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IN RE E.G., A MINOR*: DEATH OVER LIFE: A JUDICIAL TREND CONTINUES AS THE ILLINOIS SUPREME COURT GRANTS MINORS THE RIGHT TO REFUSE LIFE-SAVING MEDICAL TREATMENT

"To be or not to be."¹ That may be the question, but the answer as to who shall live and who shall die is far from resolved. When William Shakespeare penned these famous words in 1599,² it is doubtful that he envisioned this debate taking legal ramifications, much less in the highest courts of a distant nation. But this simple phrase is now at the heart of an important judicial struggle in America,³ the State of Illinois being no exception. In *In re E.G., a Minor*,⁴ the Illinois Supreme Court examined for the first time⁵

* In re E.G., a Minor, 133 Ill. 2d 98, 549 N.E.2d 322 (1989).

1. Shakespeare, HAMLET, ACT III, Scene i.

2. G. EVANS, THE RIVERSIDE SHAKESPEARE 1136 (1974).

3. The landmark case concerning the right to refuse medical treatment is *In re Quinlan*, 70 N.J. 10, 355 A.2d 647 (1976), cert. denied, 429 U.S. 922 (1976). This case involved Karen Anne Quinlan who, after suffering severe brain damage, was diagnosed as being terminally ill and in a chronic vegetative state. *Id.* at 24, 355 A.2d at 654. Karen's father sought to have the respirator and feeding tube, which were keeping Karen alive, disconnected, thinking that his daughter would die quickly thereafter. *Id.* at 22, 355 A.2d at 651. The New Jersey Supreme Court held that the right of privacy is broad enough to allow a patient to refuse medical treatment in certain instances. *Id.* at 40, 355 A.2d at 663.

However, there is a difference between asserting a right to die, as in *Quinlan*, and refusing life-saving medical treatment, as in *In re E.G.* In the latter case, death is not usually a desired outcome, but rather a consequence.

The leading case in Illinois on the refusal of life-saving medical treatment is *In re Estate of Brooks*, 32 Ill. 2d 361, 205 N.E.2d 435 (1965). In *Brooks*, the Illinois Supreme Court held that an adult has the right to refuse life-saving blood transfusions on the basis of the free exercise clause of the first amendment. *Id.* at 372-73, 205 N.E.2d at 442.

4. 133 Ill. 2d 98, 549 N.E.2d 322 (1989).

5. *Id.* at 112, 549 N.E.2d at 328. This issue is almost one of first impression in the entire country. The only other case which has examined whether a minor has the right to refuse life-saving medical treatment is *In re D.P.*, No. 91950, slip op. (Santa Clara County) (Juv. Ct. July 3, 1986).

In re D.P. involved a fourteen year old girl suffering from cancer who was also a Jehovah's Witness. Unlike Ernestine, she refused to take blood transfusions, even if court ordered, and said she would leave the hospital before taking any transfusions. Brief for Petitioner at 37, *In re E.G.*, 133 Ill. 2d 98, 549 N.E.2d 322 (1989). The *D.P.* court did not order transfusions because the girl could not be kept in the hospital against her will. *Id.* Ernestine, on the other hand, was willing to accept court ordered transfusions, since this would be done through no fault of her own and would not affect her religious standing. See *infra* note 19 for a discussion of disfellowship from the Jehovah's witness faith.

whether a mature⁶ minor has the right to refuse life-saving medical treatment.⁷ The court resolved this issue in favor of the minor E.G., holding that a mature minor has a common law right to consent to, or refuse, medical treatment.⁸ By so ruling, the court found that this common law right outweighs any state interest in preserving life, protecting the interests of third parties, preventing suicide, and maintaining the ethical integrity of the medical profession.⁹

On February 23, 1987, Ernestine Gregory ("Ernestine"), a 17 year old girl,¹⁰ was admitted to Little Company of Mary Hospital and was diagnosed as having acute nonlymphatic leukemia.¹¹ At-

6. See *infra* note 26 for the text of the Emancipation of Mature Minors Act, which is the controlling law in Illinois used to determine maturity.

7. A slightly different issue is raised when parents refuse to consent to medical treatment on behalf of their children because of religious beliefs. When parents' religious beliefs interfere with a minor's right to live, the religious beliefs must give way to the preservation of life. See generally AM. JUR. 2D NEW TOPIC SERVICE, *Right to Die: Wrongful Life* § 21 (1979).

Many courts have held that parents may not withhold life-saving medical treatment from their children because of religious beliefs. See *Application of the President and Directors of Georgetown College*, 331 F.2d 1000 (D.C. Cir. 1964) (court ordered blood transfusions, despite patient's religious beliefs, where patient wanted to live and transfusions were necessary to save her life), *cert. denied*, 377 U.S. 978 (1964); *Jehovah's Witnesses v. King County Hospital*, 278 F. Supp. 488 (W.D. Wash. 1967) (Washington statutes allowed judge to declare children dependents for purpose of authorizing blood transfusions against parents' wishes), *aff'd*, 390 U.S. 598 (1968); *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 104 N.E.2d 769 (1952) (court ordered life-saving blood transfusions for infant child despite parents' opposition); *In re Custody of a Minor*, 375 Mass. 733, 379 N.E.2d 1053 (1978) (court ordered chemotherapy for minor leukemia patient over parents' objections); *Morrison v. State*, 252 S.W.2d 97 (Mo. App. 1952) (state had power to take custody of infant child with anemia where father refused to permit transfusions because of religious beliefs); *Raleigh Fitkin-Paul Morgan Hospital v. Anderson*, 42 N.J. 421, 201 A.2d 537 (blood transfusion authorized for nonconsenting Jehovah's Witness who was pregnant), *cert. denied*, 377 U.S. 985 (1964); *State v. Perricone*, 37 N.J. 463, 181 A.2d 751 (1962) (court declared parents guilty of neglect for refusing, on religious grounds, to consent to son's needed blood transfusions, and guardian appointed for the sole purpose of consenting to transfusions), *cert. denied*, 371 U.S. 890 (1962); *In re Cicero*, 101 Misc. 2d 699, 421 N.Y.S.2d 965 (Sup. Ct. 1979) (court ordered surgery for infant spina bifida patient over parents' objections); *In re Sampson*, 65 Misc. 2d 658, 317 N.Y.S.2d 641 (1970) (fifteen year old boy held neglected after mother refused to consent to blood transfusions during surgery on the boy for facial deformity), *aff'd*, 37 App. Div. 2d 668, 323 N.Y.S.2d 253 (1971), *aff'd*, 29 N.Y.2d 900, 328 N.Y.S.2d 686, 278 N.E.2d 918 (1972); *Matter of Hamilton*, 657 S.W.2d 425 (Tenn. App. 1983) (where twelve year old girl dying of cancer needed blood transfusions, court held that preservation of life outweighed parents' religious beliefs).

8. *In re E.G.*, 133 Ill. 2d at 112, 549 N.E.2d at 328.

