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# Adult Jehovah's Witness, In Extremis, Ordered by Court to Submit to Blood Transfusion Where Both Patient and Husband Had Refused to Consent on Religious Grounds

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## CONSTITUTIONAL LAW—RELIGIOUS FREEDOM—ADULT JEHOVAH'S WITNESS, IN EXTREMIS, ORDERED BY COURT TO SUBMIT TO BLOOD TRANSFUSION WHERE BOTH PATIENT AND HUSBAND HAD REFUSED TO CONSENT ON RELIGIOUS GROUNDS

*Application of President & Directors of Georgetown College, Inc.*, 331 F.2d 1000 (D.C. Cir. 1964), *cert. denied*, 84 Sup. Ct. 1883 (1964).

Mrs. Jesse E. Jones, near death from loss of blood resulting from a ruptured ulcer, entered the Georgetown University Hospital in Washington, D. C. The Hospital concluded that a blood transfusion was necessary to save the patient's life. Since Mrs. Jones and her husband were Jehovah's Witnesses, they refused to consent to the transfusion. They contended that the Bible says that one should not drink blood and, consequently that blood transfusions were contrary to their religious beliefs. An application to the District Court for the District of Columbia for an order authorizing the transfusion was denied. Counsel for the Hospital then sought the aid of Judge Wright of the Court of Appeals of the District of Columbia who, after proceeding to the Hospital and investigating the case, granted the order. HELD: The order was proper in such an emergency to save the patient's life. The court found that these facts presented a justiciable controversy that the court could be called on to decide,[1] that under Federal Rule of Civil Procedure 62 (g) a court had the power to grant an injunction to preserve an existing condition and prevent the issue from becoming moot by death of the patient, and that a single judge had the power to issue such a temporary writ. It was reasoned that a patient who seeks medical attention wants to live, and the Hospital, being faced with civil or criminal responsibility if the patient died, initiated a proper action for relief. *Application of President & Directors of Georgetown College, Inc.*, 331 F.2d 1000 (D.C. Cir. 1964), *cert. den.*, 84 Sup. Ct. 1883 (1964).

The court felt that the religious objections to the ordered transfusion were without merit. Judge Wright considered the sick child and contagious disease cases persuasive. Since in those cases religious objections to compulsory court ordered

1. For a discussion of this procedural aspect of the case see, 13 CATHOLIC U. L. REV. 188 (1964).

treatment were no defense under the well established doctrines of *parens patriae* and the police power of the state, by analogy, the refusal to consent to the transfusion on religious grounds could not avail Mr. and Mrs. Jones in the instant case. Judge Wright also decided that the religious tenets of Mrs. Jones were not infringed for the court order relieved her of the responsibility of violating her beliefs.

This case presents the interesting and unique issue of whether or not a court of law has the power to order an adult who dissents on religious grounds to submit to a blood transfusion where death is imminent.[2] The court's action seems to conflict with two venerable authorities:

1. U. S. Const. amend. I, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."
2. *Genesis* 9:4, "But flesh with the life thereof, which is the blood thereof, shall ye not eat."

The question of the validity of the order was considered by the court with a discussion of various leading cases in which the constitutional rights of the individual are balanced against the state's interest as *parens patriae* and where the police power of the state is utilized to protect the safety, health, and welfare of the public. In *Wallace v. Labrenz*[3] the court was confronted with a child suffering from an RH blood condition and a father's belief that the blood transfusion necessary to save the child's life was prohibited by the Bible. The father testified

> [i]t is my belief that the commandments given us in Genesis, chapter 9, verse 4, and subsequent commandment of Leviticus, chapter 17, verse 14, and also in the testimony after Christ's time and recorded in Acts 15th Chapter, it is my opinion that any use of the blood is prohibited whether it be for food or whether it be for, as modern medical science puts it, for injections into the blood stream and as such I object to it. The life is in the blood and the life belongs to our father, Jehovah, and it is only his to give or take; it isn't ours, and as such I object to the using of the blood in connection with the case.[4]

2. For a review of similar cases see, 26 U. CHI. L. REV. 471 (1959).
3. 411 Ill. 618, 104 N.E.2d 769 (1952), *cert. den.*, 344 U.S. 824 (1952).
4. *Id.* at 771, 772.

