WISCONSIN SUPREME COURT DECLINES TO ADDRESS THE MATURE MINOR DOCTRINE

On July 10, 2013, the Wisconsin Supreme Court released its decision in *Dane County v. Sheila W.*, 2013 WI 63 (*per curiam*), in which it affirmed the Court of Appeals' dismissal of the case because the issues were rendered moot, or no longer in controversy, by the expiration of the underlying order appointing a temporary guardian to make medical decisions. The Court declined to exercise its power to decide moot issues even though the issues in this case were of extreme public import and likely to reoccur. Because of the far-reaching effect of a decision regarding the ability of minors to independently consent to or refuse treatment of their own medical conditions, the Court determined that the legislature should be given the opportunity to address the issue first. The full text of the Court's opinion can be found here. Justice David Prosser wrote a concurring opinion, and Justice Michael Gableman dissented, joined by Justices Patience Roggensack and Annette Ziegler.

PROCEDURAL POSTURE

This case involved review of a circuit court order that appointed a temporary guardian for a minor under Wis. Stat. § 54.50(1) to consent to certain medical treatment over the objections of both the minor and the minor's parents. The minor, a 15-year-old girl, and her parents refused blood transfusions to treat the minor's medical condition, aplastic anemia, based on their religious beliefs as Jehovah's Witnesses. Dane County took emergency custody of Sheila W. due to the high risk of imminent death and filed a petition for protective services, seeking temporary physical custody. The Circuit Court found that Sheila W.'s parents were seriously endangering her health by refusing to consent to blood transfusions and, absent a request to do so by either party, appointed a temporary guardian with the authority to consent to medical treatment for the minor. The temporary guardian consented to the blood transfusions, and Sheila W. appealed the Circuit Court order. Because the order appointing the temporary guardian expired while the appeal was pending, the Court of Appeals dismissed the case as moot in an unpublished decision. Sheila W. filed a petition for review with the Wisconsin Supreme Court, which was accepted in January of this year. Oral arguments were heard in April.

The issues presented on review were: (1) whether, notwithstanding mootness, the court should decide the case on the merits because it involved matters of statewide importance that are capable of repetition yet evade appellate review; (2) whether Wisconsin recognizes the "mature minor doctrine"; (3) whether Wisconsin recognizes a mature adolescent's due process right to refuse unwanted medical treatment; and (4) whether the circuit court violated the minor's common law and constitutional right to refuse unwanted medical treatment by appointing a temporary guardian to consent to treatment over the minor's objections.

THE MATURE MINOR DOCTRINE

Sheila W. argued that Wisconsin should adopt the mature minor doctrine, which provides that a minor may consent to or refuse medical treatment upon a showing of maturity, competence, intelligence and sufficient understanding of the medical condition and the treatment alternatives. Many states have adopted the mature minor doctrine in some form; however, how it is applied and how maturity is to be determined varies from state to state. Other states have specific statutes addressing the age at which minors may make their own medical decisions.

Wisconsin does not have an overarching statute that indicates at what age one acquires the right to make one's own medical decisions. Generally, the law has held that until a child reaches the age of majority, medical decisions are made by the minor's parents or legal guardians. In some instances, the state may step in to protect its interests in preserving life and protecting the health and welfare of minors, such as when parents deny the minor potentially life-saving treatment or fail to exercise their duty and subject the minor to serious risk of physical harm. In certain limited circumstances, a minor may obtain treatment without parental consent, such as the testing for and treatment of sexually transmitted diseases (Wis. Stat. §§ 252.11 & 225.15), the termination of a pregnancy (Wis. Stat. §§ 48.375 & 253.10) and substance abuse treatment (Wis. Stat. § 51.47). Further, an emancipated minor, defined by Wis. Stat. § 48.375(2)(e) as "a minor who is or has been married; a minor who has previously given birth; or a minor who has been freed from the care, custody and control of her parents, with little likelihood of returning to the care, custody and control prior to marriage or prior to reaching the age of majority," acquires the right to make medical decisions for himself or herself. On the other hand, minors do not attain the right to execute an advanced

directive or medical power of attorney until they reach age 18 (Wis. Stat. §§ 154.03 & 155.05).

COURT'S DECISION

The Court only addressed the first issue in its opinion and determined that the other issues presented in the case were moot and should not be decided at this time. The Court opined that any decision it could make would have no practical legal effect upon the existing controversy because the guardianship order on which the appeal was based had expired. While the Court acknowledged that the issue was one of great social importance and would likely reoccur, the Court declined to exercise its power to render a decision on the issue based on the singular factual circumstances of a moot case. Instead, the Court determined that, because of the complexities of the public policy considerations involved and the far-reaching effect of the decision, the legislature should be given the opportunity to "conduct hearings and undertake the necessary fact-finding studies that would result in measured public policy along with statutory guidelines." The Court stated that the legislature was in a better position to consider a broad range of fact situations and expert opinions and fully explore the ramifications of the adoption of general public policy regarding the ability of minors to make their own health care decisions.

Interestingly, this case follows on the heels of the Court's decision in *State v. Neumann*, 2013 WI 58, in which the court upheld second-degree reckless homicide convictions where parents prayed for their 11-year-old daughter's recovery from diabetic ketoacidosis but failed to seek medical treatment, resulting in their daughter's death. As Justice Prosser observed in his dissent, the issue of whether to adopt the mature minor doctrine will "literally have life or death consequences" and unavoidably evokes considerations regarding the duty of parents to make medical decisions for their children and neglect for failure to obtain life-saving treatment, which were at issue in the *Neumann* case.

PRACTICAL TAKEAWAYS

This decision leaves intact the present state of the law in Wisconsin, which is that the right and power to make decisions regarding the medical care of a minor lies exclusively with the minor's parents or legal guardians, unless certain public policy interests permit the state to intervene on the minor's behalf, the minor is emancipated or the legislature has explicitly provided otherwise.

If you need additional information about informed consent, guardianship or the medical treatment of minors, please contact:

- Katherine Kuchan at kkuchan@hallrender.com or 414-721-0479;
- Timothy Feeley at tfeeley@hallrender.com or 414-721-0461;
- Sara MacCarthy at smaccarthy@hallrender.com or 414-721-0478;
- Stephane Fabus at sfabus@hallrender.com or 414-721-0904; or
- Your regular Hall Render attorney.

Please visit the Hall Render Blog for more information on topics related to health care law.