In re Dubreuil: Is An Individual’s Right to Refuse a Blood Transfusion Contingent on Parental Status?

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Abstract

This statement, found in Article I, Section 23 of the Florida Constitution, is the result of a 1980 amendment granting an express constitutional right to privacy.

KEYWORDS: treatment, medical, religious
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Every natural person has the right to be let alone and free from governmental intrusion into his private life . . . . .

I. INTRODUCTION

This statement, found in Article I, Section 23 of the Florida Constitution, is the result of a 1980 amendment granting an express constitutional right to privacy. Article 1, Section 23 delineates one of the

* Gratitude is expressed to former Palm Beach County State Attorney David Bludworth and to Jean C. Rainbow, Chairman, Greater Palm Beach Hospital Liaison Committee for Jehovah's Witnesses, for their insight which contributed greatly to this Case Comment.
strongest rights to privacy in any state constitution in the United States. However, Florida's Fourth District Court of Appeal weakened this constitutional right with its decision in In re Dubreuil, by holding that the state could compel a competent adult to undergo a blood transfusion, even though it was against her wishes and religious beliefs.

In In re Dubreuil, the court chose to override Mrs. Patricia Dubreuil's federal and state constitutional right of privacy, by refusing to permit her to make her own decision regarding medical treatment. In doing so, the court also deprived Mrs. Dubreuil of her federal and state constitutional right to freedom of religious expression. Finally, the court violated her common law right to refuse medical treatment. The court based its decision upon the theory that Mrs. Dubreuil's children would be abandoned if she should die as a result of refusing a blood transfusion. The court held that this was a compelling state interest which outweighed Mrs. Dubreuil's constitutional right to privacy and freedom of religious expression.

This comment examines why the Fourth District Court of Appeal should not have affirmed the circuit court's order which forced a blood transfusion on Patricia Dubreuil. In the first section, the facts of In re Dubreuil will be described in detail. Section two will educate the reader to the Jehovah's Witnesses' religiously based refusal of blood transfusions, showing how deeply held those beliefs are, and why the decision in In re Dubreuil was truly egregious. The third section will discuss whether blood transfusions are a true medical necessity. The fourth section will review a competent adult's common law and constitutional right to refuse medical treatment.

The fifth section of this comment will demonstrate that In re Dubreuil is contradictory to state precedent, and infringes upon a competent adult's constitutional guarantees without showing a state interest sufficiently compelling to override such guarantees. Also, case law from other jurisdictions will be reviewed. Furthermore, this section will demonstrate that the state's interest in protecting minor children in this manner is inconsistent with the adoption statutes and dependency statutes of the state of Florida. Section seven will assert that the court did not apply the proper burden of proof required when one's right to privacy is overridden by the state. Section eight will suggest that this decision will result in a trend towards an increase in compelled medical treatment for competent adults who refuse it, simply because they are parents of minor children.

The conclusion of this comment will assert that this decision infringes upon a competent adult's constitutional guarantees without showing a state interest sufficiently compelling to override such guarantees. Finally, this comment will assert that in In re Dubreuil, the heavy burden of proof was not met; thus, the court should not have permitted the violation of one of the most sacred constitutional rights, that of privacy.

II. FACTS OF IN RE DUBREUIL

Patricia Dubreuil, a pregnant separated mother of three minor children, arrived at Hollywood Memorial Hospital late in the evening of April 5, 1990. She was in the last stages of labor, and the doctors determined that her condition required a cesarean section. After signing the routine medical admission forms, including an authorization for the infusion of blood, Mrs. Dubreuil verbally informed the hospital that as a Jehovah's Witness, she objected to blood transfusions. By her verbal statement, she

11. See discussion infra part VI, A; see also In re Dubreuil, 603 So. 2d at 548 (Warner, J., dissenting).
12. See discussion infra part VI, B.
13. In re Dubreuil, 603 So. 2d at 545 (Warner, J., dissenting).
14. Id.
15. Appellant's Brief, supra note 8, at 11; Fosmire v. Nicoleau, 551 N.E.2d 77, 83 (N.Y. 1990) (stating that "a competent adult could never refuse lifesaving treatment if he or she were a parent of a minor child.").
16. In re Dubreuil, 603 So. 2d at 548 (Warner, J., dissenting).
17. Id., 603 So. 2d at 539. The date of admission was found on page six of the appellate's brief.
18. Id.
19. Id. For a complete discussion regarding Jehovah's Witnesses' religiously based refusal of blood transfusions, see infra part III.
strongest rights to privacy in any state constitution in the United States. However, Florida's Fourth District Court of Appeal weakened this constitutional right with its decision in _In re Dubreuil_, by holding that the state could compel a competent adult to undergo a blood transfusion, even though it was against her wishes and religious beliefs.

_In re Dubreuil_, the court chose to override Mrs. Patricia Dubreuil's federal and state constitutional right of privacy, by refusing to permit her to make her own decision regarding medical treatment. In doing so, the court also deprived Mrs. Dubreuil of her federal and state constitutional right to freedom of religious expression. Finally, the court violated her common law right to refuse medical treatment. The court based its decision upon the theory that Mrs. Dubreuil's children would be abandoned if she should die as a result of refusing a blood transfusion. The court held that this was a compelling state interest which outweighed Mrs. Dubreuil's constitutional right to privacy and freedom of religious expression.

This comment examines why the Fourth District Court of Appeal should not have affirmed the circuit court's order which forced a blood transfusion on Patricia Dubreuil. In the first section, the facts of _In re Dubreuil_ will be described in detail. Section two will educate the reader to the Jehovah's Witnesses' religiously based refusal of blood transfusions, showing how deeply held those beliefs are, and why the decision in _In re Dubreuil_ was truly egregious. The third section will discuss whether blood transfusions are a true medical necessity. The fourth section will review a competent adult's common law and constitutional right to refuse medical treatment.

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II. FACTS OF _IN RE DUBREUIL_

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4. 603 So. 2d 538 (Fla. 4th Dist. Ct. App. 1992) (referred to alternatively in text as _In re Dubreuil_ and Dubreuil in text), petition for review filed, No. 80,331 (Fla. Aug. 5, 1992).
5. Id. at 539.
7. U.S. CONST. amend. I; FLA. CONST. art. I, § 3.
8. Brief for Appellant at 1, _In re Dubreuil_, 603 So. 2d 538 (Fla. 4th Dist. Ct. App. 1992) (No. 90-1293) [hereinafter Appellant's Brief].
9. _In re Dubreuil_, 603 So. 2d at 541.
10. Id.
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rejected her earlier signed consent. Her mother, also a Jehovah's Witness, was present and supported her daughter's decision.

The cesarean section was performed, and a healthy child was delivered. However, Mrs. Dubreuil, who suffers from a condition which prevents her blood from properly clotting, lost large quantities of blood. While the doctors felt that Mrs. Dubreuil might die without a blood transfusion, the hospital lacked the necessary authorization to perform the procedure. Consequently, it contacted the local police, who located Mr. Luc Dubreuil. Luc Dubreuil, who was not a member of the Jehovah's Witnesses, and did not object to the procedure, signed the consent form. Also present at the hospital were two of Mrs. Dubreuil's brothers, who expressed their opinions that a transfusion should be performed, and Mrs. Dubreuil's spiritual advisor, who emphasized the religious objections. Acting on Luc Dubreuil's authorization, and prior to a court hearing, the hospital performed a blood transfusion.

Thereafter, the hospital petitioned the circuit court for a declaratory judgment to determine its authority to administer additional transfusions to Mrs. Dubreuil. There was not enough time to secure any sworn testimony. Nor was there sufficient time to appoint a guardian for Mrs. Dubreuil, who remained unconscious throughout most of the day, or a guardian ad litem for her children. Despite these circumstances, an emergency hearing was held the following afternoon. The hospital submitted the matter to the trial court on stipulated facts.

During the course of the hearing, Mrs. Dubreuil regained consciousness for a time, and the court was informed that she again stated she would not consent to receive blood.

Nevertheless, the trial court, which focused on the fact that no evidence had been submitted concerning the fate of the children in the event of their mother's death, held that the state, in its role as 'parent of the country,' had a compelling interest which then outweighed the wishes of Mrs. Dubreuil, in protecting the youngsters. The hospital then received authorization to administer blood transfusions as needed. Mrs. Dubreuil survived.

The Fourth District Court of Appeal in In re Dubreuil affirmed the decision of the lower court. While the appellate court acknowledged that

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20. In re Dubreuil, 603 So. 2d at 539.
21. Id.
22. Id.
23. Id.
24. Upon admission to a hospital, a patient is asked to sign routine admission papers which include a consent form authorizing the hospital to perform blood transfusions as needed. However, if the patient refuses to consent to a blood transfusion, without which she may die, the hospital can petition the courts for a judicial order to do so. See In re Dubreuil, 603 So. 2d at 539; see also Public Health Trust v. Wons, 500 So. 2d 679, 680 (Fla. 1987), aff'd, 541 So. 2d 96 (Fla. 1989).
25. In re Dubreuil, 603 So. 2d at 539.
26. Id.
27. Id.
28. Id.
29. In her dissent, Judge Warner asserted that the hospital was wrong to rely on Luc Dubreuil's consent for the transfusions. In re Dubreuil, 542 So. 2d at 542 (Warner, J. dissenting). In Florida, a competent person has the constitutional right to refuse medical treatment. State v. Herbert (In re Browning), 568 So. 2d 4, 11 (Fla. 1990). However, when the patient is unable to directly exercise this right, it may be done by a close family member or a guardian, who then must make the same decision that the patient, if competent would make. Id. at 12.

Though the court in In re Dubreuil acknowledged that Mrs. Dubreuil's right to refuse treatment was not dependent on her husband's consent, it considered his nssupport for her decision relevant for the purpose of considering if alternative care for the children was available, in weighing the interests of the state against the rights of Mrs. Dubreuil, and in determining whether or not her decision to refuse a blood transfusion would result in the abandonment of her family. 603 So. 2d at 541.

30. Id. at 539.
31. Id.
32. Id.
33. While the court was willing to hold a bedside hearing at the hospital, none of the parties felt it was necessary, since the doctors predicted that Mrs. Dubreuil would remain unconscious throughout the day. Id. at 540.
34. In re Dubreuil, 603 So. 2d at 540.
35. "Parent of the country," which literally means "parent of the country," refers to the role of a state as sovereign or guardian in protecting minors who are under the age of majority. BLACK'S LAW DICTIONARY 1114 (6th ed. 1990).
36. In re Dubreuil, 603 So. 2d at 539.
37. Id.
38. Id. Though Patricia Dubreuil survived, the Fourth District Court of Appeal did not consider the case moot, because, as she suffered from a blood clotting problem, the circumstances were capable of repetition but evading review. Id. at 540.

