IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA, PROBATE DIVISION
File No. 90-2908GD-003

IN RE: THE GUARDIANSHIP OF THERESA MARIE SCHIAVO,
Incapacitated.

ORDER

THIS CAUSE came on to be heard upon the Petition for Authorization to Discontinue Artificial Life Support, and Suggestion for Appointment of Guardian Ad Litem. The case was tried before the court sitting without jury during the week of January 24, 2000. Before the court were Michael Schiavo, Guardian of the Person of Theresa Marie Schiavo, (sometimes referred to as "Petitioner"); George J. Felos, Esquire, and Constance Felos, Esquire, attorneys for Petitioner; Robert Schindler and Mary Schindler, the parents of Theresa Marie Schiavo, (sometimes referred to as "Respondants"); and Pamela A.M. Campbell, Esquire, attorney for Respondants. The court took testimony from eighteen witnesses, including the parties, the brother and sister of Theresa Marie Schiavo, (sometimes referred to as "Terri Schiavo"); the brother and sister-in-law of Petitioner, and the treating physician for Terri Schiavo. The court also received into evidence certain exhibits, including CAT scans of Terri Schiavo and, for comparison purposes, Dr. James Barnhill. The court has carefully reviewed its notes, the transcribed testimony of those non-parties who testified to conversations with Terri Schiavo regarding end of life declarations, the report of the Guardian Ad Litem, the video tape (Respondents' Exhibit No.1) and the other exhibits introduced as evidence. The court has also reviewed the case law submitted by and argued on behalf of the parties. Based upon the foregoing, the court makes the following findings of fact and conclusions of law.

Terri Schiavo was reared in a normal, Roman Catholic nuclear family consisting of her parents and her brother and sister. She spent the majority of her life in New Jersey and moved to Pinellas County, Florida in 1986 with

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her husband, Michael Schiavo, whom she married on November 10, 1984. They had dated for a total of two years, being engaged for year prior to their marriage.

Shortly after the move to Pinellas County by Mr. and Mrs. Schiavo, her parents and sister followed. The families on and off lived together, on and off shared expenses and generally functioned well together. Mr. Schiavo had a series of jobs including manager of a McDonald's restaurant. Terri Schiavo, after a brief period immediately following the move, resumed her employment with Prudential Insurance Company.

On February 25, 1990, in the early morning hours, Terri Schiavo suffered cardiac arrest, apparently due to an imbalance of potassium in her system. Michael Schiavo awakened when he heard a thump, found her lying in the hallway and called 911. He then called her brother who was living in the same apartment complex and her mother. The paramedics came, performed CPR and took her to a hospital. She has never regained consciousness and to this day remains in a comatose state at a nursing home in Largo. Terri Schiavo is currently being nourished and hydrated via a feeding tube and by this Petition her husband seeks authority to withdraw such life support.

In 1992, Michael Schiavo filed an action against the physicians who had been treating Terri Schiavo prior to her cardiac arrest. In late 1992, the case was resolved with a settlement and jury verdict, which resulted in Mr. Schiavo receiving $300,000 as regards his loss of consortium claim and the Guardianship of Theresa Marie Schiavo receiving net funds of $700,000 as regards her damages. Those monies were actually received in February of 1993.

During the period of time following the incident of February 25, 1990 the parties worked together in an attempt to provide the best care possible for Terri Schiavo. On February 14, 1993, this amicable relationship between the parties was severed. While the testimony differs on what may or may not have been promised to whom and by whom, it is clear to this court that such severance was predicated upon money and the fact that Mr. Schiavo was unwilling to equally divide his loss of consortium award with Mr. and Mrs. Schindler. The parties have literally not spoken since that date. Regrettably, money overshadows this entire case and creates potential of conflict of interest for both sides. The Guardian Ad Litem noted that Mr.

Schiavo's conflict of interest was that if Terri Schiavo died while he is still her husband, he would inherit her estate. The record before this court discloses that should Mr. and Mrs. Schindler prevail, their stated hope is that Mr. Schiavo would divorce their daughter, get on with his life, they would be appointed guardians of Terri Schiavo and become her heirs at law. They have even encouraged him to "get on with his life". Therefore, neither side is exempt from finger pointing as to possible conflicts of interest in this case.

By all accounts, Mr. Schiavo has been was very motivated in pursuing the best medical care for his wife, even taking her to California for a month or so for experimental treatment. It is undisputed that he was very aggressive with nursing home personnel to make certain that she received the finest of care. In 1994, Mr. Schiavo attempted to refuse medical treatment for an infection being experienced by his wife. His unrefuted testimony was that his decision was based upon medical advice. Mr. and Mrs. Schindler filed an action to have him removed as Guardian based upon numerous allegations, including abuse. Mr. Schiavo relented and authorized the treatment after which a Guardian Ad Litem appointed by this court found that there was no basis to have him removed. Mr. and Mrs. Schindler ultimately dismissed their petition citing financial considerations as their motivation.

