IN THE SUPREME COURT OF FLORIDA

Steve Scofield, as parent and natural guardian of Jessica Ilene Scofield, a minor, and Jessica Ilene Scofield, individually,	) :) :	CASE NO.: SC04-1398
	)	Lower Tribunal No.: 1D02-3026
Plaintiffs/Petitioners,	:)	
-vs-	:)	
PAUL SIBLEY, M.D., and ALL WOMEN'S HEALTH CENTER OF GAINESVILLE, INC.	:) :	
Defendants/Respondents.	) :	
_____	)	

ON PETITION TO INVOKE DISCRETIONARY JURISDICTION

FROM FIRST DISTRICT COURT OF APPEAL OF FLORIDA

CASE NUMBER: 1D02-3026

PETITIONERS' AMENDED JURISDICTIONAL BRIEF

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PREFACE

The parties will be referred to as Plaintiffs or Plaintiffs/Petitioners, being Jessica Scofield and Steve Scofield and the Defendants or Defendants/Repondents, being Paul Sibley, M.D., and All Women's Health Center of Gainesville, Inc., and the following symbol will be used:

"APP" Appendix to Jurisdictional Brief

GROUNDS FOR INVOKING DISCRETIONARY JURISDICTION

The grounds for invoking discretionary jurisdiction of the Florida Supreme Court, pursuant to Rule 9.030(A)(2)(A), Florida Rules of Appellate Procedure, are that the district court's opinion (APP 1) expressly construes the provisions of the Article I, Section 23, Constitution of the State of Florida, and expressly and directly conflicts with a decision of the Supreme Court in ***In re: T.W.***, 551 So. 2d 1186 (Fla. 1989).. The issues involved in the instant case are of great public importance, since the opinion of the First District Court of Appeal touches on matters which are likely to be raised in the future, and are outside the scope of the decision in ***In re: T.W.***, *supra*..

STATEMENT OF THE CASE AND THE FACTS

On September 4, 2001, Plaintiffs/Petitioners, Jessica Scofield and Steve Scofield, filed a Complaint, in the Circuit Court, Eighth Judicial Circuit, in and for Alachua County, Florida, seeking damages from the Defendants/Respondents, Paul Sibley, M.D. and All Women's Health Center of Gainesville, Inc., as a result of an abortion procedure performed on a 14 year old child, without the knowledge or consent of the father. On April 18, 2002, Plaintiffs/Petitioners' attorney served an Amended Complaint alleging separate counts for simple negligence and intentional torts, and seeking compensatory and punitive damages from each Defendant by each Plaintiff. Plaintiffs/Petitioners' claims are based on allegations that, on September 30, 1997, the Defendant, Paul Sibley, M.D., acting as an employee or authorized agent of Defendant, All Women's Health Center of Gainesville, Inc., performed an abortion on the Plaintiff, Jessica Scofield, a 14 year old minor, when he knew or should have known that she did not have the legal capacity to contract, or the mental maturity or capacity to exercise good judgment in stressful and life altering matters. The Amended Complaint further alleges that the Defendants negligently or intentionally failed to notify the minor child's father, Steve Scofield, of the intent to perform and abortion, or to obtain his authorization or refusal to authorize the abortion procedure, or to waive

his parental rights, prior to performing the abortion procedure. In short, the Defendants either acted with total disregard for the fundamental rights of Steve Scofield, or intentionally deprived Steve Scofield of his fundamental right to provide parental and spiritual counsel and guidance to his minor child, Jessica Scofield, regarding the propriety of having an abortion.

On May 30, 2002, the trial court granted Defendants' Motion to Dismiss the Amended Complaint, with prejudice, for failure to state a cause of action as to each and every count, and Plaintiffs appealed.

