

# Joshua's Faith

## A VICTORY FOR CHILDREN'S RIGHTS

BY AWAKE! CORRESPONDENT IN CANADA

**"IT WAS** the first time the mature minor doctrine had been considered at the appeal court level. And some say the judgment sets out clear guidelines not only for doctors and hospitals in New Brunswick but also, perhaps, elsewhere in Canada."—*Canadian Medical Association Journal*.

The above journal is referring to a case involving New Brunswick's Medical Consent of Minors Act, which says that if two doctors declare a minor under 16 to be mature and that he understands his disease and its proposed treatment, he has the legal right to accept or reject medical treatment, like any adult. Concerning 15-year-old Joshua Walker, who had acute myeloid leukemia, Chief Justice W. L. Hoyt of the New Brunswick Court of Appeal wrote the following: "The evidence here is overwhelming that Joshua is sufficiently mature and that, in the circumstances, the proposed treatment is in his best interests and his continuing health and well-being. . . . It is my view that the application [to be declared a mature minor]



was not necessary." Chief Justice Hoyt in his decision also noted that Canadian common law "recognizes the doctrine of a mature minor."

One of Joshua's lawyers, Daniel Pole, said that the written decision of the Court of Appeal is "going to be a leading case across Canada." Because it was an unusual case, the court sat with five judges instead of the usual three. "In landmark situations," Pole said, "the court will sit with a full bench. It may be that they considered the decision an impor-

tant one for Canada." He suggested that the precedent-setting ruling opens the way for mature minors to act on their own behalf and that "there's no reason for it to come up again in court. It has accomplished a great deal for other young persons." Further stressing the extensive value of this court victory, Pole declared: "It's a tremendous vindication of the rights of children, of young men and young women who have the capacity to decide what they want to have done with their bodies."

Under the heading "A 'Minor' Victory,"



## **“The judgment sets out clear guidelines . . . for doctors and hospitals.”**

**—Canadian Medical Association Journal**

an editorial in the *Telegraph Journal* said: “The New Brunswick Court of Appeal’s decision that 15-year-old Joshua Walker has the right to consent to or refuse medical treatment is a victory not just for Jehovah’s Witnesses, but for us all. . . . Sometimes the decisions an individual makes may seem too hard for society to bear, especially hard if the life or death of a young person is at stake. But even harder to bear would be a society that routinely violates the bodies and souls of its citizens. Joshua Walker has done his part to keep us safe from that.”

### **A Valiant Doctor**

From the start of his illness, Joshua was diagnosed and treated by Dr. Mary Frances Scully, a specialist in hematology and pediatric oncology. Her work includes the diagnosis and treatment of cancer in children.

The usual treatment for Joshua’s type of leukemia is chemotherapy and blood transfusions. Joshua’s family are Jehovah’s Witnesses and, for Scriptural reasons, reject blood transfusions. The divine decree to Christians is: “Abstain from things polluted by idols and from fornication and from what is strangled and from blood.” (Acts 15: 20, 29) Joshua, from the beginning, took a determined position to adhere to Jehovah’s law to ‘abstain from blood.’

Dr. Scully noted on the hospital chart that Joshua was “very adamant” about this. Dr. Dolan, head of the hospital’s adult oncology wing, talked personally to Joshua. Both he and Dr. Scully concluded that Joshua was a mature minor. The Walkers’ fami-

ly doctor, Dr. Lordon, also viewed Joshua as a mature minor. With, not just the required two, but three doctors declaring Joshua a mature minor, he was more than qualified under the Medical Consent of Minors Act to choose his treatment. No litigation should have been needed.

Unfortunately, the situation did not stay that way. The hospital, already viewing Joshua as a mature minor, wanted this established by a judicial decision in order to protect itself. The outcome of a lengthy and trying court investigation was that the judge ruled that Joshua did not have the right to refuse treatment. This decision was immediately appealed to a higher court with the results mentioned in our opening paragraph.

Throughout Joshua’s ordeal Dr. Scully stuck to her refusal to administer blood to Joshua under any circumstances unless he changed his mind and consented. Reporting on her position, the *Canadian Medical Association Journal* quoted her as saying: “My biggest concern was that Joshua or his family would be so upset that they would just leave without any options.” The article continues: “Other physicians later told her that they would have refused to treat [Joshua] altogether. However, that thought never crossed her mind.” Her reasonable and noble stand was very encouraging to Joshua and his family.

