IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

November 26, 2012.

In re Petition of Jane Doe for a Judicial Waiver of Parental Notice of Termination of Pregnancy.	)	
JANE DOE, Appellant.	)	Case No. 2D12-5713

BY ORDER OF THE COURT:

By the opinion attached, the Second District Court of Appeal has reversed the order entered by the Honorable Harvey A. Kornstein, Circuit Judge of the Tenth Judicial Circuit, in and for Polk County, Florida, in Case Number 2012-DP-000536-0000-00, dismissing a petition for a judicial waiver of parental notice under section 390.01114(4)(c), (d), Florida Statutes (2012). The minor may consent to the performance or inducement of a termination of pregnancy without notice to a parent or guardian.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES R. BIRKHOLD, CLERK

Copies: Eve Greenberg, Esq.
Honorable Harvey A. Kornstein
Clerk, Tenth Judicial Circuit, in and for Polk County

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

In re Petition of Jane Doe for a Judicial Waiver of Parental Notice of Termination of Pregnancy.	)	
JANE DOE,	)	Case No. 2D12-5713
Appellant.	)	

Opinion filed November 26, 2012.

Appeal from the Circuit Court for Polk County; Harvey A. Kornstein, Judge.

Ita M. Neymotin, Regional Counsel, Second District, and Eve Greenberg, Assistant Regional Counsel, Office of Criminal Conflict and Civil Regional Counsel, Bartow, for Appellant.

WALLACE, Judge.

Jane Doe,[1] a minor, challenges the final order dismissing her petition for judicial waiver of parental notification under section 390.01114(4)(c) and (d), Florida Statutes (2012). We find no error in the circuit court's determination that Doe failed to

[1]In the circuit court, the minor chose to be identified by her initials rather than a pseudonym. We have elected to use this pseudonym in place of the minor's initials to further protect her privacy.

establish by clear and convincing evidence that it would not be in her best interest to notify a parent under section 390.01114(4)(d). However, we reverse the order of dismissal because the circuit court abused its discretion in concluding that Doe is not sufficiently mature to terminate her pregnancy under section 390.01114(4)(c).

I. THE FACTUAL AND PROCEDURAL BACKGROUND

At the hearing on the petition, Doe testified that she is seventeen years old. She will become eighteen years of age early in 2013. Doe is currently a senior in high school; she expects to graduate at the end of the school year. Doe receives A's and B's in her course work at school. She is not currently involved in any extracurricular activities.

Doe has planned an educational and career path. After graduating from high school, she plans to attend a community college first and then transfer to a four-year institution to complete her degree. After college, she hopes to obtain an advanced degree and to enter one of the professions.

Doe has already begun to implement her educational plan by arranging to take the Scholastic Aptitude Test (SAT) next year. She has also applied or is preparing to apply to two colleges within the State of Florida.

Doe lives in the Tenth Judicial Circuit with her mother and a younger sibling. She assumes a substantial amount of responsibility at home. Doe characterizes her relationship with her mother as "distant." Doe's mother and father separated many years ago, and Doe does not have a significant relationship with her father.

Doe has never been employed, but she has recently submitted numerous applications for employment to various local businesses. During the summer, Doe performs volunteer work, which is related to her career interests, at a nonprofit institution. Doe has no savings. She receives a small weekly allowance from her mother that she uses for the purchase of clothing, personal items, and entertainment.

Doe became pregnant in an isolated incident following overindulgence in alcohol at the home of some acquaintances. Doe expressed regret about this incident in her testimony. At the time of the hearing, Doe had known for about two weeks that she was pregnant. Doe did not seem to have adult acquaintances in whom she could confide. However, she had spoken with a slightly older friend, who offered to help her. Doe had also spoken with the seventeen-year-old father with whom she has no continuing relationship. He was unable to help her financially, and he suggested that she seek an abortion. Doe stated that she does not feel pressure from anyone to seek an abortion and that the decision is her own.

At the time of the hearing, Doe had not yet consulted a physician about her pregnancy. She was scheduled to see a doctor the following week. Doe had considered both raising the child and seeking an abortion. She concluded that her educational and career goals and responsibilities at home were incompatible with having a child.

Doe discussed the possibility of having an abortion with a nurse at a local clinic. She was aware of the procedures available to her and expressed some understanding of the benefits and risks associated with each, as well as their cost. Doe did not anticipate experiencing an adverse emotional reaction from the procedure, but

said that she would seek counseling if she did. In response to questions from the circuit court, Doe said that if she had a severe reaction to the procedure, she would go to the emergency room. For a less serious problem, she would return to the clinic. Doe testified that neither she nor her family have any religious beliefs or attitudes that would impact her decision to have an abortion. Nevertheless, she anticipated an extremely negative reaction from her mother if her mother was informed about Doe's pregnancy.