The court heard testimony as to various issues; most of which having little or nothing to do with the decision the court is called upon to make. The court also heard from witnesses who ran the gambit of credibility, from those clearly biased who slanted their testimony to those such as Father Murphy whom the court finds to have been completely candid. The court also has concerns about the reliability of testimony which differed from prior deposition testimony. Vague and almost self serving reasons were given for the changes including reflection, reviewed in another fashion, knowledge that this was a real issue, found a calendar, and so forth, to the extent that at trial recollections were sometimes significantly different and in one case were now "vivid". The court has had the opportunity to hear the witnesses, observe their demeanor, hear inflections, note pregnant pauses, and in all manners assess credibility above and beyond the spoken or typed word. Interestingly enough, there is little discrepancy in the testimony the court must rely upon in order to arrive at its decision in this case.

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The Petition under consideration was filed on May 11, 1998 and on June 11, 1998 Richard L. Pearse, Jr., Esquire, was appointed Guardian Ad Litem. On December 30, 1998, Mr. Pearse filed his Report of Guardian Ad Litem, a copy of which is in evidence as Respondents' Exhibit No. 2. An issue was made as to the impartiality of the Guardian Ad Litem. Mr. Pearse readily agreed that he has feelings and viewpoints regarding the withdrawal of feeding and hydration tubes and that he did not so advise the court prior to his appointment. It was suggested that he should not have served as Guardian Ad Litem since he possesses feelings on the subject. The court is unable to agree with that assertion since most attorneys who practice in this area of law surely do have feelings one way or the other. For the court to preclude an attorney from serving as Guardian Ad Litem simply because of feelings would deprive the court of this valuable resource. The court finds that Mr. Pearse did a good job but unfortunately he did not have an opportunity to interview all of those persons who testified at trial. However, that is not his fault. Mr. Pearse did testify that his recommendation was a "close call" and that the outcome of his report may have been changed had he found certain of this other testimony heard by the court to be creditable and reliable. Consequently, the court is unable to rely upon his conclusions except for the fact that he felt Michael Schiavo alone, due to his potential conflict of interest, was not able to provide clear and convincing evidence to support the granting of his Petition.

It has been suggested that Michael Schiavo has not acted in good faith by waiting eight plus years to file the Petition which is under consideration. That assertion hardly seems worthy of comment other than to say that he should not be faulted for having done what those opposed to him want to be continued. It is also interesting to note that Mr. Schiavo continues to be the most regular visitor to his wife even though he is criticized for wanting to remove her life support. Dr. Gambone even noted that close attention to detail has resulted in her excellent physical condition and that Petitioner is very involved. Again, these are collateral issues which have little or nothing to do with the decision the court must render.

There are no written declarations by Terri Schiavo as to her intention with regard to this issue. Therefore, the court is left with oral declarations allegedly made to parties and non-parties as to her feelings on this subject. The testimony before this court reveals that she made comments or statements to five (5) persons, including her husband and her mother.

There was a lot of testimony concerning the Karen Ann Quinlin case in New Jersey. Mrs. Schindler testified that her daughter made comments during the television news reports of the father's attempts to have life support removed to the effect that they should just leave her (Karen Ann Quinlin) alone. Mrs. Schindler first testified that those comments were made when Terri was between 17-20 years of age but after being shown copies of newspaper accounts agreed that she was 11 perhaps 12 years of age at the time. A witness called by Respondents testified to similar conversations with Terri Schiavo but stated that they occurred during the summer of 1982. While that witness appeared believable at the offset, the court noted two quotes from the discussion between she and Terri Schiavo which raise serious questions about the time frame. Both quotes are in the present tense and upon cross-examination, the witness did not alter them. The first quote involved a bad joke and used the verb "is". The second quote involved the response from Terri Schiavo which used the word "are". The court is mystified as to how these present tense verbs would have been used some six years after the death of Karen Ann Quinlin. The court further notes that this witness had quite specific memory during trial but much less memory a few weeks earlier on deposition. At trial she mentioned seeing the television movie on Karen Ann Quinlin and had no hesitantly in testifying that this was a "replay" of that movie and she watched such replay at college in Pennsylvania. She also knew precisely what song appeared on a TV program on a Friday evening when Petitioner was away at McDonald's training school. While the court certainly does not conclude the the bad joke and comment did not occur, the court is drawn to the conclusion that this discussion most likely occurred in the same time frame as the similar comments to Mrs. Schindler. This could well have occurred during this time frame since this witness and Terri Schiavo, together with their families, spent portions of summer vacation together which would have included the mid-1970's.