The First District Court of Appeal entered an opinion, dated March 4, 2004, affirming the trial court's dismissal, with prejudice, of the amended complaint. On June 15, 2004, the Court entered an order denying Plaintiffs motion for rehearing. The opinion sought to be reviewed was rendered on June 15, 2004. The First District Court of Appeal's opinion states, in pertinent part:

> "We affirm the trial court's decision dismissing with prejudice the amended complaint filed in this case. The twelve-count complaint alleged claims for negligence and for intentional torts on behalf of the plaintiff Jessica Scofield and her father Steve Scofield. The claims derived from an alleged obligation of the defendants, Dr. Paul Sibley and the All Women's Health Center of Gainesville, Inc. to notify Mr. Scofield of the intent to perform an abortion on his daughter in September 1997, when she was fourteen years old, and obtain Mr. Scofield's authorization for such procedure. The complaint also avers the former minor's right to disavow her consent, upon attaining the age of majority, and then to sue

> for damages occasioned by the procedure. These claims are completely "foreclosed by the Florida Supreme Court's decision in In re T.W., 551 So. 2d 1186 (Fla. 1989)." (APP 1-2).

On July 14, 2004, Plaintiffs/Petitioners timely filed their Petition to Invoke Discretionary Jurisdiction of the Supreme Court.

SUMMARY OF ARGUMENT

Plaintiffs/Petitioners respectfully submit that the First District Court of Appeal's opinion construed Article I, Section 23, of the Constitution of the State of Florida, and the case of ***In re T.W.***, 551 So.2d 1186 (Fla. 1989), as granting absolute immunity to Dr. Sibley and All Women's Health Center of Gainesville, Inc. from claims of the Plaintiffs for damages based on the alleged negligence and intentional torts of Defendants. The effect of the opinion is to emancipate all unmarried pregnant minor children for the purpose of giving irrevocable binding consent to perform an abortion. The Court below has ruled that ***In re: T.W.***, 551 So. 2d 1186 (Fla. 1989), completely foreclosed all of Plaintiffs' claims for damages, even though the complaint did not raise any issue concerning governmental intrusion into their Plaintiffs' private lives, in violation of Article I, Section 23, of the Constitution of the State of Florida. Neither did the complaint assert the validity or unconstitutionality of any state statute requiring parental consent of the parents to obtain an abortion. In fact, the minor Plaintiff had already obtained an abortion before her father knew of it. Steve Scofield's claims are

based on the fact that the Defendants negligently or intentionally failed to notify him of the intent to perform and abortion, or to obtain his authorization or refusal to authorize the abortion procedure, or to waive his parental rights, prior to performing the abortion procedure. The Defendants either acted with total disregard for the fundamental rights of Steve Scofield, or intentionally deprived him of his fundamental right to provide parental and spiritual counsel and guidance to his minor child, Jessica Scofield, regarding the propriety of having an abortion.

The right of privacy guaranteed by Article I, Section 23, of the Constitution of the State of Florida, is that she has a right to be let alone and free from governmental intrusion into her private life. It does not guaranty freedom from intrusion by another natural person or a non-governmental entity.

This Honorable Court should accept discretionary jurisdiction of the case, pursuant to Rule 9.030(A)(2)(A), Florida Rules of Appellate Procedure, on the grounds that the district court's opinion (APP 1) expressly construes the provisions of the Article I, Section 23, Constitution of the State of Florida, and expressly and directly conflicts with a decision of the Supreme Court in ***In re: T.W.***, 551 So. 2d 1186 (Fla. 1989).

ARGUMENT

WHETHER THE FLORIDA SUPREME COURT SHOULD ACCEPT DISCRETIONARY JURISDICTION OF THE CASE PURSUANT TO THE PROVISIONS OF RULE 9.030(A)(2)(A), FLORIDA RULES OF APPELLATE PROCEDURE

The Plaintiffs/Appellants respectfully suggest that the above-stated issue should be answered YES.