The Illinois court rejected this argument basing their decision on the theory of *parens patriae* and declared that under the child neglect statute the court had the right to appoint a guardian for the child and administer the blood transfusion.

> The jurisdiction which was exercised in this case stems from the responsibility of the government, in its character as *parens patriae*, to care for infants within its jurisdiction and to protect them from neglect, abuse and fraud . . . . [T]he statute defines a dependent or neglected child as one which has not proper parental care. (Ill. Rev. Stat. 1949, chap. 23, par. 190)[5] . . . . [W]e entertain no doubts that this child, whose parents were deliberately depriving it of life or subjecting it to permanent mental impairment, was a neglected child within the meaning of the statute.[6]

The theory of *parens patriae* is also illustrated in *Mitchell v. Davis*[7] and *Morrison* v. *State*[8] which were cited by Judge Wright to sustain his findings in the present case. In the *Mitchell* case a suit to award custody of a child to the probation officer was granted where a mother had not provided medical care for her child suffering from either arthritis or complications or rheumatic fever. The court determined that medical care was a necessary and the child came under the neglect statute. The mother's objections founded on her religious belief in Divine Healing were rejected.

A twelve day old infant was suffering from erythrobastic anemia in the *Morrison* case and death was certain unless a blood transfusion was administered. The child's father, a Jehovah's Witness, denied consent to the transfusion on religious grounds. He contended that the action of the court was a violation of the constitutional right of religious freedom. The court ordered the transfusion and rejected the denial of religious freedom defense with reasoning similar to the *Wallace* case.[9]

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5. Compare S.C. CODE ANN. § 15-971, § 71-251.

6. People *ex. rel.* Wallace v. Labrenz, *supra,* note 3 at 773; *accord,* State v. Perricone, 37 N.J. 463, 181 A.2d 751 (1962); Hoener v. Bertinato, 67 N.J. Super. 517, 171 A.2d 140 (1961). *But see,* court ordered medical treatment denied under similar statutes, *In re* Seiferth, 309 N.Y. 80, 127 N.E.2d 820 (1955) where a young boy was afflicted with a harelip and a cleft palate; *In re* Hudson, 13 Wash.2d 673, 126 P.2d 765 (1942) where a child had been born with an abnormally large arm that affected her general health.

7. 205 S.W.2d 812 (Tex. Civ. App. 1947).

8. 252 S.W.2d 97 (Mo. App. 1952).

9. *Supra,* note 3.

The *Morrison* opinion displays the limits the court placed on their power to order a transfusion for the child under the neglect statute[10] without infringing the father's religious scruples as a Jehovah's Witness.

> This proceeding in no wise affects the rights of the appellant to believe, religiously, as he professes to believe, nor does it affect his right to practice his religious belief. It was not ordered that *he* eat blood, or that he cease to believe that the taking of blood, intravenously is equivalent to the eating of blood. It is only ordered that he may not prevent *another* person, a citizen of our country, from receiving medical attention necessary to preserve her life.[11] [Emphasis by the court]

The court in the present case asserts that the sick child cases are analogous to Mrs. Jones' position, that the court may have proper authority to order medical aid to an adult and Mr. Jones has no cause to object.

