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

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

---

**MICHAEL SCHIAVO**, as Guardian of the person of **THERESA MARIE SCHIAVO**,
Petitioner,
vs.

**ROBERT SCHINDLER** and **MARY SCHINDLER**,
Respondents.

---

**ORDER**

**THIS CAUSE**, came on to be heard on September 11, 2003 upon the Petition for Immediate Therapy ("Petition") filed herein by Robert and Mary Schindler. Before the court were Patricia Fields Anderson, Esquire, attorney for Mr. and Mrs. Schindler, and George J. Felos, Esquire, attorney for

Michael Schiavo, Guardian of the Person of Theresa Marie Schiavo. Other counsel were present but generally did not participate in this hearing. The court heard excellent argument from counsel who were certainly well-prepared and who eloquently stated their respective positions. The court has reviewed the Petition and supporting affidavits, the case law provided and its notes taken during the hearing. The court has also reviewed portions of the court file and the appellate decision in this case. Based thereupon, the court makes the following findings of fact and conclusions of law.

The Petition when filed was accompanied by 5 affidavits, 4 from members of the Schindler family and the fifth from Alexander T. Gimon, PhD. At the hearing, Ms. Anderson proffered and essentially read into the record 4 other affidavits, all of which had previously been filed with the Clerk. These affidavits were from Carla Sauer Iyer, R.N., Heidi Law, Sarah Green Mele, MS, OCC-SLP, and Myra S. Stinson, M.A., CCC-SLP.

The Petition asks the court " to forestall any death date" and to allow "eight weeks' therapy" by "appropriate therapists" as outlined in the affidavits. During the hearing, it was noted that due to the medical issues the ward had recently faced, it was impossible for Ms. Anderson to determine when the eight weeks of therapy could commence. Counsel for

the Guardian objects to the Petition, essentially on the grounds that the issues raised therein have previously been decided by the court.

The original trial in this cause on the issue of discontinuing artificial life support for Terri Schiavo was held during the week of January 24, 2000. This court issued its ruling on February 11, 2000. That Order was appealed through both the state and federal systems and resulted in affirmance. The appellate decision which originally affirmed this court is *Schindler v Schiavo*, 780 So. 2d 176 (Fla. 2d DCA 2001). This decision shall hereafter be referred to as *Schiavo I*. Thereafter followed other petitions and motions ruled upon by this court and a civil division court which resulted in two other appellate decisions. *Schindler v. Schiavo*, 792 So 2d 551 (Fla. 2d DCA 2001) and *Schindler v. Schiavo* 800 So. 2d 640 (Fla. 2d DCA 2001). These decisions shall hereafter be referred to respectively as *Schiavo II* and *Schiavo III*. This court then held a 7-day evidentiary hearing in October of 2002 following which the court rendered its decision by Order dated November 22, 2002. That Order was appealed resulting in a fourth appellate decision, *Schindler v. Schiavo*, 851 So 2d 182 (Fla. 2d DCA 2003). That decision shall hereafter be referred to as *Schiavo IV*.

The Petition is an attempt by Mr. and Mrs. Schindler to relitigate the entire case. It is not even a veiled or disguised attempt. The exhibits relied

upon by them clearly demonstrate this to be true. The bulk of their affidavits and that of their daughter, Suzanne Schindler Carr, deal with the central issue of the original evidentiary hearing. The totality of the affidavit of their son deals with this same issue. The affidavits of Heidi Law and Carla Sauer Iyer deal exclusively with events occurring in the 1995-1997 time frame, testimony certainly available at the time of the original evidentiary hearing. Finally, the affidavits of the speech professionals show they rely on an interpretation of the videos from the 2002 evidentiary hearing which is 180 degrees different from the affirmed ruling of this court. These matters have been fully and ably litigated and the decisions arising therefrom are res judicata. Not even Rule 1.540 (b)(5) allows a re-litigation of fully concluded issues.

Notwithstanding the above, the court has carefully read the 9 affidavits which support the Petition. Although the affidavits of the family members deal largely with events which preceded the January 2000 evidentiary hearing, Ms. Carr, Mr. Schindler, Sr. and Mrs. Schindler reference hearing Terri say "yeah" as a new sound, although Ms. Mele's affidavit referred to them as "sounds which approximate the word 'yeah' ". Testimony at prior evidentiary hearings did establish that patients in a

persistent vegetative state like Terri Schiavo could utter words from time to time.

The affidavits of the 3 speech professionals clearly demonstrate that they disagree with the previous rulings of this court as amplified by the four opinions of the Second District Court of Appeal. All viewed the videos which were part of the October 2002 evidentiary hearing and one reviewed early medical records too. Dr. Gimon said that she is "not in a persistent vegetative state", and is "clearly able to respond cognitively to environmental stimuli". Ms. Mele says Terri is "clearly vocalizing". Ms. Stinson says she is "attempting to communicate with her father" and "is able to learn and has sufficient cognitive and motor ability to respond". They all reference an audiotape prepared by Mr. Schindler, Sr. and how the tape shows interaction between Terri and her parents. (Interestingly enough, the affidavit of Mr. Schindler, Sr. is silent as to this tape.) It is clear therefrom that they do not believe that Terri is in a persistent vegetative state. Therefore, any conclusion that they have reached would be fatally flawed.