Generally, the cases involving a patient's refusal to consent to a blood transfusion based on religious beliefs do not come up for appellate review until after the hospital has, by judicial order, performed the procedure, thereby rendering the case moot. Nevertheless, when the patient suffers a chronic medical problem which may require future transfusions, the court may agree to hear the case, as it is capable of repetition by evading review. See, e.g., Public Health Trust v. Wons, 500 So. 2d 679, 683 (Fla. 3d Dist. Ct. App. 1987) (woman suffering from recurring dysfunctional uterine bleeding), aff'd, 541 So. 2d 96 (Fla. 1989).

However, it is doubtful that a patient will need future transfusions, the court may still choose to hear the case, even though it is moot, as it involves a question of great public importance but often evades appellate review. See, e.g., Fosmire v. Nicoleau, 536 N.Y.S.2d 992, 995 (App. Div. 1989), aff'd, 551 N.E.2d 77 (N.Y. 1990) (woman experienced severe
rejected her earlier signed consent.20 Her mother, also a Jehovah's Witness, was present and supported her daughter's decision.21

The cesarean section was performed, and a healthy child was delivered.22 However, Mrs. Dubreuil, who suffers from a condition which prevents her blood from properly clotting, lost large quantities of blood.23 While the doctors felt that Mrs. Dubreuil might die without a blood transfusion, the hospital lacked the necessary authorization24 to perform the procedure.25 Consequently, it contacted the local police, who located Mrs. Dubreuil's husband, Luc Dubreuil.26 Luc Dubreuil, who was not a member of the Jehovah's Witnesses, and did not object to the procedure, signed the consent form.27 Also present at the hospital were two of Mrs. Dubreuil's brothers, who expressed their opinions that a transfusion should be performed, and Mrs. Dubreuil's spiritual advisor, who emphasized the religious objections.28 Acting on Luc Dubreuil's authorization, and prior to a court hearing, the hospital performed a blood transfusion.29

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During the course of the hearing,33 Mrs. Dubreuil regained consciousness for a time, and the court was informed that she again stated she would not consent to receive blood.34 Nevertheless, the trial court, which focused on the fact that no evidence had been submitted concerning the fate of the children in the event of their mother's death, held that the state, in its role as "parents patriae,"35 had a compelling interest which then outweighed the wishes of Mrs. Dubreuil, in protecting the youngsters.36 The hospital then received authorization to administer blood transfusions as needed. Mrs. Dubreuil survived.37

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III. RELIGIOUS BELIEFS OF JEHOVAH’S WITNESSES REGARDING BLOOD TRANSFUSIONS

To understand the depth of Patricia’s conviction in refusing blood transfusions, it is necessary to consider the religious convictions held by Jehovah’s Witnesses in regard to receiving blood. To Jehovah’s Witnesses, receiving blood, whether it is their own blood or blood from another body, prevents them from their ultimate salvation. In fact, they consider a blood transfusion to be “like a fornication, an inflicting, penetrating assault on [their] bodies,” against [their] will, injecting an unwanted fluid into [their] bodies. This belief is based upon the Bible, which states “keep abstaining from things sacrificed to idols and from blood and from things strangled [unbled meat] and from fornication.” Also, Jehovah’s Witnesses believe that “God knows what is best for man, as the creator of man, and the Bible is the word of God.” Thus, based upon this language, and the statement that “For your lifeblood I will surely demand an accounting,” Jehovah’s Witnesses adamantly decline to consent to blood transfusions. Thus, Patricia Dubreuil was acting as a sincere Jehovah’s Witness, merely exercising her constitutional right of privacy and freedom to express her religion, when she consistently told doctors she would not consent to any blood transfusions.

IV. BLOOD TRANSFUSIONS: MEDICAL NECESSITY?

As a corollary to Jehovah’s Witnesses’ religious beliefs based upon biblical passages, the group believes that ultimately, “if a medical point of view, their beliefs will be vindicated, [and it will be shown] that there is wisdom behind their point of view.” In fact, refusing blood transfusions may not be as fatal as previously thought by the medical community. Actually, receiving a blood transfusion itself can be quite dangerous to one’s

44. Interview with Jean C. Rainbow, supra note 42.
45. WATCH TOWER, supra note 42, at 3 (quoting Genesis 9:3-6 (New Int’l Version)) (emphasis added).
46. See WATCH TOWER, supra note 42, at 6 (“Those who respect life as a gift from the Creator do not try to sustain life by taking in blood.”). Furthermore, Jehovah’s Witnesses believe that this biblical commandment not to have blood injected into their bodies cannot be disregarded in the face of an emergency. Id. at 4 (“Precious as life is, our Life-Giver never said that his standards could be ignored in an emergency.”).
47. Jehovah’s Witnesses believe that life after receiving a blood transfusion would be less desirable than a certain death from the refusal. See Public Health Trust v. Wonn, 541 So. 2d 96, 100 (Fla. 1989) (Ehrlich, J., concurring) (“The cost to the individual of the life-prolonging treatment, in . . . spiritual terms, may be too high.”) (citing Superintendent of Beichertown State School v. Saikewicz, 370 N.E.2d 417 (1977)).
48. Interview with Jean C. Rainbow, supra note 42. In a program presented to hospital groups by the Greater Palm Beach Hospital Liaison Committee For Jehovah’s Witnesses, it is revealed that not one test exists which shows that blood transfusions save lives. Id.
49. Findley & Rodenstein, supra note 42. This study investigated a group of seventy adult Jehovah’s Witnesses and their experiences with release of blood transfusions. The study revealed that none of the group’s family members had died as a result of refusing a blood transfusion, even though the surgeries they underwent were considered to be “major procedures.” Thus, the doctors state that “[h]is suggests that death from refusal of blood transfusion occurs infrequently.” Id.
the lower court had limited information, and did not have the benefit of
taking evidence from Mrs. Dubreuil, her estranged husband, or her family,
it accepted the lower court’s presumption that, in the absence of evidence
to the contrary, Mrs. Dubreuil’s death would result in the abandonment of
her children. Therefore, the court found that governmental intervention
was justified.  

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hemorrhaging following the birth).  

39. In re Dubreuil, 603 So. 2d at 541. By making this presumption, the court placed
on Mrs. Dubreuil the burden of proving that her death would not result in the abandonment
of a compelling state interest on the government.  

40. Id.  

41. Rev. Richard J. Devine, Save The Body, Lose The Soul, HEALTH PROGRESS, June
1989, at 68, 68. Rev. Devine also notes that “[t]he refusal to consume blood is neither a mere
ritual observance nor a minor dietary regulation; rather, it is a central expression of their
relationship with God.” (citing WATCH TOWER BIBLE & TRACT SOC’Y PA, JEHOWAH’S WIT-
NESS AND THE QUESTION OF BLOOD, at 19 (1977); see In re Osborn, 294 A.2d 372, 375 deprived
of life everlasting even if he involuntarily received [a blood] transfusion.”  

42. Telephone Interview with Jean C. Rainbow, Chairman, Greater Palm Beach Hospital
Liaison Committee for Jehovah’s Witnesses, July 27, 1992. However, Mr. Rainbow pointed
out that Jehovah’s Witnesses do not reject medical treatment, and, in fact, are very
cooperative with the medical community. See WATCH TOWER BIBLE AND TRACT SOCIETY OF
PA., HOW CAN BLOOD SAVE YOUR LIFE?, at 6 (1990) (hereinafter WATCH TOWER]
M.D. & Paul Redstone, M.D., Blood Transfusion in Adult Jehovah’s Witnesses: A Case Study
of One Congregation, ARCH. INTERM. MED. (1982) (stating that the “congregation studied are
active partners in the health care system”).

strangled [bleed meat] and from fornication.” Also, Jehovah’s Witnesses believe that “God knows what is best for man, as the creator of man, and
the Bible is the word of God.” Thus, based upon this language, and the
statement that “For your lifeblood I will surely demand an accounting,” Jehovah’s Witnesses adamantly decline to consent to blood transfusions. Thus, Patricia Dubreuil was acting as a sincere Jehovah’s Witness, merely
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transfusion, even though the surgeries they underwent were considered to be “major procedures.” Thus, the doctors state that “[t]his suggests that death from refusal of blood
transfusion is rare.” Id.
health and possibly even fatal. The medical community widely supports Jehovah’s Witnesses in their refusal of blood transfusions. For example, in Palm Beach County, 155 out of 170 doctors interviewed have agreed, in principle, to treat Jehovah’s Witnesses without use of blood transfusions while performing procedures such as open heart surgery and removal of spinal tumors, which typically require blood transfusions.

Dr. Sam Sadow, a heart surgeon in Palm Beach County, has performed numerous “bloodless” surgeries on Jehovah’s Witnesses. Dr. Sadow states that “we have long expressed interest in helping these patients... and the hospital is happy to participate. This is a very viable procedure for these patients.” Also, extensive research has been conducted to determine alternate methods of treatment when blood transfusions would normally become necessary. In fact, many “bloodless” medical and surgical centers have opened throughout the country, that are fully prepared to treat Jehovah’s Witnesses and other individuals who do not wish to receive transfused blood.

At Holy Cross Hospital in Fort Lauderdale,

50. This is due to the possibility of infection from blood contaminated with the HIV virus, hepatitis, and other potentially fatal infections. See Byron A. Myhre, M.D., Ph.D., To Treat The Patient Or To Treat The Surgeon, 265 JAMA 97 (1991); WATCH TOWER, supra note 42, at 8 ("each year hundreds of thousands have adverse reactions to blood, and many die.").

51. Pioneering Bloodless Surgery With Jehovah’s Witnesses, AWAKE!, Nov. 22, 1992, at 8, 11 [hereinafter Bloodless Surgery] (Nationwide, 10,000 doctors have been identified as willing to treat Jehovah’s Witnesses and other individuals who refuse transfusions, on the patients’ terms, i.e., without the use of blood transfusions.); Michael Lasalandra, Surgeons Find Ways To Save Lives, Beliefs, PALM BEACH POST, Sept. 15, 1991, at B1, stating that one dozen hospitals have made the identical acknowledgement.

52. Interview with Jean C. Rainbow, supra note 42. This statistic was uncovered through a poll of doctors in Palm Beach County conducted by the Greater Palm Beach Hospital Liaison Committee For Jehovah’s Witnesses.


54. Id.

55. See J.L. Dixon, M.D. & G.M. Smalley, Jehovah’s Witnesses, The Surgical/Ethical Challenge 246 JAMA 2471 (1981); see also Lasalandra, supra note 51. In Lasalandra’s transfusions in surgery, Dr. Sadow describes a technique used primarily in brain surgery whereby the patient’s body temperature is lowered so that blood no longer flows to the brain and a bloodless field results which dramatically lessens the threat of bleeding.