In the case of ***In re: T.W.***, 551 So. 2d 1186 (Fla. 1989), the issue before the Supreme Court involved the constitutionality of Section 390.001(4)(a), Florida Statutes (Supp. 1988), requiring a physician to obtain either written consent from the parents of an unmarried minor child, or a court order, prior to performing an abortion on the minor. This Honorable Court affirmed the district court opinion holding the entire statute unconstitutional, on the grounds that Article I, Section 23, of the Constitution of the State of Florida, Right of Privacy, guarantees every natural person the right to be let alone and free from governmental intrusion into his private life. The Court also held that the right of privacy extended to minors and well as adults. Further, this Honorable Court held that Section 743.065, Florida Statutes, which removed the disability of nonage in certain cases, and granted unmarried pregnant

minor children

the right to give valid and binding consent for medical and surgical care, did not make

any provisions for emergency or therapeutic abortions. The Court concluded that the statute failed to provide adequate procedural safeguards. Justice Grimes, in his concurring and dissenting opinion, recognized that the majority opinion held Section 743.065, Florida Statutes, unconstitutional.

Nowhere in ***T.W.,*** *supra,* did the Court state that Article I, Section 23, of the Constitution of the State of Florida, emancipated all pregnant minor children, or grant them the right to enter into a valid and binding contract for an abortion. ***In re: T.W.***, *supra*, held that the state could not show a compelling interest sufficient to intrude into a pregnant minor's right to decide whether or not to have an abortion, at least during the first trimester of pregnancy. Likewise, being the judicial branch of the state government, the Court could not show a compelling state interest to intrude into the private lives of the minor child or her parents, by granting emancipated status to a minor for the purpose of giving valid and binding consent to perform an abortion.

Justice Overton, in his concurring and dissenting opinion in ***In re T.W.***, *supra*, stated:

> "As explained by Justice McDonald in his concurring and dissenting opinion, a minor has the disability of nonage, including the

> inability to contract. The legislature has the power to set forth certain instances where the disability is removed. *See* ch. 743, Fla. Stat. (1987). Our right of privacy provision contained in article I, section 23, of the Florida Constitution, did not absolutely remove a minor's disability of

> nonage for obtaining an abortion or any other medical procedure, and those parts of the majority opinion in which I have concurred did not, in my view, so hold. The right of privacy provision, adopted by the people of this state in 1980, effectively codified within the Florida Constitution the principles of *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), as it existed in 1980. As illustrated by the multiple United States Supreme Court cases construing state statutes relating to parental consent, the principles of *Roe* did not remove the disability of nonage for a minor to have an abortion. (Citations omitted)."

In the case of ***Jones v. Florida***, 640 So.2d 1084, 1088 (Fla. 994), in a concurring opinion, Justice Kogan elaborated on the meaning of ***In re: T.W.***, 551 So.2d 1186 (Fla. 1989). stated the following:

> "I am deeply troubled that an uncritical acceptance of the notion of youths 'consenting' to sexual activity will merely create a convenient smoke screen for a predatory exploitation of children and young adolescents." ***Jones v. Florida***, 640 So.2d 1084, 1088 (Fla. 1994) (concurring opinion)
>
> . . .
>
> ". . . If ***T.W.*** is read as abrogating Florida law on the age of consent apart from the facts of that case then countless other legal problems immediately arise. Such a loose reading of ***T.W.*** potentially would mean that children of a young age could enter into contracts even if they lack the experience or means to do so; could marry at a very young age without the parental or judicial consent; could purchase and consume tobacco and alcoholic beverages; could attend adult movies and purchase pornography; and much else. Nothing in ***T.W.*** supports these troubling scenarios. (Ibid, at page 1089).
>
> . . .

> **". . .** They may unwittingly 'consent' to something that can ruin their lives, jeopardize their health, or cause emotional scars that will never leave them. I think most concerned adults and experts in the field would agree that this lack of prudent foresight continues in youths well into the teen years." (Ibid, at page 1089).

