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Judgements: Interest on Judgements--Limitation on Recovery of Prejudgment Interest

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Case Comments

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Plaintiff employed defendant Maxwell Aircraft Service, Inc. to modify the propellers on plaintiff's aircraft. During a subsequent flight, one of the modified propellers fractured, causing a crash which totally destroyed the aircraft. Plaintiff brought an action in Minnesota district court alleging negligence in the performance of the modification work. The jury returned a special verdict against defendant for the value of the aircraft including interest on the claim from the date of loss. On appeal the Minnesota Supreme Court found no reversible error,[1] but *held* that interest could be awarded only from the date of verdict. The court felt that since the claim was both unliquidated[2] and not readily ascertainable by computation or reference to a generally recognized standard such as market value, an award of interest from the date of loss would be unfair to the defendant, because he would have been deprived of the right to stop the running of interest by tendering payment of the amount due. *Potter v. Hartzell Propeller, Inc.*, 189 N.W. 2d 499 (Minn. 1971).

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1. The appeal raised three other issues for decision. First, defendant argued that the trial court imposed inconsistent foundational requirements for the admissibility of expert testimony in permitting plaintiff's expert to testify while refusing to allow defendant Maxwell's president to give his opinion of the cause of the crash as an expert witness. While noting that in the same situation the court would have permitted defendant's expert to testify, the court held that both decisions were within the proper discretion of the trial court since they were neither clearly erroneous nor based on an erronenous legal standard. Second, the court rejected defendant Maxwell's contention that defendants Martzell and Gopher Aviation, Inc. were concurrently negligent as a matter of law by stating that this was properly a question for the jury since the evidence of their concurrent negligence was not so clear and conclusive as to leave no room for different opinions among reasonable men. Third, the trial court's decision to admit into evidence the prior purchase price of the aircraft on the issue of damages was approved by the court since it was a fair reflection of the present market value in that the prior sale was neither forced nor remote in time.

2. C. McCormick, Law of Damages § 54 at 216 (1935):

> [W]here the amount sued for may be arrived at by the process of measurement or computation from the data given by the proof, without any reliance upon opinion or discretion after the concrete facts have been determined, the amount is liquidated. . . .

There is confusion and uncertainty caused by the cursory treatment[3] of the awarding of prejudgment interest[4] in cases involving the destruction of property. The courts employ a variety of rules and approaches. Underlying decisions in this area are two basic goals: to penalize the defendant if he delays payment to the plaintiff (*i.e.*, a punitive theory); and to compensate the plaintiff for the additional damages caused by the period of litigation (*i.e.*, a compensation theory).

Under the punitive theory, a defendant either must offer payment when damages are not substantially in dispute or be held accountable for prejudgment interest.[5] This encourages offers of payment in cases where there is a strong likelihood that such offers would be accepted.[6] In cases where damages are substantially in dispute, however, plaintiff's loss of the beneficial use of the money award apparently is viewed as a normal cost of litigation which plaintiff can be expected to bear. By contrast, under the compensation theory prejudgment interest is viewed as part of plaintiff's recovery for the loss of his property.[7] Under this concept, part of the damage which plaintiff sustains is the loss of the beneficial use of his property from the time the defendant destroyed it until the repayment of the property's monetary value.[8]

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3. *See* Laycock v. Parker, 103 Wis. 161, 179, 79 N.W. 327, 332 (1899).

4. In Minnesota a more accurate term would be "preverdict interest" since interest from the date of verdict until judgment is awarded by statute. MINN. STAT. § 549.09 (1969).

5. If the fault in nonpayment of the claim rests with the defendant, he cannot complain if he is required to compensate for the delay. If, on the other hand, the fault lies with the plaintiff . . . he should not be penalized for the unwarranted conduct of the plaintiff, and required to pay damages for the delay in the settlement of the claim.

Pierce v. Lehigh Valley Coal Co. (No. 2), 232 Pa. 170, 172, 81 A. 142, 143, (1911).

6. *Cf.* MINN. R. CIV. P., Rule 68.02, which bars *costs* and *disbursements* to the plaintiff if he rejects a sufficient offer of payment of the claim made by the defendant; Moosbrugger v. McGraw-Edison Co., 284 Minn. 143, 160, 170 N.W.2d 72, 82 (1969).

7. "Appellant erroneously assumes that prejudgment interest is in the nature of a penalty. The objective, rather, is to provide 'just compensation' for the plaintiffs." Rosa v. Insurance Co., 421 F.2d 390, 393 (9th Cir. 1970).