> Mrs. Jones was *in extremis* and hardly *compos mentis* . . . as little able competently to decide for herself as any child would be . . . it may well be the duty of [this court] to assume the responsibility of guardianship for her, as for a child . . . and if as shown above, a parent has no power to forbid the saving of his child's life, *a fortiori* the husband of the patient here had no right to order the doctors to treat his wife in a way so that she would die.[12]

To support this contention Judge Wright relied heavily on two cases interpreting applicable penal statutes. In *People v. Pierson*[13] the question involved a statute[14] making it a misdemeanor for a parent not to furnish medical aid to his child. A two year old child was suffering from pneumonia and the father refused medical care on the grounds that Divine Healing would cure the child. The court applied the doctrine of *parens patriae* and since the father's actions violated the statute his religious belief was no defense. In a concurring opinion doubt was cast on the majority decision being used where there is an adult who refuses medical treatment.

10. MO. REV. STAT. V. A.M.S. § 211.010, 211.300 (1949).
11. Morrison v. State, *supra*, note 8 at 100.
12. Application of Pres. & Dir. of Georgetown Col., Inc., 331 F.2d 1000 at 1008 (D.C. Cir. 1964), *cert. den.*, 83 Sup. Ct. 1883 (1964).
13. 176 N.Y. 201, 68 N.E. 243 (1903).
14. N.Y. PENAL CODE § 288 p. 723c. 513 (1880).

> The state, as *parens patriae* is authorized to legislate for the protection of children. As to an adult (except possibly in the case of a contagious disease which would affect the health of others), I think there is no power to prescribe what medical treatment he may receive, and that he is entitled to follow his own election, whether that election be dictated by religious belief or others considerations.[15]

In *Owens v. State*[16] religious beliefs were also considered no defense to a penal statute[17] requiring medical treatment by the parent. The court comments on the issue presented in the instant case and states: "under the law in this state, there is probably no way of reaching an adult who refuses to accept medical treatment for himself on his own responsibility."[18]

The sick child cases relied on by the court as "persuasive analogies"[19] are however, distinguishable from the case of Mrs. Jones being ordered to undergo a blood transfusion. The courts were faced with children refused medical aid by parents on religious grounds as opposed to an adult refusing prescribed treatment. The courts could and did apply the child neglect statutes and the doctrine of *parens patriae.* The excerpts quoted from cases relied on by the District of Columbia court to justify the order to administer a transfusion to Mrs. Jones reveal that the judges in those cases questioned the power of a court to order medical treatment for an adult. Since there was no statute requiring medical treatment for a dissenting adult, the court reasoned, by analogy, that Mrs. Jones was like a child and therefore Mr. Jones could not voice religious objections to the transfusion. This argument does not seem to be based on sound reasoning either by analogy or case law in the area.

The case of *Jacobson v. Massachusetts*[20] exemplifies the principle that adults can be made to comply with a state vaccination law under the police power of the state to protect the health and welfare of the public. It is, however, factually and legally distinguishable from the instant case since Mrs. Jones presented no threat to the public health or welfare by bleeding to death. Only her health and her rights were at issue. Judge Wright

15. People v. Pierson, *supra,* note 13 at 247.
16. 6 Okla. Crim. 110, 116 Pac. 345 (1911).
17. SYNDERS STATUTES COMP. LAWS, § 2369 (1909).
18. Owens v. State, *supra,* note 16 at 348.
19. Application of Pres. & Dir. of Georgetown Col., Inc., 331 F.2d at 1008 (D.C. Cir. 1964).
20. 197 U.S. 11 (1905).

reasoned, however, that since Mrs. Jones had a seven month old child, the state power of *parens patriae* could not permit the child to be left to the care of the community and, consequently, the state did have an interest in saving Mrs. Jones' life.[21] This argument loses strength when it is considered that if Mrs. Jones died Mr. Jones would not only be able to care for the child but would be legally responsible. Mrs. Jones was brought to the hospital by her husband and the court emphasized that this demonstrated her will to live. Such may have been the case, but it is difficult to fully justify this assumption where Mr. and Mrs. Jones refused the necessary treatment. Mr. Jones was fully aware of the probability of death for both Judge Wright and the hospital doctors tried to convince him to reconsider.[22]

