

CAUSE NO. 2015-69681

EVELYN KELLY,
INDIVIDUALLY, AND ON
BEHALF OF THE ESTATE OF
DAVID
CHRISTOPHER DUNN

§
§
§
§

IN THE DISTRICT COURT OF

V.

§
§
§
§
§

HARRIS COUNTY, TEXAS

THE METHODIST HOSPITAL

189TH JUDICIAL DISTRICT

**DEFENDANT, HOUSTON METHODIST HOSPITAL F/K/A THE
METHODIST HOSPITAL'S MOTION FOR CONTINUANCE AND
EXTENSION OF DEADLINES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **HOUSTON METHODIST HOSPITAL F/K/A THE
METHODIST HOSPITAL** ("Houston Methodist" or the "Hospital"), pursuant to Rules
251 and 252 of the Texas Rules of Civil Procedure and files the following Motion for
Continuance and Extension of Deadlines ("Motion"). By way of the Motion, Houston
Methodist respectfully shows the Court the following:

1. Under Texas Rule of Civil Procedure 251, a continuance may be granted "for
sufficient cause supported by affidavit, or by consent of the parties, or by operation of law."¹
"When requesting additional time for discovery, the movant must aver, by affidavit [or by
consent or agreement], that the matters to be discovered are material, show the materiality of
the discovery, and show that she has used due diligence to procure the matters."² When a
motion for continuance is: (1) in substantial compliance with the Rules; (2) verified or

¹ TEX. R. CIV. P. 251; *O'Connor v. O'Connor*, 245 S.W.3d 511, 516 (Tex. App.—Houston [1st Dist.] 2007, no
pet.).

² *O'Connor*, 245 S.W.3d at 516 (citing TEX. R. CIV. P. 252).

agreed; and (3) uncontroverted, the Court “must accept the statements in the motion as true.”³ The Court’s decision on a motion for continuance is reviewed for an abuse of discretion.⁴

2. This case is currently set on the Court’s August 21, 2017 trial docket. This is the second trial setting in this case. No party has yet made an unconditional announcement of ready for trial.

3. By this motion, Houston Methodist asks the Court for a continuance of this case. A continuance of this case will not unreasonably interfere with the other business of this Court.⁵

4. Houston Methodist requests this continuance, as the parties agreed on February 7, 2017, to stand down while opponents to current advanced direction legislation worked to pass a bill providing an amendment to the Advanced Directive Act.⁶ The proposed legislation, which would have made the current litigation moot, saving all sides the costs and expenses of litigation, did not pass as Counsel for Plaintiff expected, and now Defendant needs formal discovery to prepare for trial. Defendant has attempted to conduct formal discovery since closing of the legislative session, but Plaintiffs have objected to our efforts based on the current docket control order.

³ *Verkin v. Sw. Ctr. One, Ltd.*, 784 S.W.2d 92, 94 (Tex. App.—Houston [1st Dist.] 1989, writ denied).

⁴ *Id.*

⁵ See TEX. R. CIV. P. 330(d).

⁶ See February 7, 2017 Email Sent by Joe Nixon, which includes proposed language amending the Texas Advanced Directives Act, a true and correct copy of which is attached as Exhibit “A.”

5. Despite counsels' good faith and due diligence, Houston Methodist does not believe the remaining discovery can be accomplished to meet the current trial setting of August 21, 2017. In fact, since the parties have focused efforts on working towards an amicable resolution, they have not exchanged responses to written discovery or taken any depositions. Defendant requires full discovery to prepare this matter for trial. Defendant requests an alternative trial setting of no less than 90 days from the current setting, with new revised docket control deadlines.