56. See GOOD SAMARITAN HOSPITAL & MEDICAL CENTER, MEDICAL & SURGICAL CARE ERPHEUTIC ALTERNATIVES; OUR LADY FOR BLOODLESS MEDICINE AND SURGERY PROGRAM (pamphlet distributed by the hospitals announcing bloodless surgery)

57. HOLY CROSS HOSPITAL, THE CENTER FOR HEMOTHERAPEUTIC ALTERNATIVES (pamphlet lists the thirty specialty fields in which bloodless care is available).

58. In fact, the Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic states that “[T]he surest preventive measure with regard to the blood supply is to eliminate exposure of a patient to the blood of others . . . .” Donald T. Ridley, Accommodating Jehovah’s Witnesses’ Choice of Nonblood Management, PERSPECTIVES IN HEALTHCARE RISK MANAGEMENT, Winter 1990. Also, the California legislature has acknowledged the risky nature of blood transfusions by its enactment of a law requiring doctors to inform their patients, in writing, of the dangers of receiving blood transfusions. See Watching The World, AWAKE!, June 8, 1990, at 28.

59. Smalley & Smalley, supra note 55; see Bloodless Surgery, supra note 51, at 9 ("One French surgeon acknowledged that Jehovah’s Witnesses, by their firm stand on blood, have helped the medical profession to make progress in the field of bloodless surgery.").

60. However, if the patient is a minor and the parent is making the decision to refuse for their child, hospitals may attempt to obtain court orders for compelled blood transfusions. See HOLY CROSS HOSPITAL, THE CENTER FOR HEMOTHERAPEUTIC ALTERNATIVES (pamphlet announcing a center that specializes in medical care without blood transfusions, which contains a disclaimer warning that “State and Federal law may impose limitations on the ability to withhold or withdraw blood transfusions or blood therapy from minors . . . . The Center for Hemotherapeutic Alternatives, Holy Cross Hospital and its participating physicians . . . reserve the right to undertake any and all steps and legal proceedings necessary under the law.”).
health and possibly even fatal. The medical community widely supports Jehovah's Witnesses in their refusal of blood transfusions. For example, in Palm Beach County, 155 out of 170 doctors interviewed have agreed, in principal, to treat Jehovah's Witnesses without use of blood transfusions while performing procedures such as open heart surgery and removal of spinal tumors, which typically require blood transfusions.

Dr. Sam Sadow, a heart surgeon in Palm Beach County, has performed numerous "bloodless" surgeries on Jehovah's Witnesses. Dr. Sadow states that "we have long expressed interest in helping these patients... and the hospital is happy to participate. This is a very viable procedure for these patients." Also, extensive research has been conducted to determine alternate methods of treatment when blood transfusions would normally become necessary. In fact, many "bloodless" medical and surgical centers have opened throughout the country, that are fully prepared to treat Jehovah's Witnesses and other individuals who do not wish to receive transfused blood. At Holy Cross Hospital in Fort Lauderdale,

50. This is due to the possibility of infection from blood contaminated with the HIV virus, hepatitis, and other potentially fatal infections. See Byron A. Myhr, M.D., Ph.D., To Treat The Patient Or To Treat The Surgeon, 265 JAMA 97 (1991); Watchtower, supra note 42, at 8 ("each year hundreds of thousands have adverse reactions to blood, and many die.").

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52. Interview with Jean C. Rainbow, supra note 42. This statistic was uncovered through a poll of doctors in Palm Beach County conducted by the Greater Palm Beach Hospital Liaison Committee For Jehovah's Witnesses.

53. Lasalanda, supra note 51, at 52.

54. Id.

55. See J.L. Dixon, M.D. & G.M. Smalley, Jehovah's Witnesses, The Surgical/Ethical Challenge 246 JAMA 2471 (1981); see also Lasalanda, supra note 51. In Lasalanda's article, Dr. Sam Sadow reports that there are many procedures to eliminate the use of blood transfusions in surgery. Dr. Sadow describes a technique used primarily in brain and cardiac surgery whereby the patient's body temperature is lowered so that blood no longer flows to the brain and a bloodless field results which dramatically lessens the threat of bleeding.

56. See Good Samaritan Hospital & Medical Center, Medical & Surgical Care Alternatives; Our Lady of the Resurrection Medical Center, Center for Hemotherapy for Bloodless Medicine and Surgery; Jewish Hospital, Bloodless Medicine & Surgery Program (pamphlets distributed by the hospitals announcing bloodless surgery

Florida, one such center exists that is equipped to treat patients in thirty medical specialty areas without performing blood transfusions.

To undermine one's constitutional right to privacy based upon the refusal of a medical treatment is an extreme step, considering that the risks involved and the success rate from the procedure are in question. This is especially true in light of the fact that the medical community has successfully developed alternative methods of treatment for Jehovah's Witnesses and others who decline blood transfusions. The existence of a multitude of alternative methods to treat patients who refuse blood transfusions makes it is unnecessary for hospitals to attempt to obtain court orders to compel this type of treatment. Still, many hospitals, as Hollywood Memorial in the In re Dubreuil case, do attempt to obtain court orders to force blood transfusions on competent adults who refuse the treatment. Thus, it is important to understand the historical nature of a competent patient's legal right to refuse medical treatment.

V. BASIS FOR THE RIGHT TO REFUSE MEDICAL TREATMENT

A common law right to refuse medical treatment was first recognized in

57. HOLY CROSS HOSPITAL, THE CENTER FOR HEMOTHERAPEUTIC ALTERNATIVES (this pamphlet lists the thirty specialty fields in which bloodless care is available).

58. In fact, the Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic states that "[T]he surest preventive measure with regard to the blood supply is to eliminate exposure of a patient to the blood of others..." Donald T. Ridley, Accommodating Jehovah's Witnesses' Choice of Nonblood Management, PERSPECTIVES IN HEALTHCARE RISK MANAGEMENT, Winter 1990. Also, the California legislature has acknowledged the risky nature of blood transfusions by its enactment of a law requiring doctors to inform their patients, in writing, of the dangers of receiving blood transfusions. See Watching The World, AWAKE!, June 8, 1990, at 28.

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in 1914, in Schloendorff v. Society of New York Hospitals. In Schloendorff, Justice Cardozo stated that "every human being of adult years and sound mind has a right to determine what shall be done with his own body. . . ." The doctrine of informed consent functions to preserve this common law right to bodily integrity and self-determination. Under this doctrine, a doctor may not perform any medical procedure on a patient unless the procedure and risks involved are explained and the patient consents. Florida courts have acknowledged this common law right to refuse medical treatment.

The right to refuse medical treatment also has an implied basis in the United States Constitution, specifically in the Bill of Rights. The Bill of Rights contains a penumbral right to privacy, which includes "the right of a patient to preserve his or her right to privacy against unwanted infringements of bodily integrity in appropriate circumstances." In Florida, a constitutional right to refuse medical treatment stems from the expressly stated privacy right in the Constitution of the State of Florida. It is undisputed that under this express privacy right, a competent adult may refuse medical treatment. The Florida Supreme Court has stated "a competent person has the constitutional right to choose or refuse medical treatment, and that right extends to all relevant decisions concerning

61. 105 N.E. 92, 93 (1914); see In re Conroy, 486 A.2d 1206, 1221 (N.J. 1985) ("the right of a person to control his own body is a basic societal concept, long recognized in the common law.").
62. Schloendorff, 105 N.E. at 93.
63. In re Conroy, 486 A.2d at 1222.
64. Norman L. Cantor, A Patient's Decision to Decline Life-Saving Medical Treatment: Bodily Integrity Versus the Preservation of Life, 26 Rutgers L. Rev. 228, 237 (1973).
65. St. Mary's Hosp. v. Ramsey, 465 So. 2d 666, 668 (Fla. 4th Dist. Ct. App. 1985) ("We have hitherto held that an adult patient has a right of self-determination."); see Satri uphold the right of a competent adult patient to refuse treatment for himself.
68. In re Browning, 568 So. 2d at 10. ("The integral component of self-determination is the right to make choices pertaining to one's health.")
69. Recognizing that one has the inherent right to make choices about medical treatment, we necessarily conclude that this competent patient's refusal to undergo a life-saving or discontinue medical treatment.

one's health.") To deprive an individual of this fundamental right to privacy, a compelling state interest must be found to exist. Also, the least intrusive means must be used to achieve that goal. This is also true when depriving one of his or her freedom of religious expression. Patricia Dobrell had both of these rights violated.

As to freedom of religious expression, it is important to note that patients have the right to refuse medical treatment for any reason they choose, but in many cases their refusal is religiously based. If a patient is compelled to receive a transfusion against his or her will, that individual's right to freedom of religious expression is violated. This is especially true in cases where Jehovah's Witnesses have refused to consent to life-saving blood transfusions. Courts have generally refused to decide such cases on a free exercise of religion basis. For example, in Norwood Hospital v. Munoz, the court stated that it did not need to decide whether the patient had a right to refuse medical treatment based upon the freedom of religious expression, since its decision could be based upon the patient's fundamental right to privacy. However, Florida courts have acknow-

70. In re Browning, 568 So. 2d at 10.
71. See Shaktman v. State, 553 So. 2d 148, 151 (Fla. 1989); see also Public Health Trust v. Wons, 541 So. 2d 96, 98 (Fla. 1989) (the court noted that a compelling state interest must be found because "rooted in our constitutional traditions... an individual has a fundamental right to be left alone so that he is free to lead his private life according to his own beliefs free from unreasonable governmental interference.") (quoting Public Health Trust v. Wons, 500 So. 2d 679 (Fla. 3d Dist. Ct. App. 1989)).
72. Shaktman, 553 So. 2d at 152.
74. Note, Medical Technology And The Law, 103 Harv. L. Rev. 1519, 1669 (1990) [hereinafter Medical Technology] ("A distinct source of a constitutional right to refuse medical treatment is the free exercise clause.").
76. Medical Technology, supra note 74, at 1669. ("The most common religiously motivated refusals of treatment are objections to blood transfusions.").
77. Devine, supra note 41, at 68. Rev. Devine notes that "In several instances over the past 25 years, the courts did not consider the cases in light of the First Amendment right to freedom of religion, despite the fact that the constitutional issue clearly lies at the heart of the controversy."
79. Id. at 1021-22.
in 1914, in Schloendoff v. Society of New York Hospital.\textsuperscript{61} In Schloendoff, Justice Cardozo stated that "every human being of adult years and sound mind has a right to determine what shall be done with his own body ... .\textsuperscript{62} The doctrine of informed consent functions to preserve this common law right to bodily integrity and self-determination.\textsuperscript{63} Under this doctrine, a doctor may not perform any medical procedure on a patient unless the procedure and risks involved are explained and the patient consents.\textsuperscript{64} Florida courts have acknowledged this common law right to refuse medical treatment.\textsuperscript{65}

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\textsuperscript{61} 105 N.E. 92, 93 (1914); see In re Conroy, 486 A.2d 1209, 1221 (N.J. 1985) ("[b]right of a person to control his own body is a basic societal concept, long recognized in the common law.").

