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In Determining the Criminal Liability of a Parent, Neither the Maturity of an Unemancipated Minor nor the Minor's Right to Privacy Are Affirmative Defenses to Discharge Parental Duties to Their Minor Children in Life Threatening Situations: *Commonwealth v. Nixon*

Douglas C. Hart

In Determining the Criminal Liability of a Parent, Neither the Maturity of an Unemancipated Minor nor the Minor's Right to Privacy are Affirmative Defenses to Discharge Parental Duties to their Minor Children in Life Threatening Situations: *Commonwealth v. Nixon*

CRIMINAL LAW — CONSTITUTIONAL LAW — MATURE MINOR DOCTRINE — THE PARENTAL DUTY OF CARE — The Pennsylvania Supreme Court held that the mature minor doctrine will not be employed in the Commonwealth as an affirmative criminal defense discharging parents from the duty to provide care to a minor in their custody.

Commonwealth v. Nixon, 761 A.2d 1151 (Pa. 2000)

In June 1997, Shannon Nixon ("Shannon") became ill, fell into a comatose state, and ultimately died from complications related to the onset of diabetes acidosis.[1] At the time of her death, Shannon was sixteen years old.[2] Shannon's parents, Dennis E. and Lorie A. Nixon ("Nixons"), were aware of their daughter's deteriorating condition prior to her death.[3] Throughout their child's illness, the Nixons had Shannon "anointed"[4] at their place of worship and prayed for her recovery, but did not seek medical attention for their daughter's illness.[5]

Dennis and Lorie Nixon were subsequently charged with involuntary manslaughter and endangering the welfare of a child.[6]

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1. Commonwealth v. Nixon, 718 A.2d 312 (Pa. 1998) ("*Nixon I*"). Diabetes acidosis is defined as the "excessive acidity of body fluids due to an accumulation of ketone bodies occurring in advanced stages of uncontrolled diabetes mellitus." TABER'S CYCLOPEDIC MEDICAL DICTIONARY 26 (16th ed. 1985).

2. Commonwealth v. Nixon, 761 A.2d 1152 (Pa. 2000) ("*Nixon II*").

3. *Id.* at 1152.

4. Anointing of the sick is defined as the "sacrament of anointing a critically ill person, praying for recovery, and asking for the absolution of sin." WEBSTER'S II NEW COLLEGE DICTIONARY 46-47 (1995).

5. *Nixon II*, 761 A.2d at 1152. The Nixons and their children were members of the Faith Tabernacle Church, a religion that addresses illness through spiritual treatment rather than by conventional medical treatment. *Id.*

6. *Id.* at 1152-53. The statute for involuntary manslaughter reads:

> General rule – A person is guilty of involuntary manslaughter when as a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, or the doing

The defendant parents argued that Shannon was mature enough to make her own decisions regarding her health care and religious beliefs, thus negating their parental duty to provide her with medical care.[7] The trial court held that the parental duty of providing medical care was not abrogated, and Dennis and Lorie Nixon were convicted of both offenses charged.[8]

On appeal to the Pennsylvania Superior Court, the Nixons again contended that their parental duty to provide medical treatment was discharged because: (1) Shannon should be categorized as a "mature minor,"[9] and as such, had an ability to refuse medical treatment; and (2) pursuant to her right of privacy guaranteed by the United States and Pennsylvania Constitutions, Shannon had a right to refuse medical treatment.[10] In addressing both of the appellants' issues together, the superior court held that neither Shannon's right to privacy nor her status as a mature minor discharged her parents' affirmative duty to override her decision when her life was in immediate danger.[11] Therefore, the Pennsylvania Superior Court affirmed the order and judgment of sentence of the court of common pleas.[12]

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of a lawful act in a reckless or grossly negligent manner, he causes the death of another person.

18 Pa.C.S. § 2504(a)(1998). Pennsylvania's statute regarding endangering the welfare of children states:

Offense defined – A parent, guardian, or other person supervising the welfare of a child under 18 years of age commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.