At the conclusion of the hearing, Doe affirmed that she has decided that she wants to terminate her pregnancy. If she is unable to have an abortion, then she plans to place the child for adoption.

The circuit court conducted the hearing on Doe's petition within the required time frame. After the conclusion of the hearing, the circuit court promptly entered an order dismissing Doe's petition, finding that she failed to prove by clear and convincing evidence either of the grounds alleged. This appeal followed.

II. THE APPLICABLE LAW

Under section 390.01114(3)(a), a physician is required to notify a minor's parent or legal guardian at least forty-eight hours in advance of performing an abortion on that minor. The statute excuses the notice requirement under five circumstances, but the pertinent provision applicable to this case provides for judicial waiver of the notice requirement in the event the minor successfully petitions a circuit court to waive that requirement. See § 390.01114(3)(b)(5). This type of waiver, commonly referred to as a judicial bypass, must be granted if the circuit court finds: (1) "by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy"; (2) "by a preponderance of the evidence, that the [minor] is the victim of

child abuse or sexual abuse inflicted by one or both of her parents or her guardian"; or (3) "by clear and convincing evidence[,] that the notification of a parent or guardian is not in the best interest of the [minor]." §§ 390.01114(4)(c), (d). Here, Doe based her petition on the grounds that she is sufficiently mature to decide whether to terminate her pregnancy and that notification of her parent is not in her best interest.

Historically, courts have struggled with defining the concept of maturity in the context of whether a minor is sufficiently mature to have an abortion without notifying her parents, noting that such a decision is " 'difficult, yet delicate and important.' " In re Doe, 973 So. 2d 548, 551 (Fla. 2d DCA 2008) (quoting In re Doe 2, 166 P.3d 293, 295 (Colo. App. 2007); Ex parte Anonymous, 806 So. 2d 1269, 1274 (Ala. 2001)). In Doe, 973 So. 2d 548, this court discussed the difficulty inherent in this maturity determination, finding that the determination must be made on a case-by-case basis and examining the various ways other courts have defined maturity in this context. See id. at 551–52 (providing a myriad of factors other courts have considered in assessing the maturity of a minor). For example, one court noted:

> Manifestly, as related to a minor's abortion decision, maturity is not solely a matter of social skills, level of intelligence or verbal skills. More importantly, it calls for experience, perspective and judgment. As to experience, the minor's prior work experience, experience in living away from home, and handling personal finances are some of the pertinent inquiries. Perspective calls for appreciation and understanding of the relative gravity and possible detrimental impact of each available option, as well as realistic perception and assessment of possible short term and long term consequences of each of those options, particularly the abortion option. Judgment is of very great importance in determining maturity. The exercise of good judgment requires being fully informed so as to be able to weigh alternatives independently and realistically. Among other things, the minor's conduct is a measure of good judgment.

> Factors such as stress and ignorance of alternatives have been recognized as impediments to the exercise of proper judgment by minors, who because of those factors "may not be able intelligently to decide whether to have an abortion." Am. Coll. of Obstetricians & Gynecologists v. Thornburgh, 737 F.2d 283, 296 (3d Cir.1984).

Doe, 973 So. 2d at 551 (quoting H---- B---- v. Wilkinson, 639 F. Supp. 952, 954 (D. Utah 1986)).

In grappling with the definition of maturity, the First District said:

> Factors which evidence sufficient maturity include, but are not limited to, the minor's physical age, her understanding of the medical risks associated with the procedure as well as emotional consequences, her consideration of options other than abortion, her future educational and life plans, her involvement in civic activities, any employment, her demeanor and her seeking advice or emotional support from an adult.

In re Doe, 924 So. 2d 935, 939 (Fla. 1st DCA 2006). Similarly, in 2010, this court, in evaluating maturity, examined the minor's age, her academic performance, her educational and career goals, her consultation of the father and an adult about her decision, her consultation of a medical professional, her understanding of the medical procedure and its side effects and risks, her contingency plan in the event of complications, her plan to pay for the abortion, and her consideration of alternatives to abortion. In re Doe, 36 So. 3d 164, 165 (Fla. 2d DCA 2010).

The numerous criteria considered by various courts in assessing whether a minor is sufficiently mature to determine whether to terminate her pregnancy, while perhaps a starting point, did not provide for consistent application of the bypass provision of section 390.01114. See, e.g., Doe, 973 So. 2d at 552. It is against this backdrop that the Florida legislature amended section 390.01114 in 2011 to provide a

list of factors a trial court must consider when determining whether a minor is sufficiently mature. These factors include the minor's:

a. Age.

b. Overall intelligence.

c. Emotional development and stability.

d. Credibility and demeanor as a witness.

e. Ability to accept responsibility.

f. Ability to assess both the immediate and long-range consequences of the minor's choices.

g. Ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding to her decision.