Michael Schiavo testified as to a few discussions he had with his wife concerning life support. The Guardian Ad Litem felt that this testimony standing alone would not rise to clear and convincing evidence of her intent. The court is not required to rule on this issue since it does have the benefit of the testimony of his brother and sister-in-law. As with the witness called by the Respondents, the court had the testimony of the brother and sister-in-law transcribed so that the court would not be hamstrung by relying upon its notes. The court has reviewed the testimony of Scott Schiavo and Joan

Schiavo and finds nothing contained therein to be unreliable. The court notes that neither of these witnesses appeared to have shaded his or her testimony or even attempt to exclude unfavorable comments or points regarding those discussions. They were not impeached on cross-examination. Argument is made as to why they waited so long to step forward but their explanations are worthy of belief. The testimony of Ms. Beverly Tyler, Executive Director of Georgia Health Discoveries, clearly establishes that the expressions made by Terri Schiavo to these witnesses are those type of expressions made in those types of situations as would be expected by people in this country in that age group at that time. They (statements) reflect underlying values of independence, quality of life, not to be a burden and so forth. "Hooked to a machine" means they do not want life artificially extended when there is not hope of improvement.

Turning to the medical issues of the case, the court finds beyond all doubt that Theresa Marie Schiavo is in a persistent vegetative state or the same is defined by Florida Statues Section 765.101 (12) per the specific testimony of Dr. James Barnhill and corroborated by Dr. Vincent Gambone. The medical evidence before this court conclusively establishes that she has no hope of ever regaining consciousness and therefore capacity, and that without the feeding tube she will die in seven to fourteen days. The unrebutted medical testimony before this court is that such death would be painless. The film offered into evidence by Respondents does nothing to change these medical opinions which are supported by the CAT scans in evidence. Mrs. Schindler has testified as her perceptions regarding her daughter and the court is not unmindful that perceptions may become reality to the person having them. But the overwhelming credible evidence is that Terri Schiavo has been totally unresponsive since lapsing into the coma almost ten years ago, that her movements are reflexive and predicated on brain stem activity alone, that she suffers from severe structural brain damage and to a large extent her brain has been replaced by spinal fluid, that with the exception of one witness whom the court finds to be so biased as to lack credibility, her movements are occasional and totally consistent with the testimony of the expert medical witnesses. The testimony of Dr. Barnhill establishes that Terri Schiavo's reflex actions such as breathing and movement shows merely that her brain stem and spinal cord are intact.

Argument was presented regarding the woman in New Mexico who awakened from a coma a few months ago after sixteen years. Dr. Barnhill testified that he would have to believe that patient had a different kind of

condition or else it was a miracle. Since he knew nothing more than what appeared in the newspaper, any medical explanation would be "speculative". The court certainly would have expected a more complete explanation from the stipulated expert but the unrebutted evidence remains that Terri Schiavo remains in a persistent vegetative state. Dr. Barnhill earlier drew the distinction between comas which are catatonic in nature (no brain damage) and those caused by structural brain damage as in this case. Again, the court cannot speculate on the New Mexico situation as neither party has offered evidence in that regard.

The controlling legal authority in this area is a case which arose in St. Petersburg. A little over nine years ago, the Florida Supreme Court rendered its opinion in a case in which the State of Florida was opposing the withdrawal of feeding tubes. In that case Estelle Browning had a living will and the issue was essentially whether or not an incapacitated person possessed the same right of privacy to withhold or withdraw life supporting medical treatment as did a competent person. In re: Guardianship of *Estelle M. Browning* 568 So.2nd 4 (Fla. 1990). The Florida Supreme Court began with the premise that everyone has a fundamental right to the sole control of his or her person. They cited in 1914 New York decision in holding that an integral component of this right of privacy is the "right to make choices pertaining to one's health, including the right to refuse unwanted medical treatment". The court also found that all life support measures would be similarly treated and found no significant legal distinction between artificial means of life support. Citing its earlier decision of *John F. Memorial Hospital, Inc. vs Bludworth,* 452 So.2nd 921 (Fla. 1984), the Court held that the constitutionally protected right to choose or reject medical treatment was not diminished by virtue of physical or mental incapacity or incompetence. Citing the lower court, the Florida Supreme Court agreed that it was "important for the surrogate decisionmaker to fully appreciate that he or she makes the decision which the patient would personally choose" and that in Florida "we have adopted a concept of 'substituted judgment' ", and "one does not exercise another's right of self-determination or fulfil that person's right of privacy by making a decision which the state, the family or public opinion would prefer".

