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IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,970

THE PUBLIC HEALTH TRUST
OF DADE COUNTY, FLORIDA,

Petitioner,

vs.

NORMA WONS,

Respondent.

FILED
SID J. WHITE
MAR 23 1987
CLERK SUPREME COURT
Deputy Clerk

APPEAL FROM THE THIRD DISTRICT COURT OF APPEAL

CASE NO. 86-985

RESPONDENT'S BRIEF ON THE MERITS

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STATUTES

Section 765.02, Fl. Stat. 1984 1

STATEMENTS OF THE FACTS AND OF THE CASE

Respondent has no additions or corrections to make.

POINT ON APPEAL

The mother's constitutional right to exercise her religious freedom and her right to privacy have not been overridden by (1) her minor children's need, or (2) the state's interest in preservng her life.

SUMMARY OF ARGUMENT

A competent adult (the mother) has a constitutional right to exercise her religious beliefs by refusing medical care. She has a right to privacy. The State's interest in preserving life and adding additional security for her minor children does not extinguish the adult mother's constitutional rights when it is established that the child will be cared for by loving relatives including the husband/father and the Respondent's mother and two uncles of the minors. (A-9)

ARGUMENT

The Respondent will not indulge in a case by case recantation of the cases cited by the Petitioner, but adopts the case citations and analysis of the opinion of the subject opinion by the District Court of Appeal, Third District (A-6-21)

The Florida legislature has found that "every competent adult has the fundamental right to control the decisions relating to his won medical care, including the decision to have provided, withheld or withdrawn the medical or surgical means or procedures calculated to prolong his life". Section 765.02, Fl. Stat. 1984

In Corbett v. D'Allessandro, 487 So.2d 368, (Fla. 2d DCA 1986), Reh. Den. 492 So.2d 1331, the Court stated:

The United States Supreme Court has long recognized that several of the fundamental constitutional guarantees have created a penumbral right to privacy that is no less important than the rights specifically articulated in the constitution. Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). The Florida Constitution, article I, section 23, provides an express right of privacy to natural persons..." (at page 370)

The Respondent has shown no constitutional right that overrides the constitutional rights of the competent adult mother to pursue her religious beliefs and her right to privacy.

The issue is not a moral issue concerning the right of a minor to have two parents. It is difficult to argue that a child does not have a right to two parents but no statute or constitutional provision mandates that a child have two parents. Many children live with only one parent with the non-custodial parent having no real relationship with the child. There are no issues in this case of lack of financial support or lack of parental care or guidance or the child being dumped on the State's door step.

Respondent's right to pursue her strong religious beliefs, guaranteed by The First Amendment of the United States Constitutions and by Article 1, Section 3 of the Constitution of The State of Florida should be respected and not thrown into a legal garbage can.

In the case of Superintendent of Belchertown vs. Saikewicz, 370 N.E.2d 417 (Mass S.Ct. 1977) the Court held:

"... the possible impact of minor children would be a factor..." at page 426.

That case does not conclude that families with minor children waive their constitutional rights of privacy. All cases including Saikewicz, supra, recognizes the right of a competent adult to refuse care. The only issue in this case is whether or not persons with children should be treated differently than those without children.

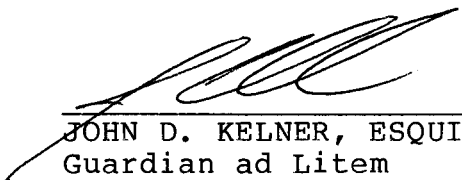
One of the cases which supports the petitioners position recognizes that in many cases a person of the Jehova's Witness faith will not object to the Court's order directing blood transfusions but will not consent on their own because of religious grounds. Application of Winthrop University Hospital, 490 N.Y.S.2d 99 (N.Y.Sup. Ct. 1985).

Norma Wons does not fit into that category.

CONCLUSIONS

1. Respondent's constitutional right to pursue her religious beliefs and right to privacy should be enforced.
2. The opinion of the Court of Appeal, Third District should be affirmed.

WE HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished by U. S. Mail this 19th day of March, 1987 to: Robert A. Ginsburg, Dade County Attorney by Aurora Ares, Assistant County Attorney, Jackson Memorial Hospital/Public Health Trust Division, 1611 N.W. 12th Avenue, Executive Suite C, Room 108, Miami, Florida 33136.



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