[J-44-2000]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 87 W.D. Appeal Docket 1999
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered 9/21/1998 at No.
	:	1310PGH1997 affirming the Judgment of
v.	:	Sentence of the Court of Common Pleas
	:	of Blair County entered 6/10/1997 at No.
	:	1260 CR 1996.
DENNIS E. NIXON,	:	
	:	718 A.2d 311 (Pa. Super. 1998)
Appellant	:	
	:	ARGUED: March 7, 2000
	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	No. 88 W.D. Appeal Docket 1999
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered 9/21/1998 at No.
v.	:	1311PGH1997 affirming the Judgment of
	:	Sentence of the Court of Common Pleas
	:	of Blair County entered 6/10/1997 at No.
LORIE A. NIXON,	:	1261 CR 1996
	:	
Appellant		718 A.2d 311 (Pa. Super. 1998)
		ARGUED: March 7, 2000

CONCURRING OPINION

MR. JUSTICE CAPPY **DECIDED: NOVEMBER 27, 2000**

From my review of the record, it is evident that Shannon Nixon did not have the maturity to make an informed decision regarding medical treatment. Thus, I concur in the majority's result, which affirms the order of the Superior Court, upholding the trial court's

judgment of sentence. I write separately, however, because I do not agree with the majority's characterization of the question that appellants raised for our consideration or with the majority's view of the role that legislative intent should play in this case or with the majority's ultimate decision to reject the mature minor doctrine.[1]

The question raised in this appeal--did Shannon Nixon, even though a minor, have the right to refuse medical attention--is of weighty import, and involves a matter which has "deep roots in our common law." Fiori v. Commonwealth, 673 A.2d 905, 909 (Pa. 1996). In Pennsylvania, the control of one's own person and the right of self-determination are closely guarded through the principle of informed consent, which declares that absent an emergency, medical treatment may not be imposed without a person's permission. Id. The right to refuse treatment or to withdraw treatment once it has begun is a logical corollary to that principle. Id.

Under the common law, a minor is deemed incompetent to provide informed consent. Parents Unlimited for Better Schs., Inc. v. School Dist. of Phila. Bd. of Educ., 646 A.2d 689, 691 (Pa. Cmwlth. 1994). Until the age of majority, a minor's parents make medical treatment decisions on his or her behalf. Id. The Pennsylvania legislature, however, has rendered the authority of parents to speak for their minor child with respect

[1] I found the majority opinion ambiguous. When I read the majority's statement on page 5 of its opinion that "[w]e believe that, without passing comment on the wisdom of the mature minor doctrine itself, a terse review of the facts and circumstances which confronted the courts of our sister states readily reveals why the doctrine is not applicable to Appellants' case", I was given to believe that the majority had decided not to determine, one way or the other, whether the doctrine would be adopted in Pennsylvania. If this had been the case, then the better course of action would have been the dismissal of this appeal as improvidently granted, rather than the issuance of an opinion containing dicta. It was after some deliberation of the majority's discussion of the statutory exceptions to the general rule of minor incapacity on pages 7and 8 of its opinion, that I concluded that the majority has evaluated the doctrine and determined that it will not be part of our common law under any circumstances.

to health care less than absolute in certain circumstances, by enacting several statutes that allow minors to speak for themselves. Under 35 P.S. §10101, a minor who is eighteen or older or graduated from high school or who has married or has been pregnant, may consent to health care treatment; under 35 P.S. § 10001, a minor who is seventeen years of age or older may donate blood in any voluntary, non-compensatory program without parental permission; under 35 P.S. §10103 and 35 P.S. §521.14(a), a minor who may be pregnant or infected with a venereal disease may seek and receive treatment; under 71 P.S. §1690.112, a minor who suffers from use of a controlled or harmful substance may consent to the furnishing of medical care or counseling; and finally, under 18 Pa.C.S. §3206(c), a minor who proves in the court of common pleas that she is mature and capable of giving informed consent may consent to and obtain an abortion.

These statutes are at the heart of the majority's holding. The majority states:

> [These] statutes create specific exceptions to the general rule of incapacity. The statutes do not, contrary to Appellants' assertion, show a legislative intent that any minor, upon the slightest showing, has capacity either to consent to or to refuse medical treatment in a life and death situation. We therefore hold that the maturity of an unemancipated minor is not an affirmative defense applicable to the charges brought against Appellants.

Majority opinion at 8.

While the majority and I agree that these statutes provide "specific exceptions" to the general precept that minors are legally incapable of informed consent, the majority and I part company in several respects.

First, I believe that the majority's characterization of appellants' position is inaccurate. In my view, appellants did not assert that a minor upon the "slightest showing" of capacity should be permitted to consent to or to refuse health care treatment or premise application of the mature minor doctrine on a "life and death situation." Instead, appellants

argued that "a minor of demonstrated maturity" or "[a] minor who is able to demonstrate the requisite maturity" "should have the ability to make determinations as to medical care." (Brief for Appellants, pp.11-12.).

Second, I do not believe that legislative intent should have the decisive role in the case sub judice that the majority apparently gives it. The majority's holding against recognition of the mature minor doctrine is expressly and exclusively premised on the intent with which the legislature enacted its statutory exceptions to the general rule of parental consent. While it is certainly proper and advisable for this court to take note of relevant statutory authority in assessing the wisdom of the doctrine, and to strive for a judicial pronouncement that is consistent with that authority, see Pugh v. Holmes, 405 A.2d 897, 904, 905 (Pa. 1979), it is not appropriate to give it a dispositive role. Except where the legislature has established a comprehensive statutory scheme, aimed at occupying an entire area, this court is guided, not directed, by legislative action. Id.

Lastly, I, unlike the majority, would recognize the mature minor doctrine. Indeed, the same statutes that inform the majority's rejection of the doctrine lead me to the opposite result. I agree with the legislature's willingness to make appropriate exceptions to the rule of minor incapacity in the first place and with the policies reflected in the exceptions the legislature has seen fit to enact. By their terms, the exceptions fall into two broad categories: those that are premised on a specific medical condition that ought to be treated and those that focus on a minor's status. With regard to the latter, the legislature has decided, for example, that turning eighteen, marrying, becoming a parent or graduating from high school are indicative of one's readiness to make health care decisions on one's own. 35 P.S. §10101.

In the same way, I believe that when it is demonstrated that a minor has the capacity to understand the nature of his or her condition, appreciate the consequences of the choices he or she makes, and reach a decision regarding medical intervention in a

responsible fashion, he or she should have the right to consent to or refuse treatment. I would, therefore, adopt the mature minor doctrine.

The record falls far short of establishing that Shannon Nixon met this standard. Accordingly, I concur in the majority's result.[2]

[2] Because I conclude that the mature minor doctrine does not apply in this case as a matter of fact, I decline to address appellants' contention that the doctrine provides them with an "affirmative defense" to the charges the Commonwealth brought against them. Because I would find that under the common law, a mature minor may consent to or refuse medical treatment, I would not reach, and I express no opinion on, the privacy issue appellants raise under the United States and Pennsylvania Constitutions. P.J.S. v. Pennsylvania State Ethics Comm'n, 723 A.2d 174, 176 (Pa. 1999).