8. [A] principle which has evolved to practically unanimous recognition [is] that the damages in a given case shall give full compensation for the loss sustained. In other words, the great weight of authority as expressed in the more recent and better-reasoned cases is to the effect that full compensation for damage to or destruction of property requires that, even in the case of unliquidated demands, account be taken of the period that

The general rule in most jurisdictions is to grant prejudgment interest where the claim is readily ascertainable by computation or reference to a market or established value.[9] While courts usually do not refer expressly to the punitive or the compensation theory, it is this implicit choice of underlying rationale that is responsible both for the divergent application of the general rule in practice and for the widespread confusion in this area generally.[10]

In *Varco v. Chicago, M. & St. P. Ry.*,[11] an early negligence action for the loss of two horses, the Minnesota Supreme Court outlined a simple test to determine whether the plaintiff was entitled to prejudgment interest:

> [The award of prejudgment interest] was proper. It is not a case in which exemplary damages were claimed or allowed, and the basis of plaintiff's claim for compensation is the value of the property destroyed. *In such cases interest is necessarily allowed for the indemnity of the party.*[12]

Clearly in this case the court was relying on the compensation theory. The interest was awarded simply because the plaintiff had been deprived of the beneficial use of his property from the date of loss.

In *Swanson v. Andrus*,[13] involving a claim for the loss of future profits from a breach of contract, the court defined the limits of its rule for granting prejudgment interest:

> [T]his court has so allowed [prejudgment interest] as a matter of law, even in cases where the demand was unliquidated, provided its pecuniary amount did not depend upon any contingencies, and was ascertainable by computation or by reference to generally recognized standards, such as market value .... [I]nterest has not been allowed where the damages claimed ... were, any part of them, prospective or contingent, or the amount thereof depended in whole or in part upon the discretion of the jury.[14]

As examples of cases which do not require interest from the

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elapsed between the damage and the award, and that allowance be made for this period in the form of interest or its equivalent. Annot., 36 A.L.R.2d 337, 345 (1954). *See* McCormack v. Hankscraft Co., 281 Minn. 571, 161 N.W.2d 523 (1968); Emery v. Tilo Roofing Co., 89 N.H. 165, 195 A. 409 (1937). For a good explanation of the compensation theory, *see* Comment, 15 STAN. L. REV. 107 (1962).

9. *See, e.g.*, Swanson v. Andrus, 83 Minn. 505, 510, 86 N.W. 465, 467 (1901); C. MCCORMICK, LAW OF DAMAGES § 55 (1935); 47 C.J.S. *Interest* § 19(b) (1946).

10. *See* Laycock v. Parker, 103 Wis. 161, 179, 79 N.W. 327, 332 (1899).

11. 30 Minn. 18, 13 N.W. 921 (1882).

12. *Id.* at 22, 13 N.W. at 922 (emphasis added).

13. 83 Minn. 505, 86 N.W. 465 (1901).

14. *Id.* at 510, 86 N.W. at 467.

date of loss, the court listed actions "for personal injuries, seduction, libel, slander, and false imprisonment"[15] and actions for future lost profits, which are entirely prospective.[16] However, the court noted that interest should be allowed from the date of loss in actions "to recover for personal property having a market value, which was converted, destroyed, or lost by the act or negligence of the defendant."[17] This classification approach was a reasonable development, and quite consistent with the *Varco* opinion.[18] Like *Varco*, *Swanson* looks solely to the compensation of the plaintiff, largely ignoring the defendant's behavior.

The most recent Minnesota cases indicate a trend away from these early precedents, adopting the more restrictive punitive theory of prejudgment interest. In *Moosbrugger v. McGraw-Edison Co.*,[19] the court, in justifying its refusal to award interest on certain unliquidated claims, mentioned that "a defendant does not know how much he owes until the verdict is reached."[20] This represented a shift in reasoning by suggesting for the first time that a defendant may have the right to avoid the payment of interest unless he wrongfully prolongs the period of the plaintiff's loss of beneficial use of the property. Such a rule significantly de-emphasizes plaintiff's right to be compensated for all of his injury.[21]

In the instant case, the plaintiff sued for the value of his aircraft and interest from the date of loss. The court held that plaintiff could recover interest only from the date of the ver-

15. *Id.*

16. The court saw two reasons why a defendant should not receive prejudgment interest for losses associated with future profits. The profits were prospective in that the loss could not be traced to the date of the breach of the contract. Interest from the date of breach would be clearly unjust since the plaintiff suffered no finite loss of beneficial use of the future profits. Also, ascertaining the amount of future profits involves considerations which have no relation to market value of either property or service, such as the chance of an accident with the workmen or the project. *Id.* at 511, 86 N.W. at 467.