In the instant case, the complaint did not involve a state imposed duty to require parental consent, which is prohibited by the Article I, Section 23, of the Constitution of the State of Florida. In fact, the minor child, Jessica Scofield, did obtain an abortion without notice to or knowledge of her father. The damages claimed by Jessica Scofield against Dr. Sibley and All Women's Health Center of Gainesville, Inc. are based on the fact that the defendants performed an abortion on her, when they knew or should have known that she did not have the legal capacity to contract, or the mental maturity or capacity to exercise good judgment in stressful and life altering matters. Also, based upon pure contract law, a minor who enters into a contract with another party has a right to either ratify or disavow the contract upon reaching the age of majority. ***Lee v. Thompson***,168 So. 848 (Fla. 1936).

Steve Scofield's claims are based on the fact that the Defendants negligently or intentionally failed to notify him of the intent to perform and abortion, or to obtain his authorization or refusal to authorize the abortion procedure, or to waive his parental rights, prior to performing the abortion procedure. The Defendants either acted with total disregard for the fundamental rights of Steve Scofield, or intentionally deprived

him of his fundamental right to provide parental and spiritual counsel and guidance to his minor child, Jessica Scofield, regarding the propriety of having an abortion.

The fact is that even if she had received counseling from her father, Jessica Scofield still retained the fundamental right to continue with, or terminate the pregnancy. The right of privacy guaranteed by Article I, Section 23, of the Constitution of the State of Florida, is that she has a right to be let alone and free from governmental intrusion into her private life. It does not guaranty freedom from intrusion by another natural person or a non-governmental entity.

Plaintiffs/Petitioners respectfully submit that the the First District Court of Appeal's opinion construed Article I, Section 23, of the Constitution of the State of Florida, and the case of ***In re T.W.***, 551 So.2d 1186 (Fla. 1989), as granting absolute immunity to Dr. Sibley and All Women's Health Center of Gainesville, Inc. from claims of the Plaintiffs. Furthermore, the effect of the opinion is to emancipate all unmarried pregnant minors for the purpose of giving binding consent to perform an abortion. Plaintiffs/Petitioners respectfully submit that the ruling of the First District Court of Appeal misconstrues Article I, Section 23, of the Constitution of the State of Florida, and is in direct conflict with the holding in ***In re T.W.***, 551 So.2d 1186 (Fla. 1989), since it held that all of Plaintiffs' claims are completely foreclosed by the

Florida Supreme Court's decision in In re T.W., 551 So. 2d 1186 (Fla. 1989). (APP 1-2).

CONCLUSION

Plaintiffs/Petitioners respectfully submit that the ruling of the First District Court of Appeal misconstrues Article I, Section 23, of the Constitution of the State of Florida, and is in direct conflict with the holding in ***In re: T.W.***, 551 So.2d 1186 (Fla. 1989), since it held that all of plaintiffs' claims are completely foreclosed by the Florida Supreme Court decision in ***In re: T.W.***, *supra.* (APP 1-2).

This Honorable Court should accept discretionary jurisdiction of the case, pursuant to Rule 9.030(a)(2)(A), Florida rules of Appellate Procedure, on the grounds that the district courts' opinion (APP 1) expressly construes the provisions of Article I, Section 23, of the Constitution of the State of Florida, and expressly and directly conflicts with the decision of the Florida Supreme Court in ***In re: T.W.***, 551 So.2d 1186 (Fla. 1989).

Respectfully submitted,

Milton H. Baxley II
Attorney for Plaintiffs/Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and five (5) copies of Petitioners' Amended Jurisdictional Brief, Appendix, and computer disk have been furnished to the Clerk of the Supreme Court of Florida, and two (2) copies of Petitioners' Jurisdictional Brief and Appendix have been furnished to **Mr. Samuel H. Lanier**, Attorney for Defendants/Respondents, 76 Laura street, Suite 1701, Jacksonville, Florida 32202, by U.S. Mail, this _____ day of August, 2004

_____

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that Petitioners' Jurisdictional Brief has been prepared using Times New Roman 14-point font as required by Rule 9.210, Florida Rules of Appellate Procedure.

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Milton H. Baxley II