\textsuperscript{62} Schloendoff, 105 N.E. at 93.

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\textsuperscript{66} Saikewicz, 370 N.E.2d at 424 (citing In re Quinlan, 55 A.2d 647 (N.J. 1976)).

\textsuperscript{67} In re Brown, 568 So. 2d at 10. ("[i]n integral component of self-determination inherent right to make choices about medical treatment, we hereby recognize that the right encompasses all medical choices."); see Permutter, 362 So. 2d at 163 (stating that a competent patient has the right to refuse or discontinue medical treatment).
edged that prohibiting a competent adult from declining a blood transfusion due to religious beliefs does infringe on that person's freedom of religious expression.80

Specifically in regard to the fundamental right to refuse medical treatment, the Fourth District Court of Appeal, in Satz v. Perlmutter, delineated four compelling state interests which, in Florida, can override an individual's constitutional right to refuse medical treatment: 1) the preservation of life; 2) the prevention of suicide; 3) the maintenance of the ethical integrity of medical practice; and 4) the protection of innocent third parties.82 These four state interests are simply to be used as factors for the court to consider, and not as a definitive test to determine that an unwanted medical treatment should be automatically compelled if one of the state interests are triggered.83

The first compelling state interest which can override an individual's right to refuse medical treatment is the preservation of life. While in most instances, the state permits competent individuals to engage in conduct or make personal decisions which may pose a risk to their lives or health, it does so only when that conduct or decision is not outweighed by the state's recognized, compelling interest in the preservation of life.84 Moreover, is dealing with an individual who is ill, but who has a positive chance of recovery, the strength of this compelling state interest may increase.85

80. See Wons, 541 So. 2d at 96; Ramsey, 465 So. 2d at 666.
81. 362 So. 2d at 162. Abe Perlmutter, a 73 year old man, suffered from anastrophic lateral sclerosis (Lou Gehrig's disease), a terminal condition which results in death approximately two years from the onset of the disease. Id. at 161. Though physically dehabilitated and dependent upon a mechanical respirator for breath, Perlmutter was in command of his mental faculties. Id. With his family's approval, he requested removal from the respirator, which he himself had previously attempted to disconnect. Without the respirator, death was imminent. Id.
82. In affirming the trial court's decision to permit the removal of the artificial life sustaining device, the Fourth District Court of Appeal found that the state's compelling interests were insufficient to override Mr. Perlmutter's wishes. Id. at 163. Thereafter, on appeal, the Florida Supreme Court adopted the district court opinion as its own. Satz v. Perlmutter, 379 So. 2d 359, 360 (Fla. 1980). However, the court issued a caveat that the reach of the decision did not extend beyond the particular facts of the case. Id.
83. Perlmutter, 362 So. 2d at 162. (citing Superintendent of Belchertown State Sch. v. Sziekanski, 370 N.E.2d 417 (Mass. 1977)).
84. Wons, 541 So. 2d at 97 ("It is important to note that these factors are by no means a bright-line test, capable of resolving every dispute regarding the refusal of medical treatment.").


Courts have ruled that in the above examples, in which the injuries result from the person's own actions, the state's interest in the preservation of life does not carry enough weight to counterbalance the right of a competent individual to refuse medical treatment.86

In Florida, this state interest, though considered laudable, is not considered an "unswerving mandate."87 Furthermore, when the patient's refusal of a blood transfusion is based on his or her religious convictions,88 one's wishes become more compelling than the interest of the state in preserving life.89

The second state interest in the Perlmutter analysis is the prevention of suicide. While a state may intervene to prevent suicide, refusing treatment is not necessarily an indication that a patient wishes to die.90 In some instances, declining medical treatment or discontinuing artificial life-support merely allows the disease to follow its natural course, and death occurs as

86. Fomara, 551 N.E.2d at 81. See also Brophy v. New England Sinai Hosp., 497 N.E.2d 626, 635 (Mass. 1986). The court stated that "[t]he duty of the State to preserve life must encompass a recognition of an individual's right to avoid circumstances in which the individual himself would feel that efforts to sustain life demean or degrade his humanity." Id.
87. However, the state's interest in preserving life becomes significant when a pregnant woman's refusal to consent to a blood transfusion may endanger the life of her unborn fetus. See, In re Jamaica Hosp., 491 N.Y.S.2d 898, 900 (Sup. Ct. 1985) (blood transfusion ordered to save the life of the unborn fetus of a critically ill pregnant woman who refused to consent, based on her religious convictions.).
88. In re Dubrinell, can be distinguished because the life of a fetus was not involved. Mrs. Dubrinell's need for blood transfusions did not arise until after she underwent a cesarean section and gave birth to a healthy baby. 603 So. 2d at 539.
89. 87. St. Mary's Hosp. v. Ramsey, 465 So. 2d 666, 668 (Fla. 4th Dist. Ct. App. 1985) (right of nonconsensial father to refuse blood transfusion upheld). The court found that as Mr. Ramsey was a competent adult he had the constitutional right of privacy which gave him the freedom to make choices concerning his medical treatment. Id.
90. In Ramsey, the court found that as Mr. Ramsey refused a blood transfusion based on his religious convictions, the state's interest in preserving his life did not outweigh his right to self-determination. However, the state's interest in preserving life becomes more compelling if a parent refuses a blood transfusion for a child, as this act "is not an exercise of the right of self-determination, it is an assumed right to determine the destiny of another." Id. Additionally, most states have specific statutes which govern situations involving parents who refuse needed medical treatment for their children. E.g., PLAT. STAT. § 39.01(37) (Supp. 1992); OHIO REV. CODE ANN. § 2151.33 (Anderson 1991).
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91. See Ramsey, 464 So. 2d at 668.
92. See Public Health Trust v. Wons, 500 So. 2d 679, 686 (Fla. 3d Dist. Ct. App. 1987) (court did not consider woman’s refusal to a blood transfusion as an act of suicide, but instead a decision based on her religious belief).
a result of the underlying illness, not from a self-inflicted injury. Further, a patient may want to live, but only under his or her own power or by the tenets of his or her religion or personal beliefs. For example, in In re Farrell, the New Jersey Supreme Court upheld the right of a woman suffering from amyotrophic lateral sclerosis, a degenerative and terminal illness, to withdraw from a life-sustaining respirator. The court did not consider Mrs. Farrell’s request to die, unencumbered by artificial means, as a desire to commit suicide, but instead as a desire to let the disease and nature take their course. Currently, as a patient’s refusal of medical treatment is not considered a suicide attempt, but instead an expression of personal autonomy, this state interest has lost its significance, and is not deemed sufficiently compelling to override an individual’s right of self-determination.

The third state interest of the Perlmuter analysis considers the maintenance of the ethical integrity of medical practice. In certain instances, health care professionals believe their ethical code does not permit them to allow a patient the prerogative of declining medical treatment. However, prevailing medical practice does not, without exception, require that in all circumstances all efforts be made to prolong life. Rather, the role of the medical profession is at times “to recognize that the dying are more often in need of comfort than treatment.”

In fact, Massachusetts courts refuse to require a physician to participate in a patient’s decision as long as alternative resources are available. And in New Jersey, this state interest in preserving medical ethics has lost its significance because the courts have found that the medical profession recognizes and accepts the fact that the right of the individual to forego treatment, even if a wrong decision, outweighs ethical concerns. In Florida, courts have held that a refusal to submit to treatment threatens neither the integrity of the medical profession nor the proper role of hospitals in caring for such patients. Thus it is not necessary to deny a patient his or her right of self-determination. Instead, when a patient is competent to make a choice, the responsibility of the doctor is to inform him or her of the risks involved, and thereafter the onus for the decision rests with the patient. Based on the foregoing, it appears that the ethical responsibilities of the medical profession do in fact cede to a patient’s right of self determination, but with the state’s implied consent.

The fourth and final state interest, under Perlmuter, is the protection of innocent third parties. Florida, in its role of “pares patrisae” has an interest in protecting the rights of innocent third parties. This interest becomes most compelling in those cases where a patient, with a good chance of recovery, is the parent of minor children. As courts have expressed concern that the death of the parent may cause a child emotional and financial harm and may leave the child abandoned, demonstrating

91. See In re Conway, 486 A.2d 1209, 1224 (N.J. 1985). The advances in medical technology have enabled physicians to keep patients alive longer than previously, albeit by artificial means, thereby postponing a death that is inevitable. Id.
92. Id. See also Satz v. Perlmuter, 362 So. 2d 160, 162-63 (Fla. 4th Dist. Ct. App. 1978) (terminally ill man petitioned to be removed from artificial life-support, preferring to hasten his death rather than continue to be subjected to the misery of being kept alive by machine), aff’d, 379 So. 2d 359 (Fla. 1980).
94. Id. at 406. While still on a respirator, Mrs. Farrell died before this case was decided.
95. Id. at 411.
96. E.g., Foxman, 551 N.E.2d at 80; see Perlmuter, 362 So. 2d at 162 (competent patient with degenerative, terminal illness, who had right to refuse treatment, had right to discontinue it).
99. Id.
100. 397, 497 N.E.2d at 639.
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In fact, Massachusetts courts refuse to require a physician to participate
in a patient’s decision as long as alternative resources are available. And in New Jersey, this state interest in preserving medical ethics has lost

91. See In re Conway, 486 A.2d 1209, 1224 (N.J. 1985). The advances in medical
technology have enabled physicians to keep patients alive longer than previously, albeit by
artificial means, thereby postponing a death that is inevitable. Id.
92. Id. See also Satz v. Perlmuter, 362 So. 2d 160, 162-63 (Fla. 4th Dist. Ct. App.
1978) (terminally ill man petitioned to be removed from artificial life-support, preferring to
hasten his death rather than continue to be subjected to the misery of being kept alive by
machine), aff’d, 379 So. 2d 359 (Fla. 1980).
94. Id. at 406. While still on a respirator, Mrs. Farrell died before this case was decided.
95. Id. at 411.
96. E.g., Foumiere, 551 N.E.2d at 80, see Perlmuter, 362 So. 2d at 162 (competent
patient with degenerative, terminal illness, who had right to refuse treatment, had right to
discontinue it).
1977).
99. Id.
100. Brophy, 497 N.E.2d at 639.

its significance because the courts have found that the medical profession
recognizes and accepts the fact that the right of the individual to forego
treatment, even if a wrong decision, outweighs ethical concerns. In Florida, courts have held that a refusal to submit to treatment threatens
neither the integrity of the medical profession nor the proper role of hospitals in caring for such patients. Thus it is not necessary to deny a
patient his or her right of self-determination. Instead, when a patient is
competent to make a choice, the responsibility of the doctor is to inform
him or her of the risks involved, and thereafter the onus for the decision
rests with the patient. Based on the foregoing, it appears that the ethical
responsibilities of the medical profession do in fact cede to a patient’s right of self determination, but with the state’s implied consent.