17. *Id.* at 510, 86 N.W. at 467.

18. Varco v. Chicago, M. & St. P. Ry., 30 Minn. 18, 13 N.W. 921 (1882).

19. 284 Minn. 143, 170 N.W.2d 72 (1969).

20. *Id.* at 160, 170 N.W.2d at 82.

21. This right was emphasized in Minneapolis Harvestor Works v. Bonnallie, 29 Minn. 373, 375, 13 N.W. 149, 151 (1882). "To afford the party just compensation, since his damages accrued at a definite time, he must be allowed interest, else the longer the delay the more inadequate his compensation would prove to be."

dict.[22] In so doing, the court refined *Moosbrugger* and formally announced a new policy to govern cases of prejudgment interest:

> [A]lthough . . . plaintiff actually suffers loss of use of his money from the date of the wrongful act, for which loss he theoretically should be compensated, it would nevertheless be unreasonable to require defendant to compensate plaintiff for this loss where defendant could not have readily determined the amount of damages himself either by computation or reference to generally recognized standards such as market value. The underlying principle is that one who cannot ascertain the amount of damages for which he might be held liable cannot be expected to tender payment and thereby stop the running of interest.[23]

The court's rule states that prejudgment interest will be awarded in all cases in which defendant could be expected to tender payment,[24] thus halting the accrual of interest. The court's reliance on the concept of tender, however, seems misplaced, since in all cases tender forces the defendant to admit liability. Where there is no substantial dispute over damages, a defendant who attempts to avoid prejudgment interest by tendering the amount due effectively gives up his right to contest liability since the plaintiff presumably will accept the amount, thereby terminating the lawsuit. In situations like *Potter* where plaintiff might *not* accept the tender—that is,

22. Even though the facts of the instant case are similar to the facts of the *Varco* case and the claim is of a type allowed interest in the *Swanson* opinion, the court here denied interest.

23. 189 N.W.2d at 504.

24. "Tender" is a term used to describe offers of payment or settlement in various legal situations. Perhaps the most common is the sales contract "tender" of delivery by the seller which creates a concurrent obligation in the buyer to "tender" payment. *See* UNIFORM COMMERCIAL CODE § 2-301. Another area where a "tender" concept is employed is the offer of payment or settlement. Under MINN R. CIV. P., Rule 68.02, a sufficient offer will bar costs and disbursements. *See* note 6 *supra*. At common law "tender" can be used to stop the running of interest in a contract claim case. For example, a debtor, by tendering the amount of his obligation, triggers the creditor's obligation to receive the payment and relieves himself of liability for subsequent interest. From the brief reference to "tender" in *Potter* it is unclear what use of the term was intended by the court.

It seems reasonably clear that tender as a bar to the accrual of interest is a realistic concept only in cases of liquidated damages. This is the only situation where the defendant will know the exact amount due which is needed in order to make a specific and precise offer of payment. Where the amount of damages are to some degree uncertain the defendant will have to negotiate a settlement with the plaintiff in order to terminate the case without trial. Perhaps the *Potter* court is thinking more generally of an offer of payment or settlement when it uses the term "tender."

where damage is unliquidated, but readily ascertainable and plaintiff reasonably believes himself entitled to an amount greater than the amount offered by the defendant—there is a slightly different problem with the court's rule. That is, despite the contrary implication of the *Potter* court,[25] it is generally accepted that tender, to be effective, must include everything to which the other party is entitled.[26] It is not at all clear that defendant's offer of payment would satisfy these technical requirements and thereby stop the running of interest. In some cases, then, the defendant might be left with no sure mechanism by which to avoid liability for prejudgment interest short of tendering the full amount to which plaintiff believed himself entitled. This would seem an extremely difficult decision for a defendant, especially where liability and the amount of damages are doubtful and contested in good faith. Despite this fact, the *Potter* rule, which apparently seeks to penalize the defendant for contesting liability, was adopted by the court without any adequate explanation of the policies which might underlie such a rule. This absence of policy justification is particularly glaring in the case where damages are unliquidated but readily ascertainable since the rule suggests that defendant not only would be precluded from contesting liability but also could not dispute the amount of damages.

