

**IN THE SUPREME COURT OF TEXAS**

Misc. Docket No. 98-9223

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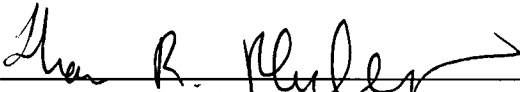
**ORDER ON MOTION TO TRANSFER CHILDREN'S MEDICAL CENTER OF  
DALLAS V. McCOMBS FROM SIXTH TO FIFTH COURT OF APPEALS**

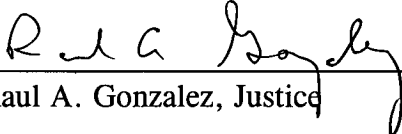
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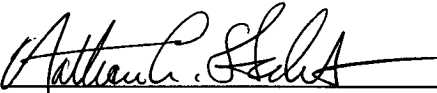
**ORDERED:**

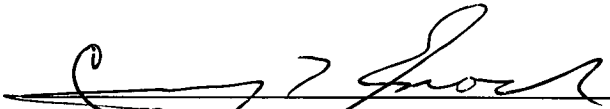
The motion of petitioner to transfer Children's Medical Center of Dallas v. McCombs, Texarkana Court of Appeals No. 06-98-00079-CV, is denied.

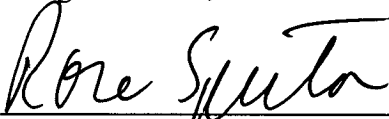
SIGNED this 31<sup>st</sup> day of December, 1998.

  
\_\_\_\_\_  
Thomas R. Phillips, Chief Justice

  
\_\_\_\_\_  
Raul A. Gonzalez, Justice

  
\_\_\_\_\_  
Nathan L. Hecht, Justice

  
\_\_\_\_\_  
Craig T. Enoch, Justice

  
\_\_\_\_\_  
Rose Spector, Justice

*Priscilla R. Owen*

Priscilla R. Owen, Justice

*James A. Baker*

James A. Baker, Justice

*Greg Abbott*

Greg Abbott, Justice

*Deborah G. Hankinson*

Deborah G. Hankinson, Justice

F:\STAFF\exec\Orders\121598



CHIEF JUSTICE LA  
LINDA THOMAS  
JUSTICES  
SUE LAGARDE  
ED KINKEADE  
JOHN OVARO  
FRANCES MALONEY  
RON CHAPMAN  
JOSEPH B. MORRIS  
MARK WHITTINGTON  
TOM JAMES  
CAROLYN WRIGHT  
JIM MOSELEY  
DAVID L. BRIDGES  
JOHN R. BOACH

**Court of Appeals  
Fifth District of Texas at Dallas**

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MEMORANDUM

DATE: August 27, 1998  
FROM: Linda Thomas *LThomas*  
TO: Jim Hutcheson  
RE: Transfer of *Children's Medical Center of Dallas v. McCombs*

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Our Court agrees totally with the comments in the August 20, 1998 letter from Chief Justice Cornelius.

cc: Chief Justice William J. Cornelius



## Court of Appeals

State of Texas

Sixth Appellate District

August 20, 1998

CHIEF JUSTICE  
WILLIAM J. CORNELIUS

JUSTICES  
BEN Z. GRANT  
DONALD R. ROSS

CLERK  
TIBBY THOMAS

BI-STATE JUSTICE BUILDING  
100 NORTH STATE LINE AVENUE #20  
TEXARKANA, TEXAS 75501  
903/798-3046

Mr. Jim Hutcheson  
Deputy Executive Assistant  
Supreme Court of Texas  
Austin, Texas

Honorable Linda Thomas  
Chief Justice  
Fifth Court of Appeals  
Dallas, Texas

It is our opinion that the case of *Children's Medical Center of Dallas v. McCombs* should stay in our Court.

Although a court of appeals has jurisdiction of an appeal when the notice of appeal is filed in the trial court, the date that the appeal is considered "filed" in the appellate court for purposes of the transfer procedure should be the date that a copy of the notice of appeal is received and filed in the appeals court. If any other date is used, our statistics will be skewed to show an unrealistic time between filing and disposition of the appeal in the transferee court. As noted, sometimes a significant period of time elapses between the time the notice of appeal is filed in the trial court and the time that the transferee court receives a copy of the notice. The appeals court cannot know that the appeal is filed until it receives a copy of the notice of appeal, and, obviously, the appeals court cannot work on the case until it receives notice that the appeal has been filed. We should not be penalized for not expeditiously working on a case when we don't even know that we have the case.

We believe that even if the referenced case is not left in our Court, the term "filed in the appeals court" in future transfers should be construed to mean when the notice of appeal is received and filed in the transferee court.

Sincerely,

William J. Cornelius  
Chief Justice

WJC/ljr



## THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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CLERK  
JOHN T. ADAMS

EXECUTIVE ASS'T  
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

JUSTICES  
RAUL A. GONZALEZ  
NATHAN L. HECHT  
CRAIG T. ENOCH  
ROSE SPECTOR  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT  
DEBORAH G. HANKINSON

January 5, 1999

Mr. Scott Patrick Stolley  
Thompson & Knight  
1700 Pacific Avenue, Suite 3300  
Dallas, Texas 75201-4693

RE: Petitioner's Motion to Transfer Children's Medical Center of Dallas v. Joe and Carolyn McCombs, Individually and on behalf of the Estate of Samantha McCombs (06-98-00079-CV).

Dear Mr. Stolley,

Enclosed is a copy of Misc. Docket No. 98-9223 (December 31, 1998) which denies the request to transfer the subject case from the Sixth Court of Appeals to the Fifth Court of Appeals. Your check #159120 is also enclosed, as no fee was required for this motion.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

Encl.

cc: Mr. Bill Liebke

Ms. Lisa Rombok, Clerk  
Fifth Court of Appeals

Ms. Tibby Hopkins, Clerk  
Sixth Court of Appeals