The fourth and final state interest, under Perlmuter, is the protection of
innocent third parties. Florida, in its role of “parents patriae,” has an
interest in protecting the rights of innocent third parties. This interest
becomes most compelling in those cases where a patient, with a good
chance of recovery, is the parent of minor children. As courts have
collapsed that the death of the parent may cause a child emotional and
financial harm and may leave the child abandoned, demonstrating

101. In re Farrell, 529 A.2d 404, 412 (N.J. 1987). Prior to making this determination,
the New Jersey Supreme Court surveyed numerous medical authorities, including the New
Jersey State Board of Medical Examiners, the New Jersey Chapter of the American College
of Physicians, and others, and found they all supported a competent adult’s right to refuse
treatment.
102. Perlmuter, 362 So. 2d at 163. The Florida Fourth District Court of Appeal stated:
Recognition of the right to refuse necessary treatment in appropriate circumstances is consistent with existing medical mores; such a doctrine does not
threaten either the integrity of the medical profession, the proper role of
hospitals in caring for such patients or the State’s interest in protecting the same.
It is not necessary to deny a right of self-determination to a patient in order to
recognize the interest of doctors, hospitals, and medical personnel in attendance
on the patient.
103. Id. at 163.
104. See id. This is known as the doctrine of informed consent.
105. See supra note 35.
state interest has been identified as protecting the rights of innocent third parties, currently
the concern appears to be only for minor children who may be adversely affected by a
parent’s refusal to undergo a blood transfusion or medical treatment.
107. See id. (court upheld a mother’s right to refuse a blood transfusion because it knew
her children would receive adequate care upon her death).
108. Saikewicz, 370 N.E.2d at 426.
that the rights of the patient outweigh the state’s interest in protecting minors becomes the most difficult hurdle to overcome. 109

One of the earliest cases to categorize a parent’s refusal to undergo a life-saving blood transfusion as abandonment of her children was In re President & Directors of Georgetown College. 110 While the decision authorizing a transfusion for a twenty-seven year old mother rested on grounds other than concern for the children, the single appellate judge who signed the order stated in dictum that as the state “will not allow a parent to abandon a child . . . it should not allow this most ultimate of voluntary abandonments.” 111 Thereafter, courts faced with similar factual situations, considered the prevention of abandonment as a justifiable goal. 112 However, since those cases have generally involved intact families, 113 courts have never held that the prevention of abandonment, alone, was sufficiently compelling to override the patient’s right of self determination. 114 In re Dubreuil presented the court, for the first time, the question of whether abandonment alone should prevent a single or separated custodial parent from refusing a blood transfusion.

Based upon the right to privacy and upon the freedom of religious expression found in the Constitution of the United States and in the Constitution of the State of Florida, and upon the common law right to

bodily integrity, individuals possess the right to refuse medical treatment. In Florida, the people chose to adopt an express privacy right, 115 and it cannot be outweighed unless the state has a compelling interest to protect. 116 On those facts, it is established that Patricia Dubreuil possessed the right to refuse a blood transfusion, and the question becomes whether the state’s interest was sufficiently compelling to deprive Patricia Dubreuil of this cherished fundamental right. 117

VI. DOES A COMPPELLING STATE INTEREST EXIST?

In In re Dubreuil, the court held that Mrs. Dubreuil’s refusal of a blood transfusion amounted to the abandonment of her minor children, and that this abandonment reached the level of a compelling state interest upon which her constitutional rights could be violated. 118 The court’s decision was based upon the state’s interest in protecting innocent third parties, using a theory of abandonment 119 to find that Mrs. Dubreuil’s children would be abandoned if she was not forced to submit to the blood transfusion. Thus, the court held that Mrs. Dubreuil’s children needed the protection of the state. 120 The theory that a parent who exercises his or her right to refuse medical treatment is actually abandoning his or her child was first considered in 1964, in In re President & Directors of Georgetown College. 121

109. Ramsey, 465 So. 2d at 668 (court upheld right of noncustodial father to refuse a blood transfusion because the child was well cared and provided for).
111. Id. at 1008. The order authorizing the blood transfusion represents the opinion of only one judge. Thereafter, a petition for a rehearing en banc was denied. Judge Miller, dissenting in the denial of rehearing, stated: “I object to the order which merely states the petition for a rehearing, without more, because it leaves in effect . . . as orders of this court which may be cited thereafter as precedents . . . for the summary administration of blood transfusions against the will of the patient.” In re Pres. & Dir. of Georgetown C., 331 F.2d 1010, 1013 (D.C. Cir.) (Miller, J., dissenting), reh’g denied, 337 U.S. 978 (1964). Nevertheless, this case is often cited by those who oppose the right of a parent to refuse life-saving medical treatment, even though the value of this case as precedent remains questionable.
112. See Public Health Trust v. Wons, 500 So. 2d 679, 686 (Fla. 3d Dist. Ct. App. 1987), aff’d, 541 So. 2d 96 (Fla. 1989); see also Munoz, 564 N.E.2d at 1024. Both of those cases held that a married woman with children had the right to refuse a needed, and possibly life-saving blood transfusion, as there was no evidence that the children involved would not receive adequate financial and emotional care.

116. See Shaktman v. State, 553 So. 2d 148, 150 (Fla. 1989). In In re Dubreuil, it was noted that “[t]he compelling state interest was adopted specifically because it placed on the government the heavy burden of proof.” 603 So. 2d at 542 (Warner, J., dissenting) (citing Winfield v. Division of Part.-Mut. Wagering, 477 So. 2d 544 (Fla. 1985)).
117. Id.
118. 603 So. 2d at 538. However, it has been noted that “[e]xcept cases have tended to reject arguments that such interests override a patient’s right to refuse treatment.” Medical Technology, supra note 74, at 1668.
119. See In re Pres. & Dir. of Georgetown C., 331 F.2d 1008.
120. In re Dubreuil, 603 So. 2d at 542.
121. 331 F.2d at 1000; see also supra note 109-110 and accompanying text. Circuit Judge Wright stated the following:

The state, as parens patriae, will not allow a parent to abandon a child, and so it should not allow this most ultimate of voluntary abandonments. The patient had a responsibility to the community to care for her infant. Thus the people had an interest in preserving the life of this mother.

Id. at 508. However, in the petition for rehearing of Georgetown, Chief Justice Burger, dissenting in the denial of rehearing, disputed Justice’s Wright’s reasoning by concluding that
that the rights of the patient outweigh the state’s interest in protecting minors becomes the most difficult hurdle to overcome.109

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In that case, a court order compelled an unwanted blood transfusion into a Jehovah's Witness who was the mother of a seven month old baby. In Georgetown, unlike in In re Dubreuil, the patient was not competent to make her own decision to refuse the blood transfusion, and the husband refused on behalf of his wife. Furthermore, the Georgetown decision was made by only one judge, and a rehearing was denied because the procedure was so flawed. Subsequent to Georgetown, courts have not concluded that exercising one's fundamental right to privacy and religious freedom can constitute the abandonment of one's minor children. In fact, this decision is unprecedented in Florida.

Florida case law, as well as case law from other jurisdictions, reveals that the In re Dubreuil court was incorrect in asserting that Mrs. Dubreuil's refusal of a blood transfusion created a state interest compelling enough to permit the state to override her constitutional right to refuse such treatment. Furthermore, the least intrusive means were not used to meet the state's expressed interest. Moreover, the holding in Dubreuil conflicts with Florida statutory law.

A. Florida Case Law Regarding the Right to Refuse Medical Treatment

In Florida, two recently decided cases considered whether a competent patient refusing a blood transfusion could be forced to submit to one based upon the existence of the patient's minor children. The first such decision

was in St. Mary's Hospital v. Ramsey. In Ramsey, the Fourth District Court of Appeal considered whether a competent adult, who also was the father of a minor child, could properly refuse life-saving medical treatment. The patient, like Patricia Dubreuil, was a Jehovah's Witness, and as such refused to consent to a blood transfusion. The court considered whether this refusal of treatment would result in the abandonment of the patient's minor child, thus requiring the state to protect the child by compelling the father to receive a blood transfusion. The court recognized that should the father die, the minor child would be deprived of fifty dollars per week in child support which the patient was required to pay. The court stated it could not describe Ramsey's refusal of the blood transfusion as abandonment of his child. The court stated that "the patient's wishes in this case are rendered even more compelling because of the presence of deeply held religious convictions." Thus, the Fourth District Court of Appeal held that the competent father of a minor child had a constitutional right to refuse medical treatment, based upon privacy and freedom of religious expression, that could not be outweighed by the existence of a minor child requiring support. In Ramsey, the Fourth District Court of Appeal was unwilling to intrude into one's private decisions regarding medical treatment. Yet, in In re Dubreuil, this same court disregards its unwillingness to override a competent adult's right to privacy and religious freedom. To account for the inconsistency, the In re Dubreuil court attempts to distinguish itself from Ramsey.

128. 465 So. 2d 666 (Fla. 4th Dist. Ct. App. 1985). The patient in this case was twenty seven years old and suffered from kidney disease requiring regular renal dialysis treatments. Id. at 667.
129. Id. The court stated that "we have hitherto held that an adult patient has a constitutional right of privacy, a freedom to choose and a right of self-determination." (citing Sitz v. Perlmuter, 362 So. 2d 160 (4th Dist. Ct. App. 1978), aff'd, 379 So. 2d 359 (Fla. 1980)).
130. Ramsey, 465 So. 2d at 668. The court noted that "[h]is particular patient is a Jehovah's Witness and his deeply held faith teaches that ingestion of whole blood will deny him both resurrection and eternal salvation." Id.
131. Id. at 667. The child lived with Ramsey's former wife in another state, and it was determined that the child's mother and her family would help support the child. Id. at 668.
132. Id.
133. Ramsey, 465 So. 2d at 668.
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The factual distinction is that Patricia Dubreuil's children lived with her, while the father in Ramsey did not have physical custody of his child. However, this distinction is not sufficient enough to override her fundamental constitutional rights. The fact that Ramsey's minor child did not live with him was not the only factor the court considered when making its decision. The court also weighed the fact that the mother and both families would help support the child. Thus, the Dubreuil court should likewise have considered whether other means of support were available, before taking the extreme step of overriding Mrs. Dubreuil's fundamental rights of privacy and freedom of religious expression.