§ 390.01114(4)(c)(1). In addition, the trial court must consider "[w]hether there may be any undue influence by another on the minor's decision to have an abortion." § 390.01114(4)(c)(2).

While this statutory list does not appear to limit the factors a trial court may consider, it does limit the trial court's discretion by prescribing several factors it is required to address. Moreover, not only must the trial court consider these factors in its determination of maturity, its final order must include "factual findings and legal conclusions relating to the maturity of the minor" in view of these specific factors. § 390.01114(4)(e)(2). In light of these factors, we review the circuit court's findings in this case for an abuse of discretion.

III. EXAMINATION OF THE STATUTORY FACTORS

The circuit court's order contains findings of fact and conclusions of law. The findings of fact generally summarize Doe's testimony at the hearing. Although the

circuit court's order contains a recital that it has considered each of the factors outlined in section 390.01114(4)(c), the order actually only addresses some of the statutory factors while ignoring others. In the following discussion, we will use the statutory factors as a framework to address the circuit court's findings and conclusions in the light of the record.

Section 390.01114(4)(c)(1)(a): The minor's age. Doe is seventeen years of age, and she will reach the age of eighteen in a few months. This factor tends to support a determination of maturity. See Doe, 36 So. 3d at 165 (finding that a minor whose age is over seventeen is one factor supporting a petition to waive parental notice); In re Doe, 932 So. 2d 278, 284 (Fla. 2d DCA 2005) (observing that "age bears positively on the [maturity] inquiry" when the minor is within months of reaching adulthood); Doe, 921 So. 2d at 756 (noting that the minor's "age, which places her less than one year from being outside the scope of the parental notification law is, if anything, a factor that weighs positively in support of her position"). Although the circuit court's order accurately states Doe's age, the order does not reflect that the circuit court gave any consideration to Doe's relative proximity to the age of majority in assessing her maturity.

Section 390.01114(4)(c)(1)(b): The minor's overall intelligence. Doe's school grades, her educational and career plans, and the general tenor of her testimony tend to establish that her overall intelligence is above average. See Doe, 36 So. 3d at 165 (considering a minor's good grades and educational and career goals as a factor that weighed in favor of a finding of maturity). The circuit court's order summarizes Doe's testimony concerning her school work and her educational and career objectives.

Nevertheless, there is nothing in the circuit court's order to indicate that it considered these factors in reaching its determination that she lacked sufficient maturity under the statute.

Section 390.01114(4)(c)(1)(c): The minor's emotional development and stability. A fair reading of the record supports the conclusion that Doe's emotional development and stability are appropriate to her age and circumstances. Nothing in the record suggests that she has any emotional problems or instability. The circuit court's order fails to address this factor.

Section 390.01114(4)(c)(1)(d): The minor's credibility and demeanor as a witness. The circuit court expressly addressed the factor of Doe's credibility and demeanor in two separate sections of its order, but its findings are contradictory and inconsistent. Initially, the circuit court described Doe positively as "neat, well dressed and courteous," and "soft spoken." The circuit court also noted that Doe appeared to be "somewhat insecure," but this is not surprising under the circumstances. However, later in its order, the circuit court criticized Doe as being "rather cavalier in her demeanor and responses concerning her overall depth of thoughtfulness to this extremely important decision."

The circuit court's finding about Doe's "cavalier" demeanor is inconsistent with the circuit court's earlier characterization of Doe as "courteous," "soft spoken," and "somewhat insecure." The adjective "cavalier" is defined as: "1. Showing arrogant or offhand disregard; dismissive: *a cavalier attitude toward the suffering of others*; 2. Carefree and nonchalant; jaunty." The American Heritage Dictionary of the English Language 296 (4th ed. 2000) (emphasis in original). Clearly, Doe could not be

"courteous," "soft spoken," and "somewhat insecure" while displaying an arrogant or offhand disregard toward others. And Doe was certainly not carefree, nonchalant, or jaunty about her predicament or the difficult choices facing her.

Moreover, the circuit court's assessment of Doe's demeanor as "cavalier" is simply without support in the record. Doe's testimony demonstrated that she had carefully considered the impact of an unplanned pregnancy in light of her educational and career goals and her other responsibilities. After such consideration, she had reached the decision that terminating the pregnancy is the best choice for her. Doe, 921 So. 2d at 756 (rejecting the trial court's assessment of the minor's demeanor because it failed to describe "any articulable facts supporting the conclusion that [the minor's] demeanor was indicative of immaturity"). To the extent that the assessment of Doe's demeanor as "cavalier" reflects the circuit court's disagreement with Doe's decision, the circuit court based its finding on inappropriate considerations. See Doe, 932 So. 2d at 285; Doe, 924 So. 2d at 940.