18 Pa.C.S. § 4304(a)(2000).

7. *Nixon I*, 718 A.2d at 313. Dennis and Lorie Nixon argued that Shannon had a right to refuse medical treatment pursuant to her constitutional right to privacy, which would eliminate the parents' duty to provide treatment. *Id.* The Nixons additionally asserted that Shannon's ability to refuse medical treatment as a mature minor abrogated the parental duty of care. *Id.*

8. *Id.* The Court of Common Pleas of Blair County held that the Nixons had a duty to Shannon, their minor child, to override her religious beliefs and obtain medical treatment when her condition became life threatening. *Id.*

9. *Id.* A minor is defined as "an infant or person who is under the age of legal competence . . . . In most states, a person is no longer a minor after reaching the age of 18 . . . ." BLACK'S LAW DICTIONARY 689 (6th ed. 1990). For a definition of the mature minor doctrine, *see infra* note 17.

10. *Nixon I*, 718 A.2d at 312. The Nixons raised other issues on appeal, including: (1) that their prosecution violated the notice requirements of due process where spiritual treatment is authorized by statute; (2) that the trial court erred in failing to deliver a mistake of fact charge to the jury; and (3) that the trial court improperly imposed an excessive sentence. *Id.* These arguments were dismissed by the Pennsylvania Superior Court and not raised at the subsequent appeal to the Pennsylvania Supreme Court. *Id.* at 315-16.

11. *Id.* at 313.

12. *Id.* at 312.

The Pennsylvania Supreme Court granted *allocatur*[13] to consider two issues: (1) whether a mature minor doctrine should be adopted in the Commonwealth as an affirmative defense to the parental duty to provide care for a minor; and (2) whether Shannon Nixon had a right to refuse medical treatment pursuant to her privacy rights under the United States and Pennsylvania Constitutions.[14] Justice Zappala, writing for the majority,[15] affirmed the orders of both the superior court and the court of common pleas, and upheld the convictions of involuntary manslaughter and endangering the welfare of a child against both Dennis and Lorie Nixon.[16]

Justice Zappala first confirmed that a mature minor doctrine[17] would not be adopted as a criminal defense within Pennsylvania.[18] Second, the majority found that Shannon Nixon's constitutional right to privacy did not relieve her parents from fulfilling their statutory duty to provide her with care.[19]

In analyzing the mature minor doctrine as a possible affirmative defense to the charge of endangering the welfare of children, Justice Zappala conceded that if the appellants could avoid the affirmative, statutory duty imposed on them, the convictions of the appellants could not stand.[20] The court's opinion recognized that the Commonwealth has a duty to care for individuals who are legally incapacitated, which arises under the sovereign's duty of

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13. *Allocatur* is defined as "the allowance of a writ or order." BLACK'S LAW DICTIONARY 49 (6th ed. 1990).

14. *Nixon II*, 761 A.2d at 1152. Although not explicitly specified in either, personal privacy rights are guaranteed by both the United States and Pennsylvania Constitutions, resulting from the "penumbra of articulated rights." *Id.* at 1156. In Pennsylvania, the personal privacy right is understood to be "the right to left alone." *Id.*

15. The majority consisted of Chief Justice Flaherty, and Justices Zappala, Castille, Nigro, Newman, and Saylor. *Id.* at 1151. Justice Cappy filed a concurring opinion. *Id.* at 1157.

16. *Id.*

17. *Id* at 1153. The Pennsylvania Supreme Court accepted the appellants' definition of the mature minor doctrine as held in a Tennessee decision, *Cardwell v. Bechtol*, 724 S.W.2d 739, 748 (Tenn. 1987). The Tennessee court indicated that the determination of whether a minor has the capacity to consent to medical treatment depends upon age, ability, experience, education, training, and degree of maturity or judgment as obtained by the minor, as well as upon the conduct and demeanor of the minor at the time of the incident involved. *Cardwell*, 724 S.W.2d at 748. Furthermore, the totality of the circumstances, nature of the treatment, risks, and probable consequences, and the minor's ability to appreciate the risk and consequences are to be considered in the determination of whether a minor has the capacity to consent to medical treatment. *Id.* The application of a mature minor doctrine has been utilized in other states as well as Tennessee. *Nixon II*, 761 A.2d at 1154.

18. *Id.* at 1155.

19. *Nixon II*, 761 A.2d at 1152.