The Florida Supreme Court set forth a three pronged test which the surrogate (in this case the Petitioner/Guardian) must pursue in exercising the patient's right of privacy, In re: *Guardianship of Estelle M. Browning,* supra. The surrogate must satisfy the following conditions:

" 1) The surrogate must be satisfied that the patient executed any document knowingly, willingly and without undue influence and that the evidence of the patient's oral declaration is reliable;

2) The surrogate must be assured that the patient does not have a reasonable probability of recovering competency so that the right could be exercised directly by the patient; and

3) The surrogate must take care to assure that any limitations or conditions expressed either orally or in the written declaration have been carefully considered and satisfied."

The Florida Supreme Court established the clear and convincing test as a requirement and further held that when " the only evidence of intent is an oral declaration, the accuracy and reliability of the declarant's oral expression of intent may be challenged".

The court is called upon to apply the law as set forth in In re: *Guardianship of Estelle M. Browning,* supra, to the facts of this case. This is the issue before the court. All of the other collateral issues such as how much was raised in the fund-raising activities, the quality of the marriage between Michael and Terri Schiavo, who owes whom between Michael Schiavo and Mr. and Mrs. Schindler, Mr. and Mrs. Schindler's access or lack of access to medical information concerning their daughter, motives regarding the estate of Terri Schiavo if deceased, and the beliefs of family and friends concerning end of life decisions are truly not relevant to the issue which the court must decide. That issue is set forth in the three pronged test established by the Florida Supreme Court in the *Browning* decision, supra. The court must decide whether or not there is clear and convincing evidence that Theresa Marie Schiavo made reliable oral declarations which would support what her surrogate (Petitioner/Guardian) now wishes to do. The court has previously found that the second part of that test, i.e. the patient does not have a reasonable probability of recovering competency, is without doubt satisfied by the evidence.

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There are some comments or statement made by Terri Schiavo which the court does not feel are germane to this decision. The court does not feel that statements made by her at the age of 11 or 12 years truly reflect upon her intention regarding the situation at hand. Additionally, the court does not feel that her statements directed toward others and situations involving others would have the same weight as comments or statements regarding herself if personally placed in those same situations. Into the former category the court places statements regarding Karen Ann Quinlin and the infant child of the friend of Joan Schiavo. The court finds that those statements are more reflective of what Terri Schiavo would do in a similar situation for someone else.

The court does find that Terri Schiavo did make statements which are creditable and reliable with regard to her intention given the situation at hand. Initially, there is no question that Terri Schiavo does not pose a burden financially to anyone and this would appear to be a safe assumption for the foreseeable future. However, the court notes that the term "burden" is not restricted solely to dollars and cents since one can also be a burden to others emotionally and physically. Statements which Terri Schiavo made which do support the relief sought by her surrogate (Petitioner/Guardian) include statements to him prompted by her grandmother being in intensive care that if she was ever a burden she would not want to live like that. Additionally, statements made to Michael Schiavo which were prompted by something on television regarding people on life support that she would not want to life like that also reflect her intention in this particular situation. Also the statements she made in the presence of Scott Schiavo at the funeral luncheon for his grandmother that "if I ever go like that just let me go. Don't leave me there. I don't want to be kept alive on a machine." and to Joan Schiavo following a television movie in which a man following an accident was in a coma to the effect that she wanted it stated in her will that she would want the tubes and everything taken out if that ever happened to her are likewise reflective of this intent. The court specifically finds that these statements are Terri Schiavo's oral declarations concerning her intention as to what she would want done under the present circumstances and the testimony regarding such oral declarations is reliable, is creditable and rises to the level of clear and convincing evidence to this court.

Those statements above noted contain no limitations or conditions. However, as Ms. Tyler noted when she testified as to quality of life being the primary criteria in artificial life support matters, Americans want to "try

it for awhile" but they do not wish to live on it with no hope of improvement. That implicit condition has long since been satisfied in this case. Therefore, based upon the above and foregoing findings of fact and conclusions of law, it is

ORDERED AND ADJUDGED that the Petition for Authorization to Discontinue Artificial Life Support of Michael Schiavo, Guardian of the Person of Theresa Marie Schiavo, an incapacitated person, be and the same is hereby **GRANTED** and Petitioner/Guardian is hereby authorized to proceed with the discontinuance of said artificial life support for Theresa Marie Schiavo.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida at the hour of 11:50 o'clock a m this 11th day of February, AD, 2000.

George W. Greer
Circuit Judge

cc: Pamela A. M. Campbell, Esquire
George J. Felos, Esquire

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