

No. 08-0391

**In the
Supreme Court of Texas**

**IN RE TEXAS DEPARTMENT OF
FAMILY AND PROTECTIVE SERVICES,
RELATOR**

From Case No. 03-08-00235-CV

In the
Third Court of Appeals
Austin, Texas

REPLY TO RESPONSE TO MOTION FOR EMERGENCY RELIEF

To The Honorable Justices Of The Supreme Court:

In accordance with Rules 10.3(a)(3) and 52.10(a) of the TEXAS RULES OF APPELLATE PROCEDURE, Relator, the Texas Department of Family and Protective Services, files this Reply to Response to Motion for Emergency Relief, and shows this Honorable Court:

ARGUMENT AND AUTHORITIES

1. The Department stands by its position that the *only evidence* of maternity with respect to Relators in the underlying mandamus of the approximately one hundred and twenty-four subject children, was testimony regarding maternity of two alleged mothers, Lori Jessop and Lucille Nielsen, and four children. Lori Jessop, age twenty five, has three children, ages four, two and one-half, and eleven months. 5 RR 270. Lucille Nielson is twenty-four years old, and has a two-year-old son. 5 RR 299.

2. The Real Parties In Interest claim that the documents referenced in their Appendix I evidence that “**mothers** identified themselves and their children.” RESPONSE TO MOTION FOR EMERGENCY STAY 5. This simply is not accurate. The record reflects that ten alleged mothers did nothing more than make an appearance which was noted with an indication of the attorneys and the clients they represented. Further, it contained a reference to the children that Relator listed in its petitions. RELATOR’S APPENDIX 1. Two of those ten alleged mothers assert that a reference to their children alleged in Relators petitions constitute their affirmative identification of their children. In the matter of those ten alleged mothers, there is nothing before the trial court wherein they identify or claim their children. Another alleged mother listed in Real Parties in Interest’s Appendix 1, Sylvia Johnson, is not referenced whatsoever to any supportive documentation. Another alleged mother in the underlying mandamus, Linda Musser, is not even listed on Real Parties in Interest’s Appendix 1.

The above inaccurate claim is made with respect to twenty-nine alleged mothers listed in Real Parties Interest's Appendix 1, in which the alleged mothers identified their children in petitions for habeas corpus filed during the two days of the adversary hearing. This claim might have been true if the alleged mothers had averred the petitions. However, examination of these petitions reveals that they were ***all*** averred to by the alleged mothers' attorneys who ***could not*** have had personal knowledge of the facts to which they swore. If they did have documentary evidence upon which to base their sworn assertions, such as birth certificates, no such documentation was referenced in the habeas corpus petitions or introduced into evidence at the adversary hearing of April 17 and 18, 2008. *See attached RELATOR'S APPENDIX 1.*

3 Due to the initial and continuing obfuscation of maternity by the alleged mothers, the lack of evidence adduced at the adversary hearing, and the complete absence of evidence of paternity with all but four of the four-hundred sixty-eight children, Judge Walther ordered DNA testing for all alleged mothers and alleged fathers who wished to assert a claim to any of the subject four-hundred sixty-eight children. This testing is not complete. ***It is important to note that no fathers were identified by the subject alleged mothers in any of their habeas corpus petitions or in any other pleading.***

4. The establishment of familial relationships was critical to the Department in order to assess the risk of sexual predation of the subject children if

they were either allowed to remain in the “home” or be, at some point returned to the “home.”

5. Failure to grant a stay will mean that approximately one hundred twenty-four children will be returned to alleged mothers without any male sexual perpetrators being identified.

6. Further, the effect of this mandamus is to compel the Department to return the subject children to persons and an environment where two days of testimony in the adversary hearing in which the underlying Relators actively participated, clearly established that the practice of forcing underage girls into marriages with adult males was an institutional practice, a practice which was supported by the alleged mothers. The return of the children will subject them to continuing sexual and emotional abuse.

7. The alleged mothers, Real Parties in Interest, assert in their response that, “No grounds exist for a stay because allowing the order [Third Court of Appeals Memorandum Opinion] to go into effect will not moot the controversy nor threaten this Court’s jurisdiction.” RESPONSE TO MOTION FOR EMERGENCY STAY 1. This begs the question: What greater threat could exist to the jurisdiction of this Honorable Court regarding this mandamus proceeding than the subject mothers and their one hundred twenty-four children fleeing the jurisdiction of the State of Texas and taking refuge in Hilldale, Utah , Colorado City, Arizona, or some other undisclosed location? If the order of the Third Court Appeals stands, Judge Walther will have to vacate the temporary orders relative to all of the children subject to this mandamus. This will

strip the Relator of temporary managing conservatorship of the subject children. Once that occurs, neither the Relator nor the trial court will have any legal authority whatsoever to compel the alleged mothers or children to remain within the State of Texas, or any region. In fact, neither the Relator nor the trial court will have any legal authority whatsoever over the subject children, alleged mothers, or unidentified sexual perpetrators. The instant case is a child protection case, not a divorce case where the court retains jurisdiction to enter further temporary orders for the protection of the children. Pursuant to the Family Code, once the Department is denied temporary managing conservatorship of the subject children, which would be the effect of the order of the Third Court of Appeals, the trial court has no authority to enter orders for the protection of children.

8. According to the Real Parties in Interest, because Relator can file a petition for removal of an alleged perpetrator pursuant to Family Code Section 262.1015, the Department's concern is not an issue. Relator can envision two insurmountable problems with that proposed solution: 1) In the likely event that Real Parties in Interest alleged mothers and their children flee the jurisdiction of this Honorable Court, no Texas court would have any authority to enter any orders to protect these children; and 2) Even if Real Parties in Interest alleged mothers and their children remain within the State of Texas, which this Relator doubts, due to the conspiracy of silence and obfuscation of the alleged mothers, the Relator would be

unable to identify and remove the sexual predators who impregnated numerous underage children at the YFZ Ranch.

9. Finally, this will affect, irreparably, the outcome of the collateral cases involving hundreds of other children. On May 23, 2008, in two cases, the 57th and 225th Judicial District Courts of Bexar County, conducted hearings on writs of habeas corpus involving approximately 20 children. Rather than releasing these children to their alleged parents without any restrictions, both courts released the children on the condition that they remain within Bexar County, Texas, and remain under the supervision of the Relator. This was done due to the fact that this mandamus matter is pending before this Honorable Court. If this Court does not grant an emergency stay, it is unlikely that those conditions will remain for the protection of those twenty children.

10. The Court may grant temporary relief pending its determination of an original proceeding. TEX. R. APP. P. 52.10(b)

11. This emergency stay is necessary to maintain the status quo of the parties and to preserve the Court's jurisdiction to consider the merits of the original proceeding. *In re Reed*, 901 S.W.2d 604, 609 (Tex. App.-San Antonio 1995, orig. proceeding).

12. Not only will Relator suffer irreparable harm if this mandamus is allowed to stand, but the subject children will be at risk of continuing sexual and emotional abuse, which certainly is not in the children's best interest.

PRAYER

For these reasons, Relator prays that this Court grant temporary relief by immediately granting a stay prohibiting the Third Court of Appeals from issuing its mandamus. Relator further requests all relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2008, I mailed a copy of this brief by certified mail, return receipt requested, to the following parties and attorneys of record:

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