9. *Id.* at 111, 549 N.E.2d at 328.

10. Ernestine was actually seventeen years, six months old at the time of trial. *Id.* at 104, 549 N.E.2d at 324.

11. Leukemia is a continuous, malignant disease of the blood, characterized by distorted development of the white blood cells and bone marrow, which eventually causes death. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 914 (27th ed. 1988). Patients who suffer from acute nonlymphatic leukemia have chromosomal abnormalities in their white blood cells. *Id.*

There is no known cure for either the acute or chronic forms of leukemia, but the

tending physicians informed Ernestine and her mother, Rosie Denton, that blood transfusions were necessary in order to treat the disease.¹² However, Ernestine and her mother refused to consent to such treatment because of their religious beliefs.¹³ As Jehovah's Witnesses,¹⁴ they believe receiving blood transfusions¹⁵ violates the Bible's prohibition against the consumption of blood.¹⁶

As a result of their refusal to consent to the blood transfusions, the Illinois State's Attorney's Office filed a petition in juvenile court.¹⁷ In this petition, the State's Attorney sought both the finding that Ernestine was medically neglected, and the appointment of a temporary guardian to consent to the transfusions.¹⁸ At an April 8,

disease can be controlled by bone-marrow transplants and chemotherapy. Blood transfusions help control the disease after chemotherapy treatments. BLACK'S MEDICAL DICTIONARY 408 (35th ed. 1987). The cause of leukemia has not been discovered. *Id.* at 409.

12. *In re E.G.*, at 101-02, 549 N.E.2d at 323.

13. *Id.*

14. Since 1876, Jehovah's Witnesses have believed that they are living in the "last days," which will culminate in the Battle of Armageddon when Christ will return to set up his earthly kingdom. J. PENTON, APOCALYPSE DELAYED: THE STORY OF JEHOVAH'S WITNESSES 17 (1985). Witnesses abstain from voting, running for public office, serving in the military, recognizing the national anthem, or honoring the American flag. Whalen, *Don't Get Unhinged By Doorbell Evangelists*, CHRISTIANITY TODAY, March 2, 1984 at 36. Jehovah's Witnesses search for scripture that supports their beliefs while ignoring Biblical text that does not. By doing so, they attempt to show that owning a Christmas tree is sinful, and that only a Biblical elite of 144,000 followers will enter Heaven (this interpretation of *Revelation* 7:1-8, describes 144,000 Jews witnessing on earth for Christ during the Tribulation). *Id.* at 38. They also believe that blood transfusions are prohibited by God. *Id.*

Jehovah's Witnesses typically refuse blood transfusions based on what they believe to be the Bible's prohibition against "eating blood." J. Ford, *Refusal of Blood Transfusions By Jehovah's Witnesses*, 10 CATHOLIC LAWYER 212 (1964). Witnesses believe that taking blood transfusions is contrary to the teachings of *Genesis* 9:4, *Leviticus* 3:17, and *Acts* 15:29. J. PENTON, *supra* at 153. *Genesis* 9:4 states: "But flesh with the life thereof, which is the blood thereof, shall ye not eat." *Leviticus* 3:17 states: "By a perpetual law for your generation, and all your habitations, neither blood nor fat shall you eat at all." *Acts* 15:29 reads: "That you abstain from things sacrificed to idols, and blood."

Jehovah's Witnesses reject the argument that these passages are dietary laws. Witnesses believe that since a blood transfusion is intravenous feeding, it is identical to eating blood. J. Ford, *supra* at 212. In contrast, based on the history and teaching of Christianity, the Catholic Church believes that "eating blood" (blood from animal meat) is no longer a violation of God's law. *Id.* at 213.

15. Mrs. Denton consented to any other treatment for Ernestine besides blood transfusions and signed a waiver releasing all medical staff from liability for not administering the transfusions. *In re E.G.*, 133 Ill. 2d at 102, 549 N.E.2d at 323.

16. *Id.* For Bible passages allegedly supporting Jehovah's Witnesses' prohibition against blood transfusions, see *supra* note 14.

17. Ernestine's attending physicians initially contacted the State's Attorney. *In re E.G.*, 161 Ill. App. 3d at 765, 766, 515 N.E.2d 286, 287 (1st Dist. 1987).

18. The court held a custody hearing on February 25, 1987 to determine whether a temporary guardian should be appointed. *Id.* The State presented Dr. Stanley Yachnin, a hematology expert who had examined Ernestine the day after she was admitted. *Id.* He testified that Ernestine's platelet count was 30,000 at the time of her admission, far lower than her normal count of 200,000 to 300,000. Brief for

1987 hearing, several witnesses testified, including Ernestine, who had already received several court ordered transfusions.¹⁹ The trial court took the urgency of Ernestine's condition into account and found that Rosie Denton had medically neglected her daughter. As a result, the court appointed a temporary guardian to consent to all medical treatment Ernestine required.²⁰

On appeal, the appellate court reversed the trial court in part, holding that Ernestine was a "mature minor" and could therefore refuse the blood transfusions based on her first amendment right to freely exercise her religion.²¹ Relying on *In re Estate of Brooks*,²²

Petitioner at 10, *In re E.G.*, a Minor, 133 Ill. 2d at 298, 549 N.E.2d at 322. He stated that without transfusions she would likely die within two weeks and he would be "astonished" if she lived a month. *Id.* Dr. Yachnin also stated that when transfusions are coupled with chemotherapy, the disease achieves remission 80% of the time. *In re E.G.*, 133 Ill. 2d at 102, 549 N.E.2d at 323. However, leukemia patients have a survival rate of only twenty to twenty-five percent. *Id.*

19. *In re E.G.*, 161 Ill. App. 3d at 767, 515 N.E.2d at 288. A Jehovah's Witness would be excommunicated from the faith and consumed at the Battle of Armageddon if she knowingly received a blood transfusion. Brief for Petitioner at 14, *In re E.G.*, 133 Ill. 2d 98, 549 N.E.2d 322 (1989). However, if the court forced her to take blood transfusions against her will, Ernestine stated that she would not risk disfellowship. *Id.* See also Woodward, *Are They False Witnesses?*, NEWSWEEK, July 20, 1981, at 75 (one percent of Jehovah's Witness members excommunicated each year). Ernestine would still be resurrected by Jehovah and not be destroyed at Armageddon. In earth's final battle, which will be so destructive that "except those days be shortened, no flesh would be saved" *Matthew 24:21*, Christ will return to destroy his enemies and set up his millennial kingdom. *Revelation 19:17-21*. "Armageddon" refers to the Valley of Megiddo, a 25 mile long valley in north eastern Israel. See *supra* note 14 for a discussion of Jehovah's Witnesses' religious beliefs.

After receiving ten blood transfusions, Ernestine was confident she would still go to Heaven because the decision to administer the transfusions had been made by the court, not her. Brief for Petitioner at 14, *In re E.G.*, a Minor, 133 Ill. 2d 98, 549 N.E.2d 322 (1989). It would be the judge's sin, not Ernestine's. *Id.* at 16.