### **Joshua Loved Life and Touched Hearts**

Joshua Walker loved life; he didn’t want to die. His family didn’t want him to die. In many lands Jehovah’s Witnesses, his spiritual brothers, hoped that he might recover and live. Joshua was willing to accept his situation; his faith in God convinced him he would come back in the resurrection. He found support in Jesus’ words: “The hour is coming in which all those in the memorial tombs will hear [the] voice [of the Son of God] and come out.”—John 5:25, 28, 29.



Support came to him from many places. The *Evening Times Globe* said: "Both parents emphasized yesterday that they're not abandoning Joshua. They brought him to the Regional Hospital to get the best medical treatment possible, without blood. 'We would have left him at home if we wanted him to die,' the father argued. 'We don't want Josh to die. We're doing everything medically to keep him alive. And that's what anyone would do for any of their loved ones. We're not here to watch him die. We're here to get that boy better, so he can walk out and go back to his trains, go back to the Kingdom Hall, to his meetings and his service, and maybe go back to some basketball.'"

His family were certainly there for him, literally. One newspaper noted this: "While one of them took a turn at keeping Joshua company, other family members huddled nearby in a small quiet-room, some of them still in gowns and with loosened masks hanging from their necks. It's the same scene that has been unfolding there since March 31, when Joshua first came to [the] hospital. In three weeks, Joshua has not spent a moment when there wasn't a gowned and masked family member in his hospital room. . . . Often, both parents stay overnight with Joshua, sleeping in a bed next to their youngest son. [The mother said,] 'We're needed here, and I'd do anything for Josh, for any of my children.' 'I'd sit out in the parking lot if I had to,' said the father."

#### **Confidences and Conversations**

In the evenings when his mother or father was with him, there were intimate conversations. One night he said: "Mom, please write this down. All you young ones, please draw close to Jehovah so that if anything should ever happen to you, you will keep your integrity to him. When I am better I promise to do more in declaring Jehovah's name.

You young ones in good health, do more if you can."

One night when Josh was in the hospital, he said: "Mom, a lot of times when you go to the bathroom or go to get Dad, the doctors come in and say: 'Josh, you need a blood transfusion. Without it you will die. We want to help you.' 'Then please respect my wishes about blood,' I would reply. I told one doctor who tried to get me to take blood: 'You may think I'm crazy, but I have all my thinking abilities. I just want to live by Jehovah's law on blood. He knows what is best for us. The best thing for me is to respect the sanctity of life, and if I die I will live again.'"

One doctor, the chief of pediatrics, Dr. Garry, said to Josh's parents: "Be proud of Josh. He has faith that I have never seen demonstrated before in my life." He hugged them both and said: "You are a courageous family."

One evening in the hospital, after some bad news had been given the family concerning Josh's condition, his brother Jeff and his sister, Janice, were with him. Jeff was crying, and Josh said: "Jeffrey, you stop crying. I'm a winner either way. Don't worry about me." His point was that if he recovered from his illness, he was a winner; if he didn't and he died and was resurrected into the Paradise earth, then he was undoubtedly a winner!

When there was talk of a bone-marrow transplant, his brother Jerry was the first to offer his bone marrow. At one time, his brothers John and Joe used to kiss Josh good night. When he turned 13, he got his

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but for us all."**

**—Telegraph Journal**



mother to tell them he was too old for that. But during his illness, although he was 15, when they started it again and hugged and prayed with him, Josh told his mother it was OK now—it showed they still loved him.

### Community Support

Jerry and Sandra, Joshua's parents, say the support from the community has been overwhelming and widespread. In May 1994, one newspaper said: "Joshua receives, on average, 20 cards a day. They have even come from as far away as Romania and Mexico. He has also received phone calls and faxes at the hospital from as far away as Alberta and Washington. In addition to all that, he was sent about half-a-dozen fruit baskets [and] dozens of flowers. . . . When his vital statistics . . . improved, the nurses organized a celebratory Hawaiian luau in his honor. They made grass skirts out of garbage bags and danced the hula around his room. 'He was laughing so hard, I thought he was going to cry,' said Sandra."

Josh's father, Jerry, added some tidbits: "We could not let all the children visitors from school come into the hospital room. So the principal came and got reports on Josh. The students sent Josh a 1,000-piece puzzle of a railroad scene—Josh is crazy about trains. The police wanted to put on a benefit dance for him to help on certain costs, but we didn't give them a go-ahead on that. The social-studies class at school was talking about people's rights, and each individual in that class wrote Josh about giving them a talk on that, giving them his feelings."

During all this time, the newspaper coverage was phenomenal—stories with pictures on the front pages of several dailies.