Section 390.01114(4)(c)(1)(e): The minor's ability to accept responsibility. The circuit court accurately summarized the substantial responsibilities assumed by Doe at home but did not otherwise consider this factor. The circuit court failed to note or otherwise consider Doe's testimony about the steps she normally took to avoid the consumption of alcohol and participation in sexual relationships.

Section 390.01114(4)(c)(1)(f): The minor's ability to assess both the immediate and long-range consequences of the minor's choices. The circuit court's only finding on this factor focused on the incident that led to Doe's pregnancy. The circuit court said: "The court finds that such conduct was indicative of poor judgment in

crucial decision making settings. The court further finds that the choices she made on the day of conception were impulsive and immature."

We conclude that the circuit court misapprehended and misapplied this factor. Doe was not required to prove that she possesses the same maturity as an adult, "[r]ather, she was called upon to demonstrate that she is 'sufficiently mature' to *make the decision whether to terminate her pregnancy*." Doe, 932 So. 2d at 284 (emphasis added). To be sure, a minor's behavior that results in an unplanned pregnancy may be indicative of poor decision-making. Nevertheless, such behavior is not determinative on the issue of the minor's maturity. If careless behavior resulting in an unplanned pregnancy is conclusive proof of immaturity, then very few minors could ever qualify as sufficiently mature to warrant a waiver of the parental notification requirement.

Here, Doe expressed regret for the isolated incident that resulted in her pregnancy and displayed substantial maturity in addressing its consequences. The circuit court's narrow focus on the incident to the exclusion of the larger picture was improper. See Doe, 921 So. 2d at 756 (stating that a minor's acknowledgment of the immature decision that led to her pregnancy supported her belief that she had sufficient maturity to decide whether to terminate her pregnancy). In assessing Doe's judgment and decision-making, the circuit court simply failed to consider the substantial evidence of the maturity she displayed in understanding and addressing the consequences of her actions.

Section 390.01114(4)(c)(1)(g): The minor's ability to understand and explain the medical risks of terminating her pregnancy and to apply that understanding

to her decision. On this factor, the circuit court found that Doe "was only superficially able to advise the court of any medical complications that may result from the termination procedure." Once again, the evidence does not support this finding. When asked about the risks of the procedures available to her, Doe responded appropriately based on the information provided by the nurse with whom she had spoken at the clinic, and Doe was able to provide the court with sufficient details regarding the available procedures and their associated risks. This was hardly a "superficial" response, and an average adult could do no more. The circuit court's characterization of Doe's response as "superficial" is particularly unfair in this case. Additionally, at the hearing, the circuit court questioned Doe closely about various other matters. However, the circuit court did not ask Doe for any details about her understanding of the risks of the available procedures and gave no hint that it considered Doe's response inadequate. Thus neither Doe nor her counsel had an opportunity to address the issue further.

Section 390.01114(4)(c)(2): Whether there may be any undue influence by another on the minor's decision to have an abortion. The circuit court accurately summarized Doe's testimony that the seventeen-year-old father had suggested that she get an abortion. There was no evidence that anyone else had urged Doe to have an abortion. Although the circuit court made no express finding on this factor, there was no suggestion of undue influence in this case. Doe's reasons for seeking an abortion were personal and unrelated to the suggestion of the father, with whom she has no continuing relationship.

IV. DISCUSSION

Our review of the statutory factors in the context of this case establishes that the circuit court addressed some of the factors while ignoring others. The factors that the circuit court did not address directly point to the conclusion that Doe is sufficiently mature to make the decision to seek an abortion without parental notification. To the extent that the circuit court did expressly address some of the statutory factors, its findings were either unsupported by the record or based on inappropriate considerations. Here, the circuit court's discretion is limited in the sense that it must be exercised in a manner consistent with the applicable statute. See Wilson v. Robinson, 917 So. 2d 312, 313 (Fla. 5th DCA 2005). For these reasons, we conclude that the circuit court abused its discretion in ruling that Doe lacked sufficient maturity for a waiver of the parental notification requirement.

We find additional support for our decision in this court's 2010 decision in Doe, 36 So. 3d 164 (2010 Doe decision). In the 2010 Doe decision, this court reversed a circuit court order denying a minor's petition for a waiver of the parental notification requirement. The facts in the 2010 Doe decision are remarkably similar to the facts in this case. Although the circuit court's order indicates its study of this court's decisions in Doe, 932 So. 2d 278, and Doe, 973 So. 2d 548, it does not mention our 2010 Doe decision. Like cases should be decided alike. See Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980) ("Judges dealing with cases essentially alike should reach the same result. Different results reached from substantially the same facts comport with neither logic nor reasonableness."). The circuit court's failure to follow this court's controlling precedent also constitutes an abuse of discretion.