Compare *Fosmire v. Nicoleau*, 75 N.Y.2d 218, 551 N.E.2d 77 (1990) (expectant mother with leukemia refused blood transfusions not only for religious reasons, but also to avoid the risk of AIDS). For a general discussion of the risk of contracting AIDS through blood transfusions, see Minamoto, *Infection With Human T-Cell Leukemia Virus Type I in Patients With Leukemia*, 318 NEW ENG. J. MED. 219 (1988). See also Shafer, *Adverse Affects of Transfusions*, 69 SO. MED. J. 476 (1976) (between 3,000 and 30,000 people die each year in the United States as a result of blood transfusions).

20. *In re E.G.*, 161 Ill. App. 3d at 767, 515 N.E.2d at 287-88. At the conclusion of this hearing, the court appointed Jane McAtee, counsel for the University of Chicago Hospital, Ernestine's temporary guardian, and authorized her to consent to transfusions on Ernestine's behalf. *In re E.G.*, 133 Ill. 2d at 102, 549 N.E.2d at 323-24.

21. *In re E.G.*, 161 Ill. App. 3d at 771-72, 515 N.E.2d at 290-91. The trial court found that Ernestine had made a mature decision to follow her religious beliefs, not that she herself was mature. *Id.*

While there is a constitutional right to religious belief, the law can limit religious practices. *Reynolds v. United States*, 98 U.S. 145, 166 (1878). In this famous Mormon polygamy case, the court stated: "Suppose one believed that human sacrifices were a necessary part of religious worship. [W]ould it be seriously contended that the civil government . . . could not interfere to prevent a sacrifice." *Id.* Similarly, the state can make the handling of poisonous snakes illegal even if such activity is required for

the appellate court first noted that an adult Jehovah's Witness has a constitutional right to refuse blood transfusions.²³ The appellate court then extended this holding to include "mature minors," drawing this conclusion from cases²⁴ in which the United States Supreme Court has allowed "mature minors" to consent to abortions without parental approval.²⁵ Recognizing that Ernestine was only six months from her eighteenth birthday at the time of trial and relying on the Emancipation of Minors Act,²⁶ the court concluded that Ernestine was partially emancipated and, therefore, had the right to refuse transfusions.²⁷ Specifically, the appellate court held that a mature minor has a constitutional right to refuse medical treatment.²⁸

The Illinois Supreme Court granted the State's petition for leave to appeal to decide the issue of whether a mature minor has a right to refuse medical treatment.²⁹ The court declined to address the first amendment question, finding that the issue could be re-

religious worship. See generally Annotation, *Power of Courts or Other Public Agencies, In the Absence of Statutory Authority, to Order Compulsory Medical Care For Adults*, 9 A.L.R.3d 1393 (1966) (citing *Hill v. State*, 38 Ala. App. 404, 88 So.2d 880, cert. denied, 264 Ala. 197, 88 So.2d 887 (1956)) (State outlawed the handling of poisonous snakes during religious ceremonies).

22. 32 Ill. 2d 361, 205 N.E.2d 435 (1965). See *supra* note 3 for the *Brooks* holding.

23. *In re E.G.*, 161 Ill. App. 3d at 772, 515 N.E.2d at 291.

24. *Id.* at 770, 515 N.E.2d at 290, (citing *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976) (state may not restrain a minor's right to abortion by requiring her to obtain parental consent)); *Belotti v. Baird*, 443 U.S. 622 (1979) (Massachusetts statute preventing minor from receiving an abortion without both parents' consent held unconstitutional)

25. *In re E.G.*, 161 Ill. App. 3d at 771, 515 N.E.2d at 290. Although recognizing that the Supreme Court has not extended a minor's constitutional right of privacy beyond abortion, the appellate court found such extension "inevitable." *Id.* But see *In re E.G.*, 133 Ill. 2d 98, 108, 549 N.E.2d 322, 326 (1989), where the majority felt that extending the constitutional mature minor doctrine to cases involving refusal of medical treatment was not "inevitable."

26. Emancipation of Mature Minors Act, ILL. REV. STAT. ch. 40, para. 2201 (1989). See *infra* note 97 for a discussion of this Act.

27. *In re E.G.*, 161 Ill. App. 3d at 771, 515 N.E.2d at 290-91.

28. *Id.*

29. *In re E.G.*, 133 Ill. 2d 98, 104-05, 549 N.E.2d 322, 324 (1989). The court also considered two other issues of lesser importance. *Id.* First, whether the appeal should be dismissed as moot, since Ernestine was no longer a minor (she turned eighteen on November 25, 1987). *Id.* at 105, 549 N.E.2d at 325. Second, whether the trial court's finding of neglect against Mrs. Denton should be upheld. *Id.* Concerning the mootness issue, the general rule is that a court will dismiss an appeal where substantial questions raised during trial no longer exist. *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 622, 104 N.E.2d 769, 772, cert. denied, 344 U.S. 824 (1952). However, when an issue of substantial public interest is presented, an exception to the mootness doctrine exists. *Id.* To determine whether there is sufficient public interest, the reviewing court looks to the public or private nature of the issue, the need to decide the issue for further guidance, and the likelihood that the matter will recur in the future. *Id.* The court found that the issue of whether a minor can refuse medical treatment met the criteria of this public interest exception, and decided to hear the case. *In re E.G.*, 133 Ill. 2d 105-06, 549 N.E.2d 322, 325 (1989). The court also reversed the finding of neglect against Mrs. Denton. *Id.* at 112-13, 549 N.E.2d at 328.

solved on other grounds.³⁰ Lacking guidance from the United States Supreme Court, which has never held that a constitutionally based right to refuse medical treatment exists for adults³¹ or minors, the court relied on Illinois common law to resolve this issue.³² The court's majority reasoned that eighteen is not an automatic age restriction limiting the rights of mature minors, whether the rights are derived from the constitution or the common law.³³ The Illinois Supreme Court relied on decisions in which a minor's common law right to refuse medical treatment has been established.³⁴ The court then concluded that with judicial approval, a minor can refuse medical treatment, even if this refusal results in the minor's death.³⁵

The Illinois Supreme Court began its analysis by recognizing that in Illinois, an adult has a common law right to refuse life-sustaining medical treatment,³⁶ including blood transfusions.³⁷ However, the United States Supreme Court has not recognized that adults or minors have a constitutional right to refuse life-saving medical treatment.³⁸ Therefore, the Illinois Supreme Court relied on both case law and Illinois statutes to support its conclusion that eighteen is not a strictly adhered to age restriction limiting the rights of mature minors.³⁹ Relying upon the Consent by Minors to Medical Operations Act⁴⁰ and the Emancipation of Mature Minors

30. *Id.* at 112, 549 N.E.2d at 328.

