ENDORSED

FILED

JUL 3 1986

GRACE K. YAMASAKI
County Clerk

BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

JUVENILE COURT

In Behalf of D.P., A Minor.	NO. 91590 ORDER

This case came before the Court for hearing on a petition filed by the County of Santa Clara on behalf of a 14-year old minor, D.P. Deputy County Counsel James Lewis appeared for the Petitioner; William Hardy, Esq. appeared for the Minor; Deputy District Attorney Robert Masterson appeared as guardian ad litem for the Minor; and the Minor's parents, Mr. and Mrs. P., appeared in propria personna. The hearing commenced on June 19, 1986 and was continued until July 1, 1986 when it was concluded.

The amended petition alleged that D.P. comes within the provision of Section 300(b) of the Welfare and Institutions Code in that:

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said minor was diagnosed as having rhabdom[y]osarcoma, a pediatric form of cancer, that without treatment has a 100% fatality rate, and that with the full treatment protocol recommended by said Minor's physician, said minor's cancer will remain in remission, and with reasonable medical probability it is estimated said Minor may have a 50% probability of complete cure, full treatment protocol requires the ability to transfuse said minor with whole blood or blood products during critical phases of this therapy; without this transfusion ability, the treatment protocol is not able to be fully implemented and said minor is in danger of life threatening side effects; furthermore, said minor and her parents have refused to consent to the use of whole blood or blood products in the treatment of said minor based on religious concerns; therefore, said minor, D.P., is not provided with the necessities of life.

FACTS

D.P. is a 14-1/2 year old daughter of R.P. and C.P. D.P. is a 9th grader with interests and activities normal to a young person her age. There is nothing remarkable about D.P. or her family except in the context of what has happened in the past few months.

In April of 1986, D.P. was diagnosed as having stage IV alveolar rhabdomyosarcoma, a rare form of cancer which originates in the muscles. She and the family began consulting with Dr. Smith at Stanford Children's Hospital in April.

Since she was diagnosed as having alveolar rhabdomyosarcoma, she and her family have spent more than 30 hours discussing her illness and the proposed treatment plan with Dr. Smith. Dr. Smith is a recognized expert in the diagnosis and treatment of childhood cancer. Dr. Smith recommended that she

participate in the Intergroup Rhabdomyosarcoma Study III (IRS #III). He informed the family that this was the treatment plan that would offer D.P. the highest chance of survival from the disease.

Dr. Smith testified that IRS #III is the most advanced protocol for the treatment of alveolar rhabdomyosarcoma. It includes several choices of treatment combinations referred to as numbers 34, 35, and 36. Each involves chemotherapy with numerous drugs (including vincristine, adriamycin, actinomycin D, and cytoxan), radiation treatment, and surgery. Each of these plans necessitates the availability of blood for transfusions should the patient need them. Dr. Smith told the family that any one of the three plans would necessarily involve blood transfusions.

Upon learning that the proposed therapies would involve blood transfusions, D.P. and her parents indicated they refused to accept any such treatment.

They requested a treatment plan that would not involve any blood transfusions. Dr. Smith agreed to develop a plan that would not necessitate resort to blood transfusions. That plan (hereinafter "the modified treatment plan") was agreed to by D.P. and her parents and has been followed by D.P. for over 10 weeks to date.

D.P. and her parents' principal reason for refusing blood transfusions is religious. Everyone in the family is a member of the Jehovah's Witness religious faith. Members of this faith believe that to accept a blood transfusion would be contrary to

God's word. Members point to statements in the Bible to support their belief as well as studies which show that blood transfusions are used too frequently in the medical community and can be hazardous to the recipient.

D.P. testified she would resist having a blood transfusion in any way that she could. She considered a transfusion an invasion of her body and compared it to rape. She asked the Court to respect her choice and permit her to continue at Stanford Children's Hospital without Court ordered blood transfusions. She said she would refuse treatment at Stanford and would leave the Children's Hospital if the Court authorized coercive blood transfusions. She said she has made her choice freely and after due consideration of all the information presented by Dr. Smith. She said she was expressing her own view, not that of her parents or her attorney.