20. *Id.* at 1153.

parens patriae.[21] The majority also identified that the Pennsylvania legislature has placed the primary responsibility for the well-being of children upon their parents, and as such, has partially fulfilled its sovereign duty.[22] Furthermore, Justice Zappala conveyed that the Pennsylvania legislature has provided authority for identifying minors who are deemed sufficiently mature to give consent to, and correspondingly to refuse, medical treatment.[23] Admittedly, the court recognized that the legislature has created several exceptions to the general rule for incapacity, but recognized that in no instances have these statutory exceptions indicated a legislative intent to grant a minor the capacity to either consent to or refuse medical treatment in a life-threatening situation.[24] In conclusion, the majority ruled that the maturity of an unemancipated minor[25] is not an affirmative defense applicable to the charges brought against the Nixons.[26]

The appellants' second argument, that their parental duty to provide medical care was discharged by Shannon Nixon's constitutional privacy interests, was analyzed in relation to the Pennsylvania Constitution rather than the United States Constitution, as the right of privacy is afforded greater protection by the Pennsylvania Constitution.[27] To pass constitutional muster in Pennsylvania, the state's interest in any legislation diminishing a citizen's right to privacy must be compelling in relation to the

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21. *Id.* *Parens patriae* refers to "the principle that a state must care for those who cannot take care of themselves, such as minors who lack proper care and custody from their parents." BLACK'S LAW DICTIONARY 769 (6th ed. 1990).

22. *Nixon II*, 761 A.2d at 1153.

23. *Id.* at 1155. "Any minor who is eighteen years of age or older, or has graduated from high school, or has married, or has been pregnant, may give effective consent to medical, dental, and health services for himself or herself, and the consent of no other person shall be necessary." Act of Feb. 13, 1970, P.L. 19, No. 10, §1, 35 P.S.§10101.

24. *Nixon II*, 761 A.2d at 1155.

25. An unemancipated minor refers to a person under eighteen years of age who is not totally self-supporting. BLACK'S LAW DICTIONARY 360 (6th ed. 1990). There was no indication in appellants' argument or record that Shannon Nixon was emancipated. *Nixon II*, 761 A.2d at 1154. Shannon Nixon lived in appellants' home and did not assert her independence from her parents in any manner that could render her emancipated. *Id.*

26. *Nixon II*, 761 A.2d at 1155.

27. *Id.* at 1156. Although both the U.S. and Pennsylvania Constitutions offer protections of personal privacy, the court elected to utilize the constitutional test applicable under the Pennsylvania Constitution to determine if Shannon Nixon's privacy interest was violated. *Id.* The federal constitutional approach to determine whether a violation of privacy has occurred employs a flexible balancing approach, which causes increasing levels of scrutiny to be applied to corresponding increased levels of intrusion. *Id.* The Pennsylvania Constitution does not allow for any flexibility, but applies a "strict scrutiny" test in which only a compelling state interest can override one's privacy rights. *Id.* *See supra* note 14.

privacy right affected.[28] The majority deemed the state's interest in the welfare of unemancipated minor children to be compelling.[29] Additionally, the court noted that imposing a duty on parents to provide care to a minor in their custody was an appropriate subject for legislation.[30] Therefore, the court concluded that Pennsylvania's compelling interest in preserving the welfare of minor children overrides an individual's privacy rights, and, consequently, the parental duty of the appellants to seek medical attention for Shannon was not negated by her right to privacy.[31] Accordingly, Pennsylvania will not employ a mature minor doctrine as an affirmative criminal defense, and the majority affirmed the convictions of the appellants.[32]

Justice Cappy, although agreeing with the result of the majority's decision, wrote a separate concurring opinion in which he accepted the mature minor doctrine.[33] Justice Cappy concurred with the majority's result by determining that Shannon did not have the maturity to make an informed decision regarding medical treatment.[34] However, criticizing the majority's analysis, Justice Cappy indicated his belief that legislative intent should not have played such a decisive role in the outcome of the case.[35] Although the end result in this case would remain unchanged, Justice Cappy suggested that the court should be guided, not directed, by legislative intent.[36]

Furthermore, Justice Cappy identified two broad categories of exceptions under the rule of minor incapacity; those premised on the child's specific medical condition that ought to be treated, and those that focus on a minor's status.[37] Regarding the exceptions

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28. *Id. See supra* note 27.

29. *Id.* The court indicated that a compelling state interest in the welfare of minors could impinge upon the constitutional rights of both minors and adults simultaneously. *Id.*

30. *Id.*

31. *Nixon II*, 761 A.2d at 1156.

32. *Id.*

33. *Id.* (Cappy, J., concurring).