V. CONCLUSION

For these reasons, we reverse the circuit court's order, and Doe's petition for judicial waiver of the parental notification required by section 390.01114 is deemed granted. See Fla. R. App. P. 9.110(n). The clerk shall place a certificate to this effect in the file and provide Doe with a certified copy for delivery to her physician. This court's mandate shall issue simultaneously with this opinion, and no rehearing motion shall be entertained.

Reversed.

NORTHCUTT, J., Concurs with opinion.
BLACK, J., Dissents with opinion.

NORTHCUTT, J., Concurring.

I fully endorse the thoughtful majority opinion. I write separately to more fully explain my reasons for concluding that the circuit court abused its discretion in this matter.

Three decades ago, the Florida Supreme Court issued Canakaris v. Canakaris, 382 So. 2d 1197 (Fla. 1980), in which it expounded on the nature of judicial discretion and the standard of review for reviewing discretionary rulings. Courts and litigants often invoke Canakaris for the proposition that an abuse of judicial discretion may be found only when no reasonable person would agree with the lower court's ruling. Id. at 1203. But they frequently overlook the critically important central components of that "reasonableness" test:

> The trial court's discretionary power is subject only to the test of reasonableness, but that test requires a determination of whether there is logic and justification for the result. The trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner. Judges dealing with cases essentially alike should reach the same result. Different results reached from substantially the same facts comport with neither logic nor reasonableness.

Id.

Of course, in addition to the notions that there must be some logic and justification for a discretionary ruling, and that similar cases should lead to similar results, judicial discretion is constrained by another important parameter that is applicable to all judicial rulings: it must comport with the law and the evidence. Under the circumstances presented in this case, the circuit court's conclusion that Doe was not sufficiently mature to decide for herself whether to terminate her pregnancy failed the reasonableness test.

As the majority opinion points out, the circumstances of this case are substantially similar to those in In re Doe, 36 So. 3d 164 (Fla. 2d DCA 2010), in which we held that the record did not support the circuit court's determination that the petitioner was not sufficiently mature to decide to terminate her pregnancy. There are two seeming differences between the cases.[2] First, in the 2010 case the petitioner had

[2]The dissent perceives other differences that are certainly immaterial to the question whether this young woman is sufficiently mature to assess and choose from among her alternative courses. For instance, it quibbles that, unlike the petitioner in the earlier case, at the time of the hearing below Doe had not yet consulted a physician. But she did have an appointment for the following week. The significance vis-à-vis the question of her *maturity* is that she recognized the importance of obtaining medical advice and had arranged to do so. As I have observed in the past, it is not the specific purpose of the *maturity determination* to apprise minors of the medical risks associated with terminating their pregnancies. That function is served by another statute

consulted a trusted adult relative about her decision; there is no evidence of such in this case. Some courts have considered it a hallmark of maturity that a petitioner has sought such counsel. But, obviously, her failure to do so is not necessarily evidence of immaturity, and it could have no practical significance at all in the absence of proof that she had a trusted adult confidante available to her. Because there was no such proof here, this factor was irrelevant to the question of Doe's maturity.

I acknowledge that the other difference between this case and the prior one is, at least superficially, more significant. In the earlier case, the circuit court's order made no mention of the petitioner's demeanor as a factor affecting the court's assessment of the petitioner's maturity. In this case, however, the court weighed Doe's purported demeanor heavily against her:

> The court finds that the Petitioner does not fully appreciate the depth of the magnitude of this life altering choice. In fact, the court finds that the Petitioner was rather cavalier in her demeanor and responses concerning her overall depth of thoughtfulness to this extremely important decision.

Yet, the evidence was uncontested that this young woman had investigated the medical risks associated with the termination procedure and that she had weighed them against the relative gravity of her alternatives. Doe had considered what she would do if she developed physical complications, i.e., she would return to the clinic or go to an emergency room. If she experienced emotional difficulties, she said,

---

that requires this information to be given to every woman, young or old, as part of her informed consent to a termination procedure. See § 390.0111(3), Fla. Stat. (2012). In re Doe, 973 So. 2d 548, 570 n.15 (Fla. 2d DCA 2008) (Northcutt dissenting).

she would seek counseling or find someone to talk to. (The circuit court's findings mentioned this testimony but omitted Doe's reference to counseling.)[3]

Doe's testimony also reflected her awareness that abortion is a controversial procedure about which many people have strong feelings; she reported that her mother was "completely against" it, to the point that Doe believed her mother would banish her from their home if she learned of her intention to terminate the pregnancy. Finally, she recognized that childrearing, or merely a full-term pregnancy, would substantially interfere with or altogether thwart her educational and career plans as well as her ability to meet her significant responsibilities at home—particularly those involving her younger sibling, whom she was helping to rear. In other words, in Doe's view, a decision *not* to terminate the pregnancy would be life altering.