The remaining affidavits deal exclusively with events which allegedly occurred in the 1995-1997 time frame. The court feels constrained to discuss them. They are incredible to say the very least. Ms. Iyer details what amounts to a 15-month cover-up which would include the staff of Palm

Garden of Largo Convalescent Center, the Guardian of the Person, the Guardian ad Litem, the medical professionals, the police and, believe it or not, Mr. and Mrs. Schindler. Her affidavit clearly states that she would "call them (Mr. and Mrs. Schindler) anyway because I thought they should know about their daughter". The affidavit of Ms. Law speaks of Terri responding on a constant basis. Neither in the testimony nor in the medical records is there support for these affidavits as they purport to detail activities and responses of Terri Schiavo. It is impossible to believe that Mr. and Mrs. Schindler would not have subpoenaed Ms. Iyer for the January 2000 evidentiary hearing had she contacted them as her affidavit alleges.

Clearly, the Petition seeks a new review of the *Schiavo I* decision. A major portion of the Petition is devoted to "The Record as it Pertains to Terri's Wishes". In addition to the affidavits, the Petition has appended to it certain portions of the original evidentiary hearing transcript. Additionally, the Petition seeks a new review of *Schiavo IV* since the speech professionals who executed affidavits in support of the Petition rely heavily for their opinions upon their evaluation of the videos in evidence at the October 2002 evidentiary hearing. Finally, much of the Schindler family affidavits deal with events that occurred prior to the 2000 trial as do the affidavits of Ms. Iyer and Ms. Law. Suffice it to say that the appeal time for the 2000 and

2002 decisions of this court as affirmed by *Schiavo I* and *Schiavo IV*, respectively, has certainly expired. Admittedly, this Petition is essentially a new request under FRCP 1.540 (b)(5) which de facto assumes the final judgment stands but that it is no longer equitable to enforce it.

The Petition fails to set forth a viable Rule 1.540 (b)(5) motion. As noted in *Schiavo II*, Rule 1.540 (b)(5) "does not allow a party to retry merely because the judgment provides equitable relief and the party has found additional evidence. Instead, the rule requires the movant to establish that significant new evidence or substantial change in circumstances arising after the entry of the judgment make it 'no longer equitable' for the trial court to enforce its earlier order". Here, the principal issue raised by the Petition is certainly not new. It has previously been litigated. On March 7, 2000 this court entered an Order on Mr. and Mrs. Schindler's Petition for Order Authorizing Evaluation. That Order followed an evidentiary hearing in which the Schindlers presented 2 medical doctors and the Guardian of the Person presented 1 medical doctor. As stated in that Order, the request was to have Terri Schiavo "undergo a swallowing test to determine if she can orally consume nutrition and hydration without a feeding tube". That is precisely the same request which is currently before the court. While the court has no independent recollection of the testimony at that evidentiary

hearing, the Order finds that 3 swallowing tests had been performed and that Terri had annually been seen by a speech pathologist for several years. That petition was denied and the Notice of Appeal of the original February 11, 2000 Order filed by Mr. and Mrs. Schindler also included for appellate review the Order "denying the swallowing test". Therefore, the Petition and supporting documents do not establish significant new evidence or a substantial change in circumstances required to permit the requested relief.

In *Schiavo II*, then Second District Court of Appeal granted the Schindlers the right to proceed with a Rule 1.540 (b)(5) motion. This Rule permits a party to challenge a judgment if prospective application of it is no longer equitable. Later, in *Schiavo III*, the Second District Court of Appeal set forth specific procedural requirements for that motion to move forward and to ultimately be heard by this court at an evidentiary hearing. That was done and affirmed on appeal in *Schiavo IV*. All that remains is for this court to follow the Mandate of the Second District Court of Appeal issued August 25, 2003.

This court is being asked to essentially put the Mandate of the Second District Court of Appeal on hold. This is not appropriate. *Division of Alcoholic Beverages and Tobacco, et. al. v Tampa Crown Distributors*, 745 So. 2d 418 (Fla. 1st DCA 1999) The Second District Court of Appeal has set

forth an intricate procedure which has to date been followed and will hereafter be likewise followed. That is all this court can do. Based thereupon, it is

**ORDER AND ADJUDGED** that the Petition for Immediate Therapy filed herein by Robert and Mary Schindler be and the same is hereby denied.

**DONE AND ORDERED** in Chambers, at Clearwater, Pinellas County, Florida this 17 day of September, 2003 at 3:27 o'clock p. m.

TRUE COPY

George W. Greer
Circuit Judge

90-2908-GD-003
Copies furnished to:
Patricia Fields Anderson, Esquire
George J. Felos, Esquire
Deborah A. Bushnell, Esquire
Gyneth S. Stanley, Esquire
Lawrence Crow, Esquire
Pamela A. M. Campbell, Esquire
Scott P. Swope, Esquire
Joseph D. Magri, Esquire