31. The United States Supreme Court will soon address the issue of whether the right to privacy includes decisions to withdraw life-prolonging medical treatment from an incompetent adult. *Cruzan v. Harmon*, 760 S.W.2d 408 (Mo. 1988) (en banc), cert. granted, 109 S. Ct. 3240 (1989).

The right to privacy is not explicitly mentioned in the Constitution. However, *Griswold v. Connecticut*, 381 U.S. 479 (1965) held that a constitutional right of privacy exists, emanating from penumbras in the first amendment. *Id.* at 484. Privacy encompasses only fundamental rights "implicit in the concept of ordered liberty," *Roe v. Wade*, 410 U.S. 113, 152 (1973), or those which are "deeply rooted in the Nation's history." *Bowers v. Hardwick*, 478 U.S. 156, 192 (1986) (quoting *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977)). The Supreme Court has never held that the right of privacy includes the right to refuse life-saving medical treatment.

32. *In re E.G.*, 133 Ill. 2d 98, 106-07, 549 N.E.2d 322, 325-26 (1989).

33. *Id.* at 107-08, 549 N.E.2d at 326.

34. *Id.* at 106, 549 N.E.2d at 326.

35. *Id.* at 111, 549 N.E.2d at 328.

36. *Id.* at 109 (citing *In re Estate of Longeway*, 133 Ill. 2d 33, 45-46, 549 N.E.2d 292, 297-98 (1989)).

37. See *Brooks*, *supra* note 3 and accompanying text (an adult has a common law right to refuse medical treatment, even if it results in his death). *In re Osborne*, 294 A.2d 372 (D.C. 1972) (court would not appoint guardian for adult who refused blood transfusions on religious grounds).

38. See *supra* note 32 and accompanying text.

39. *In re E.G.*, 133 Ill. 2d 98, 106, 549 N.E.2d 322, 325 (1989).

40. ILL. REV. STAT. ch. 111, para. 4501 (1989). The Consent By Minors to Medical Operations Act states:

The consent to the performance of a medical or surgical procedure by a physician licensed to practice medicine and surgery executed by a married person who is a minor, or by any person 18 years of age or older, is not voidable because of such minority, and, for such purpose, a married person who is a minor,

Act,⁴¹ the court found that minors possess numerous rights usually associated with adulthood.⁴² For example, the court drew analogy from criminal law, citing the Juvenile Court Act,⁴³ which allows minors to be tried as adults if they possess certain mental states.⁴⁴ When a minor is mature enough to form criminal intent, both the common law and the Juvenile Court Act treat the minor as an adult.⁴⁵

Moreover, the court acknowledged that minors are treated as adults under constitutional law.⁴⁶ Minor's constitutionally protected rights include: the right of privacy;⁴⁷ freedom of expression;⁴⁸ freedom from unreasonable searches and seizures;⁴⁹ and procedural due process.⁵⁰

Next, the court stated that in addition to these constitutional rights, mature minors have common law rights regarding consent to medical treatment.⁵¹ In support, the court interpreted the decision of *In re Estate of Longeway*⁵² as extending the absolute right of control over one's body to mature minors.⁵³ The *In re E.G.* court

a pregnant woman who is a minor, or any person 18 years of age or older, is deemed to have the same legal capacity to act and has the same powers and obligations as has a person of legal age.

Id.

41. ILL. REV. STAT. ch. 40, para. 2201 (1987).

42. *In re E.G.*, 133 Ill. 2d 98, 105, 549 N.E.2d 322, 325 (1989).

43. ILL. REV. STAT. ch. 37, para. 805-4 (1987).

44. The court construed the Juvenile Court Act, *supra* note 43, as finding that in certain situations, minors can be found mature enough to have formulated mens rea in committing crimes. *In re E.G.*, 133 Ill. 2d at 107, 549 N.E.2d at 326.

45. *Id.*

46. *Id.* at 108, 549 N.E.2d at 326.

47. *Id.* (citing *Carey v. Population Services Int'l*, 431 U.S. 678 (1977)). A blanket prohibition of the distribution of contraceptives to minors is unconstitutional. *Carey*, 431 U.S. at 694.

48. *In re E.G.*, 133 Ill. 2d at 108, 549 N.E.2d at 326 (citing *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)). High school students wearing black arm bands to protest United State's policy in Vietnam protected by the first amendment.

49. *In re E.G.*, 133 Ill. 2d at 108, 549 N.E.2d at 336, (citing *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)). School officials are not exempt from the first amendment's prohibition against unreasonable searches and seizures just because they have authority over schoolchildren. *T.L.O.*, 469 U.S. at 325.

50. *In re E.G.*, 133 Ill. 2d at 108, 549 N.E.2d at 326, (citing *In re Application of Gault*, 387 U.S. 1 (1967)). Due process requires that adequate and timely notice be given to a child and his parents or guardian. *Gault*, 387 U.S. at 33. "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority." *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52, 74 (1976).

51. *In re E.G.*, 133 Ill. 2d at 109-10, 549 N.E.2d 326-27.

52. *In re Estate of Longeway*, 133 Ill. 2d 33, 549 N.E.2d at 292 (1989).

53. *In re E.G.*, 133 Ill. 2d at 109, 549 N.E.2d at 326. Justice Cardozo stated that every adult has the right to decide what will be done with his own body, and any doctor who operates without patient consent may be liable for assault. *Longeway*, 133 Ill. 2d at 44, 549 N.E.2d at 297 (citing *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 129-30, 105 N.E. 92, 93 (1914)). For a discussion of patient consent, see

distinguished cases which have ordered medical treatment for minors on the basis that the issue in those cases was not whether a minor could refuse treatment, but whether a parent could do so on behalf of their child.⁶⁴

The court held that because of the State's *parens patriae* power to protect a minor's health,⁵⁵ and the fact that Illinois has a strong public policy favoring life,⁵⁶ a mature minor must have judicial approval to refuse medical treatment.⁵⁷ When a minor's health and life are at stake, courts afford strong consideration to this policy favoring life.⁵⁸ Thus, in determining whether a minor is mature enough to refuse life-saving medical treatment, the trial judge must weigh evidence⁵⁹ of the minor's maturity against these two principles favoring life and health.⁶⁰ If the evidence is clear and convincing that the minor is mature enough to understand the consequences of her decision, then the trial court may determine that there is a common law right to refuse medical treatment.⁶¹

However, the mature minor's right to refuse medical treatment is not absolute.⁶² Courts must balance the minor's right against four State interests:⁶³ preserving life, protecting the interests of third parties, preventing suicide,⁶⁴ and maintaining the ethical integrity of

also Hirsh & Cuneo, *Who Shall Live, Who Shall Die, Who Decides?* 5 MED. & L. 111, 113 (1986).

The *Longeway* court reasoned that since a doctor could not treat a patient without his consent, it naturally followed that the patient had a common law right to refuse medical treatment, whether it be life-saving or life-sustaining. *Longeway*, 133 Ill. 2d at 45, 549 N.E.2d at 297.

54. *In re E.G.*, 133 Ill. 2d at 110, 549 N.E.2d at 327.