It is difficult to understand how the trial court could state that no evidence was available at the time of the emergency decision, especially when the children's natural father was present at the hospital. Also, Mrs. Dubreuil's mother remained at her bedside and was supportive of her daughter's decision. However, the trial court did not consider these facts when it made its ruling. Then, subsequent to the initial ruling, the trial court in In re Dubreuil refused to hear evidence regarding the supervision of the children, when Patricia Dubreuil submitted evidence of a plan for their care and requested a rehearing. Consequently, the circuit court in In re Dubreuil made its decision without considering the evidence, while the trial court in Ramsey heard evidence of care for the child. Rather than admitting the proffered evidence that the children would be cared for, the Dubreuil court simply made the assumption that there was "no showing that the children...would be protected." After analyzing the Fourth District Court of Appeal's decision in Ramsey, it is baffling that the same court, when deciding In re Dubreuil, found that a mother's refusal of a blood transfusion, based on the same religious belief, did amount to an abandonment of her minor children.

Subsequent to Ramsey, in 1989, the Florida Supreme Court, in Public Health Trust v. Wons, considered the same conflict that the Fourth District Court of Appeal had considered in Ramsey and was to consider in In re Dubreuil. Mrs. Wons, a married woman with two minor children, was admitted to the hospital with dysfunctional uterine bleeding. While the doctors determined that a blood transfusion was necessary to save her life, neither Mrs. nor Mr. Wons would sign the consent form. The hospital then received authorization from the trial court which stated judicial intervention was justified because of the young age of Mrs. Wons' children. Thereafter, the Florida Third District Court of Appeal reversed the trial court decision. The Wons case reached the Florida Supreme Court on the certified question: "WHETHER A COMPETENT ADULT HAS A LAWFUL RIGHT TO REFUSE A BLOOD TRANSUSSION WITHOUT WHICH SHE MAY WELL DIE." The supreme court answered the question in the affirmative and refused to override the mother's constitutional right to privacy and freedom of religious expression by forcing her to submit to a blood transfusion. In doing so, the supreme court noted that the Third District Court of Appeal's decision was "highly articulate" and quoted it as stating "[s]urely nothing, in the last analysis, is more private or more sacred than one's religion or view of life, and here the courts, quite properly, have given great deference to the individual's right to make decisions vitally affecting his private life according to his own conscience."

A key distinguishing factor between In re Dubreuil and Wons is that Mrs. Dubreuil's estranged husband did not support her decision to refuse the blood transfusion. This disparity is not sufficient to support the court's holding that Mrs. Dubreuil's rights could be thwarted. The Dubreuil court stated that spousal consent is used to determine "whether alternative care for

136. Appellant's Brief, supra note 8, at 3.
137. Ramsey, 465 So. 2d at 668.
138. This analysis is necessary, because when a compelling state interest is found, the least intrusive means must be used to achieve the goal. See Shakhtman v. State, 553 So. 2d 148, 151-52 (Fla. 1989).
139. See In re Dubreuil, 603 So. 2d at 545 (Warner, J., dissenting).
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the surviving children is available, in weighing the overriding interest of the state, and in determining whether or not the [patient's] decision to refuse the transfusion constitutes an abandonment."151 The court then contradicted itself by noting that "a spouse's concurrence in such a decision is irrelevant to the exercise of a first amendment or privacy right . . . ."152 In In re Dubreuil, the court did not show any respect for an individual who was in threat of being deprived of those rights. Therefore, while the court stated that Mrs. Dubreuil was free to refuse medical treatment without her husband's consent, it ultimately held that it can override this right based upon her husband's lack of consent.153 The Dubreuil court placed great emphasis on the lack of spousal support when deciding In re Dubreuil as compared to the analysis applied in Wons.154 The court did this to justify why it did not follow Wons, the controlling case law on this issue, when it decided In re Dubreuil.

The Dubreuil court should have given as much deference to Mrs. Dubreuil's constitutional rights as the court accorded the mother in Wons. While the protection of the children is a valid state interest in this case, as in Wons and Ramsey, the court is actually questioning the 'quality of life' that the minor children will experience without a parent, and not the lives of the children themselves.155

B. Case Law in Other Jurisdictions

Other states have also refused to reach the holding of the Dubreuil court, and have held that the existence of minor children does not create a state interest compelling enough to override a competent adult's right to refuse medical treatment.156 For example, in New York the court went even further in extending the right to forgo medical treatment, in Fosmire v. Nicoleau.157 In that case, the hospital, finding no statute or case law which limited the rights of patients with minor children, turned to the law of domestic relations and sought to "equate a parent who declines essential medical care with a parent who intentionally abandons a child."158 However, the Court of Appeals rejected this characterization, and instead found that while New York will not permit a parent to abandon a child, it has never gone so far as to intervene in every parental decision which may jeopardize the unity of the family.159 On the contrary, while the state may prohibit the public from engaging in particular hazardous activities or require that special safety precautions be taken, it does not prohibit parents from participating in risky activities which may leave their children orphans or require they take special safety precautions simply because they have minor children.160 Thus, the court found no indication that the state should take a more intrusive role when the danger to the parent was a result of a personal choice in medical care.161 Instead, the court ruled that the existence of minor children did not make the state's interest superior to that of the patient's right to self-determination, and upheld the right of competent adults to refuse medical care without regard to their parental status.162

Also counter to In re Dubreuil is Norwood Hospital v. Munoz,163 in which Massachusetts adopted the Wons approach. Initially, the Family and Probate Court in Munoz authorized a blood transfusion for Mrs. Munoz, a Jehovah's Witness who was married and had a young son.164 The lower court found that this intervention was warranted due to several reasons. Mrs. Munoz was the primary caretaker of the child; Mr. Munoz worked long hours; the grandfather, who was willing to care for the child, was of advanced age and spoke limited English; and the aunt and uncle, who were

151. In re Dubreuil, 603 So. 2d at 542.
152. Id.
153. Id.
154. Cf. Wons, 541 So. 2d at 96.
155. In re Wons, 650 So. 2d at 544 (Warner, J., dissenting).
156. Fosmire v. Nicoleau, 551 N.E.2d 77 (N.Y. 1990) (holding that the existence of a competent patient's minor child was not sufficient to outweigh her right to refuse a blood transfusion); Norwood Hosp. v. Munoz, 564 N.E.2d 1017 (Mass. 1991) (stating that the court is in agreement with the Wons decision in Florida and holding that a competent patient who refused a blood transfusion was not abandoning her minor child); In re Osborne, 294 A.2d 372 (D.C. 1972) (holding that the existence of two minor children could not prevent a competent father from exercising his right to refuse a blood transfusion); see Mercy Hosp. v. Jackson, 489 A.2d 1130 (Md. Ct. Spec. App. 1985) (holding that a competent pregnant woman had the right to refuse a blood transfusion when no threat to the fetus existed); In re Farrell, 529 A.2d 404 (N.J. 1987) (holding that a competent terminally ill mother of teenage

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the surviving children is available, in weighing the overriding interest of the state, and in determining whether or not the [patient's] decision to refuse the transfusion constitutes an abandonment.\textsuperscript{131} The court then contradicted itself by noting that "a spouse's concurrence in such a decision is irrelevant to the exercise of a first amendment or privacy right . . . ."\textsuperscript{132} In In re Dubreuil, the court did not show any respect for an individual who was in threat of being deprived of those rights. Therefore, while the court stated that Mrs. Dubreuil was free to refuse medical treatment without her husband's consent, it ultimately held that it can override this right based upon her husband's lack of consent.\textsuperscript{133} The Dubreuil court placed great emphasis on the lack of spousal support when deciding In re Dubreuil as compared to the analysis applied in Wons.\textsuperscript{154} The court did this to justify why it did not follow Wons, the controlling case law on this issue, when it decided In re Dubreuil.

The Dubreuil court should have given as much deference to Mrs. Dubreuil's constitutional rights as the court accorded the mother in Wons. While the protection of the children is a valid state interest in this case, as in Wons and Ramsey, the court is actually questioning the "quality of life" that the minor children will experience without a parent, and not the lives of the children themselves.\textsuperscript{52}

B. Case Law in Other Jurisdictions

Other states have also refused to reach the holding of the Dubreuil court, and have held that the existence of minor children does not create a state interest compelling enough to override a competent adult's right to refuse medical treatment.\textsuperscript{156} For example, in New York the court was even further in extending the right to forego medical treatment, in Fosmire v. Nicolleau.\textsuperscript{157} In that case, the hospital, finding no statute or case law which limited the rights of patients with minor children, turned to the law of domestic relations and sought to "equtate a parent who declines essential medical care with a parent who intentionally abandons a child."\textsuperscript{158} However, the Court of Appeals rejected this characterization, and instead found that while New York will not permit a parent to abandon a child, it has never gone so far as to intervene in every parental decision which may jeopardize the unity of the family.\textsuperscript{159} On the contrary, while the state may prohibit the public from engaging in particular hazardous activities or require that special safety precautions be taken, it does not prohibit parents from participating in risky activities which may leave their children orphans or require they take special safety precautions simply because they have minor children.\textsuperscript{160}

Thus, the court found no indication that the state should take a more intrusive role when the danger to the parent was a result of a personal choice in medical care.\textsuperscript{161} Instead, the court ruled that the existence of minor children did not make the state's interest superior to that of the patient's right to self-determination, and upheld the right of competent adults to refuse medical care without regard to their parental status.\textsuperscript{162}

Also counter to In re Dubreuil is Norwood Hospital v. Munoz,\textsuperscript{163} in which Massachusetts adopted the Wons approach. Initially, the Family and Probate Court in Munoz authorized a blood transfusion for Mrs. Munoz, a Jehovah's Witness who was married and had a young son.\textsuperscript{164} The lower court found that this intervention was warranted due to several reasons: Mrs. Munoz was the primary caretaker of the child; Mr. Munoz worked long hours; the grandfather, who was willing to care for the child, was of advanced age and spoke limited English; and the aunt and uncle, who were

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\textsuperscript{151} In re Dubreuil, 603 So. 2d at 542.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\textsuperscript{154} Cf. Wons, 541 So. 2d at 96.
\textsuperscript{155} In re Dubreuil, 603 So. 2d at 544 (Warner, J., dissenting).
\textsuperscript{156} Fosmire v. Nicolleau, 551 N.E.2d 77 (N.Y. 1990) (holding that the existence of a competent patient's minor child was not sufficient to outweigh her right to refuse a blood transfusion); Norwood Hosp. v. Munoz, 564 N.E.2d 1017 (Mass. 1991) (stating that the court in agreement with the Wons decision in Florida and holding that a competent patient who refused a blood transfusion was not abandoning her minor child); In re Osborne, 294 A.2d 372 (D.C. 1972) (holding that the existence of two minor children could not prevent a competent father from exercising his right to refuse a blood transfusion); see Mercy Hosp. v. Jackson, 489 A.2d 1130 (Md. Ct. Spec. App. 1985) (holding that a competent pregnant woman had the right to refuse a blood transfusion when no threat to the fetus existed); In re Farrell, 529 A.2d 404 (N.J. 1987) (holding that a competent terminally ill mother of teenage
also willing to provide care, had not submitted a concrete plan for doing so. On appeal, this decision was reversed, as the higher court found that not only were the family members amenable to help with the child, but that no evidence had been presented to demonstrate that Mr. Munoz was unwilling to care for his son. The court held that "in the absence of any compelling evidence that the child will be abandoned, the state's interest in protecting the well-being of children does not outweigh the right of a fully competent adult to refuse medical treatment."