Another difficulty with the court's decision in *Potter* is that its test is extremely difficult to apply. The rule of the instant case will involve courts in ad hoc determinations of whether variations in market value are so great that the defendant cannot "readily ascertain" what he owes. A striking example of this problem is illustrated by *Lacy v. Duluth, M. & I. R. Ry.*,[27] a breach of contract case brought to recover the cost of labor and the rental value of well drilling equipment. There the Minnesota Supreme Court allowed interest from the date of breach, stating that "[t]he difference between the amount

25. The *Potter* court seems to think that in a "readily ascertainable" situation an offer of payment by the defendant will stop the running of interest even though it does not satisfy the technical requirements of tender. *See* note 26 *infra*.

26. There are two main, technical requirements in order for a tender to be effective in halting the running of interest. First, it must be a specific offer of the exact amount due. *See* Spoon v. Frambach, 83 Minn. 301, 86 N.W. 106 (1901). In addition, the offer must be kept open by the the debtor in order to halt the accrual of interest. *See* First Nat'l Bank v. Schunk, 201 Minn. 359, 276 N.W. 290 (1937); 52 Am. Jur. *Tender* § (1944).

27. 236 Minn. 104, 51 N.W.2d 831 (1952).

claimed, $9,307.17, and the amount finally determined, $7,127.03, does not appear to be so unreasonable as to justify a complete denial of interest upon the latter amount . . . ."[28] In the instant case estimates of the damages went up to $90,000 or $95,000 while the jury assessed them at $66,000. In percentage terms, the variances between estimates in the two cases are quite similar.[29] However, in *Potter* the court felt that such a divergence demonstrated "the absence of an objective standard of measurement for this sophisticated kind of property."[30] A less subjective test perhaps would avoid these problems. A better standard would be whether the claim is pecuniary in nature; in other words, whether it was based on the loss of money or of property having a discernible monetary value. For example, in the instant case the jury based its verdict on what it felt was the market value of this type of aircraft. This should demonstrate to the court that an objective standard of measurement exists for ascertaining damages.

Finally, the *Potter* rule, to the extent it is based on a punitive theory, disregards the fact that payment of prejudgment interest does not penalize the defendant but merely prevents his unjust enrichment. That is, it requires him only to return the benefits presumably resulting for his use of the money from the date of injury. By not awarding prejudgment interest, the *Potter* decision may in fact encourage delay by defendant, since by refusing to settle, he would not risk an increase in the size of the judgment and would still be able to use the money for his own benefit.

It seems clear that the Minnesota Supreme Court would be well-advised to return to a rule consistent with its earlier decisions based on the compensation theory. Any rule for prejudgment interest in property damage cases should compensate the plaintiff fairly for his loss, prevent the defendant from being unjustly enriched, and be sufficiently clear so that the courts are able to apply it equitably. The best approach would grant interest in all cases involving pecuniary loss resulting from injury to property, except if the damage is merely contin-

28. *Id.* at 108, 51 N.W.2d at 834.

29. In the instant case a variance of 36.4% or 43.9% exists while in *Lacey* the variance was 30.6%.

30. 189 N.W.2d at 504. It is noteworthy that both parties felt that the market value of the aircraft was easily established. In fact, the defendant felt it was as easy to discover the market value of such an aircraft as that of an used car. *See* Brief for Appellant at 31-32.

gent or prospective.[31] This would achieve the objective of fair compensation within the scope of the widely used "readily ascertainable" test for unliquidated claims. The division of types of claims seen in *Swanson v. Andrus*[32] reflects the reasonable proposition that pecuniary loss which occurs at a fixed time is by its nature readily ascertainable, either by computation or reference to generally recognized standards. The trend of modern tort law is to adopt the policy that the plaintiff should be compensated for his loss.[33] This has replaced the attempt to punish the defendant as the basis for awarding damages. The test for awarding interest as damages should parallel this general tort law development. A distinction based on the pecuniary nature of the claim will provide a logical, workable rule which is in line with this modern tort policy consideration of victim compensation.

One desirable modification, however, would be to allow the trial judge discretionary power to reduce or eliminate interest in cases where the plaintiff is responsible for unnecessary delay.[34] The defendant would be aware that interest was accruing from the date of loss and that he could not avoid paying it by showing at trial or on appeal that the pecuniary claim was not readily ascertainable. However, the plaintiff would also know that unreasonable delay on his part would jeopardize his compensation on the claim for the period before the verdict. This approach encourages settlement by creating a situation where neither party unjustly gains from delay. In addition, it would encourage more uniform decisions by applying a clear rule based on the solid policy of just compensation and would be more equitable and practical than the approach of the instant case.

