Supreme Court Case No.
District Court Case No. 90-1295
Florida Bar No. 283975

80,311

In the
SUPREME COURT OF THE STATE OF FLORIDA

In Re: Matter of Patricia Dubreuil,
Petitioner,

vs.

South Broward Hospital District,
Respondent.

PETITIONER'S BRIEF ON JURISDICTION

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INTRODUCTION

The Petitioner, PATRICIA DUBREUIL, was the Appellant in the District Court of Appeal of Florida, Fourth District. The Respondent, SOUTH BROWARD HOSPITAL DISTRICT, was the Appellee. The Petitioner shall be referred to herein as "Mrs. Dubreuil" and the Respondent shall be referred to as "the Hospital."

STATEMENT OF THE CASE AND FACTS[1]

In the late evening of Thursday, April 5, 1990, Patricia Dubreuil, the mother of three minor children (Cary, age 12; Tina, age 6; and Tracy, age 4) was admitted to Memorial Hospital in Hollywood, Florida. Mrs. Dubreuil was admitted through the Hospital's emergency room in an advanced stage of pregnancy.

By the early morning hours of Friday, April 6, 1990, it was determined that Mrs. Dubreuil was ready to deliver her child and that a Caesarean section delivery was indicated. Mrs. Dubreuil consented to the Caesarean section but withheld consent to the use of blood on the basis of her values and convictions as one of Jehovah's Witnesses.[2]

After the safe delivery of the child, Mrs. Dubreuil experienced significant loss of blood and, in the opinion of her attending physicians, required blood transfusions to save her life. Mrs. Dubreuil still refused to consent to the use of blood. Mrs. Dubreuil's mother, who also was one of Jehovah's Witnesses, supported her daughter's refusal. On the other hand,

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1 The following statement of the facts is taken directly from the facts set forth in the opinion of the District Court of Appeal unless otherwise noted by reference to a document in the Appendix hereto other than the District Court's opinion.

2 Mrs. Dubreuil apparently executed admissions forms, including a general consent form, shortly after she arrived at the Hospital. This general consent form evidently included a consent to blood transfusions. However, when the Hospital indicated a desire to transfuse Mrs. Dubreuil, she expressed her religiously motivated refusal of the same to Hospital personnel.

Mrs. Dubreuil's husband, from whom she was separated, and Mrs. Dubreuil's two brothers did not support her refusal. Neither her husband nor her brothers were Jehovah's Witnesses.

Unsure of its rights, obligations and responsibilities under these circumstances, the Hospital petitioned the Circuit Court of the Seventeenth Judicial Circuit (Broward County) for an emergency declaratory judgment to determine the Hospital's authority or duty to administer blood transfusions to Mrs. Dubreuil despite her refusal. (App. 1)

A hearing upon the Hospital's petition was held on the afternoon of April 6, 1990. Counsel for both the Hospital and Mrs. Dubreuil were present but no formal testimony was taken.[3] After hearing the arguments and representations of counsel, the Circuit Court ordered that Mrs. Dubreuil be transfused as deemed necessary in the opinion of her attending physicians.

Several days thereafter, the Circuit Court issued a written order setting forth its findings of fact and conclusions of law. (App. 8) In its order, the Circuit Court distinguished Mrs. Dubreuil's case from ***Public Health Trust of Dade County v. Wons***, 541 So.2d 96 (Fla. 1989), *aff'g* ***Wons v. Public Health Trust of Dade County***, 500 So.2d 679 (Fla. 3rd DCA 1987). The Circuit Court did not find the ***Wons*** precedent to be controlling because, unlike the patient in ***Wons***, Mrs. Dubreuil's husband was not one of Jehovah's Witnesses and did not support her refusal of blood. In addition, the Circuit Court distinguished ***Wons*** because Mrs. Dubreuil was separated from her husband and was thus the de facto custodial parent of her four minor children whereas the patient in ***Wons*** was not separated or divorced from her husband.

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3 During the hearing, counsel for the Hospital received a telephone call from the Hospital indicating that Mrs. Dubreuil had again stated her objection to the use of blood.