34. *Id.* (Cappy, J., concurring). Justice Cappy made this determination based on a review of the record. *Id.*

35. *Id.* at 1158. Justice Cappy characterized the majority's refusal to accept the mature minor doctrine as based on the legislature's express and exclusive enactment of statutory exceptions to the general rule of parental consent. *Id.*

36. *Nixon II*, 761 A.2d. at 1158 (Cappy, J., concurring). Commenting on the impropriety of allowing legislative action to have a dispositive role in the assessment of the mature minor doctrine, Justice Cappy remarked that the court should not be directed by legislative intent except in instances where the legislature has established a comprehensive statutory scheme aimed at occupying an entire area of the law. *Id.*

37. *Id.* at 1158.

related to a minor's status, the Pennsylvania legislature has ascertained specific occurrences that are indicative of a person's capacity to make his or her own medical decisions.[38] In reference to a minor's right to consent to or refuse medical treatment, Justice Cappy remarked that a minor should be entitled to make this decision, provided that he has demonstrated the capacity: (1) to understand the nature of his condition; (2) to appreciate the gravity of the choices he makes; and (3) to responsibly reach a decision regarding medical intervention.[39] Justice Cappy suggested that the court should adopt the mature minor doctrine to allow minors who meet this standard to make their own medical decisions.[40]

A concept that originated from English common law, the *parens patriae* doctrine confers power on the state to protect the health and welfare of its citizens.[41] An extension of this power is the right of the state to protect its citizen children.[42] Following the rationale of the United States Supreme Court in *Prince v. Massachusetts*,[43] the *Nixon* court agreed that the rights of parenthood and religion will occasionally yield to the state's *parens patriae* power.[44]

In a case of first impression, the Supreme Court of Pennsylvania, in *Nixon*, to determine whether Pennsylvania should adopt the mature minor doctrine, first identified the affirmative duty upon parents and guardians to care for their children.[45] Realizing that accompanying this parental duty is also the right to raise the child

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38. *Id.* (Cappy, J., concurring). Justice Cappy identified examples of such occurrences, for instance: minors turning the age of eighteen, marrying, becoming a parent, or graduating from high school. *Id.* These statutory exceptions allow minors to make medical decisions of their own. *Id. See supra* note 23.

39. *Id.*

40. *Id.* Justice Cappy's analysis of the record indicated that Shannon Nixon fell short of the standard. *Id.* Accordingly, Justice Cappy concurred with the majority's result in upholding the convictions of the appellants. *Id.* at 1158 (Cappy, J., concurring). Justice Cappy did not express any opinion on the privacy issue raised under the Pennsylvania and United States Constitutions. *Id.*

41. *Parens patriae*, in English common law, conveyed the perception of the King as the "guardian to persons with legal disabilities such as infants, idiots and lunatics." BLACK'S LAW DICTIONARY 1003 (5th ed. 1979).

42. "The state has a paramount interest in the welfare of children which may justify intervention to control or supersede the rights of parents when necessary for the protection of children." 67A C.J.S. *Parent & Child* §15 (1978).

43. 321 U.S. 158 (1944).

44. *Nixon II*, 761 A.2d at 1153. The court quoted the U.S. Supreme Court's analysis in *Prince* that neither the rights of liberty nor of parenthood are beyond the reach of state intervention. *Id.* Furthermore, in acting as *parens patriae*, the state can restrict parents' control over their children in various ways, including requiring school attendance and the regulation of child labor laws. *Id.*

45. *Id.*

with minimal state encroachment, the court cited *Prince*[46] to reiterate that the rights of religion and parenthood are subject to limitation.[47] The right to practice religion freely does not include the liberty to expose the community to communicable disease or a child to ill health or death.[48]

The court concluded that applying the mature minor doctrine in the context of health care decisions would release parents from their affirmative duty to care for their children.[49] In considering the Nixons' petition for an exception to the parental duty, the majority analyzed the application of the mature minor doctrine in cases decided by other states.[50]

In *Cardwell v. Bechtol*,[51] the Supreme Court of Tennessee confronted issues concerning the ability and capacity of a mature minor to consent to receive medical treatment.[52] The plaintiff parents in *Cardwell* argued that parental consent was required for a physician to render medical treatment to a minor, and the failure to obtain such consent would constitute a battery on the child.[53] The Tennessee court examined the state's statutory policy to assist it in deciding whether the mature minor exception should be a viable defense, or rather, whether policy requires a strict view of the common law, which does not consider the minor's maturity nor the circumstances and nature of treatment involved.[54]

In assessing to what extent a minor will be held responsible for his actions, the supreme court noted that Tennessee case law has consistently considered the maturity of a minor and his ability to

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46. *Prince*, 321 U.S. at 158.