---

[3]There were other instances in which the order portrayed evidence in terms that effectively mischaracterized it. For example, the evidence reflected that Doe prepares her family's meal every night and does much of the household cleaning. Weekdays, she is responsible for waking her younger sibling and getting [him/her] ready for and off to school. (For obvious reasons, I avoid specifying the sibling's gender to further protect Doe's identity.) When the sibling returns home in the afternoon, Doe assigns [him/her] chores and oversees homework. The uncontestable import of the evidence is that Doe bears significant responsibility for running the household and rearing her sibling, and she does so largely independently of her mother, with whom she has only a distant, passing relationship. But on this topic the court's order recounted merely that Doe "takes care of her [sibling] when her mother is at work. She fixes meals for [him/her] and helps with homework." The dissent, as well, contains similarly inaccurate representations of the evidence. Thus it remarks that Doe "described termination by pill as resulting in a 'normal period'." In fact, Doe's testimony clearly imparted her understanding that the pill achieves its purpose by inducing a miscarriage.

By these observations I intend no criticism of my colleagues on either this court or the circuit court, both of whom undertook this important matter in a considered, professional manner while under severe time restraints. However, neither the presumption of correctness in favor of a lower court's ruling nor the abuse of discretion standard of review authorize an appellate court to accept findings that are at odds with uncontested facts in the record.

In light of the uncontradicted evidence, it is impossible to dispute that assessment. Doe's concerns were not the insubstantial worries of a frivolous schoolgirl. They related directly to her ability to carry out her important existing responsibilities and to accomplish specific educational and professional objectives that would determine the quality of the rest of her life. As the United States Supreme Court has observed:

> [T]he potentially severe detriment facing a pregnant woman, see Roe v. Wade, [410 U.S. 113, 153 (1973)], is not mitigated by her minority. Indeed, considering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor. In addition, the fact of having a child brings with it adult legal responsibility, for parenthood, like attainment of the age of majority, is one of the traditional criteria for the termination of the legal disabilities of minority. In sum, there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible.

Bellotti v. Baird, 443 U.S. 622, 642 (1979).[4]

---

[4]On the other hand, the courts have long recognized that the medical risks associated with a first trimester termination are less or no greater than those attendant to childbirth. See Roe v. Wade, 410 U.S. at 163.

Moreover, after conducting a comprehensive review of credible studies, the American Psychological Association Task Force on Mental Health and Abortion reported that

> the prevalence of mental health problems observed among women in the United States who had a single, legal, first-trimester abortion for nontherapeutic reasons appeared to be consistent with normative rates of comparable mental health problems in the general population of women in the United States. Consider, for example, the overall prevalence of depression among women in the [National Longitudinal Survey of Youth: 1992], a longitudinal national survey of a cohort of men and women aged 14-21 years in 1979. Among *all* women in the NLSY, irrespective of reproductive history and without controlling for any covariates, 22% met criteria for depression in 1992 (i.e., scored above the clinical cutoff

It is difficult, then, to fathom what the circuit court meant by its assertion that Doe did not sufficiently appreciate the "depth of the magnitude of this life altering choice," or its criticism of her "overall depth of thoughtfulness to this extremely important decision." To the contrary, the unmistakable import of the evidence was that this young woman knew precisely what is at stake for her. I can only surmise, without knowing, that the court's remarks referred not to the accuracy of Doe's assessment of the choices available to her, but to her failure to express ethical or moral ambivalence about her decision to terminate the pregnancy. Notably, she was not questioned on the topic. But if this is what gave the court pause about Doe's "depth of thoughtfulness," I submit that the court demanded more of her than the law permits.

In Roe v. Wade, 410 U.S. 113, the United States Supreme Court addressed the constitutionality of the Texas abortion statute. The Court prefaced its analysis with a lengthy examination of the widely disparate views, both historical and contemporary, about the beginning of life. The Court concluded that "[i]n view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake." Id. at 162. The Court ultimately concluded that the state's interest in regulating abortion is confined to protecting the mother's health after the first trimester of pregnancy and protecting "the potentiality of human life" after

---

> on the CES-D). Among women who reported one abortion, the corresponding percentage was 23%.