Mrs. Dubreuil timely filed a "Motion for Rehearing" asking the Circuit Court to set aside its order authorizing the transfusions. Mrs. Dubreuil's motion indicated that her extended family and friends would care for her children in the event of her demise. (App. 19) In an affidavit in support of her motion, Mrs. Dubreuil repeated her unqualified refusal of blood and requested non-blood management of her medical problems. (App. 22) The Circuit Court denied the "Motion for Rehearing." (App. 26)

Mrs. Dubreuil sought appellate review in the District Court of Appeal of Florida, Fourth District and, on July 8, 1992, the District Court, in a two-to-one decision, affirmed the Circuit Court's order. The District Court found the trial court's order was not inconsistent with ***Wons*** because "no testimony was presented, and no suggestion was made to the court, as to who would care for Mrs. Dubreuil's four minor children in the event of her death, except that it was a known fact that Mr. and Mrs. Dubreuil were separated to the point where he did not accompany her to the hospital." Based upon these facts, the District Court concluded that, "since there was no showing that the children of tender years would be protected in the event of their parent's death, the trial court did not abuse its discretion."[4]

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An additional issue was raised herein, to wit: whether the Hospital had the right to rely upon Mrs. Dubreuil's husband's consent to the blood transfusion over her stated objection. The majority opinion noted that the trial court had commented upon the fact that the husband was not one of Jehovah's Witnesses and did not support Mrs. Dubreuil's decision but opined that, "we do not construe this comment by the trial court as indicating that the court believed that Mrs. Dubreuil's constitutional right to refuse treatment was in any way dependent upon the consent of her husband." The dissent, however, felt otherwise, noting, "the hospital relied on the husband's consent to administer blood to Mrs. Dubreuil over her objection . . . .In this day and age where we have long since abandoned the notion that a wife is the husband's 'property,' I would think that it would be universally recognized that he cannot overrule her conscious decisions regarding care of her own body. I would hold that one spouse does not have the right to overrule the competent decisions of the other spouse regarding the spouse's own medical treatment ."

The dissenting judge opined that the trial court's order was procedurally and substantively inconsistent with both ***Wons*** and ***In re Guardianship of Browning***, 568 So.2d 4 (Fla. 1990), noting:

> **Both parents are the natural guardians of their children. Whether he was prepared or willing to accept custody, in the event of Mrs. Dubreuil's untimely death for any reason, Mr. Dubreuil would be the children's natural guardian, and would be legally responsible for arranging for their care. §744.301, Fla. Stat. (1989). Therefore, from the standpoint of the state's interest in protecting the children from abandonment, their father as a matter of law will be responsible for their care.**
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> **The trial court placed on Mrs. Dubreuil the burden of proving that the minor children will be cared for in the event of Mrs. Dubreuil's death. However, where the state seeks to override the right of privacy based upon a compelling state interest, the burden is on the state to show that the proposed intrusion on the right of privacy is justified by a compelling state interest and that the state has used the least intrusive means in accomplishing its goal. [T]hus, it is the *state's* burden to prove that Mrs. Dubreuil's children will be abandoned. Simply to allow the state to prove its right to compel a blood transfusion in violation of the mother's right of privacy and right to her religious belief solely on the ground that she is a separated or divorced parent of minor children does not satisfy the heavy burden of proof the state is required to bear in intruding on the right of privacy.** (App. 43-44)
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> **I believe the majority's approach also diverges from *In re Guardianship of Browning*. There, the supreme court held that "a competent person has the constitutional right to choose or refuse medical treatment, and that right extends to *all* relevant decisions concerning one's health."** (App. 46-47)
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> **In discussing any intrusion by the state upon the right of privacy for a compelling state interest, the court recognized the compelling state interest**

> **identified in *Wons* and its antecedent authority but reiterated: "As we noted in *Wons*, the state interests discussed above are 'by no means a bright line test, capable of resolving every dispute regarding the refusal of medical treatment. Rather, they are intended merely as factors to be considered while reaching the difficult decision of when a compelling state interest may override the basic constitutional right of privacy." I think the creation of the presumption of abandonment where a separation parent of minor children wishes to forego lifesaving treatment creates a bright line test rejected in *Wons*.** (App. 47)

The Petitioner seeks review of the District Court's decision herein based upon the clear conflict between the decision in this case and the decisions of this Court in ***Public Health Trust of Dade County v. Wons***, 541 So.2d 96 (Fla. 1989) and ***In re Guardianship of Browning***, 568 So.2d 4 (Fla. 1990).

