cs. She has been selected to participate in a program during her

senior year in high school where she will not only complete her high-school course requirements but also begin taking college-level courses. It is an honor to be selected for this program. Currently, she is participating in a work-study program where she completes her core curriculum each day and then works at least 15 hours each week.

{¶4} Doe wants to join the military after high school, although she ultimately plans to become a firefighter. She currently volunteers at a local fire department.

{¶5} Doe has her own bank account and credit card, both of which she personally manages. She often buys her own clothes, food, and other necessities. She has assumed this financial responsibility because her mother has limited financial resources. Jane Doe also voluntarily spends each weekend with her grandparents, helping them with cleaning, grocery shopping, and medical issues—her grandfather is nearly blind and her grandmother has health issues.

{¶6} Doe testified that she became pregnant as a result of her first sexual encounter. Her partner was a 17-year old young man whom Jane Doe had been dating for four months. They had used birth control, but it failed when the condom tore. Upon learning that Doe was pregnant, her partner ended their relationship. But he has agreed to pay for part of the abortion because he also wants Doe to have the abortion. Doe testified that she will wait until she is older to have a sexual relationship again, and upon doing so, she will use an oral contraceptive.

{¶7} When Doe realized that she might be pregnant, she went to speak with both of the school nurses. Although the nurses counseled her to talk to her parents, when Jane Doe told them that she did not think that such a conversation was in her best interest, they provided her with pamphlets about pregnancy and her

options, and they reviewed those options with her. The nurses also arranged a doctor's appointment at a local medical center where Doe had an ultrasound that confirmed the pregnancy. The nurses also referred Doe to Planned Parenthood in Hamilton County. In addition to both of the school nurses, Doe met with one of her teachers to discuss her situation. She also talked to her older sister, who is 22 years old and will be entering medical school this fall. Doe said that, of those adults she spoke with, some counseled her to remain pregnant and others supported her decision to terminate the pregnancy.

{¶8} Doe made an appointment with Planned Parenthood. During her four-hour meeting, she had a sonogram confirming that she was nine weeks' pregnant and received information concerning both the risks associated with carrying a pregnancy to full term and the risks associated with having an abortion. She also met with a social worker to review all the information she had received, as well as meeting with a doctor to review the 24-hour consent document.

{¶9} Finally, Doe testified that she is not physically, emotionally, or financially ready to care for a child. She indicated that she has considered all three of her choices carefully—parenting, adoption, and abortion—and is “certain” that the best option for her is abortion.

{¶10} The social worker from Planned Parenthood also testified at the hearing. She indicated that she had discussed with Doe all of her options and the risks associated with an abortion. The social worker believed that Doe understood the information they had reviewed and had asked appropriate questions. The social worker opined that Doe is sufficiently mature and well enough informed to decide

intelligently whether to terminate her pregnancy. The social worker also testified that she believed that Doe's decision is completely her own.

{¶11} The court-appointed guardian ad litem testified that she had twice spoken at length with Doe on the phone and had met with her once. The guardian ad litem testified that it is in Doe's best interest to have an abortion without notifying her parents. In support of this opinion, the guardian ad litem noted that Doe's mother is remarrying this summer and that Doe does not get along well with her mother's fiancé. The guardian ad litem also noted that Doe does not have a significant relationship with her father.

{¶12} Following the hearing, the trial court denied Jane Doe's application. Although the trial court found that Doe was intelligent, that she appeared to be her stated age, and that her "demeanor [was] appropriate," the court determined that she was not sufficiently mature to make a decision to have an abortion without notifying her parents. The court then stated that "notification and discussion with her parents, particularly her mother, may help her make an informed decision considering all her options." This appeal followed.

{¶13} In a single assignment of error, Doe contends that the trial court erred by denying her application to have an abortion without parental notification.

{¶14} We review the juvenile court's dismissal of Doe's application in this case under an abuse-of-discretion standard.¹

{¶15} In Ohio, an unemancipated minor may have an abortion, bypassing notification to her parents, if the juvenile court finds by clear and convincing evidence that she "is sufficiently mature and well enough informed to intelligently

¹ *In re: Doe*, 1st Dist. No. C-050133, 2005-Ohio-1559, ¶14.

decide to have an abortion without the notification of her parents, guardian, or custodian.”² To determine maturity, it is helpful for courts to look to the following eight factors: (1) age; (2) overall intelligence; (3) emotional stability; (4) credibility and demeanor as a witness; (5) ability to accept responsibility; (6) ability to assess the future impact of present choices; (7) ability to understand the medical consequences of abortion and to apply that understanding to the abortion decision; and (8) whether the minor is making an affirmative, independent personal decision.³

{¶16} Although the trial court noted in this case that Doe was intelligent, that she looked her age, and that her demeanor was appropriate,⁴ it still determined that she was not sufficiently mature to consent to an abortion without notifying her parents. The court bases this determination on the fact that Doe did not want to tell her parents about her pregnancy because she was worried that they would be against the idea of her having an abortion. Her stated concern is certainly reflected in the record, but it does not answer the question whether Doe is “sufficiently mature and well enough informed to intelligently decide to have an abortion without parental notification.” The trial court also noted that “notification and discussion with her parents, particularly her mother, may help her make an informed decision considering all her options.” Again, this may be true, but the issue of whether notification of Doe’s mother is in Doe’s best interest was not germane to the court’s decision. Instead, the question was whether Doe is sufficiently mature and well

² R.C. 2151.85(A)(4)(a) and (C)(1).