55. *Id.* at 110-11, 549 N.E.2d at 327. As *parens patriae*, the State has a special duty to protect minors and, if necessary, submit minors to medical treatment where their lives are in jeopardy. *In re Hamilton*, 657 S.W.2d 425, 429 (Tenn. App. 1983).

56. *Longeway*, 133 Ill. 2d at 51, 549 N.E.2d at 300 (citing *Siemieniec v. Lutheran General Hospital*, 117 Ill. 2d 230, 249, 512 N.E.2d 691, 701 (1987)).

57. *In re E.G.*, 133 Ill. 2d at 110, 549 N.E.2d at 327. Because of Illinois' strong public policy favoring life, judicial intervention is appropriate in cases where a minor's health is involved. *Id.* A minor, who otherwise has a long life ahead of herself, could jeopardize that life by making an imprudent decision. *Id.*

58. *Id.* at 111, 549 N.E.2d at 327.

59. *Id.* In *Cardwell v. Bechtol*, 724 S.W.2d 739 (Tenn. App. 1987), a case the majority relied on, the court looked to age, ability, experience, education, the nature of the treatment, and the minor's ability to appreciate the risks and consequences of her actions, to determine whether the minor was mature enough to consent to medical treatment (therapy for herniated disc). *Id.* at 748-49. However, the *In re E.G.* court failed to specify criteria to evaluate a minor's maturity, thus giving future courts who confront this issue no guidance.

60. *In re E.G.*, at 111, 549 N.E.2d at 327.

61. *Id.* at 111, 549 N.E.2d at 327-28.

62. *Id.* at 111, 549 N.E.2d at 328. See *Brophy v. New England Sinai Hosp., Inc.*, 398 Mass. 417, 497 N.E.2d 626 (1986) (while there is a general right to refuse medical treatment in appropriate circumstances, the right to refuse treatment in life threatening situations is not absolute).

63. *In re E.G.*, 133 Ill. 2d at 111, 549 N.E.2d at 328.

64. When a competent adult refuses medical treatment, he is not necessarily

the medical profession. The court reasoned that protecting the interests of third parties was the most important consideration.⁶⁵ Finally, by concluding that a mature minor may exercise a common law right to refuse life-saving medical treatment, the court stated that it would not address the constitutional issue of freedom of religion.⁶⁶

The Illinois Supreme Court correctly analyzed *In re E.G.* on common law grounds.⁶⁷ Although the court's approach was accurate, its holding was incorrect for three reasons. First, the court did not adequately consider the wide body of case law upholding State intervention where medical treatment is necessary to save a minor's life. Thus, the court disregarded the State's interest in the preservation of life.⁶⁸ Second, although the majority recognized evidence demonstrating the severity of Ernestine's condition,⁶⁹ the court's decision contradicted the fact that blood transfusions were clearly in the minor's best interests. Finally, the court erroneously extended the mature minor doctrine after failing to recognize the differences between the abortion cases, where the doctrine has previously been applied, and the case at hand.

First, the Illinois Supreme Court erroneously ignored the State's *parens patriae*⁷⁰ duty to protect minors⁷¹ and disregarded

committing suicide, since, in doing so, he may not wish to die. Superintendent of Belchertown v. Saikewicz, 373 Mass. 728, 737 n.11, 370 N.E.2d 417, 426 n.11 (1977).

65. *In re E.G.* at 111, 549 N.E.2d at 328. When a patient's refusal of treatment adversely affects the health and safety of third parties, typically minor children, the state has an interest in ordering treatment. Matter of Conroy, 98 N.J. 321, 352, 486 A.2d 1209, 1225 (1985). A minor may be hurt emotionally (by being abandoned) and financially if the minor's parent refuses life-saving or life-sustaining medical treatment. *Belchertown*, 373 Mass. at 744, 370 N.E.2d at 426.

Because Mrs. Denton was in agreement with her daughter that Ernestine refuse the transfusions, the court did not see any relevance in examining third party interests. *In re E.G.*, 133 Ill. 2d at 112, 549 N.E.2d at 328.

66. *Id.* at 112, 549 N.E.2d at 320. See also *In re Application of Roswell*, 97 Ill. 2d 434, 440, 454 N.E.2d 997, 999 (1983) (if a case can be decided on other grounds, constitutional questions should not be considered).

67. See Note, *Live or Let Die: Who Decides An Incompetent's Fate? In re Storar and In re Eichner* 1982 B.Y.U. L. REV. 387, 390 (where court's decision was decided on common law grounds, there was no need to extend the constitutional right of privacy to the refusal of medical treatment issue).

68. The court devoted a significant part of its analysis to discussing Illinois' strong public policy favoring life. Yet the court did not give even the slightest consideration to this interest in deciding whether minors can refuse life-saving medical treatment. *In re E.G.*, 133 Ill. 2d at 110-11, 549 N.E.2d at 327-28.

69. See *supra* notes 11, 18 for a discussion of leukemia and the seriousness of Ernestine's condition prior to receiving blood transfusions.

70. *Parens patriae* means "parents of the country." The term refers to the state's sovereign duty to protect minors and incompetents. It is a concept the state uses to protect its general economy and the health, comfort, and welfare of its citizens. BLACK'S LAW DICTIONARY 579 (5th ed. 1983).

71. Minors are presumed to be incompetent and, thus, need protection from the State against their own neglectfulness. Mark, *The Competent Child's Preferences in*

case law in which courts have intervened to save a minor's life.⁷² Although there are certain realms of family life the state cannot interfere with, this right is not absolute.⁷³ The state may interfere when parental decisions endanger the health and safety of a minor child.⁷⁴ The majority disregarded the state's interest in protecting the lives of minors, even after declaring that the right to refuse medical treatment is not absolute.⁷⁵

Where a minor's survival is jeopardized by a parent's refusal to consent to medical treatment on the child's behalf, the state has no alternative but to intervene as *parens patriae*⁷⁶ and order treat-

Critical Medical Decisions: A Proposal for its Consideration, 11 W. St. U. L. Rev. 25, 40 n.96 (1983). One example of a minor's inability to provide consent is the fact that minors can avoid contracts they enter. *Id.* at n. 96.

72. See *supra* note 7 for cases upholding state intervention to save a minor's life. See also *Muhlenberg Hospital v. Patterson*, 128 N.J. 498, 320 A.2d 518 (1974) (where infant would suffer permanent brain damage without blood transfusion, court ordered such treatment); *J.F.K. Hospital v. Heston*, 58 N.J. Super. 576, 279 A.2d 670 (1971) (court ordered twenty-two year old accident victim, whose religion forbade blood transfusions, to submit to such treatment to save her life); *Crouse Irving Memorial Hospital, Inc. v. Paddock*, 127 Misc. 2d 101, 485 N.Y.S.2d 443 (1985) (in light of state's interest in welfare of children, court ordered hospital to administer minor's blood transfusions over parents' objections); *In re Willmann*, 24 Ohio App. 3d 191, 493 N.E.2d 1380 (1986) (parents' religious beliefs did not allow them to expose their sick child to ill health or death).