SUMMARY OF THE ARGUMENT

This Court, in ***Public Health Trust of Dade County v. Wons***, 541 So.2d 96 (Fla. 1989) and ***In re Guardianship of Browning***, 568 So.2d 4 (Fla. 1990), addressed all of the issues raised in the instant case and held, in ***Wons***, that, "it will be necessary for hospitals that wish to contest a patient's refusal of treatment to commence court proceedings and sustain the heavy burden of proof that the state's interest outweighs the patient's constitutional rights."

The District Court of Appeal herein, however, has "rewritten" this Court's opinions and has held, in effect, that the burden of proving that the possible death of a parent will not result in an "abandonment" of that parent's children is on the parent-patient and that, where the parent-patient is a single, divorced or separated parent, then a "presumption" arises that the parent-patient's children will not be cared for after her death.

It is established law that the principal situations justifying the invocation of the jurisdiction of this Court are, (1) the announcement of a rule of law which conflicts with a rule previously announced by this Court, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case disposed of by this Court. See, e.g., ***Nielsen v. City of Sarasota***, 117 So.2d 731 (Fla. 1960).

Here, the District Court has announced a rule of law - placing the burden of proof of "non-abandonment" upon the parent-patient rather than placing the burden of proof of abandonment upon the state - that is directly contrary to the rule announced by this Court in ***Wons***. Further, the District Court reached a decision in this case contrary to the decision of this Court in ***Wons*** despite the fact that the only factual differences between the two cases was that Norma Wons was married and Mrs. Dubreuil was separated from her husband.

Review by this Court of the decision of the District Court of Appeal herein is of profound importance to the law and therefore the people of this State. If the District Court's opinion is an accurate statement of Florida Law, the personal privacy and religious freedom rights of all single parents (in all likelihood the vast majority of whom will be poor and minority women) are now of lesser stature than the privacy and free exercise rights of all other Floridians.

ARGUMENT

A. The District Court's decision expressly and directly conflicts with this Court's decision in *Public Health Trust of Dade County v. Wons*

In view of the fundamental importance and value of the state constitutional guarantees of religious freedom and personal privacy, this Court said, in ***Wons***, that "it will be necessary for hospitals that wish to

contest a patient's refusal of treatment to commence court proceedings and sustain the heavy burden of proof that the state's interest outweighs the patient's constitutional rights." ***Wons***, 541 So.2d at 98.

Since the individual enjoys these constitutional rights by the fact of her citizenship, the burden is on the *state* to prove that its interest justify an infringement or limitation on the citizen's rights. The burden is *not* on the individual to prove that her constitutional rights should be honored when the state has not first carried its burden.

The decision of the District Court herein expressly and directly conflicts with this holding of ***Wons*** because, as the majority below acknowledged, no evidence was received at the hearing before the trial court about the future of Mrs. Dubreuil's children. Thus, the state did nothing to carry its burden of proof as prescribed by this Court in ***Wons***. Instead, the majority essentially established a presumption in favor of the state because Mrs. Dubreuil had not shown that her and her separated husband's four children would not be left destitute.

Thus, not only is the presumption that the Dubreuil children would be left without any parental or familial support highly questionable in view of the presence of the father, the maternal grandmother and two uncles, but the majority's allocation of the burden of proof expressly and directly conflicts with this Court's instructions in ***Wons*** that the *state* "must sustain the heavy burden of proof . . ."

B. The District Court's decision expressly and directly conflicts with this Court's decision *In re Guardianship of Browning*

In analyzing state interests which may justify the burdening or limitation of any individual's constitutional liberties, this Court has said, in

reference to the four state interests typically identified in refusal of treatment cases[5] , that such interests:

> **[A]re by no means a bright-line test, capable of resolving every dispute regarding the refusal of medical treatment. Rather, they are intended merely as factors to be considered while reaching the difficult decision of when a compelling state interest may override the basic constitutional rights of privacy and religious freedom.** *Wons*, 541 So.2d at 97.

