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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ADVOCACY CENTER FOR PERSONS
WITH DISABILITIES, INC.,

Plaintiff,

v.

Case No. 8:03-cv-2167-T-23EAJ

MICHAEL SCHIAVO, as Guardian of the
person of THERESA MARIE SCHIAVO,

Defendant.

_____ /

ORDER

Advocacy Center for Persons with Disabilities, Inc. ("The Center") sues for injunctive relief against Michael Schiavo ("the guardian"), the guardian of Theresa Marie Schiavo ("the ward"), and seeks a temporary restraining order. The complaint alleges that Governor Bush of Florida has invested The Center with responsibility for protecting "the legal and human rights of individuals with disabilities" pursuant to 29 U.S.C. § 794e(a) (Doc. 1). The Center alleges consequent authority "to investigate incidents of abuse and neglect of individuals with . . . disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred" 42 U.S.C. § 15043(a)(2)(B).¹

¹ Although the ward is ineligible for the benefits afforded by the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001, *et seq.*, because the onset of her present circumstance occurred after she attained the age of 22, presumably The Center premises its contention of investigative authority on 29 U.S.C. §

The Center alleges further that the guardian has sued successfully in Florida's courts pursuant to Chapter 765, Florida Statutes, for permission to remove "his wife's hydration and nutrition tube" and that Florida's courts have awarded the guardian the authority he sought. (Florida's courts have determined that the ward suffers from a persistent vegetative condition and, after finding her consent, have authorized discontinuation of her life support pursuant to Chapter 765, Florida Statutes.) The Center further alleges that removal of the hydration and nutrition tube will result in the "ultimate death" of the ward. The Center further alleges both (1) receipt of a complaint from an unspecified complainant that the ward "is the subject of an incident or incidents of abuse or neglect," the details of which are unspecified in the complaint, and (2) a determination by The Center that "there is probable cause to believe that abuse and neglect has occurred."² The Center requests injunctive relief to prohibit the guardian's interference with The Center's investigation of the reported abuse (Doc. 3).³

794e(f)(2) ("[T]he eligible system will . . . have the same general authorities, including access to records and program income, as are set forth in subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.").

² At the October 20, 2003, hearing, The Center argued that withholding nutrition and hydration from the ward may constitute "abuse and neglect." However, The Center admitted that had the ward left explicit written directions under Chapter 765 to terminate her nutrition and hydration, The Center would not have filed this action. In other words, this action represents The Center's disagreement with the fact finding in Florida's courts that the ward actually consented to the present course.

³ This dispute has a lengthy history, see, e.g., In re Guardianship of Schiavo (Schindler v. Schiavo), 780 So.2d 176 (Fla. 2d DCA 2001); In re Guardianship of Schiavo (Schindler v. Schiavo), 792 So.2d 551 (Fla. 2d DCA 2001); In re Guardianship of Schiavo (Schindler v. Schiavo), 800 So.2d 640 (Fla. 2d DCA 2001); In re Guardianship of Schiavo (Schindler v. Schiavo), 851 So.2d 182 (Fla. 2d DCA 2003); Schindler v. Florida, 01-cv-784-

However, the complaint fails to allege any “interference” by the guardian with any investigation by The Center. The complaint fails to allege the details of the “investigation” contemplated pursuant to the statute or how the guardian might interfere, if he were so inclined. Neither does the complaint allege any duty of the guardian to assist in any specified manner in the investigation by The Center. In short, the complaint alleges, at best, a mere prospect that the guardian might interfere at some time in an unknown manner with a wholly prospective investigation.

The complaint and accompanying papers, elaborated somewhat at the October 20th hearing, amount to an assertion that the course authorized by Chapter 765, Florida Statutes, and administered closely by Florida’s courts amounts inherently to an episode of abuse or neglect within the assigned responsibilities of The Center to investigate. To the extent that the complaint alleges that Florida’s statutory arrangement in Chapter 765, as definitively interpreted by Florida’s courts, is abusive or neglectful in an actionable manner, the complaint and other papers are wholly inadequate to warrant preliminary injunctive relief. The complaint fails to establish any basis in law or in fact to preliminarily conclude that the steps authorized by Florida in this tragic circumstance are abusive or neglectful within the meaning of the pertinent statute. Finally, the complaint and other papers contain no citation of pertinent legal authority that supports granting the extraordinary relief requested.

T-26EAJ (M.D. Fla. 2001); Schindler v. Schiavo, 03-cv-1860-T-26TGW (M.D. Fla. 2003).

Even if all the prerequisite factual allegations and legal support were present, The Center's action would likely fail. The Rooker-Feldman doctrine, which prohibits federal courts, other than the Supreme Court, from reviewing any claim "inextricably intertwined" with the judgment of a state court, likely precludes this Court's subject matter jurisdiction. See Goodman v. Sipos, 259 F.3d 1327, 1332 (11th Cir. 2001). Even assuming subject matter jurisdiction, Burford v. Sun Oil Co., 319 U.S. 315 (1943), or Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976), and their progeny would likely require abstention.

The circumstances of this action, however, require no resolution of the effect of Rooker-Feldman or Burford and Colorado River abstention before deciding The Center's motion for a temporary restraining order. In its motion and supporting memorandum, in its complaint, and at the hearing, The Center failed to demonstrate both a substantial likelihood of success on the merits and a substantial threat that the Center will suffer irreparable harm or that any harm to The Center outweighs harm to others, including the guardian, the ward, and the public. See Cheffer v. McGregor, 6 F.3d 705, 709-10 (11th Cir. 1993); Local Rule 4.05(b)(4). Accordingly, the Center's motion for a temporary restraining order (Doc. 3) is **DENIED**.

I join the distinguished Chief Judge, Chris Altenbernd, of Florida's Second District Court of Appeal in his concluding remarks in his most recent opinion in this matter. 851 So.2d at 186-87. But the tragic circumstances aside, this case offers no occasion for the judiciary to invade the province of the legislature or for the United States to invade the province of the State of Florida. This case offers a vivid

opportunity for the public, whose collective will ultimately decides such matters, to contemplate the confounding issues associated with degenerative illness and catastrophic disability and, thereafter, by a means consistent with government in a republic, to direct their representatives to legislate in accord with their concerted desires, if in conflict with the present state of the law.

ORDERED in Tampa, Florida, on October 21st, 2003.

Steven D. Merryday

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE