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SUPREME COURT CASE NO. 80,311
DISTRICT COURT CASE NO. 90-1295

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In the
SUPREME COURT OF THE STATE OF FLORIDA

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In Re: MATTER OF PATRICIA DUBREUIL,
Petitioner,

vs.

SOUTH BROWARD HOSPITAL DISTRICT,
Respondent.

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# RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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## PREFACE

The petitioner, Patricia Dubreuil, was the appellant in the district court of appeal, fourth district. The petitioner shall be referred to herein as "Mrs. Dubreuil."

The respondent, South Broward Hospital District, a special tax district under the laws of the State of Florida, was the appellee. Such respondent is referred to as "the hospital."

## STATEMENT OF THE CASE AND OF THE FACTS

The hospital accepts the statement of the case and of the facts contained in the petitioner's brief on jurisdiction.

## SUMMARY OF THE ARGUMENT

In Florida, Public Health Tr. of Dade County v. Wons, 541 So.2d 96 (Fla. 1989) affig. 500 So.2d 679 (Fla. 3d DCA 1987), has become the leading case on the subject.

In Wons, the supreme court did not adopt an absolute and iron clad rule that every member of the Jehovah's Witness faith had the undisputed right to refuse a blood tranfusion without which the patient might well die.

Wons held that each case was to be considered separately and on the facts peculiar to the case.

On the morning of April 6, 1990, Mrs. Dubreuil had stated to the hospital that she was a Jehovah's Witness and that she did not consent to the transfusion of blood into her

body. Sadly, at the particular moment, she seemed to be bleeding to death and the health care experts were of the opinion that the transfusion was essential to prolong life. On the morning of April 6, 1990, the hospital knew of the holding in the Wons case and believed that all the facts, as of the moment, concerning Mrs. Dubreuil's situation were substantially different from the facts presented in the Wons case. The hospital also believed the statement in Wons that every case (involving refusal to consent to recommended medical treatment) was to be considered individually and on the particular facts pertaining to the exact situation at hand.

The hospital arranged an emergency hearing before a court having jurisdiciton. Mrs. Dubreuil was represented by her attorney and the attorney for Mrs. Dubreuil participated in the hearing. On a "stipulated facts" basis, every fact then known about Mrs. Dubreuil was presented to the court. The court found that Mrs. Dubreuil's situation was different from the circumstances concerning Mrs. Wons.

The trial court entered an order distinguishing Mrs. Dubreuil's situation from the findings in the Wons case and ordered that blood be transfused into the body of Mrs. Dubreuil. On appeal, the district court of appeal agreed with the trial judge and affirmed his order.

## ARGUMENT

I.

THE DECISION OF THE DISTRICT COURT DOES NOT CONFLICT WITH THE DECISION OF THE SUPREME COURT IN PUBLIC HEALTH TR. OF DADE COUNTY v. WONS.

The first Florida case on the general subject (of the right of a patient to refuse medical treatment) which received wide attention was Satz v. Perlmutter, 379 So.2d 359 (Fla. 1980), aff'g. 362 So.2d 160 (Fla. 4th DCA 1978).

In Satz v. Perlmutter, the physical condition of the patient was stated in some detail in the opinion of the fourth district, 362 So.2d at page 161. The case involved the right of a competent, but terminally ill, 73-year old adult patient who sought the removal of a respirator from his trachea.

In Public Health Tr. of Dade County v. Wons, 541 So.2d 96 (Fla. 1989), the supreme court reviewed the four tests (first summarized in Satz v. Perlmutter) wherein the right of a patient to refuse a blood transfusion might be outweighed by a compelling state interest. In Public Health Tr. of Dade County v. Wons, 541 So.2d at page 97, the supreme court analyzed the criteria established in Satz v. Perlmutter and said:

> "An individual's right to refuse medical treatment must be analyzed in terms of our decision in Satz v. Perlmutter, 379 So.2d 359 (Fla. 1980), aff'g. 362 So.2d 160 (Fla. 4th DCA 1978). That case, in which this Court adopted the fourth district's reasoning in full, established four criteria wherein the right to refuse

medical treatment may be overriden by a compelling state interest. . . ."

The observation that the facts of each case are very material appears in St. Mary's Hosp. v. Ramsey, 465 So.2d 666 (Fla. 4th DCA 1985).

The Wons case was not a childbirth case where a blood transfusion was needed as an incident of the delivery of a child. Mrs. Wons was a hospital patient, requiring a blood transfusion, because she suffered from a condition known as uterine bleeding. Her condition did not present itself in relationship to the birth of a newborn child.

Mrs. Wons had two children. One was a son 14 years of age. The other child was a son 12 years of age.

At the time that Mrs. Wons refused a blood transfusion because of her religious beliefs as a Jehovah's Witness, she was conscious and able to reach an informed decision.

Mr. and Mrs. Wons were living together. All of the members of the family were practicing Jehovah's Witnesses.

The supreme court concluded that Mrs. Wons' constitutional right to exercise her religious freedom and to lead her private life according to her own conscience had not been overriden by a compelling societal interest, based on the analysis established by Satz v. Perlmutter and St. Mary's Hosp. v. Ramsey as governing the types of cases at issue.

Wons clearly did not create an absolute rule of law

which should be followed on a rigid and unbending basis as to each Jehovah's Witness who might wish to decline medical treatment even though such refusal might place his life in dire and immediate peril.

What were the factual considerations involved in the case of Mrs. Dubreuil?

Mrs. Dubreuil came into the emergency room of Memorial Hospital, Hollywood, Florida, late during the evening of Thursday, April 5, 1990, in an advanced state of pregnancy and ready for immediate delivery. She already had three minor children, 12 years of age, 6 years of age and 4 years of age. She did not have an attending physician and it was necessary that the hospital assign a qualified physician from its medical staff to render the necessary medical services required by Mrs. Dubreuil and to deliver the child expected at any moment. The obstetrician attending Mrs. Dubreuil, having been selected and assigned by the hospital because Mrs. Dubreuil did not have a private attending physician, was obviously a stranger to her and was not a party to any long-standing doctor-patient relationship.

Delivery by a caesarean section was indicated. Regardless of any preliminary consents given by Mrs. Dubreuil at the time of her admission to the hospital, she soon made it known that she was a Jehovah's Witness and refused to consent to the use of blood through transfusion.

The newborn child was delivered at about 6:00 a.m., Friday, April 6, 1990. As an incident of the delivery of the child, Mrs. Dubreuil developed a bleeding condition because of the failure of her blood to clot. Immediate blood transfusions were required to save her life. Mrs. Dubreuil was literally bleeding to death.

Mr. Dubreuil (the husband) was separated from his wife and did not accompany her to the hospital. When the matter of attempting to obtain the necessary consent became apparent, the hospital called upon the police department to locate Mr. Dubreuil and to cause him to come to the hospital. Mr. Dubreuil appeared at the hospital. He did not support Mrs. Dubreuil's decision regarding refusal of blood. Further, Mrs. Dubreuil's two brothers did not support her refusal. The husband and the brothers were not Jehovah's Witnesses. The spiritual advisor of Mrs. Dubreuil soon appeared and expressed the religious objection to the transfusion of blood into the body of a Jehovah's Witness.

On April 6, 1990, when the medical emergency concerning Mrs. Dubreuil first became apparent, the hospital staff was well aware of the holdings in the Wons case. The hospital assumed that the decision in Wons meant what it said and that every case involving refusal of treatment (particularly, a Jehovah's Witness case involving the refusal to consent to a blood transfusion to save a patient's life) was unique,

different and subject to possible emergency court intervention.

An emergency hearing was immediately arranged. The attorney for the hospital and the attorney for Mrs. Dubreuil were present at the emergency hearing. Both attorneys presented what amounted to an agreed upon statement of the facts as same were known at the time to the court and the district court held, in its opinion on appeal, that such submission amounted to "stipulated facts" forming the basis of the trial court's order. A conference telephone call was arranged with the attending physician during the course of the hearing so that the only evidence before the trial court were the "stipulated facts" and the telephonic statements of the attending physician.