After considering Florida case law, as well as decisions in other jurisdictions, it is apparent that the Fourth District Court of Appeal took a step backward with the decision in In re Dubreuil.

C. Inconsistency With Florida Adoption and Dependency Statutes

Another factor which signifies that the abandonment theory is not compelling enough to outweigh fundamental constitutional rights is that the In re Dubreuil holding conflicts with Florida adoption and dependency statutes. The Florida adoption statute permits a parent to voluntarily relinquish parental rights at his or her own option. Children are thus not protected by the state from this type of abandonment, and parents are free to "abandon" their children in this matter. The act of relinquishing one's child is more of a voluntary abandonment than the act of refusing medical treatment forbidden by one's religion. If the former is permitted by state law, it is illogical that the latter should be prohibited.

Also, the state of Florida has no statute specifically stating that parents of minor children may not refuse medical treatment. The state legislature did not choose to put such a burden on parents. Since the Florida legislature saw no need to enact a law requiring this extreme infringement

165. Id. at 1019.
166. Id. at 1024.
167. Id.
168. See ALAN MUSEL, THE RIGHT TO DIE § 4.15, at 64-65 (Supp. No. 1, 1992) ("The New York Court of Appeal's opinion in . . . [Foamire v. Nicoleau,] along with some other recent cases, may signal a change in judicial attitude.") (citation omitted).
169. In re Dubreuil, 603 So. 2d at 545 (Werner J., dissenting).
170. Fla. STAT. § 39.464 (1) (1991). "Abandoned" means a situation in which the parent . . . while being offered, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient to enjoin a wilful rejection of parental obligations. See Fla. STAT. § 39.01 (1) (1992) (regarding neglect).
171. By law, a child is considered neglected when the parent deprives a child of, or allows a child to be deprived of, necessary food, clothing, housing or medical treatment or allows a child to live in an environment which causes the child's physical, mental, or emotional health to become significantly impaired. See Fla. STAT. § 39.01 (1) (37) (Supp. 1992). This same statute, however, excludes from the definition of neglect a parent . . . who acts because of his or her legitimate religious beliefs. J.Y., 516 So. 2d at 1134.

172. It is unjust that Mrs. Dubreuil, a competent adult, when exercising her constitutional right to refuse a blood transfusion, is considered by the court to be abandoning her child, when the state legislature did not consider this state interest sufficiently compelling to be codified.

Aside from the fact that the state statutes do not prohibit a competent adult from refusing lifesaving treatment based upon one's status as a parent, this type of abandonment is not expressed in the definition of an abandoned child in the dependency statutes of this state. Furthermore, the First District Court of Appeal, in I.V. v. State, held that parents who did not provide their child with essential medical treatment, due to their religious beliefs, did not abandon, abuse or neglect their child, based upon the statutory definitions of abandonment, abuse and neglect. Specifically, the statute regarding neglect states that when the parent's refusal is motivated by their religious beliefs, the child is not regarded as either neglected. The court construed the "motivated by religious beliefs" language to be equally applicable to the abuse statute. Moreover, the court explained that the three statutes, taken together, must be strictly construed before a finding of abandonment, abuse, or neglect could be made, and by so construing the statutes' definitions, neither abandonment,
also willing to provide care, had not submitted a concrete plan for doing so. On appeal, this decision was reversed, as the higher court found that not only were the family members amenable to help with the child, but that no evidence had been presented to demonstrate that Mr. Munoz was unwilling to care for his son. The court held that "in the absence of any compelling evidence that the child will be abandoned, the state's interest in protecting the well-being of children does not outweigh the right of a fully competent adult to refuse medical treatment." After considering Florida case law, as well as decisions in other jurisdictions, it is apparent that the Fourth District Court of Appeal took a step backward with the decision in In re Dubreuil.

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Also, the state of Florida has no statute specifically stating that parents of minor children may not refuse medical treatment. The state legislature did not choose to put such a burden on parents. Since the Florida legislature saw no need to enact a law requiring this extreme infringement on parents' rights, a court should not impose this burden. It is unjust that Mrs. Dubreuil, a competent adult, when exercising her constitutional rights to refuse a blood transfusion, is considered by the court to be abandoning her child, when the state legislature did not consider this state interest sufficiently compelling to be codified.

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172. Id.
173. See Fosmire, 551 N.E.2d at 83 ("the hospital can point to no law or regulation which requires a parent to submit to medical treatment to preserve the patient's life for the benefit of a minor child or other dependent"); see also In re Dubreuil, 603 So. 2d at 545 (noting that Florida "does not prefer parental ties over all other rights and conflicting systems") (Warner, J., dissenting).
174. FLA. STAT. § 39.01(1) (1991); see In re Dubreuil, 603 So. 2d at 545 (Warner, J., dissenting). See infra note 177, for a definition of "abandoned."
175. 516 So. 2d 1133 (Fla. 1st Dist. Ct. App. 1987).
176. 913 So. 2d at 1134.
177. Id.; see FLA. STAT. § 39.01(1) (1991) * "Abandoned" means a situation in which the parent... while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations.  See FLA. STAT. § 39.01 (37) (Supp. 1992) (regarding neglect).
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VII. IMPROPER BURDEN OF PROOF APPLIED

In addition to the fact that a compelling state interest did not exist, the In re Dubreuil court made a fatal flaw regarding the application of the burden of proof. When a court is faced with balancing an individual's fundamental rights against a state interest, the burden of proof rests on the state, since it is the party asserting that the state's interest is sufficiently compelling. The Florida Supreme Court held in Wons that this stringent standard applies to cases involving the right to refuse medical treatment.

According to the Florida Supreme Court in Wons, "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." This statement makes it crystal clear that in Dubreuil, Hollywood Memorial Hospital had the burden of showing that Mrs. Dubreuil's children would be abandoned. Yet rather than requiring the hospital to affirmatively demonstrate that the children would be abandoned, the court shifted the burden by focusing on the omission of evidence by the Dubreuil family that the children would be protected. The court simply concluded "that since there was no showing that the children . . . would be protected in the event of their parent's death" it was appropriate to presume that the children would be abandoned. However, the court was incorrect in making this presumption of abandonment.

Several reasons exist to show that the In re Dubreuil court made an incorrect assumption. First, similar to the facts of Wons, Mrs. Dubreuil's supportive mother was present, as well as a church which supported her decision. Second, Mrs. Dubreuil's husband, the children's natural father, was present at the hospital. Thus, it could be presumed that the father could care for his children in the event of the death of their mother. However, the court justified its holding by stating that "nothing at all is known about the father or his ability to care for the children." This conclusion ignores the fact that, as the natural parent of the children, the father is responsible for their care should the mother die. Thus, the existence of the father demonstrates that the court did have facts before it at the time of the emergency hearing. Therefore, it is logical that the court should presume the children would not be abandoned. In fact, the holding in Wons mandates that this presumption be made. Hollywood Memorial Hospital was required to show that the children most certainly would be abandoned upon Patricia's death. Thus, the court erred when it stated that "we can discern no reason to conclude that the

180. Id. at 1135.
181. In re Dubreuil, 603 So. 2d at 545 (Warner, J. dissenting). Justice Warner notes that since the parent withholding treatment for a child is not considered to abandon that child, "how then can the religiously motivated refusal of medical treatment by the parent for herself be considered 'abandonment' of her children sufficient for the state to override her competent decision?"
182. MEBBEL, supra note 97, § 4.12, at 97.
183. Public Health Trust v. Wons, 541 So. 2d 96, 98 (Fla. 1989).
184. Id.
185. In re Dubreuil, 603 So. 2d at 540 (emphasis added).
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182. MERED, supra note 97, § 4.12, at 97.
183. Public Health Trust v. Wons, 541 So. 2d 96, 98 (Fla. 1989).
184. Id.
185. In re Dubreuil, 603 So. 2d at 540 (emphasis added).
hospital has not met its burden.\textsuperscript{195}

The \textit{In re Dubreuil} court simply presumed that the children would be abandoned if the mother did not receive a blood transfusion.\textsuperscript{196} In doing so, it appears the court seized upon the fact that Patricia was separated from her husband at the time of her admittance to the hospital.\textsuperscript{197} However, this sole fact should not be considered sufficient to find that Memorial Hospital met its high burden of proof.\textsuperscript{198} This is in direct contradiction to precedent set by the supreme court in \textit{Wons}.\textsuperscript{199} The \textit{In re Dubreuil} court erred in not holding the hospital to this high burden of proof.\textsuperscript{200} The court's holding has eroded the express right of privacy and religious expression afforded the residents of the state of Florida.\textsuperscript{201}

\textsuperscript{195} Id. at 541. The court's reasoning was that the hospital has its own interests in mind, as opposed to the state's interests. Also, the court noted that in this instance the hospital, and not the state, is a party to the action and not the state, and the Wons court did not address that dilemma. Furthermore, the court stated "[w]e do not interpret Wons as placing an insurmountable or unreasonable burden of proof in the way of the court's responsibility to exercise its discretion . . ." Id.

\textsuperscript{196} Id. In response to this presumption, Judge Warner stated in his dissent that he "think[ed] the creation of the presumption of abandonment where a separated parent or minor children wishes to forego lifesaving treatment creates a bright line test rejected in Wons." Id. at 547 (Warner, J., dissenting).

\textsuperscript{197} In re Dubreuil, 603 So. 2d at 540. The court stated the following:

We additionally note that the trial court's order also mentions, in distinguishing Wons, that in this case the husband was not a member of Jehovah's Witnesses and did not support his wife's decision to refuse a blood transfusion. In so commenting the trial court was cognizant that both the appellate court and the supreme court in Wons has considered relevant the evidence of the husband's support for the wife's decision.

\textit{Id.} Thus, it appears that the \textit{In re Dubreuil} court rationalizes its divergent decision from Wons by seizing upon the factual difference that, unlike the husband in Wons, Mrs. Dubreuil's husband was not a Jehovah's Witness and did not support her decision. See Appellant's Brief, supra note 8, at 3.

\textsuperscript{198} In re Dubreuil, 603 So. 2d at 545-46 (Warner, J., dissenting).