D.P. testified she does not want to die. She has participated willingly in the modified treatment program even though she has suffered several painful side effects. She believes that the modified treatment program is working and that it will succeed in curing her. If it does not, she is ready to accept death. She is not willing to accept treatment which might offer her a greater chance to live if it means that she will have to undergo blood transfusions. Her parents support her in all of the positions she has taken regarding treatment.

Dr. Smith testified that the modified treatment plan chosen by D.P. will not be as effective as number 36 of IRS

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#III. The modified plan does not treat the cancer as aggressively as would the recommended plan. Fewer drugs are used and in smaller doses over longer periods of time. Radiation is delayed under the modified plan.

Moreover, there are no studies on the effectiveness of the modified plan. Dr. Smith testified that D.P. is doing well on the modified plan now, but that she would do better on number 36 of IRS #III.

He testified that under the recommended plan, D.P.'s chances of survival (at 5 years) would be perhaps as high as 50%. He indicated that under the modified plan, he could give no prediction of her survival chances except that they are greater than 0% and less than the recommended plan.

Dr. Smith also testified that he and the Stanford medical staff have come to the Juvenile Court requesting assistance. They are not certain how to treat D.P., given her and her parents' desires. Dr. Smith testified that he spent a great deal of time with D.P. and her family explaining the different treatment plans and the rights that she and her parents had with regards to choosing a treatment plan. He testified that he presented to D.P. the Experimental Subject's Bill of Rights which, in part, includes the patient's right to refuse treatment. D.P., her parents, and Dr. Smith all signed this document on April 14, 1986, with the postscript that said:

> We agree to treatment on a modified IRS 3 treatment 36 program as outlined by Dr. Smith.

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The evidence reveals that D.P. cannot be a part of the medical experiment outlined in the Experimental Subject's Bill of Rights. She is in week 10 of her treatment and has not followed any of the three treatment plans (34, 35, or 36). Dr. Smith nevertheless is asking whether he can be authorized to treat D.P.'s condition more aggressively consistent with IRS III treatment 36 which would necessitate the use of blood transfusions.

Dr. John Kernick of Downey, California, an expert in the field of oncology, testified that it would be possible to treat D.P. without resort to blood transfusions. He suggested that such treatment was possible at the hospitals in Southern California. He testified it would not be irresponsible of D.P. and her parents to leave Stanford and to seek treatment at Long Beach Memorial Hospital where she could receive treatment without the necessity of blood transfusions. He was much less optimistic about D.P.'s chances of survival under the state III treatment program, believing that she has between 15% and 20% chance of living (at 5 years). He agreed that her chances of survival would be greater if she agreed to the IRS #III treatment plan.

Mr. and Mrs. P. testified that they supported their daughter's choice to receive treatment without the necessity of blood transfusions. They pointed to religious beliefs as well as the dangers that blood recipients are exposed to, noting that hepatitis and AIDS can be contracted through such transfusions. They also described D.P. as a person who has a mind of her own.

They said that D.P. has discussed her disease and treatment at length and that she reached her decision not to permit blood transfusions after listening to Dr. Smith and has firmly stuck with that decision.

DISCUSSION

There is no question that the State is justified to intervene when parents fail to provide their child with adequate medical care. However, the State bears a serious burden of justification before abridging parental autonomy by substituting its judgment for that of the parents.

The factors for the Court to consider include the seriousness of the harm the child is suffering or the substantial liklihood that she will suffer serious harm; the evaluation of treatment by the medical profession; the risks involved in medically treating the child; the preferences of the parents and the preferences of the child. Overlying all these considerations is the Court's concern for the child's welfare and her best interests. See generally In re Phillip B. (1979) 92 Cal.App.3d 796, 802, 156 Cal.Rptr. 48.

D.P. suffers from stage IV alveolar rhabdomyosarcoma. Dr. Smith recommends that she be treated by an aggressive form of therapy, one developed by the National Cancer Institute. The treatment would involve chemotherapy with several drugs, radiation, and surgery, all in combinations and doses such that the cancer would be attacked aggressively over a 20-week period and thereafter over a 2-year time span.