31. *See* the discussion of contingent or prospective damages in Swanson v. Andrews, 83 Minn. 505, 510-11, 86 N.W. 465, 467 (1901).

32. 83 Minn. 505, 510-11, 86 N.W. 465, 467 (1901).

33. For example, recent developments in the area of products liability have been based on a theory of compensation. *See* RESTATEMENT (SECOND) OF TORTS § 402A, comment c (1965).

34. This concept would be similar to the federal doctrine of awarding prejudgment interest according to considerations of fairness. *See, e.g.*, Board of Comm'rs v. United States, 308 U.S. 343, 352 (1939), in which the court stated:

> The cases teach that interest is not recovered according to a rigid theory of compensation for money withheld, but is given in response to considerations of fairness. It is denied when its exaction would be inequitable.

Constitutional Law: Freedom of Religion—Forcing Treatment on Mental Patient over Objection on Religious Grounds Violates First Amendment

Plaintiff was admitted to a state institution as an involuntary mental patient.[1] She was a 59 year old Christian Scientist without dependents or relatives. When she was admitted, and several times thereafter, plaintiff informed the hospital staff that she would not submit to physical treatment or medication due to her religious beliefs.[2] Despite her repeated protests, she was given medication (for the most part, heavy doses of tranquilizers) continually from the time of her admission until she was discharged several months later. After her release, plaintiff brought suit under the federal civil rights statutes,[3] maintaining that the defendants,[4] while acting under color of state law, had violated her constitutional right to free exercise of religion.[5] The district court held that medical officials, when

1. Plaintiff was admitted pursuant to Section 78(1) of the New York Mental Hygiene Law. Under this statute, the Director of any state-approved mental hospital may retain for a period of 30 days any person alleged to be mentally ill. The allegations of mental illness need not be made by a physician.

2. Followers of Christian Science believe that they should not accept medical treatment of a physical nature. Psychological treatment, however, is acceptable. C. CAWLEY, THE RIGHT TO LIVE 24-26 (1969).

3. 42 U.S.C. § 1982 (1970); 28 U.S.C. § 1343(3) (1970).

4. The defendants in this suit were the Commissioner of Mental Hygiene for the State of New York, the Director of the Psychiatric Division of Bellevue Hospital, the Director of Central Islip State Hospital, and doctors on the staffs of Bellevue Hospital and Central Islip State Hospital whose names were unknown to plaintiff.

Circuit Judge Moore, in his dissenting opinion, felt the appeal should have been dismissed as moot as to the named defendants and for lack of jurisdiction over the person as to the unnamed defendants, *citing* Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971). Judge Moore argued that since the named defendants were unaware of plaintiff's beliefs or the treatment afforded her they could not be held liable. "The doctrine of 'command responsibility' . . . can have no applicability to the chain of responsibility in the state executive branch." Winters v. Miller, 446 F.2d 65, 73 (2d Cir. 1971). The issue raised by Judge Moore's argument was ignored by the majority opinion and is beyond the scope of this Comment.

5. Plaintiff also challenged the constitutionality of Section 34(9) of the New York Mental Hygiene Law which provides for the compulsory fingerprinting and photographing of state mental patients. Plaintiff claimed that this procedure violated her Fourth Amendment right to privacy, her Fifth Amendment right to substantive and procedural due process and her Fourteenth Amendment right to equal pro-

they have acted in good faith in ordering treatment for a mentally ill patient, may not be held liable when appropriate treatment is given over the patient's objections.[6] On appeal, the Court of Appeals for the Second Circuit reversed the decision, one judge dissenting. It *held* that absent a prior judicial determination of incompetency, the forcing of medication upon a mental patient objecting to the treatment on religious grounds is an unconstitutional infringement of the patient's right to free exercise of religion, absent a showing that the treatment furthers a substantial interest of society or some third person. *Winters v. Miller*, 446 F.2d 65 (2d Cir. 1971).