47. *Nixon II*, 761 A.2d at 1153. The court identified that familial rights are not beyond regulation in the public interest as against a claim of religious liberty. *Id.* Acting to guard its general interest in a child's well-being, the state may restrict parental controls. *Id.* This authority is not nullified merely because the parent grounds his claim to control the child's conduct in religion or conscience. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 1153-55.

51. 724 S.W.2d 739 (Tenn. 1987).

52. *Cardwell*, 724 S.W.2d at 742.

53. *Id.* at 743. Plaintiffs' daughter, a minor of 17 years and 7 months, decided to visit the defendant physician on her own initiative and without informing her parents. *Id.* She was seeking relief from persistent back pain, and the minor's testimony indicated that the physician did not treat her against her will. *Id.* The defendant physician testified that although parental consent is ordinarily obtained for the treatment of minors, the minor patient's demeanor led him to believe that she was of age, rendering any inquiry about parental consent unnecessary. *Id.*

54. *Id.* at 747.

appreciate the consequences of his own conduct.[55] Compatible with the Rule of Sevens,[56] Tennessee tort law has consistently held minors to differing standards of capacity, depending upon their ability to appreciate the consequences of their own conduct and the conduct of others.[57] Additionally, the Tennessee court acknowledged that its state legislature had enacted several statutes recognizing the varying degrees of responsibility and maturity for minors aged fourteen years and older.[58] Accordingly, the mature minor exception was accepted as part of the common law of Tennessee, although it did not alter the general rule requiring parental consent before providing medical treatment to minors.[59]

Similarly, the West Virginia Supreme Court of Appeals in *Belcher v. Charleston Area Medical Center*[60] also adopted a version of the mature minor doctrine, and in agreement with the *Cardwell* decision, held that the mature minor exception is part of the common law rule of parental consent in West Virginia.[61] *Belcher* resolved whether a physician is required to obtain the consent of a mature minor patient prior to withholding medical treatment.[62] The

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55. *Id.* at 748.

56. *Id.* at 745. The Tennessee Supreme Court identified the Rule of Sevens as the common law rule for determining questions of capacity for both criminal and tort liability, as well as the competency of minors to testify as witnesses. *Id.* The Rule of Sevens asserts that a minor under the age of seven will be deemed to not have capacity for decision-making; there will be a rebuttable presumption of no capacity for a minor between seven and fourteen years of age; and for minors between fourteen and twenty-one years of age, a rebuttable presumption exists that the minor has capacity. *Id.*

57. *Cardwell*, 724 S.W.2d at 747.

58. *Id.* at 745.

59. *Id.* at 749. The Tennessee Supreme Court held that the adoption of the mature minor doctrine as an exception to the common law rule at issue (requiring parental consent before providing medical treatment to a minor) would be wholly consistent with the existing statutory and tort law, and continue the normal growth and development of the law. *Id.* at 748-49. The application of the mature minor doctrine is a question of fact for the jury who determines if the minor has the capacity to consent to and appreciate the nature, risks, and consequences of the medical treatment involved. *Id.* at 749. The court explained that its decision does not change the general rule requiring parents' consent for the medical treatment of their minor children by stating:

> Under the Rule of Sevens, it would rarely, if ever, be reasonable, absent an applicable statutory exception, for a physician to treat a minor under seven years of age, and that between the ages of seven and fourteen, the rebuttable presumption is that a minor would not have the capacity to consent; moreover, while between the ages of fourteen and eighteen, a presumption of capacity does arise, that presumption may be rebutted by evidence of incapacity, thereby exposing a physician or care provider to an action for battery.

Id.

60. 422 S.E.2d 827 (W. Va. 1992).

61. *Belcher*, 422 S.E.2d at 837.