This Court reemphasized this same point most recently in ***In re Guardianship of Browning*** and observed that these four routinely listed state interests are neither automatically determinative (either singly or collectively) nor necessarily exhaustive (e.g., there may be state interests which support the patient's refusal in refusal of treatment cases.) ***In re Guardianship of Browning***, 568 So.2d 4, 14, & n.13 (Fla. 1990).

Instead of requiring the state to show that the forcible administration of religiously abhorrent, nonconsensual medical treatment was the least intrusive, least restrictive infringement of Mrs. Dubreuil's fundamental constitutional rights, *see* ***Winfield v. Division of Pari-Mutuel Wagering***, 477 So.2d 544, 547 (Fla. 1985), the majority below, by presuming that the state's *parens patriae* interest in the Dubreuils' children was compelling enough to override Mrs. Dubreuil's rights of religious freedom and privacy rights on the basis of nothing more than her status as a single parent, essentially established a bright-line test when it comes to refusals of treatment by single parents. This decision expressly and directly conflicts with this Court's decision in ***In re Guardianship of Browning***.

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The four routinely identified state interests are: (1) preservation of life; (2) protection of innocent third parties; (3) prevention of suicide; and, (4) maintenance of the ethical integrity of the medical profession. *See, e.g.*, ***Browning***, 568 So.2d at 14; ***Wons***, 541 So.2d at 97.

C. The District Court's decision expressly construes the religious freedom and personal privacy provisions of the Florida Constitution

In ***Wons***, this Court construed the state constitutional guarantees of religious freedom and personal privacy in a case involving a competent adult's religiously motivated refusal of potentially life-saving medical treatment. Norma Wons was one of Jehovah's Witnesses and was refusing blood transfusions believed to be necessary to save her life. Since Mrs. Wons was the mother of two sons (ages 12 and 14), this Court had to decide whether her refusal of blood would amount to abandonment of her sons. On the basis of evidence that Mrs. Wons' husband, mother-in-law and other extended family would provide for her sons in the event of her demise, this Court ruled that her refusal did not constitute abandonment and stated that "the state's interest in maintaining a home with two parents for the minor children does not override Mrs. Wons' constitutional rights of privacy and religion." 541 So.2d at 98.

The decision herein revisits these same constitutional provisions in a fact pattern that is only slightly different from that of ***Wons***. In the instant case, Mrs. Dubreuil is also one of Jehovah's Witnesses. Mrs. Dubreuil is also the parent of minor children. The only difference between Mrs. Dubreuil and Mrs. Wons is that Mrs. Dubreuil's husband was separated from her at the time she was admitted to the hospital. According to the District Court herein, this fact, combined with the absence of any evidence about the future care of the Dubreuil's children, 'out-balanced' Mrs. Dubreuil's constitutional rights of religious freedom and personal privacy.

The majority and dissenting opinions of the District Court thoroughly analyze and attempt to construe and apply this Court's decision in ***Wons***. These fundamentally conflicting opinions about the strength of and the procedural safeguards required to protect the religious freedom and

personal privacy rights guaranteed by the Florida Constitution clearly put the decision herein within this Court's discretionary jurisdiction. Fla. Const. art. V, §3(b)(3); Rule 9.030(a)(2)(A)(ii), Florida Rules of Appellate Procedure.

CONCLUSION AND CERTIFICATE OF SERVICE

Based upon the foregoing argument and authority, the Petitioner submits that the decision of the District Court of Appeal herein expressly and directly conflicts with this Court's decisions in ***Wons*** and ***In re Guardianship of Browning*** and expressly construes the religious freedom and personal privacy provisions of the Florida Constitutional and, therefore, this Court should assume jurisdiction herein.

WE HEREBY CERTIFY that a copy of the foregoing was served by mail upon counsel for the Respondent, Clarke Walden, 3501 Johnson Street, Hollywood, Florida, 33021, this 13 day of August, 1992.

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