The Free Exercise Clause of the First Amendment generally has been considered to protect two distinct freedoms: the freedom to believe and the freedom to act.[7] While the freedom to believe is absolute,[8] the freedom to act may be subject to governmental restriction or prohibition even when the action is compelled by religious conviction.[9] To determine when governmental interference with religious "action" is constitutionally permissible, the Supreme Court has employed a balancing test, weighing the interest in free exercise of religion against other competing interests of society.[10]

A number of courts have used this balancing test to decide when a patient may refuse treatment on religious grounds.[11] Most of the cases in this area deal with physically ill patients. But in at least two instances the patient also was considered

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tection. Both the district and circuit court found that the fingerprinting and photographing of state mental patients served a legitimate government interest (the identification of injured, lost or incompetent patients) and that plaintiff's claims were "obviously without merit." Winters v. Miller, 306 F. Supp. 1158, 1166 (E.D.N.Y. 1969), *rev'd on other grounds*, 446 F.2d 65 (2d Cir. 1971).

6. Winters v. Miller, 306 F. Supp. 1158 (E.D.N.Y. 1969).

7. *Id.* at 1166.

8. Braunfield v. Brown, 366 U.S. 599, 603 (1961); Cantwell v. Connecticut, 310 U.S. 296 (1940).

9. Braunfield v. Brown, 366 U.S. 599, 603 (1961); Prince v. Massachusetts, 321 U.S. 158 (1944).

10. West Virginia v. Barnette, 319 U.S. 624 (1943).

11. Application of Pres. and Dirs. of Georgetown College, 331 F.2d 1000, *rehearing denied*, 331 F.2d 1010 (D.C. Cir. 1964), *cert. denied*, 377 U.S. 978 (1964); United States v. George, 239 F. Supp. 752 (D. Conn. 1965); *In re* Brooks, 32 Ill. 2d 361, 205 N.E.2d 435 (1965); Raleigh Fitkin-Paul Morgan Mem. Hosp. v. Anderson, 24 N.J. 421, 201 A.2d 537 (1964), *cert. denied*, 377 U.S. 985 (1964); Powell v. Columbian Presbyterian Medical Center, 49 Misc. 2d 215, 267 N.Y.S.2d 450 (Sup. Ct. 1965); Collins v. Davis, 44 Misc. 2d 622, 254 N.Y.S.2d 666 (Sup. Ct. 1964).

mentally competent.[12] In these cases the courts made it quite clear that a patient's right to refuse treatment on religious grounds must yield to a compelling state interest in ordering the treatment. Obviously, the determinative issue is the definition of a compelling state interest.

In *Application of President and Directors of Georgetown College*,[13] the mother of a seven month old child voluntarily entered the hospital for treatment of a ruptured ulcer. In the opinion of four attending physicians, the patient would die without the immediate administration of blood transfusions. Due to their religious convictions,[14] both the patient and her husband refused to consent to the treatment. An emergency order was granted authorizing the transfusions. The court reasoned that because the patient was *in extremis* and *non compos mentis* she was no more able to make a rational decision than a child. The court also pointed out that the patient had a responsibility to the community to care for her child, and the state as *parens patriae*, could not tolerate parental conduct which constituted child abandonment.[15] As one commentator has noted, "The conclusion suggested by this case is that the state [as *parens patriae*] can order treatment where the adult patient is either incompetent or has dependents to whom he has a responsibility of care."[16]

The leading case upholding the patient's right to refuse treatment is *In re Brooks*.[17] In that case plaintiff, a Jehovah's Witness, successfully appealed an order that had authorized

12. Application of Pres. and Dirs. of Georgetown College, 331 F.2d 1000, *rehearing denied* 331 F.2d 1010 (D.C. Cir. 1964)), *cert. denied* 377 U.S. 978 (1964); *In re* Brooks, 32 Ill. 2d 361, 205 N.E.2d 435 (1965).

13. 331 F.2d 1000 (D.C. Cir. 1964).

14. Plaintiff and her husband were Jehovah's Witnesses. The Jehovah's Witnesses religion prohibits the giving or accepting of blood transfusions as a violation of God's Law. Their objection to blood transfusions, which are equated with the "eating of blood," is based on Biblical text. *See Acts* 15:28-29. *See generally* WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., BLOOD, MEDICINE AND THE LAW OF GOD (1961); How, *Religion, Medicine and Law*, 3 CAN. BAR J. 365 (1960).

15. 331 F.2d at 1008. *Accord*, United States v. George, 239 F. Supp. 752 (D. Conn. 1965); Raleigh Fitkin-Paul Morgan Mem. Hosp. v. Anderson, 42 N.J. 421, 201 A.2d 537 (1964), *cert. denied*, 377 U.S. 985 (1964); Powell v. Columbian Presbyterian Medical Center, 49 Misc. 2d 215, 267 N.Y.S.2d 450 (Sup. Ct. 1964); Collins v. Davis, 44 Misc. 2d 622, 254 N.YS..2d 66 (Sup. Ct. 1964).