62. *Id.* at 835. Plaintiffs' son, a minor at the age of 17 years and 8 months, was

West Virginia court held that the mature minor exception applies not only to medical procedures performed, but also to treatment administered and withheld.[63]

The West Virginia Supreme Court, similar to the *Cardwell* court, had reviewed provisions enacted by the state legislature concerning medical treatment of minors without parental consent.[64] The court dismissed the defendant physician's assertion that the state's legislative intent rejected the mature minor rule.[65] To the contrary, the court held that the state statutes did not indicate any legislative intent to establish a comprehensive statutory scheme occupying the entire area of the medical treatment of minors.[66]

The West Virginia Supreme Court focused on the maturity level of the minor patient; if the minor is deemed to be a mature minor based on certain considerations,[67] the child's informed consent is required before the physician has a legal right to perform a procedure, administer a treatment, or withhold a treatment from that minor patient.[68] Therefore, the requirement of parental consent is nullified, and the only necessary informed consent is that of the mature minor.[69]

In the case of *In re E.G., a Minor*,[70] Illinois also faced the issue of applying the mature minor doctrine to determine whether a minor has a right to refuse medical treatment, and if so, how the right may be exercised.[71] The general rule in Illinois, similar to that

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confined to a wheelchair due to muscular dystrophy. *Id.* at 829-30. The minor contracted a viral syndrome, a "cold" in laymen's terms, which had an exaggerated effect on his condition. *Id.* at 830. After recurring episodes of breathing failure, the minor was placed on a respirator. *Id.* The parents, after consultation with the physician, decided that their minor child should not be intubated or placed on a respirator again in the event of another breathing failure, unless specifically requested by the minor. *Id.* Conversely, the parents subsequently informed the physician that they did not want their child involved in the decision. *Belcher*, 422 S.E.2d at 830. Accordingly, the minor was not consulted and did not participate in the decision-making process regarding his medical treatment. *Id.*

63. *Id.* at 836.

64. *Id.*

65. *Id.*

66. *Belcher*, 422 S.E.2d at 837.

67. *Id.* at 838. Determining the child's capacity to consent is a question of fact dependent upon several factors, including age, ability, experience, education, training, degree of maturity or judgment obtained by the child, as well as upon the conduct and demeanor of the child at the time of the procedure or treatment. *Id.*

68. *Id.*

69. *Id.* In instances of conflict between the intentions of one or both parents and the minor, a physician's good faith assessment of the minor's maturity level immunizes the physician from liability for the failure to obtain parental consent. *Id.*

70. 549 N.E.2d 322 (Ill. 1989).

71. *In re E.G.*, 549 N.E. 2.d at 324. Appellee E.G., a minor at the age of 17, contracted

of West Virginia and Tennessee, indicates that a minor does not reach majority until the age of eighteen.[72] However, the Illinois Supreme Court recognized that its legislature enacted numerous statutory exceptions that allow minors, under the age of eighteen, to exercise certain rights normally associated with adulthood.[73]

In its analysis, the supreme court acknowledged that an adult may refuse life-saving blood transfusions based on the freedom of religion guaranteed by the First Amendment.[74] Furthermore, the majority rationalized that no reason exists to deny the same right to control one's health care to mature minors.[75] Accordingly, the Illinois Supreme Court ruled that the common law of Illinois recognizes that mature minors may possess and exercise rights regarding their own medical care.[76]

Discussing how the mature minor's rights can be exercised, the Illinois court first confirmed that the trial judge has discretion to determine whether a minor is mature enough to make his or her own health care decisions.[77] Identifying that Illinois public policy values the sanctity of life, and that the state has a special duty to protect those incapable of protecting themselves, the court indicated that the trial judge must weigh these two principles against the evidence of a minor's maturity.[78] The Supreme Court of Illinois held that only in instances where clear and convincing

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acute nonlymphatic leukemia, a malignant disease of the white blood cells. *Id.* at 323. The treatment of the disease required blood transfusions, to which both E.G. and her mother refused to consent due to their devout religious beliefs as Jehovah's Witnesses. *Id.* Medical testimony introduced at the initial hearing in juvenile court opined that without the blood transfusions, E.G. would likely die within one month. *Id.* Ultimately, the juvenile court appointed the counsel of a local hospital as temporary guardian, who in turn authorized the blood transfusions on E.G.'s behalf. *Id.* at 324.

72. *Id.* at 325.