The survival rate for children who receive this treatment is estimated to be somewhere between 15% and 50%. Seventeen percent seems to have a sound basis in existing data, and Dr. Smith is optimistic that with the stage III program, the 5-year survival rate will be considerably higher. Preliminary considerations seem to give credence to his beliefs.

D.P. and her family are asking the Court to approve a modified treatment plan, one that would include chemotherapy, radiation and surgery, but in more moderate amounts and with less aggressiveness than the stage III program. They have asked for this modified treatment plan because they understand (and the evidence does not contradict their understanding) that the stage III program will involve blood transfusions for D.P. in order to survive the high stresses placed on her body. The family opposes blood transfusions primarily for religious reasons, but also because they believe there are inherent medical dangers in the transfusion of blood. Finally, they believe that the modified treatment plan offers hope for survival. Both doctors agree that the modified plan may indeed be effective in treating D.P., but would not be as effective as the stage III program. No one knows how the modified plan compares exactly with the stage III program.

Both parents testified that they supported their daughter's decision to refuse treatment that involved blood transfusions. Their support was firm, grounded on love for their daughter and respect for her decision. It did not appear that

they had persuaded D.P. to take the position she has or that they would reduce their support if she chose to accept blood transfusions. The Court considers the parents' views as important but not determinative in deciding which treatment program to choose.

The Court believes that D.P.'s wishes, if they are an expression of a mature young person, should be given great weight. Were she an adult (18), there is no question that she could refuse treatment, even treatment which, if withdrawn, would end her life immediately. Bouvia v. Superior Court (1986) 179 Cal.App.3d 1127.

On the other hand, were she a newborn baby or an infant, the Court would have to speak for her. This Court has on numerous occasions been called to a hospital when a newborn baby faced immediate death unless she received a blood transfusion. In these cases, the parents refused the treatment for the same religious reasons expressed by D.P. and her family in this case. The Court has never hesitated to order blood transfusions to save the baby in these cases. The decision is based upon the swift and sure fate awaiting the baby, upon the fact that no alternative treatment is available, and upon the fact that the baby is unable to speak for herself.

D.P. is neither an adult nor an infant. The extent to which the Court will respond to her wishes depends on her maturity, the intelligibility of her views, and whether her best interests would be served by respecting her wishes.

Over the past 20 years, the rights of children have expanded dramatically. In the case of In re Gault (1967) 387 U.S. 1, the Supreme Court recognized that children had constitutional safeguards when accused of delinquent acts which,if proved, could result in deprivation of liberty. In a different setting, Justice Douglas recognized the importance of the child's voice when considering educational issues.

> Where the child is mature enough to express potentially conflicting desires, it would be an invasion of the child's rights to permit such an imposition without canvassing his views. Wisconsin v. Yoder (1972) 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed. 15 (Douglas, J., dissenting).

California law has widely broadened the extent to which a minor may control important decisions affecting her life.

Married minors and minors on duty in the armed forces may consent to any hospital, medical or surgical care. (Civil Code sections 25.6 and 25.7.) "The Minor's Right to Consent to Medical Treatment: A Corollary of the Constitutional Right of Privacy." 48 Southern California Law Review 1417 (1975).

An unmarried pregnant minor may give consent "to the furnishing of hospital, medical, and surgical care related to the prevention and treatment of pregnancy." This includes consent for abortion. Ballard v. Anderson (1971) 4 Cal.3d 873, 884. The State may not require parental consent for such an abortion without having a sufficient justification for the restriction. Planned Parenthod of Central Missouri v. Davforth (1971) 428 U.S. 52, 76. Any minor can be excused from class for medical

treatment, including abortion, and schools are under no duty to notify the parents. 66 Ops.Atty.Gen. 299.

At age 12, a minor may, without parental consent, do any of the following:

1. Seek mental health treatment (Civil Code section 25.9);

2. Seek diagnosis and treatment of any infections, contagious, or communicable disease (Civil Code section 34.7);

3. Seek treatment and counseling for rape (Civil Code section 34.8);

4. Seek treatment for sexual assault (Civil Code section 34.9);

5. Seek treatment for drug or alcohol abuse (Civil Code section 34.10);

6. Veto a proceeding under Civil Code section 232 to free him from parental custody (Welfare and Institutions Code section 366.25).