American Psychological Association, Task Force on Mental Health and Abortion, Report of the Task Force on Mental Health and Abortion at 91 (2008). The APA Task Force concluded that "among women who have a single, legal, first-trimester abortion of an unplanned pregnancy for nontherapeutic reasons, the relative risks of mental health problems are no greater than the risks among women who deliver an unplanned pregnancy." Report of the Task Force at 92.

the second trimester. Id. at 162-63. During the first trimester, the Court held, the decision whether to terminate a pregnancy is strictly a matter between the pregnant woman and her physician, free of interference or regulation by the state. Id. at 163. In other words, a pregnant woman is constitutionally entitled to elect between proceeding with her pregnancy or terminating it consistent with her own ethical, moral, or religious convictions, *or lack thereof*—and unburdened by the state's assertion that she should feel differently about it.

Jane Doe has that very right, and if she is sufficiently mature, she is entitled to invoke it without consulting a parent. The parental notification requirement is justified only by the state's interest in protecting immature minors who lack the ability to intelligently and independently weigh their choices. The Supreme Court has observed that it is rational for the state to assume that the family will "strive to give a lonely or even terrified minor" guidance to assist her with her decision. Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 520 (1990). It would be *irrational* to hold that a woman who is only a few weeks shy of her eighteenth birthday, who is fully aware of the position her parent would take, and who has made a different choice for herself based on sound, realistic reasoning, is not mature enough to do so because she is *not* sufficiently overwrought or ambivalent about her decision. The circuit court's conclusion to that effect failed the reasonableness test, and therefore it was an abuse of discretion.

BLACK, J., dissenting.

I respectfully dissent. Having observed and questioned the petitioner, the trial judge determined that she lacked the maturity to decide to terminate her pregnancy without notifying her parent, and he issued a well-reasoned, detailed order supporting his conclusion. Because competent, substantial evidence supports the trial court's findings of fact and conclusions of law, I would affirm. See In re Doe, 67 So. 3d 268, 268 (Fla. 2d DCA 2011). Sufficient maturity must be shown by clear and convincing evidence, and this court reviews the trial court's order for an abuse of discretion. Clear and convincing evidence is evidence of " 'such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.' " In re Doe, 973 So. 2d 548, 556 (Fla. 2d DCA 2008) (Casanueva, J., concurring in denial of rehearing en banc) (quoting In re Davey, 645 So. 2d 398, 404 (Fla. 1994)). Both the clear and convincing and abuse of discretion standards are statutory. § 390.01114(4)(b)(2), (4)(c). These heightened standards of review denote the legislature's strong position that judicial waiver is clearly to be an exception to the notice requirement.

The trial court issued a detailed order in this case. While it is true that the trial court did not undertake a point-by-point review of the statutory factors, as does the majority, it is clear that the court was familiar with the statute and the factors and considerations announced in case law when determining whether the petitioner met her burden by clear and convincing evidence. See In re Doe, 67 So. 3d at 268. The court specifically considered the petitioner's demeanor, a factor previously focused on by this court as the single most important consideration in a minor’s ability to decide whether to

terminate her pregnancy. Compare In re Doe, 67 So. 3d at 268 ("Significantly, the trial court made specific findings and expressed particular concern regarding the minor's demeanor, and the court considered that factor important in this case.") with In re Doe, 36 So. 3d 164, 165 (Fla. 2d DCA 2010) (reversing the trial court's dismissal and specifically noting "the circuit court's order made no mention of the minor's demeanor"), and In re Doe, 932 So. 2d 278, 285 (Fla. 2d DCA 2005) (reversing the trial court's dismissal and noting that petitioner's demeanor might have been the "one possible exception" to the maturity evidence). Judge Altenbernd has previously observed, "[m]aturity is often evidenced by demeanor, composure, tone of voice, and body language." In re Doe, 973 So. 2d at 574 (Altenbernd, J., dissenting on denial of rehearing en banc). In addition, "[i]f the issue is 'maturity to decide,' then it would seem to rest heavily upon factors of demeanor and matters that cannot be gleaned from an appellate record in the absence of findings by the trial judge." Id. at 575.

In its order, the trial court referred to petitioner's demeanor and responses as "cavalier." Although the court indicated petitioner was neat, well dressed, and courteous, it also noted that she appeared "somewhat insecure." The court also found that petitioner's demeanor and responses evidenced a lack of thoughtfulness and a failure to "fully appreciate the depth of the magnitude" of her choice.

In addition to having the invaluable benefit of personally observing and speaking with the petitioner, the court considered the petitioner's testimony in light of the case law discussing and attempting to define "sufficiently mature" for purposes of section 390.01114(4)(c). Of those identified by the court, the most striking to me is the immaturity exhibited by petitioner on the day of conception. Petitioner readily admitted

to succumbing to peer pressure to drink alcohol. She became intoxicated and had sexual intercourse—an act she testified she would not have engaged in had she been sober. In fact, petitioner only "vaguely recalls" the sex that resulted in her pregnancy; she did not indicate that she and the father were in a relationship and she does not anticipate having any future relationship with the father. Cf. In re Doe, 932 So. 2d at 284. In these cases, a " 'minor's conduct is a measure of good judgment' " and " '[j]udgment is of very great importance in determining maturity.' " In re Doe, 973 So. 2d at 551 (quoting H---- B---- v. Wilkinson, 639 F. Supp. 952, 954 (D. Utah 1986)). Here, petitioner's actions illustrate poor judgment and are the antithesis of the necessary maturity to decide to terminate her pregnancy.