However, where a minor's condition is not life-threatening, courts are reluctant to intervene and order treatment. See *e.g.*, *Aronson v. Superior Court*, 191 Cal. App. 3d 294, 235 Cal. Rptr. 347 (1987) (parents may control minor's medical treatment unless parents' decisions threatens the child's life); *In re Seiferth*, 309 N.Y. 80, 127 N.E.2d 820 (1955) (where no present emergency existed for boy with cleft palate and harelip, court declined to order plastic surgery for the boy); *In re Green*, 452 Pa. 37, 307 A.2d 279 (1973) (where eighteen year old boy with scoliosis was not in imminent danger of dying, State did not have sufficient interest in ordering surgery to outweigh parents' religious beliefs); *In re Hudson*, 13 Wash. 2d 673, 126 P.2d 765 (1942) (court refused to order amputation of minor's deformed arm over objection of parent).

73. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

74. *Wisconsin v. Yoder*, 406 U.S. 205, 234 (1972). Parents do not have life and death authority over their children. *Prince*, 321 U.S. at 166-67. The *Prince* court reinforced this conclusion stating:

The right to practice religion freely does not include the liberty to expose the community or child to communicable disease or the latter to ill health or death . . . Parents may be free to become martyrs themselves. But it does not follow they are free in identical circumstances to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.

Id. at 166, 170.

75. *In re E.G.*, 133 Ill. 2d 98, 111, 549 N.E.2d 322 328 (1989).

76. The majority gave inadequate consideration to the State's *parens patriae* duty to preserve the lives of minors, as if the interest is inconsequential. Furthermore, the court dismissed cases upholding state intervention to save a minor's life. See *supra* notes 7, 71 for a list of cases upholding state intervention. In so doing, the court completely missed the point of those cases. Admittedly, the issue in those cases (whether parents can refuse life-saving treatment on behalf of their child) varies slightly from the issue presented in *In re E.G.* What matters, though, is that in each case the State intervened and ordered treatment to save the minor's life.

The Illinois Supreme Court looked at *In re Cutsody of a Minor*, 375 Mass. 733,

ment.⁷⁷ The Illinois Supreme Court has already acknowledged a strong state interest in protecting a minor from parental decisions that threaten the minor's health.⁷⁸ Therefore, the state certainly has an interest in protecting the minor from her own decision which not only affects her health, but could result in her death.⁷⁹

The court also disregarded its recent decision in *Siemieniec v. Lutheran General Hospital*, in which this court held that there is a strong public policy preserving the sanctity of human life, even in its imperfect state.⁸⁰ The interest in preserving life is even greater when

379 N.E.2d 1053 (1978), for example, where life-saving chemotherapy was ordered to save a young leukemia patient. The court concluded that since the issue in *Minor* was not identical to the case at hand, it could be distinguished. *In re E.G.*, 133 Ill. 2d at 110, 549 N.E.2d at 327. Instead, the Illinois Supreme Court relied on *Cardwell v. Bechtol*, 724 S.W.2d 739 (Tenn. 1987), a case even further removed from the present issue than *Minor*. In *Cardwell*, which involved a seventeen year old girl seeking treatment for back pain, the Tennessee Supreme Court held that mature minors can receive medical treatment without parental consent. *Cardwell*, 724 S.W.2d at 749. However, unlike *In re E.G.*, *Cardwell* clearly did not involve a life-threatening dilemma and can therefore be distinguished itself. There is a major difference in the consequences of failing to treat a herniated disc and failing to treat a fatal disease such as leukemia with blood transfusions, where transfusions are the only treatment. *In re E.G.*, as well as the cases the State cited therein, involved situations where a minor's life was hanging in the balance. The Illinois Supreme Court disregarded this fact which distinguishes *In re E.G.* from every case where a court refused to order medical treatment for a minor. See *supra* note 72 for a list of cases where courts have refused to intervene.

77. *In re Willmann*, 24 Ohio App. 3d 191, 199, 493 N.E.2d 1380, 1389 (1986).

78. *Siemieniec v. Lutheran General Hospital*, 117 Ill. 2d 230, 249, 512 N.E.2d 691, 701 (1987).

79. Dr. Yachnin testified that without blood transfusions, Ernestine would die within a month. Brief for Appellant at 10, *In re E.G. a Minor*, 133 Ill. 2d 98, 549 N.E.2d 322 (1989).

The State's interest in preserving minors' lives is important not only because of its *parens patriae* duty, but also for another reason. The loss of young people, who represent the hope and future of our society, threatens the progress and stability of the entire state. *Morrison v. State*, 252 S.W.2d 97, 103 (1952).

The State has a long standing duty to protect its minor residents. *In re Custody of a Minor*, 375 Mass. 733, 754, 379 N.E.2d 1053, 1066 (1978). It is not only vital to America's youth, but to the communities in which they live, that minors be safeguarded from abuses and given opportunities for growth into adulthood. *Id.* The U.S. Supreme Court further adheres to this principle:

[T]he power of the state to control the conduct of children reaches beyond the scope of its authority over adults. The State has an interest to protect the welfare of children and to see that they are safeguarded from abuses which might prevent their growth into free and independent, well-developed men and citizens.

Prince, 321 U.S. at 170.

80. *Siemieniec*, 117 Ill. 2d at 249, 512 N.E.2d at 701. The State's interest in life is just as strong when dealing with patients approaching the end of their lives as it is with those just beginning life. *Longeway*, 133 Ill. 2d 33, 77, 549 N.E.2d 292, 312 (1989) (Clark, J., dissenting). This court in *Siemieniec* looked to the supreme courts of Idaho, Kansas, and New Jersey in finding strong public policy favoring life. *Siemieniec*, at 250-51, 512 N.E.2d at 702. See *Blake v. Cruz*, 108 Idaho 253, 260, 698 P.2d 325, 322 (1944) (basic to American culture is the belief that life is precious and, thus, our laws must protect, preserve, and improve human life); *Bruggeman v. Schimke*, 239 Kan. 245, 254, 718 P.2d 635, 642 (1986) (a person's life is valuable and

the patient's condition is curable.⁸¹ The State's interest was particularly strong in Ernestine's case. Her death was imminent only if she had not received blood transfusions.⁸² Therefore, the Illinois Supreme Court should have concluded that the State's interest in protecting a minor's life outweighed any right to refuse treatment for a potentially fatal health problem.