³ *Doe*, supra, citing *In re: Doe I* (1990), 57 Ohio St.3d 135, 143, 566 N.E.2d 1181.

⁴ We note that the trial court did not make a finding that Doe’s testimony was not credible. Under these circumstances, we can only conclude that the testimony was credible, given that the record does not demonstrate otherwise and that the trial court found that Doe’s demeanor was appropriate.

enough informed to intelligently decide whether to have an abortion without parental notification. After reviewing the record, we conclude that she is.

{¶17} There are many examples in the record that clearly and convincingly demonstrate Doe’s maturity. First, she is intelligent. She has achieved good grades while maintaining part-time employment, and she has been selected to participate in a program where she will begin taking college courses during her senior year of high school. She is financially responsible for herself. She maintains her own bank account and credit card and buys her basic necessities. She has career goals and is working towards them. Each weekend, she cares for her paternal grandparents. Upon learning of her pregnancy, she demonstrated emotional stability and showed discernment by discussing her pregnancy and her options with trusted adults: two school nurses, a teacher, and her college-educated sister. Importantly, the record demonstrates that Doe’s decision to have an abortion is her own, and that Doe has not been unduly influenced. She testified that some of the adults she spoke with encouraged her to parent the child.

{¶18} The record also clearly and convincingly demonstrates that Doe is “well enough informed” to decide to have an abortion without parental notification. The school nurses gave her pamphlets discussing her options, which they reviewed with her. Doe also reviewed all of her options, as well as the medical risks of an abortion, with a social worker. The social worker testified that Doe asked appropriate questions that indicated her understanding of the risks.

{¶19} Accordingly, given that there is ample evidence that Doe is “sufficiently mature and well enough informed to make an intelligent decision,” we hold that the trial court’s decision denying her application was unreasonable and

thus an abuse of discretion. In reaching this conclusion, we emphasize that “[t]he law must be followed, whether or not it fits our personal preferences. To refuse to grant permission in this case would be to render R.C. 2151.85 meaningless.”⁵

{¶20} It is therefore ordered that the judgment of the trial court be reversed and that the application of Jane Doe be granted. Doe is hereby authorized to consent to the performance or inducement of an abortion without the notification of a parent, a guardian, or a custodian.

{¶21} If Jane Doe believes that this option may disclose her identity, she has a right to appear and argue at a hearing before this court. She may perfect this right by filing a motion for a hearing within 14 days of the date of this decision.

{¶22} The clerk is instructed that this decision is not to be made available or released until (1) 21 days have passed from the date of the decision, and Doe has not filed a motion for a hearing, or (2) after this Court has ruled on a motion for a hearing, is such a motion is filed.

Judgment accordingly.

CUNNINGHAM, P.J., concurs.
HENDON, J., dissents.

HENDON, J., dissenting.

{¶23} The Ohio legislature created a particular mechanism in the compromise legislation that became R.C. 2151.85, and that mechanism required the juvenile court to conduct an ex parte proceeding to determine in this case “whether [Jane Doe] is sufficiently mature and well enough informed to decide intelligently whether to have an abortion without notification of her parents.” The very nature of

⁵ In re: Doe, 1st Dist. No. C-020443, 2002-Ohio-3926, ¶5.

the proceeding put the court in the position of either accepting without question the testimony of Doe or attempting, in a quasi-adversarial manner, to determine the credibility of Doe and the evidence she presented.

{¶24} In this case, the court engaged in extensive questioning of the witnesses and determined that the granting of Doe’s application to bypass notification would not be in the child’s best interests, after finding that Doe “didn’t want to have the child because having a child would interfere with her plans for the future.” In addition, the court found that Doe did “not want to tell her parents that she is pregnant and does not want to have any discussions with them about what options she might have and hear what advice they might offer.”

{¶25} The majority is convinced that the court accepted the relevant portions of the girl’s testimony as credible, and was therefore required to find that she had proved her requisite maturity by “clear and convincing evidence.” I respectfully dissent because, in my view, although the court’s decision does not specifically announce its finding as to credibility—in fact, it addresses the impossibility of such a finding without an adversarial process—the determination made by the court does not constitute an abuse of discretion based on the evidence presented. Therefore, I would defer to the trial court’s ability to weigh the credibility of the witnesses as they testified and leave its decision undisturbed.

Please Note:

The court has recorded its own entry on the date of the release of this decision.