73. *Id.* For example, a minor over the age of twelve in Illinois can seek medical treatment without parental consent if believing they have been inflicted with venereal disease, alcoholism, or drug addiction. *Id.* In addition, a married or pregnant minor under the age of eighteen may also consent to medical treatment without parental consent, therefore controlling his or her own medical decisions. *Id.*

74. *Id.*

75. *Id.* at 326.

76. *In re E.G.*, 549 N.E.2d at 326.

77. *Id.* at 327. Noting an exception to this rule, the court declared that if the legislature has provided applicable statutory guidelines regarding the consent of minors for medical treatment, these statutory guidelines are determinative. *Id.*

78. *Id.* Recognizing that Illinois has a *parens patriae* power with respect to minors, the majority explained that this authority is strongest when the minor is immature and thus incompetent (lacking in capacity) to make these decisions on his own. *Id.* As the minor gets older, however, the *parens patriae* power fades, and eventually disappears once the minor reaches majority. *Id.*

evidence exists to show that the minor is mature enough to appreciate the consequences of his actions and can exercise adult judgment will the mature minor doctrine applicable, and thereby grant the minor the right to consent to or refuse medical treatment.[79]

Nonetheless, the Illinois court was quick to clarify that the common law right to consent to or refuse medical treatment as a mature minor is not absolute.[80] To establish whether the mature minor doctrine confers a right to consent to or refuse medical treatment, the supreme court averred that the right of the minor must be balanced against four state interests: (1) the preservation of life; (2) protecting the interests of third parties; (3) prevention of suicide; and (4) maintaining the ethical integrity of the medical profession.[81] Therefore, in a case where a parent or guardian opposes an unemancipated minor's refusal to consent to treatment for a life-threatening health problem, such opposition would weigh heavily against the mature minor's right to refuse treatment.[82]

The case history of Pennsylvania's sister states implies a growing acceptance of the mature minor doctrine and its application. In contrast, the limited case history related to the doctrine in Pennsylvania is contained in *Commonwealth v. Cottam*.[83] One of the many issues determined by the Pennsylvania Superior Court in *Cottam* was whether a child of sufficient maturity and intellect can assert his own religious identity; and furthermore, if a child of such sufficient maturity and intellect voluntarily refrains from eating due to these religious beliefs, do the parents have a duty to provide food to the child?[84]

After reviewing the facts, the superior court distinguished

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79. *Id.* at 327-28.

80. *Id.*

81. *In re E.G.*, 549 N.E. 2.d at 328. With respect to the second stated interest, the court pronounced the principal interested third parties to be parents, guardians, adult siblings and relatives. *Id.*

82. *Id.* For instance, in E.G.'s case, if E.G. had refused the blood transfusions against the wishes of her mother, the court would have given serious consideration to the desires of the mother. *Id.* Based on religious grounds, both E.G. and her mother agreed that she should not accept the blood transfusions. *Id. See supra* note 71. The court held that a mature minor may exercise the common law right to consent to or refuse to medical treatment in instances where the mature minor's rights are greater than the related state interests. *Id.*

83. 616 A.2d 988 (Pa. Super. Ct. 1992).

84. *Cottam*, 616 A.2d at 1000. Appellant parents were convicted of third degree murder, recklessly endangering another person (two counts), and endangering the welfare of children (two counts). *Id.* at 993. All charges stemmed from the starvation death of their fourteen year-old son and the malnutrition of their twelve year-old daughter. *Id.* The children were not provided with food for a period of six weeks. *Id.* at 1000.

between having the maturity to freely exercise one's religious beliefs, and the maturity necessary to decide from refraining from eating for forty-two consecutive days.[85] The court ruled that even if the children were considered mature enough to freely exercise their religious beliefs, the parents are not dispelled of their affirmative duty to provide the children with parental care, direction, and sustenance while the children are in their custody.[86]

The aforementioned cases examine the concept of the mature minor doctrine and its application thereof. However, the privacy interests of a child, as established under the United States and Pennsylvania Constitutions, can also negate a parent's duty to provide medical care in certain circumstances.[87] The Pennsylvania Constitution encompasses the right "to be left alone," and only a compelling state interest can override one's personal privacy rights.[88]

Relying upon the principles set forth in *Commonwealth v. Wormser*,[89] the Pennsylvania Supreme Court in *Nixon* concluded that a compelling interest in the welfare of minors may impinge upon the constitutional rights of both minors and adults simultaneously.[90] Although conceding that privacy rights are constitutionally protected, the court ruled that an encroachment upon this right of privacy was warranted; as the state's *parens patriae* interest in the life of an unemancipated child is compelling, the imposition of a duty to care for a minor in the parents' custody is an appropriate subject for legislative action.[91]

In its decision to reject the mature minor doctrine as an available defense, the majority in *Nixon* concluded that it is the

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85. *Id.*

86. *Id.* at 1000. The majority held that parents have an affirmative duty to seek medical help, despite their religious beliefs, when their child's life is threatened. *Id.*

87. *Nixon II*, 761 A.2d at 1156.

