

WHEN IS IT RIGHT

TO LET

a baby die



Grappling with the right to life

By James Walsh

Photography by Larry Marcus

There were days, Earnest Wotring admits, when he was happy his baby cried. Nights when he was thrilled to deal with diaper rash, colic or even a slight fever. Weeks when he welcomed being deprived of sleep by 2 a.m. feedings.

Why? At the same time that new dad Wotring and his wife, Ju, were wearied and worn out by a new baby at home, the up-and-coming lawyer was working on the biggest case of his life — arguing to remove another baby, a terminally ill baby, from life support. When you spend your days arguing that your client, a hospital, should be allowed to remove a ventilator from a baby that would never grow to cry, eat, burp or crawl, well, Wotring says he counted himself lucky indeed.

Every day, Wotring worked to convince the court that little Sun Hudson had no prospects for survival; every night, he embraced the challenges of fathering his own child.

“The blessings I felt were immediate and apparent,” Wotring says of even the tough nights at home caring for his newborn, Nicole, and his toddler, Samantha. “The option is having a child who won’t be able to cry, who might not be able to eat, a child who will never learn to crawl or be able to say ‘Mama’ or ‘Dad.’”

How does a new father do everything he can to ensure the health and happiness of his own children while arguing that such an opportunity should be taken away from someone else’s child?

“I never felt like ‘Are we doing the right thing?’” he says. “I never questioned that.”

But he did hug his new baby a little tighter at night.

Sun Hudson was born Sept. 25, 2004, at Texas Children’s Hospital in Houston. His mother, Wanda Hudson, had received no prenatal care, nothing that would warn her or the hospital that something terribly wrong was happening in the development of her baby. But something was wrong.

Hudson was born with thanatophoric dysplasia, a rare form of dwarfism that affects the development of the lungs and chest cavity. Essentially, the baby and his organs will grow, but the chest cavity won’t. The child slowly suffocates to death. From the moment he was born, he needed a ventilator to breathe. And soon after he was born, his doctors decided it would be futile and wrong to continue care.

Under a Texas law passed in 1999, attending physicians can discontinue care if they and the hospital’s bioethics committee determine that a patient’s condition is hopeless. The law gives a parent, guardian or the patient’s family 10 days to find another hospital or institution. After those 10 days, a hospital can stop providing care.

Wanda Hudson refused to go along with the hospital’s determination. The 33-year-old mother insisted her son would live. Her son had no biological father, she insisted, but rather was a child of the sun — the star that fuels our solar system. And little Sun could communicate with her telepathically, she said.

Rather than take on the mother, an unemployed dental assistant, Texas Children’s encouraged Wanda Hudson to go to court and even paid for her lawyer. At the same time, the hospital agreed to several extensions of the 10-day requirement to help seek alternative care for her baby.



Even though 40 hospitals refused to assume care of the baby, Wotring had a tough time convincing a judge that treatment was hopeless.

In all, Wotring says, the hospital contacted more than 40 different facilities across the country — including Stanford, Yale and several leading hospitals in the Boston area — to find someone, anyone, willing to say that Sun Hudson had a chance to live. No one was in a hurry to pull the plug on tiny Sun. Neonatal doctors, after all, will fight for any new life — no matter how sick or small, Wotring says.

“We knew there would be a process in getting to the court’s comfort level,” he says. “In addition to that, [helping Wanda Hudson] was the right thing to do.”

Yet no other hospital stepped forward.

Wanda Hudson and her attorney asked the court to issue a restraining order in the case. And, on Dec. 7, 2004, Wotring argued before a Texas judge that all possibilities had been exhausted and the law’s requirements had been satisfied. Nonetheless, the case gave the judge pause.

“He says, ‘Let me get this straight. Unless I grant Ms. Hudson’s motion, you will discontinue life support?’” Wotring recalls. “And we say ‘Yes.’”

So the judge issued the order, setting in motion a right-to-die battle months before the Terry Schiavo case would begin dominating the country’s headlines and news channels.

But, Wotring says, the Sun Hudson case has little similarity to the Schiavo drama. Because the Texas law deals with the process taken by the hospital when a patient’s chances are deemed hopeless rather than delving into issues regarding quality of life, the questions before the court were more cut and dried. Nevertheless, Wotring says, few judges were eager to be the one to order that care should be stopped. The 39-year-old attorney admits the months of hearings and arguing the case were hard on him too.

“I knew our child was healthy,” Wotring says. “Ju had had prenatal care and everything was fine. Still, you can’t help but feel some anxiety. It does raise possibilities in your mind.”

Ernest Wotring doesn’t come across as a Texas legal hotshot. Quiet, unassuming and shy around people he’s just met, he better fits the stereotype of an intellectual or a policy wonk. He’s trim, clean-cut, wears spectacles. His office is mostly unadorned, except for a few photos and a drafting table.