In addition, petitioner's understanding of her options and the termination methods available to her—including the potential medical complications that may result from a pregnancy termination—were superficial and evidenced a lack of understanding. "Significantly, the minor failed to demonstrate any knowledge regarding any specific immediate or long-term physical, emotional, or psychological risks of having an abortion." In re Doe, 973 So. 2d at 552. In fact, the majority of petitioner's answers were inarticulate in terms of reasoning. See id.; cf. In re Doe, 36 So. 3d at 165. Her knowledge of potential risks and consequences was both limited and inaccurate. For instance, she described termination by pill as resulting in a "normal period" and cited the potential for "getting sick" and urinary tract infections as the risks associated with surgical termination of pregnancy. "If maturity and good judgment are measured by one's attempt to become fully informed of all of the options available and the possible consequences of those options, the instant record does not demonstrate that this

petitioner exhibited such maturity." In re Doe, 932 So. 2d at 289 (Davis, J., dissenting). In fact, petitioner's testimony evidences a lack of awareness, appreciation, and consideration of the risks associated with abortion. See In re Doe, 973 So. 2d at 552; In re Doe, 932 So. 2d at 281.

And although she had one telephone conversation with a Planned Parenthood nurse, she has not sought the emotional support or counsel of any adult. Cf. In re Doe, 36 So. 3d at 165. When asked what options she had considered, she stated abortion and raising the child. She continued: "And it would just be very, very, very hard for me with going to school, and not having a job, and still living with my mom, and having other responsibilities, like taking care of my [younger sibling], and so I just figured abortion would probably be the – the best way to go." This evidence fails to advise the trial court of the "depth or duration of [petitioner's] deliberative process." In re Doe, 973 So. 2d at 557 (Casanueva, J., concurring in denial of rehearing en banc). And while the majority takes issue with the court's lack of follow-up questions in this regard, it is not the responsibility of the court to solicit testimony from the petitioner; the petitioner bears the burden of proof. See In re Doe, 973 So. 2d at 550.

I note, too, that petitioner's testimony as to whether she has discussed her pregnancy with someone other than the father is conflicting. When directly asked whether she had discussed the pregnancy with anyone other than the father she answered "no." However, when asked how she would pay for the termination, she stated a friend of hers "was going to help her out."

Other facts considered by the court included that the petitioner has never worked outside of her home, has never earned any money other than a small weekly

allowance, and has had very little exposure to handling personal finances. These facts are evidence of lack of the required maturity. Cf. In re Doe, 973 So. 2d at 550; In re Doe, 967 So. 2d 1017, 1020 (Fla. 4th DCA 2007). In addition, while it is true that petitioner expressed educational and career aspirations and makes good grades in school, the court took notice at the hearing that petitioner's high school is a nontraditional, on-line school, and that petitioner does not take advanced placement classes.

Peculiarly, the majority asserts that the facts of our case are "remarkably similar" to In re Doe, 36 So. 3d 164. I disagree and note that in direct contrast to the 2010 Doe decision, the trial court here addressed petitioner's demeanor and petitioner here has not consulted any adult about her situation. In reviewing our past decisions, these factors have been deemed arguably the most significant in reaching the maturity determination. In addition, at the time of the hearing our petitioner had not visited a medical clinic and she evidenced a lack of understanding about the termination procedures. Therefore, the majority's reliance on the 2010 Doe decision as authoritative in this case is unpersuasive.

It appears to me that the majority is substituting its conclusions regarding the minor's maturity for the trial court's, without the benefit of observing the tenor of the proceedings or petitioner's body language, tone of voice, and demeanor. These are assessments necessary to the determination of maturity which are impossible to glean from a cold record. By statute, this court may only overturn the trial court's ruling when the trial court has abused its discretion. Here, by necessity, the majority must resort to a dictionary definition of cavalier, whereas the trial judge's findings of fact, in his well-

reasoned order, reflect that he knew it because he saw it. Finally, I believe the majority departs from this court's opinion in In re Doe, 67 So. 3d 268, by effectively reviewing the testimony de novo rather than determining whether the testimony supports the trial court's findings.

In my opinion, there is competent, substantial evidence to support the trial court's ruling, and in dismissing the petition the court acted well within its discretion.