88. *Id.*

89. 103 A. 500 (Pa. 1918). The *Wormser* court ruled on a case involving the employment of a sixteen year-old boy at a factory in violation of work-hour guidelines designed to regulate the employment of minors. *Id.* The employer argued that child-labor provisions restricting the time that a minor could work were unconstitutional, and that such provisions deprived the employer and minor equally of their freedom to contract. *Id.* The Pennsylvania Supreme Court concluded that child-labor statutes were appropriate subjects for legislative action, and that such statutes were proper under Pennsylvania's authority of *parens patriae*. *Id.* Additionally, the *Wormser* court identified that the state has an "inalienable power to enact laws to promote the health, morals and general welfare of the people," and in doing so, ruled that such child-labor employment regulation was constitutional. *Id.*

90. *Nixon II*, 761 A.2d at 1156.

91. *Id. See supra* notes 9-11, 27-32 and accompanying text.

responsibility of the legislature to render decisions and laws regarding the capacity of minors.[92] Although the general rule in Pennsylvania is that an unemancipated minor cannot give consent to or refuse medical treatment, several exceptions have been formalized by the legislature. The Pennsylvania Supreme Court has elected not to make any policy decisions regarding the medical consent requirements for minors, instead abiding to the specific exceptions and general rules as determined by the legislature.

By not incorporating the mature minor doctrine as a viable criminal defense for parents, the *Nixon* majority rejected the notion that the maturity of an unemancipated child can release a parent from the affirmative duty of providing care and sustenance. Under the precedence of the United States Supreme Court in the *Prince*[93] and *Wisconsin v. Yoder*[94] decisions, the *Nixon* majority's analysis was accurate. The underlying parental right, as defined by the U.S. Supreme Court to be the interest in the upbringing of children, is fundamental;[95] only when the decisions of the parent place the children at physical or mental risk can the government disrupt this parental right. The guarantee of the fundamental right to rear children and the duty associated with the care of minor children under parental custody go hand in hand.

The doctrine of *parens patriae* also places a burden on the state to provide oversight of the health and welfare of its citizens, especially its children.[96] Although exceptions exist to discharge the parental duty and the requirement of parental consent to medical treatment of a minor, these exceptions were properly made by the legislature. Furthermore, none of these exceptions were intended to prove the capacity of a minor to consent to or refuse medical treatment in a life and death situation.[97]

The role of the judiciary is to enforce the laws, or strike them

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92. *See supra* notes 20-24 and accompanying text.

93. *See supra* notes 43, 46 and accompanying text.

94. 406 U.S. 205 (1972). The constitutionality of a Wisconsin statute requiring compulsory school attendance of all children, including the Amish, was challenged. *Yoder*, 406 U.S. at 207. The Amish claimed that mandating Amish children to attend school through the age of sixteen was unconstitutional due to their religious beliefs. *Id.* at 211.

95. *Id.* at 233. In *Yoder*, the U.S. Supreme Court indicated that parents have the primary duty to rear and educate their children. *Id.* However, the Court concluded that this conferral of parental power can be limited in instances where the parental decision making put the minor child's health or safety at risk. *Id.* The Amish introduced compelling evidence that "accommodating their religious objections to the compulsory additional year(s) of education would not impair the physical or mental health of the child." *Id.* at 234.

96. *See supra* notes 41-42 and accompanying text.

97. *Nixon II*, 761 A.2d at 1155.

down if found to be unconstitutional. The Pennsylvania Supreme Court analyzed the case accurately, as the acceptance of the mature minor doctrine in allowing minors to exercise their own religious beliefs to their detriment would be contrary to the state's *parens patriae* responsibility, as well as exceed the scope of the court's intended judicial function.

Douglas C. Hart