16. Note, *Compulsory Medical Treatment: The State's Interest Reevaluated*, 51 MINN. L. REV. 293, 300 (1966).

17. 32 Ill. 2d 361, 205 N.E.2d 435 (1965).

the administration of blood transfusions to her. The Supreme Court of Illinois acknowledged that approaching death had so weakened the faculties of the patient that she might properly be considered incompetent. But it still held the authorization of blood transfusions for the patient an unconstitutional interference with her right to the free exercise of her religion. The *Brooks* court distinguished *Georgetown College* on the ground that Mrs. Brooks had no small children or other dependents. However, the general tenor of the opinion indicates that even in the *Georgetown College* situation the court would deny the order.[18] In any case, the patient's mental incapacity alone does not justify state interference with her religious beliefs under *Brooks*.

Winters v. Miller is the first case to consider the right of a *mental* patient to decline treatment on religious grounds. In deciding the case, the district court adopted the reasoning of *Georgetown College*:

> In mental illness cases, the public interest in treating and curing patients is greater than the public interest in cases of physical illness . . . . A mental patient . . . may be unable either to seek appropriate treatment or to determine what treatment to allow.[19]

The lower court further argued that the detrimental effects resulting from failure to treat a mental patient were greater than those resulting from failure to treat a physically ill patient:

> For the physically ill person, where there are no dependent children or communicable diseases involved, the danger from a refusal, on religious or any other grounds, to allow a particular type of treatment may be that the patient will die. Only the patient and his immediate family are likely to be aggrieved or injured as a result. On the other hand, where the mental patient is not properly treated, the condition may progressively worsen, and the patient may become a public burden and expense.[20]

The lower court concluded that the state's strong interest in the treatment of mental patients, combined with the patient's assumed incapability of deciding on appropriate treatment, allowed the defendants to ignore plaintiff's religious objections.

The district court's position was based on a *parens patriae* approach to the problem similar to that expressed in *Georgetown College*. The state's interest will outweigh the mental pa-

18. Note, *Unauthorized Rendition of Lifesaving Medical Treatment*, 53 CALIF. L. REV. 860, 872 n.56 (1965).
19. 306 F. Supp. at 1167.
20. *Id.*

tient's right to refuse treatment in every case, since in every case the state's strong interest in the treatment of mental patients will be present, as will the assumption that the patient cannot rationally decide whether or not to accept treatment. If the district court's reasoning is accepted, a compelling state interest would be established by a mere showing that the individual objecting to treatment is an involuntary mental patient. In effect, once an individual enters a mental institution, he no longer can exercise his right to refuse treatment on religious grounds.

On appeal, therefore, the case presented two issues to the circuit court. The court first had to determine whether *any* involuntary mental patient can effectively assert the right to decline treatment on religious grounds. It clearly recognized that under the district court's reasoning, "[a]ny patient alleged to be suffering from a mental illness of *any* kind . . . loses the right to make a decision on whether or not to accept treatment."[21] The appellate court could not accept this. Nor could it accept the applicability of *parens patriae* to the present situation. While the court conceded the state could ignore plaintiff's religious convictions if it did stand in *parens patriae* relationship to her, it argued that such a relationship does not automatically arise whenever a person is committed to a state mental institution. There first must be a judicial determination of the patient's competency. Absent such a hearing, the court concluded that the patient retains the right to decline treatment on religious grounds.[22]

The appellate court rightly rejected the district court's decision. While the lower court conducted a balancing test of sorts, its scales were faulty. First, the district court decision gives unlimited discretion to hospital officials. Under the district court ruling doctors could order any treatment they consider desirable, even though it may be merely expedient under the circumstances. One hardly can deny that it is easier to administer medication than, for example, to give psychological treatment to a patient. But if psychological treatment is just as effective, as plaintiff had argued in the court below,[23] should a mere showing that medication is more expedient be a sufficient reason to deny the patient her constitutional right to the free exercise of religion? There seems but one answer.

21. 446 F.2d at 68.
22. *Id.* at 71.
23. 306 F. Supp. at 1170.