The risk of civil and criminal liability to the hospital if the order for the transfusion was not granted was given by the court as one of the primary reasons for its decision.[23] In the petition for rehearing, however, the civil liability issue appears weak since Mr. and Mrs. Jones offered to sign a waiver of liability to the hospital.[24] *Jones v. United States*[25] which was cited by Judge Wright on the theory that the hospital could have been guilty of manslaughter in the District of Columbia for a breach of duty to provide medical care would also appear not to be in point. In the *Jones* case the defendant was convicted in the lower court of involuntary manslaughter for failure to provide food and necessities to an infant. The defendant had received money from the child's mother to take care of the child. On appeal the conviction was reversed. The court stated that criminal responsibility rests on four theories: (1) Statute, (2) status relationship (parent - child), (3) contract, and (4) voluntary assumption of duty while preventing others from providing care.[26] It is difficult to place the relationship between Mrs. Jones and the hospital into any one of these categories.

It would appear that Judge Wright's concluding remarks evidence the *real* reason for holding the court ordered transfusion proper.

21. Application of Pres. & Dir. of Georgetown Col., Inc., *supra,* note 19 at 1008.
22. *Id.* at 1006, 1007.
23. *Id.* at 1009.
24. Application of Pres. & Dir. of Georgetown Col., Inc., 331 F.2d 1010 at 1016 (D.C. Cir. 1964) (dissenting opinion). The petition for rehearing *en banc* was denied.
25. 308 F.2d 307 (D.C. Cir. 1962).
26. *Id.* at 310.

> The final, and compelling, reason for granting the emergency writ was that a life hung in the balance. There was no time for research and reflection. Death could have mooted the cause in a matter of minutes, if action was not taken to preserve the *status quo*. To refuse to act, only to find later that the law required action, was a risk I was unwilling to accept. I determined to act on the side of life.[27]

The authority of Judge Wright to enter the order for the blood transfusion under the Federal Rules of Civil Procedure is questioned in the dissenting opinion of the rehearing petition.

> It has been suggested, however, under the Code provision[28] which authorizes one appellate judge to enter an order to preserve the *status quo* justifies the procedure employed here. This suggestion is, I think, without foundation. Even if an appeal had properly been in this court . . . the orders . . . by one judge of this court did not preserve the *status quo;* to the contrary the orders completely changed the *status quo ante* by granting fully and finally all of the relief sought, thus disposing of the matter on its merits. This fact is confirmed, perhaps unwittingly, by the majority's order denying the petition for rehearing *en banc* which implicitly relies on mootness.[29]

The humanitarian considerations of the court, of course, must be given high respect, but courts should decide cases on rules of law, not of conscience. This does not mean that the law should be static and inhuman. The court should, however, weigh the consequences of a singular case such as this against its precedent setting power to determine future litigant's rights. This danger was recognized by Judge Miller in the dissenting opinion in the petition for rehearing.

> I object to the order which merely denies the petition for rehearing, without more, because it leaves in effect the . . . orders . . . of this court which may be cited hereafter as precedents, not only for summary administration of blood transfusions against the will of the patient, but also for the proposition that one judge of this court, without summoning

27. Application of Pres. & Dir. of Georgetown Col., Inc., 331 F.2d at 1009, 1010 (D.C. Cir. 1964).
28. FED. R. CIV. P. 62(g).
29. Application of Pres. & Dir. of Georgetown Col., Inc., 331 F.2d 1010 at 1014, (D.C. Cir. 1964).

> two of his colleagues to act with him and without any record before him, may take the drastic and unprecedented action which was taken in this matter.[30]

This case raised the various questions of compulsory treatment versus the religious beliefs of the person, but refused to squarely decide these issues. The opinion in this case lays down no objective legal test to determine the court's power to act where it is presented with a similar factual pattern. It can be argued that the arbitrary action by a judge to decide what is in the patient's best interest violates the religious freedom of the individual under the first amendment. This would appear especially true in the present case where these religious views do not infringe the rights of others and the theory of *parens patriae* and the police power is not open to the court.

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30. *Id.* at 1013.