The court's second error was its failure to reinstate the trial court's finding that blood transfusions were in Ernestine's best interests. When a state intervenes to save a minor's life by ordering medical treatment, the order should not be disturbed by a reviewing court.⁸³ In *In re E.G.*, the court failed to consider a number of factors that supported the trial court's decision to order transfusions.⁸⁴

First and most importantly, Ernestine was in a life-threatening situation. Medical testimony established that without blood transfusions, Ernestine would die.⁸⁵ In support, the United States Supreme Court held that a decision which threatens the life of a minor cannot be justified by religious beliefs alone.⁸⁶

The appellate court also correctly considered Ernestine's willingness to comply with the court imposed treatment,⁸⁷ a factor conspicuously absent from the majority's analysis here. Court ordered treatment is proper where a patient does not believe that transfusions will hurt her religious standing, as long as she does not personally consent to them.⁸⁸ The trial court found that Ernestine would

deserves protection whether he is in perfect health, sick, or disabled); *Berman v. Allan*, 80 N.J. 421, 430, 404 A.2d 8, 13 (1979) (no life is less precious just because it suffers some defect).

81. *Cruzan v. Harmon*, 760 S.W.2d 408, 419, 413 n.6 (Mo. 1988) (en banc), cert. granted, 109 S. Ct 3240 (1989). See, e.g., *Fosmire v. Nicoleau*, 75 N.Y.2d 218, 551 N.E.2d 77, 83 (1990) (when the patient is healthy, the state has a stronger interest in preserving life, which should override the patient's choice to refuse treatment).

82. See *Fosmire*, supra note 81 for a discussion of the state's interest in patient medical care.

83. *Willmann*, 24 Ohio App. 3d at 199, 493 N.E.2d at 1389. The trial court's decision must not be reversed unless it is against the manifest weight of the evidence. *Id.*

84. The State must consider several factors before ordering medical treatment for a minor over parental objections. In *re Phillip B.*, 92 Cal. App. 3d 796, 802, 156 Cal Rptr. 48, 51, cert. denied, 445 U.S. 949 (1979). The State must examine the seriousness of the child's condition, whether the medical profession has accepted the proposed treatment, the risks of such treatment, and the minors willingness to comply with the treatment. *Id.* The most important consideration is whether the minor's best interests are furthered by the treatment. *Id.*

85. *In re E.G.*, 133 Ill. 2d at 102, 549 N.E.2d at 323.

86. *Prince*, 321 U.S. at 166-67. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 234 (1972) (court upheld Amish parents' decision to forego compulsory education on behalf of their child since the decision did not threaten the health of the child).

87. *In re E.G.*, 161 Ill. App. 3d at 780, 515 N.E.2d at 296.

88. *United States v. George*, 239 F. Supp. 752, 753 (D.C. Conn. 1965). Similarly, in *In re Hamilton*, a twelve year old girl's father refused to consent to chemotherapy treatment on her behalf because of his religious beliefs. *In re Hamilton*, 657 S.W.2d

accept the transfusions. This willingness was exemplified by Ernestine's acceptance of nine or ten blood transfusions prior to testifying.⁸⁹

When a court examines what is in a minor's best interests, it must focus on factors unique to that minor's situation.⁹⁰ Here, since the court compelled Ernestine to receive the blood transfusions, she would not be excommunicated from the Jehovah's Witness faith.⁹¹ Instead, Ernestine's church would treat her with sympathy.⁹² This is an important factor the Illinois Supreme Court ignored.

Another factor evidencing the correctness of the trial court's order is that no other treatment besides blood transfusions were available to save Ernestine's life.⁹³ Where a minor's life is in danger, judicial intervention is appropriate unless the proposed treatment is too dangerous or medical opinions differ.⁹⁴ At trial, the State presented uncontradicted evidence showing that blood transfusions are a standard, medically accepted manner of treating Ernestine's disease. The blood transfusions gave Ernestine an eighty percent chance of remission, the health risks to her were small,⁹⁵ and no other treatment could have saved her life.⁹⁶ These facts should have convinced the majority that transfusions were in Ernestine's best interests. Instead, the court improperly disregarded these key factors which the trial court properly considered.

425 (1983). However, the court ordered treatment, basing its conclusion partly on the father's "revealing" testimony. *Id.* at 428. The father said that "if a doctor were to tell me that he had medicine that would heal me, I'd go right in there just a minute, but there ain't none." *Id.*

89. *In re E.G.*, 133 Ill. 2d 98, 103, 549 N.E.2d 322, 324 (1989).

90. *Custody of a Minor*, 375 Mass. at 753, 379 N.E.2d at 1065.

91. *In re E.G.*, 161 Ill. App. 3d at 781, 515 N.E.2d at 297 (McNanmara, J., dissenting). See *supra* note 19 for a discussion of the difference between a Jehovah's Witness voluntarily receiving blood transfusions and receiving them against her will.

92. Joseph Howard, district supervisor for the Jehovah's Witnesses, testified that if an individual is forced to undergo blood transfusions, the congregation would treat her with respect and adoration, and would not penalize her. Brief for Petitioner, *supra* note 5, at 14-15.

93. *In re E.G.*, 133 Ill. 2d 98, 102, 549 N.E.2d 322, 323 (1989). See *Minor*, 375 Mass. at 754, 379 N.E.2d at 1065 (judge determined that there was no affective alternative to chemotherapy in treating a young leukemia patient).

94. *Morrison v. State*, 252 S.W.2d 97, 102 (blood transfusions almost certain to succeed if given in time and presented no risk to the child). There was no difference of medical opinion as to Ernestine's condition or the treatment necessary to save her life. *Id.* Dr. Yachnin's testimony at trial was uncontradicted. *In re E.G.*, 133 Ill. 2d at 102, 549 N.E.2d at 323.

95. One risk of undergoing blood transfusions is contracting hepatitis, but the illness can be easily treated. Brief for Petitioner, *supra* note 5, at 22. Possible side effects from chemotherapy include nausea, diarrhea, and hair loss. *Id.* However, these side effects far outweigh the alternative to refusing treatment, which is death.

96. *In re E.G.*, 133 Ill. 2d at 102, 549 N.E.2d at 323. See *Minor*, at 754, 379 N.E.2d at 1065-66 (there was no chance for a cure without chemotherapy and the risks were small considering that failure to treat the leukemia would result in the minor's death).

Finally, the Illinois Supreme Court erroneously extended the mature minor doctrine⁹⁷ to the present case. The State's interest in preventing minors from refusing treatment necessary to save their lives is far greater than in the abortion cases where the concept has previously been used.⁹⁸ The court relied on three U.S. Supreme Court abortion cases⁹⁹ in holding that mature minors can refuse medical treatment. By expanding the mature minor doctrine to a medical neglect case involving a seventeen year old leukemia patient, the court failed to recognize the fundamental basis of the abortion cases.¹⁰⁰

In the abortion cases, the Supreme Court focused on the mi-

97. The "mature minor" doctrine is an exception to the general rule requiring parental consent. Brown & Truitt, *The Right of Minors To Medical Treatment*, 28 DE PAUL L. REV. 289, 294 (1979). This exception allows minors to consent to medical treatment or surgery if it is established that the minor is mature enough to understand the nature and consequences of the treatment. *Id.* A "mature minor" is one who is independent, able to manage her own daily and financial affairs, and understands the risks and benefits of proposed treatment. *Id.*

The Illinois Legislature has defined a mature minor as "a person 16 years of age or over and under the age of 18 who has demonstrated the ability and capacity to manage his own affairs and to live wholly or partially independent of his parents or guardian." Emancipation of Mature Minors Act, ILL. REV. STAT. ch. 40, para. 2203-2 (1989).