\textsuperscript{199} 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.

\textit{Id.}

\textsuperscript{200} In re Dubreuil, 603 So. 2d at 545-46 (Warner, J., dissenting).

\textsuperscript{201} Id. at 547. The adherence to such a standard issues that the right of privacy, and in this case religion, remain fundamental. It is my belief that the majority's analysis does not adhere to this standard and thus lessens the vitality of the Right of Privacy clause . . ." Id.

\textsuperscript{202} See Founniere v. Nicolette, 551 N.E.2d 77 (N.Y. 1990). As the New York Court of Appeals stated in regard to the state's interest in compelling a competent adult to receive lifesaving medical treatment to protect that person's minor children, "a competent adult could never refuse lifesaving treatment if he or she were a parent of a minor child." Id. at 83.\textsuperscript{203} See also In re Dubreuil, 603 So. 2d at 544 (Warner, J., dissenting) ("[I]n such issues as refusing medical treatment, courts should exercise restraint in the light of the absolute nature of judicial power, and that court must 'reconcile ourselves to the idea that there are myriads of problems and troubles which judges are powerless to solve . . ." (quoting \textit{In re Pers. & Dir. of Georgetown C.}, 331 F.2d 1010, 1017-18 (D.C. Cir.), cert. denied, 337 U.S. 978 (1964)).

\textsuperscript{203} Founniere, 551 N.E.2d at 83 (noting that the state's interest in preserving the life of the patient for the benefit of a minor child is the equivalent of holding that a competent parent of a minor child could never exercise his or her right to refuse medical treatment).

\textsuperscript{204} Id.
hospital has not met its burden.\footnote{195. Id. at 541. The court's reasoning was that the hospital has its own interests in mind, as opposed to the state's interests. Also, the court noted that in this instance the hospital, and not the state, is a party to the action and not the state, and the Wons court did not address that dilemma. Furthermore, the court stated "[w]e do not interpret Wons as placing an insurmountable or unreasonable burden of proof in the way of the court's responsibility to exercise its discretion . . . ." Id.}

The \textit{In re Dubreuil} court simply presumed that the children would be abandoned if the mother did not receive a blood transfusion.\footnote{196. Id. In response to this presumption, Judge Warner stated in his dissent that he 'think[ed] the creation of the presumption of abandonment where a separated parent of minor children wishes to forego lifesaving treatment creates a bright line test rejected in Wons.' Id. at 547 (Warner, J., dissenting).} In doing so, it appears the court seized upon the fact that Patricia was separated from her husband at the time of her admittance to the hospital.\footnote{197. \textit{In re Dubreuil}, 603 So. 2d at 540. The court stated the following: 'We additionally note that the trial court's order also mentions, in distinguishing Wons, that in this case the husband was not a member of Jehovah's Witnesses and did not support his wife's decision to refuse a blood transfusion. It is commenting the trial court was cognizant that both the appellate court and the supreme court in \textit{Wons} has considered relevant the evidence of the husband's support for the wife's decision.' Id. Thus, it appears that the \textit{In re Dubreuil} court rationalizes its divergent decision from \textit{Wons} by seizing upon the factual difference that, unlike the husband in \textit{Wons}, Mrs. Bamonte and Bierman, \textit{In re Dubreuil: Is an Individual's Right to Refuse a Blood Transf}.

\section*{VIII. Consequences of Decision}

Compelling an unwanted blood transfusion into Patricia Dubreuil's body when, while competent, she adamantly refused, creates a precedent that will permit unwanted results. This holding suggests that any parent of a minor child, and particularly a custodial parent, is in jeopardy of being deprived of his or her constitutional rights if the right to refuse medical treatment is exercised. Under this reasoning, the court could compel a parent to undergo unwanted cancer treatments, or surgeries, or any procedure that could prevent him or her from dying.\footnote{202. See Fonzi v. Nicoleas, 551 N.E.2d 77 (N.Y. 1990). As the New York Court of Appeals stated in regard to the state's interest in compelling a competent adult to receive lifesaving medical treatment to protect that person's minor children, "a competent adult could never refuse lifesaving treatment if he or she were a parent of a minor child." Id. at 83.} This is irrational because even medical science does not permit doctors to state with assurance that the refusal of a lifesaving medical treatment will cause death. Thus, it is inappropriate for a court to presume itself capable of making such a determination.\footnote{203. See \textit{In re Dubreuil}, 603 So. 2d at 544 (Warner, J., dissenting) ("[I]n such issues as refusing medical treatment, courts should exercise restraint in the light of the absolute nature of judicial power, and that court must 'reconcile ourselves to the idea that there are myriads of problems and troubles which judges are powerless to solve ... .'" (quoting \textit{In re Pres. & Dr. of Georgetown C.}, 331 F.2d 1010, 1017-18 (D.C. Cir.), cert. denied, 337 U.S. 978 (1966)).}

If the \textit{In re Dubreuil} decision is allowed to stand, in the future, when a custodial parent wishes to assert his or her right to refuse a blood transfusion, he or she will also have to submit a care plan for his or her children in the event of death. This care plan will prove significant when the matter is presented to the trial court, for without it, the patient's right of self-determination will not be honored. Instead, he or she will be denied the right to decide for himself or herself the type of medical treatment he or she is willing to accept. Moreover, the court will assume it is justified in interfering in the personal choices an individual makes concerning his or her life.

The essence of the holding in \textit{In re Dubreuil} implies that a parent of a minor child must never die.\footnote{204. Fonzi, 551 N.E.2d at 83 (noting that the state's interest in preserving the life of the patient for the benefit of a minor child is the equivalent of holding that a competent parent of a minor child could never exercise this right to refuse medical treatment).} This decision has far surpassed the state's goal of protecting innocent third parties from harm.\footnote{205. See \textit{In re Dubreuil}, 603 So. 2d at 547 (Warner, J., dissenting) ("The adherence to such a standard insures that the right of privacy, and in this case religion, remain fundamental. It is my belief that the majority's analysis does not adhere to this stringent standard of review and thus leaves the vitality of the Right of

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is a tragic attack upon our fundamental right to privacy and freedom of religious expression. As the Florida Supreme Court stated, "It is difficult to overstate this right because it is, without exaggeration, the very bedrock on which this country was founded." 206

IX. CONCLUSION

The Fourth District Court of Appeal was incorrect on several grounds when it held that Patricia's refusal of a blood transfusion amounted to the abandonment of her minor children. First, this possibility of abandonment is not an interest compelling enough to override Mrs. Dubreuil's constitutional rights. Second, prior Florida court decisions have not supported this outcome. 207 Nor have decisions in other states supported this outcome. 208 Third, the statutes of this state do not support this holding. 209 Fourth, less intrusive means are available to the state to prevent abandonment. 201 Fifth, as a last resort, state foster care exists to protect the children. 211 Thus, the children would not have been abandoned if the mother died.

Finally, the In re Dubreuil decision is flawed because the court did not require the heavy burden of proof dictated when depriving an individual of his or her most sacred fundamental rights, granted by the federal and state constitutions. 212 The holding in In re Dubreuil represents an unfortunate departure from recent decisions regarding a competent adult's right to refuse medical treatment, and greatly limits our freedom to exercise our fundamental constitutional rights that we so greatly covet. This is especially true for custodial single, separated or divorced parents of minor children. Lastly, this holding creates an unfavorable departure from the intent of both the United States and the Florida Constitutions. As the United States Supreme Court has asserted, "[t]he makers of our [C]onstitution sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations." 213 Unfortunately, no such protection was accorded to Patricia Dubreuil.

Jennifer L. Bamonte
Cathy Bierman

206. Public Health Trust v. Wons, 541 So. 2d 96, 98 (Fla. 1989) (quoting Public Health Trust v. Wons, 500 So. 2d 679 (Fla. 3d Dist. Ct. App. 1987)). Another consequence, exploration of which is beyond the scope of this note, is that the holding in In re Dubreuil fails to grant the same respect to the rights of a separated or single parent as it does to a parent in a viable marital relationship. This seems to violate the Equal Protection clause of both the Florida Constitution and the United States Constitution. Fla. Const. art. I, § 2, U.S. Const. amend. XIV.

208. See cases cited, supra note 156.
209. See supra notes 172-181 and accompanying text.
210. In re Dubreuil, 603 So. 2d at 545 (Warner, J., dissenting).
212. In re Dubreuil, 603 So. 2d at 546 (Warner, J. dissenting).
213. Id. at 544 (quoting Olmstead v. United States, 277 U.S. 438, 478 (1928)).
is a tragic attack upon our fundamental right to privacy and freedom of religious expression. As the Florida Supreme Court stated, "It is difficult to overstate this right because it is, without exaggeration, the very bedrock on which this country was founded." 206

IX. CONCLUSION

The Fourth District Court of Appeal was incorrect on several grounds when it held that Patricia's refusal of a blood transfusion amounted to the abandonment of her minor children. First, this possibility of abandonment is not an interest compelling enough to override Mrs. Dubreuil's constitutional rights. Second, prior Florida court decisions have not supported this outcome. 207 Nor have decisions in other states supported this outcome. 208 Third, the statutes of this state do not support this holding. 209 Fourth, less intrusive means are available to the state to prevent abandonment. 210 Fifth, as a last resort, state foster care exists to protect the children. 211 Thus, the children would not have been abandoned if the mother died.

Finally, the In re Dubreuil decision is flawed because the court did not require the heavy burden of proof dictated when depriving an individual of his or her most sacred fundamental rights, granted by the federal and state constitutions. 212 The holding in In re Dubreuil represents an unfortunate departure from recent decisions regarding a competent adult's right to refuse medical treatment, and greatly limits our freedom to exercise our fundamental constitutional rights that we so greatly covet. This is especially true

206. Public Health Trust v. Wons, 541 So. 2d 96, 98 (Fla. 1989) (quoting Public Health Trust v. Wons, 500 So. 2d 679 (Fla. 3d Dist. Ct. App. 1987)). Another consequence, exploration of which is beyond the scope of this note, is that the holding in In re Dubreuil fails to grant the same respect to the rights of a separated or single parent as it does to a parent in a viable marital relationship. This seems to violate the Equal Protection clause of both the Florida Constitution and the United States Constitution. FLA. CONST. art. I, § 2; U.S. CONST. amend. XIV.

207. See St. Mary's Hosp. v. Ramsey, 465 So. 2d 666 (Fla. 4th Dist. Ct. App. 1985); Wons, 541 So. 2d at 96.

208. See cases cited, supra note 156.

209. See supra notes 172-181 and accompanying text.

210. In re Dubreuil, 603 So. 2d at 545 (Warner, J., dissenting).


212. In re Dubreuil, 603 So. 2d at 546 (Warner, J., dissenting).