At age 14, a minor may, without parental consent, do any of the following:

1. Petition for emancipation. There are restrictions set forth in Civil Code section 64 (See Civil Code section 60, et. seq.);

2. Petition for appointment of a guardian (Probate Code section 1510). If the Court finds that a guardianship is "necessary or convenient", the right of a 14 year old minor to have his nominated guardian appointed, if fit, becomes absolute,

and will prevail over the objection of a parent (Guardianship of Kentera (1953) 41 Cal.2d 639);

3. Seek medical treatment without being subject to the Child Abuse Reporting Law. Planned Parenthood Affiliates of California v. Van de Kamp (May 21, 1986) 226 Cal.Rptr. 361.

A minor may have considerable voice in a custody dispute between parents. Civil Code section 4600, 4602; In re Marriage of Rosson (1986) ____ Cal.3d ___, and may have a voice in the choice of her attorney in dependency cases. Akkiko M. v. Superior Court (1985) 163 Cal.App.3d 525.

The emergence of the child's right to make decisions or have input into the decision-making process is a recognition that the child is an interested party with important interests to which she should be able to speak.

There are several discernable reasons for this granting of power to the child. In some situations, it is a recognition that the child should be responsible for certain decisions before she reaches the age of majority. Often it is a recognition that parents may have failed and that the child needs the opportunity to see that her needs are met inspite of parental inaction. Sometimes, it is a recognition that certain issues are private and personal and are best addressed by the individual most affected even if she is only 12 or 14.

The Court finds D.P. to be a sufficiently mature minor, such that her wishes will be seriously considered when any decision affecting her is made. The Court was most impressed

with the intelligence, poise, dignity, and forcefulness of this 14-1/2 year old youngster. She may have been overwhelmed by the discovery that she had a deadly form of cancer, by the counseling which described in detail the chances of life and death, and by the realization that she would have to consider her religious beliefs when deciding on a course of treatment. Nevertheless, it was a mature young person who came to Court to testify. She appeared to have focused clearly on the difficult task facing her. She had attended all counseling sessions, agreed to a plan of therapy, developed a coherent philosphy on how she as a human being would face this medical challenge, and she came to the Court with the poignant request: respect my decision.

Under the facts of this case, the Court will respect D.P.'s request and not order a course of treatment which would subject her to numerous blood transfusions.

In addition to her maturity, D.P. has expressed sufficient grounds for her decision for the Court to respect it. Spiritually, psychologically, morally, and emotionally she would be harmed by a treatment plan which included blood transfusions. The Court will respect her choice of treatment plan.

The Court might have reached the same result for a different set of reasons. The petition requests that the Minor be declared a dependent child of the Court and the dispositional recommendation is that:

> The minor be ordered to participate in the conventional therapy program for alveolar rhabdomyosarcoma which includes chemotherapy with vincristine, adriamycin, actinomycin D,and cytoxan, and radiation therapy as well as transfusions which

may include blood or blood products under the administration of Dr. Stephen D. Smith, Associate Professor of Pediatrics at the Children's Hospital at Stanford.

It is doubtful that such an order if made could be carried out. The testimony is clear that D.P. and her parents could leave Stanford Children's Hospital before any such aggressive treatment program were initiated. It is doubtful whether any Court would have the power to force her to remain at Stanford against her will. Would she be locked in a hospital room? Would she be sedated whenever blood transfusions were necessary since she declared she would resist any transfusion attempts? Would this last for weeks and months?

The Court doubts that the Court could make orders which would make possible forced therapy over an extended period of time. The Court doubts that Stanford Children's Hospital would participate in such a program of coercion. Such an order would have unfortunate consequences for the Court system, the hospital, for D.P., for the P. family, and for those who are consdering cancer treatment in the community.

The amended petition is dismissed.

DATED: July 3, 1986

LEONARD P. EDWARDS

LEONARD P. EDWARDS
Judge of the Superior Court

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