The trial court then announced its order in open court at the conclusion of the hearing on April 6, 1990. A written order (App. 8) was entered a few days later to confirm the verbal order.

The majority decision of the district court does not conflict with the decision of the supreme court in Public Health Tr. of Dade County v. Wons.

The trial court followed the principles in the Wons case which recognized that every case, concerning a patient's refusal to give consent, was unique and was to be treated individually. Further, the trial court was aware that the

Wons holding involved a Jehovah's Witness. The trial court followed the Wons case by considering each circumstance which was material to Mrs. Dubreuil's situation. The trial court felt that there were sufficient facts to differentiate Mrs. Dubreuil's circumstances from the situation presented by the Wons case.

II.

THE DECISION OF THE DISTRICT COURT DOES NOT CONFLICT WITH THE SUPREME COURT'S DECISION IN RE GUARDIANSHIP OF BROWNING.

In re Guardianship of Browning, 568 So.2d 4 (Fla. 1990) concerned a patient who was 86 years of age. The patient had suffered a stroke. She was diagnosed as having a massive hemorrhage in the left parietal region of the brain, the portion that controls cognition. The patient was unable to swallow. She had undergone a gastrostomy during which a feeding tube was inserted directly into her stomach.

The issues in In re Guardianship of Browning was whether the guardian of a patient who is incompetent but not in a permanent vegetative state and who suffers from an incurable, but not terminal condition, may exercise the patient's right of self-determination to forego sustenance provided artificially by a nasogastric tube.

The hospital has no quarrel with the holding in In re Guardianship of Browning. Mrs. Dubreuil's case falls outside of the holding in Browning and is subject to Satz v.

Perlmutter, 362 So.2d 160 (Fla. 4th DCA 1978), which established the criteria holding that the right of a patient to refuse medical treatment may be overridden by a compelling state interest such as protection of innocent third parties.

III.

THE DISTRICT COURT'S DECISION DOES NOT EXPRESSLY CONSTRUE THE RELIGIOUS FREEDOM AND PERSONAL PRIVACY PROVISIONS OF THE FLORIDA CONSTITUTION.

Filing Briefs on Jurisdiction in the Supreme Court of Florida, Gregory P. Borgognoni and Michael J. Keane, 54 Fla. Bar J. 510 (1980) is an article concerning the proper preparation of briefs addressed to the issue of the jurisdiction of the supreme court and is particularly applicable to appellate proceedings seeking to invoke the discretionary jurisdiction of the court. The article has a specific recommendation to assist the petitioner in the preparation of a jurisdictional brief regarding discretionary jurisdiction, based on a conflict of decisions, 54 Fla. Bar J. at page 513, which is quoted as follows:

> "If jurisdiction exists because of a conflict of decisions, begin by making it clear how the instant decision conflicts with others. Stated simply, one decision may conflict with another in three possible ways: (1) by announcing a conflicting rule of law; (2) by applying the same rule of law to yield conflicting result on substantially similar facts; or (3) by misapplying precedent. Remember that the court is well aware of the genesis of these rules: recounting their origin in the brief is far less important than proving their application to the instant case."

Public Health Tr. of Dade County v. Wons, 541 So.2d at page 97, expressly recognizes the impossibility of adopting a "bright-line" test, capable of resolving every dispute regarding the refusal of medical treatment and that each case must be addressed on a case-by-case basis.

In considering Mrs. Dubreuil's situation, the trial court very carefully followed Public Health Tr. of Dade County v. Wons, 541 So.2d 96, by considering Mrs. Dubreuil's case on an individual basis.

## CONCLUSION AND CERTIFICATE OF SERVICE

Based upon the foregoing argument and authority, the respondent submits that the decision of the district court of appeal does not conflict with this court's decision in Wons and in In re Guardianship of Browning.

CERTIFICATION is hereby made that a copy of the foregoing respondent's answer brief on jurisdiction was furnished by Federal Express to Cynthia L. Greene, Law Offices of Elser, Greene & Hodor, Attorneys for Petitioner, Suite 2100 Courthouse Tower, 44 West Flagler Street, Miami, Florida 33130, on this 4th day of September, 1992.

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