6. Additionally, Lead counsel for Houston Methodist, Dwight W. Scott Jr., has recently been scheduled for spinal surgery on August 23, 2017, following a recent medical setback. This date is the earliest date his treating physician has on his surgical schedule and falls during the current trial setting of August 21, 2017. The surgeon has estimated an inpatient hospital stay of 2-5 days, and discharge to home with outpatient physical therapy. Mr. Scott will not be released to return to normal work activities for at least 2 weeks following discharge, and will be under orders to avoid long periods of activity for at least 4 weeks.⁷

7. Accordingly, Houston Methodist requests a continuance of the trial setting to this Court's November 13, 2017 docket. Houston Methodist also requests that the Court issue a new docket control order for expert witness designations, pleadings, discovery, and summary judgment deadlines to afford the parties the opportunity to complete the necessary discovery for trial.

⁷ See Affidavit of Dwight W. Scott, Jr., attached hereto at Exhibit "B."

8. This Motion is not brought for the purpose of delay, but so that justice may be done.

II.

PRAYER & CONCLUSION

9. For these reasons, Houston Methodist respectfully requests that this Court grant a continuance of the current trial setting and issue a new docket control order, in this cause in accordance with the new trial setting, and grant all other relief the Court deems appropriate.

Respectfully submitted,

SCOTT PATTON PC

By: *s/Dwight W. Scott, Jr.*

DWIGHT W. SCOTT, JR.

Texas Bar No. 24027968

dscott@scottpattonlaw.com

CAROLYN CAPOCCIA SMITH

Texas Bar No. 24037511

csmith@scottpattonlaw.com

3939 Washington Avenue, Suite 203

Houston, Texas 77007

Telephone: (281) 377-3311

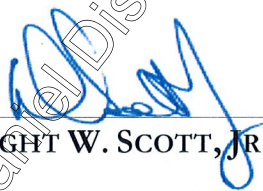
Facsimile: (281) 377-3267

**ATTORNEYS FOR DEFENDANT,
HOUSTON METHODIST HOSPITAL
f/k/a THE METHODIST HOSPITAL**

VERIFICATION

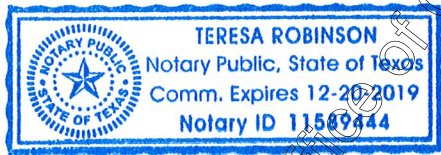
STATE OF TEXAS §
 §
COUNTY OF HARRIS §


BEFORE ME, the undersigned authority, on this day personally appeared **DWIGHT W. SCOTT, JR.** known to me to be the person whose name is subscribed hereto, who upon his oath, stated that he has read the Motion for Continuance, and acknowledged to me that the factual statements contained therein are true and correct to the best of his knowledge.



DWIGHT W. SCOTT, JR.

SUBSCRIBED TO AND SWORN BEFORE ME on this 13th day of July, 2017 to certify which witness my hand and official seal of office.





Notary Public in and for
The State of Texas

Unofficial Copy Office of Clerk of Court District Clerk

CERTIFICATE OF CONFERENCE

I hereby certify that I have spoken to opposing counsel in this matter and they are opposed to this motion for trial continuance.

/s/ Dwight W. Scott, Jr.
DWIGHT W. SCOTT, JR.

Unofficial Copy Office of Chris Daniel District Clerk

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record pursuant to Rule 21a, Texas Rules of Civil Procedure, on this the 13th day of July, 2017.

Via E-file

James E. "Trey" Trainor, III
Trey.trainor@akerman.com

AKERMAN, LLP
700 Lavaca Street, Suite 1400
Austin, Texas 78701

Via E-file

Joseph M. Nixon
Joe.nixon@akerman.com

Brooke A. Jimenez
Brook.jimenez@akerman.com
1300 Post Oak Blvd., Suite 2500
Houston, Texas 77056

Via E-File

Emily Kebodeaux
ekebodeaux@texasrighttolife.com

TEXAS RIGHT TO LIFE
9800 Centre Parkway, Suite 20
Houston, Texas 77036

ATTORNEYS FOR PLAINTIFF

/s/ Dwight W. Scott, Jr.

DWIGHT W. SCOTT, JR.