Second, the district court decision fails to recognize that in some cases the state's interest may not be very substantial. As already pointed out, there may be instances where one type of treatment is preferred over another simply because the one is more expedient to administer. Or there may be cases where the patient is neither dangerous nor disruptive and the treatment has little chance of success. In still other circumstances, perhaps the individual should not be in the institution in the first place.

Moreover, the district court decision is partially based on the premise that a patient suffering from a mental illness of *any* kind cannot competently decide whether or not to accept treatment. This seems an unfounded assumption. "Absent a specific finding of incompetence, the mental patient retains the right to sue or defend in his own name, to sell or dispose of his property, to marry, draft a will, and, in general to manage his own affairs."[24] Surely, there also will be instances where the mental patient can rationally decide whether or not to accept treatment.

Finally, the district court's holding gives too little weight to the patient's religious views. Absent a compelling state interest, every person has the right to practice freely a religion of his own choice, no matter how controversial or unorthodox. The district court's opinion withdraws this right from the involuntary mental patient even though interference may be unwarranted or arbitrary. Moreover, if the state's interest in the treatment of mental patients prevails over this fundamental right in every case, what rights can the involuntary mental patient have? Theoretically, by invoking this same state interest medical officials could deny the involuntary mental patient any constitutional freedom so long as they did so in the belief that it was in the patient's best interest.

The circuit court's decision, on the other hand, requires a case by case balancing of interests, except where there has been a *judicial* determination of incompetency. Thus the court insures that a mental patient does not forego his right to religious freedom simply by virtue of his involuntary admission to the hospital. However, having determined that mental patients have a right to decline treatment on religious grounds, the court still had to decide what state interests are sufficient

24. 446 F.2d at 68.

to justify interference with that right and whether such interests were present in the instant case.

The circuit court's opinion describes two situations in which the state's interest might justify action inconsistent with the patient's religious convictions. First, where there has been a judicial determination of legal incompetency, medical officials could take any action they consider necessary to the patient's welfare under the *parens patriae* doctrine. In the instant case, there was no such determination of incompetency. Second, medical officials could order treatment over the patient's religious objections if necessary "to prevent a grave and immediate danger to interests which the state may lawfully protect."[25]

The circuit court seems to imply that if the hospital staff were faced with an emergency their actions could be defended as proper.[26] But it concludes no such emergency existed in the instant case and notes that plaintiff was not disruptive nor dangerous.[27] Indeed, the circuit court felt the defendants easily could have waited for a judicial resolution of the issue.[28] Further, there was no showing that the medication was necessary to cure the patient, nor did the defendants answer plaintiff's argument that psychological treatment would have been equally as effective. On these facts, the case involved a non-emergency situation where doctors had ordered medication repugnant to the patient's religious views without showing that the medication was necessary to cure the patient or that it was the best means of treatment available. Under these circumstances the court's observation that "there is no evidence in the record that would indicate that in forcing the unwanted medication on Miss Winters the state was in any way protecting the interests of society"[29] is correct. The court could conclude only that the defendants unconstitutionally had violated the plaintiff's right to the free exercise of her religion.

The *Winters* decision gives the same constitutional protection to the religious views of the mental patient as that given the religious views of anyone else.[30] While the patient's mental

25. West Virginia v. Barnette, 319 U.S. 624 (1943).
26. 446 F.2d at 70.
27. *But cf.* 306 F. Supp. at 1161.
28. 446 F.2d at 71.
29. *Id.* at 70.
30. Absent a prior judicial determination of incompetency. *Id.* at 71.

illness may be very relevant in determining whether there is sufficient state interest to justify interference with his right to decline medical treatment on religious grounds, the court has concluded that it is irrelevant in determining whether or not that right exists in the first place. It is difficult to determine what effect the *Winters* decision will have on the treatment of mental patients. The court clearly recognized that, in the instant case, First Amendment rights were involved and the state had to meet a more stringent standard in justifying its actions than it would if other, nonfundamental rights were involved. However, one effect of the *Winters* decision is predictable. Absent a judicial determination of incompetency, the *Winters* decision, in practice, will require state mental hospitals to get prior judicial authorization before they take any action which would interfere with the patient's religious views. This guarantees mental patients protection from arbitrary or unwarranted interference with their religious convictions.

When dealing with members of unconventional minority religious sects, such as Christian Scientists and Jehovah's Witnesses, a sharp line must be drawn between the patient's illness and his religious views. If a compelling state interest is present, the doctor should be allowed to treat the illness, but in no case should the patient's religious views be considered a symptom of that illness. *Winters v. Miller* ensures that medical officials will make this distinction.