**"I just want to live by  
Jehovah's law on blood."  
—Joshua Walker**

School principals relayed bulletins on Joshua's health. He received invitations to speak when he recovered, and schools held sessions on the details of the case.

"Did you notice much of a change in Joshua when this disease hit him and threatened his life?" *Awake!* asked. Josh's father, Jerry, commented: "There was a tremendous change in him, and almost overnight. Josh had previously been an easygoing, carefree young boy, sometimes needing the counsel that 15-year-olds typically need. I have sat and looked at him in awe. It's almost as though he grew up overnight. One evening his lawyer wanted to talk to him, and Joshua asked me to leave. One day he was the class clown; the next he was mature, talking to lawyers and judges. A crisis can bring up from the depths of the heart things never suspected of being there."

Dr. Scully gave a beautiful tribute to Joshua. She said to his mother: "He of all the patients I have ever treated is the friendliest, most considerate, most polite, and most compassionate person I have ever met. He is very courageous and a young man we will never forget. He is a very lovable person. You can be very proud of him, Mrs. Walker."

In a few weeks, the leukemia changed. The brief periods of remission were gone; the cancer was back. Dr. Scully told the family that Josh might not live much longer—weeks maybe, a few months possibly. The next evening, with Joshua's parents present, Dr. Scully told Joshua that the cancer was back and that it might also be in the stomach by then. Joshua said: "Oh, no, it's not back—are you sure?" Dr. Scully said: "Josh, your blood work is not too good." Soon thereafter Jerry left the room, then Dr. Scully.

### Two Aching Hearts Finding Peace

Josh's mother describes the scene: "There was silence. I pulled a chair up to his bed-



side and took his hand. I asked him if he was worried or depressed because of what the doctor had said. He replied: 'I hadn't thought about dying and leaving so soon. But, Mom, don't worry. I am not afraid to die, nor am I afraid of death. Will you be with me when I die? I don't want to die alone.' I started to cry and hugged him. He cried, too, and said: 'Mom, I'm in Jehovah's hands.' Then, 'I want all of you to stay in the truth so you can welcome me back in the resurrection. I can tell you this, Mom, with all certainty: I know Jehovah is definitely going to bring me back in the resurrection. He has read my heart, and I truly love him.'

"I started to cry again. I told him how much we loved him and, for the 16 years that we have had him here, how proud we have been of him—and most of all, how Jehovah was smiling down on him with approval. He said, 'Mom, I know.' I said to him: 'Josh, as much as I hate to let go, it would only be selfish on our part to want you to stay.' He said: 'Mom, I know, and really I am kind of tired of fighting.'"

#### **The Legal Ramifications**

Daniel Pole, one of Joshua's lawyers, along with other attorneys, dealt with the questions raised by the case of Joshua Walker. What is a mature minor under the Medical Consent of Minors Act? Does consent to treatment include the right to refuse it? Is the argument of *parens patriae*, in which the government acts for someone who cannot competently act for himself, applicable here? Does the individual have the legal right to determine what can be done to his own body? Is his bodily integrity inviolate? And what about Canadian common law? Is it applicable in this case? Finally, did Joshua Walker's case need to come into court in the first place?

Were these questions settled by the writ-

**"He has faith that I have never seen demonstrated before in my life."**

**—Dr. Garry**

ten decision of the Court of Appeal? Yes, they were. Upon the conclusion of the hearing, the five-judge court recessed and thereafter returned to the courtroom and gave orally the unanimous decision of the justices, as follows:

"The appeal is allowed. The decision of Turnbull, J. [the lower court judge] is set aside. Joshua Walker is declared to be a mature minor under the provisions of the *Medical Consent of Minors Act* and the consent of his parents with respect to his treatment is not required. The question of costs will be dealt with in our written reasons."

Is Canadian common law applicable to this case? Yes. The printed account of the hearing states: "In Canada, the common law recognizes the doctrine of a mature minor, namely, one who is capable of understanding the nature and consequences of the proposed treatment. . . . New Brunswick has codified the common law to the extent that it is expressed in the *Medical Consent of Minors Act*."

Finally, did Joshua's case have to come into court to make him legally able to refuse blood transfusions? No. "As long as the provisions of the *Act* are complied with, there is no need to make such an application."

Chief Justice W. L. Hoyt concluded: "The application was made in good faith and with an abundance of caution. Nevertheless, the result of the application was to involve Joshua and his family in unwanted litigation. For that reason, in my view, they are entitled to costs from the Hospital."

Joshua died October 4, 1994.