But this partner in Houston’s firm of Connelly Baker Maston Wotring Jackson, which specializes in environmental law and medical malpractice, has been rocketing to the top ever since becoming a lawyer in 1992.

Born and raised in Edmond, Okla., and the son of a former Methodist minister, Wotring excelled in debate and public speaking. He's wanted to be an attorney since junior high school. "I just don't remember ever considering anything else."

Another thing he wouldn't consider, he says, was following three older sisters to the University of Oklahoma. "I was looking for a change of scenery," he says. "I wanted a different experience in a different part of the country." He attended Dartmouth College in Hanover, N.H., and majored in government and political science.

It didn't start well, Wotring says. He and his freshman-year roommate, Jonathan Risch, an East Coast kid with conservative political views, did not get along. Eventually they decided they couldn't be roommates any longer. Risch says their problems had more to do with being a couple of strong-willed kids who never really had to compromise before. "And we came from really different backgrounds," he says.

Wotring says in time their debates turned to respect, and respect turned to friendship. By their junior year, they decided to become roommates again. Years later, each served as best man at the other's wedding. Risch, now a vice president at Reliant Energy in Houston, says Wotring wins people over through his focus, his dedication and his loyalty. "I don't think I've gone a week without talking to him," Risch says.

Risch jokes that his friend "needs to find a few hobbies, frankly."

But Wotring says that much of his joy comes from his work. It certainly shows.

Wotring graduated magna cum laude from Dartmouth and went on to law school at the University of Chicago, where he also graduated with honors. After clerking for Texas Supreme Court Justice Nathan Hecht, Wotring began practicing at Mayor, Day, Caldwell & Keeton in Houston, becoming a partner in 2000. In 2001, he and his current partners formed Connelly Baker, which has grown 700 percent since its inception four years ago.

A good portion of that growth has been due to Wotring's hard work and dedication, say partners Debra Baker and Michael Connelly.

"I've worked with Earnest from the day he got his license," Connelly says. "I've seen him not only mature as a person, but become extremely insightful in dealing with people and relationships."

Baker says that Wotring is an excellent litigator with terrific people skills who infuses a heavy workload with strong ethics and unwavering morality — even with all the pressure to succeed in an extremely competitive environment.

"He never drops the ball," Baker says. "Never did."

Of course, everything works a little better when an attorney has complete confidence in his client and the merits of his case. Despite his situation at home, despite his sense of empathy for Wanda Hudson and her baby boy, despite knowing that the early court of public opinion would probably view the hospital as cold-hearted, Wotring says there was never a doubt that Texas Children's was doing the right thing. He worked on the case pro bono. He says he didn't feel comfortable taking money in such a case.

Sun Hudson was dying. And there was nothing any hospital could do about it, he says.

But that didn't mean he liked to talk about it. His wife, Ju, whom Wotring met in Austin while he clerked at the state supreme court and she worked at the Texas Department of Housing and Community Affairs, says that when he was assigned the Hudson case, "he didn't tell me much about it, I think on purpose."

Ju Wotring never really learned the details of the case until seeing news reports. Then they talked. Wotring says he didn't want to worry his wife — not while she was expecting and, later, not while she was caring for her own infant. She says her husband never brought the sadness of the case home with him, although he did seem to be even more patient and more gentle with their children.

Still, she says he was upset by the news reports that made the hospital appear to be the bad guy.

"Everyone had good intentions, the best of intentions," she says. "But the media tends to sensationalize things. It does tug at you."

Over time, however, Ju and Earnest Wotring say the more complete story came out — about the disease, about the extent of Sun's suffering without hope for recovery. The intensity of the news coverage continued. But, still, Wotring preferred to stay in the background and let his client do the talking.

Every day, Wotring worked to convince the court that little Sun Hudson had no prospects for survival; every night, he embraced the challenges of fathering his own child. "The blessings I felt were immediate and apparent," he says.

"I saw him on TV once, and it was just a shot of the back of his head in the courtroom," his friend Risch says. "You could see a case like this being a platform for a lawyer. But it wasn't like that for him. He was working for his client."

Neither the hospital nor the attorney ever turned the focus onto Wanda Hudson. She was a mother, suffering for the fate of her son, Wotring says. The other stuff, about how Sun was conceived, about how he supposedly communicated telepathically, was consciously left alone. This case would come down to the law and whether the law was followed, Wotring says.

And, on March 14, 2005, the temporary restraining order was lifted, and care for Sun Hudson discontinued. The hospital, Wotring says, offered to pay for the case to be appealed. But the attorney working with Wanda Hudson didn't bring the issue forward.

Within hours of being disconnected from life support, Sun Hudson died.

"One of the members of the media asked me, 'Are you happy with the result of this case?'" Wotring says. "There is no happy ending here. This is a tragic case." ❖