98. The State's interest in the abortion cases is to safeguard minors from the burdensome responsibilities of motherhood, which they may not be able to handle, and to allow them to make the abortion decision without having to tell their parents. *Bellotti v. Baird*, 443 U.S. 622, 641 (1979).

99. *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983) (abortion ordinance which had no provision for mature or emancipated minors held unconstitutional); *Bellotti v. Baird*, 443 U.S. 622 (1979) (Massachusetts statute requiring minors to receive parental consent for abortions held unconstitutional); *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52 (1976) (blanket parental consent requirement for minors seeking abortions held unconstitutional).

However, in these abortion cases, if a minor is found not to be mature enough to consent to an abortion, the minor must then show that the abortion is in her best interests. *Bellotti*, 443 U.S. at 644. *See also Wynn v. Scott*, 448 F. Supp. 997, 1005 (N.D. Ill. 1978) (State has an interest in showing that minor's consent to an abortion is an intelligent and mature decision), *aff'd*, 582 F.2d 1375 (7th Cir. 1978).

100. *In re E.G.*, 161 Ill. App. 3d at 777, 515 N.E.2d at 294 (McNamara, J., dissenting). The majority conceded that the rights examined in the abortion cases have not been extended beyond reproductive matters. *In re E.G.*, 133 Ill. 2d at 106-07, 549 N.E.2d at 325-26. Nonetheless, the court felt that these abortion cases did show that eighteen is not an automatic age restriction limiting the rights of mature minors. *Id.*

The court disregarded the fact that Illinois has not adopted mature minor legislation in the area of abortion. In fact, section one of the Illinois Abortion Law of 1975 demonstrates Illinois' strong public policy favoring the preservation of life. The Act states:

The General Assembly of the State of Illinois declares . . . the longstanding policy of this State that the unborn child is a human being from the time of conception . . . Further, to protect the right to life of the unborn child from conception by prohibiting abortion unless necessary to preserve the life of the mother is impermissible only because of the decisions of the United States Supreme Court.

ILL. REV. STAT. ch. 38, para. 81-21 (1989).

nor's best interests in light of the minor's circumstances.¹⁰¹ A minor will face the burdensome responsibilities¹⁰² of motherhood if she is prevented from having an abortion. Therefore, the Supreme Court determined that extending the mature minor doctrine was proper in those cases.¹⁰³

However, extending the mature minor doctrine to the present case is not in the minor's best interests.¹⁰⁴ The two situations are completely different. Permitting a minor to have an abortion allows an affirmative act by the minor, and any physical or psychological harm to the child can be accordingly treated.¹⁰⁵ However, allowing a minor to refuse blood transfusions results in the end of her life. The majority's expansion of the mature minor doctrine beyond the abortion cases, in effect says that death may sometimes be in the minor's best interests.

In Justice Ward's dissenting opinion, he clearly identified what was at stake in this case. Justice Ward determined that this case was not as simple as one that allows a mature minor to refuse medical treatment.¹⁰⁶ The possible self-destruction¹⁰⁷ of a young life was

101. *Bellotti*, 443 U.S. at 644.

102. Having to become a mother unwillingly may be particularly stressful for a minor. *Id.* at 642. Pregnant teenage girls are often emotionally immature, and lack education, employment skills, and finances necessary to care for a baby. *Id.* at 642. Thus, in the abortion setting, the Supreme Court held that it was wrong to give parents absolute veto power over a minor's abortion decision. *Id.*

103. See *Bellotti*, 443 U.S. at 647 (every minor must have the opportunity to go directly to a court, to establish her maturity, without first consulting her parents about an abortion).

104. Because the abortion decision is unique, the Supreme Court intended that the mature minor doctrine be limited to abortion cases. See *Bellotti*, 443 U.S. at 642. Deciding to terminate a pregnancy differs in many ways from other decisions minors may face, such as deciding to marry. *Id.* A minor who is not allowed to marry before the age of majority can simply wait until she is old enough. *Id.* However, a pregnant minor may only have a few weeks to decide to have an abortion before the law prevents her from doing so. *Id.*

Furthermore, applying the mature minor doctrine to *In re E.G.* directly contravenes the Supreme Court's proclamation that the State has a *parens patriae* duty to prevent physical and emotional harm to minors. *Prince v. Massachusetts*, 321 U.S. 158, 169-70 (1943).

105. *In re E.G.*, 161 Ill. App. 3d at 777, 515 N.E.2d at 294 (McNamara, J., dissenting) (the result of preventing a minor from having an abortion is the birth of a child; a situation the minor can handle with other's help).

106. *In re E.G.*, 133 Ill. 2d at 114, 549 N.E.2d at 329 (Ward, J., dissenting).

107. See *Brophy v. New England Sinai Hosp., Inc.*, 398 Mass. 417, 447, 497 N.E.2d 626, 643 (1986) (Lynch, J., dissenting). In *Brophy*, Justice Lynch concluded that there is no real difference between killing one's self and refusing life-sustaining medical treatment. *Id.*

Christians view suicide as sinful, unnatural, and against God's will. Note, *The Refusal of Lifesaving Medical Treatment vs. the State's Interest in the Preservation of Life: A Clarification of the Interests at Stake*, 58 WASH. U.L.Q. 85, 104 (1980). However, although refusing life-saving medical treatment is against Christian morals, the first amendment does not allow states to enforce religious beliefs. *Id.*

the real issue here.¹⁰⁸ The majority unfortunately lost sight of the fact that its decision in *In re E.G.* will have far ranging effects which go way beyond Ernestine. The court has taken a dangerous step in a direction that may threaten the lives of other children who will follow. By disregarding an already established State policy preserving the sanctity of life, the court has weakened Illinois' authority to protect its minors and secure their growth into adults. Remarkably, the court added to the confusion by failing to adopt a standard in which "mature" may be measured by future courts. As a result, children even younger than Ernestine may someday make decisions that ensure their death.

William D. Brewster

108. *In re E.G.*, 133 Ill. 2d at 114, 549 N.E.2d at 329 (Ward, J., dissenting). The majority's unfortunate holding weakens the protection Illinois law has otherwise afforded minors. *Id.* Perhaps Justice Nolan's closing thoughts in *Brophy* sum up the result in *In re E.G.* as well. Nolan wrote:

Finally, I can think of nothing more degrading to the human person than the balance which the court has struck today in favor of death against life. It is but another triumph for the forces of secular humanism which have now succeeded in imposing their anti-life principles at both ends of life's spectrum. *Brophy*, 398 Mass. at 443, 497 N.E.2d at 640 (Nolan, J., dissenting).

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