

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION**

File No. 90-2908GD-003

In Re: The Guardianship of

THERESA MARIE SCHIAVO,

Incapacitated.

ROBERT SCHINDLER, et al.,

Petitioners,

v.

MICHAEL SCHIAVO,

Respondent.

//

**PETITIONERS' RESPONSE TO COURT'S
REQUEST REGARDING GUARDIAN AD LITEM**

COME NOW the blood relatives of Theresa Marie Schiavo ("Terri"), Robert Schindler, et al. ("the Schindler family"), by and through undersigned counsel pursuant to Chief Judge Demers' request concerning the reappointment of a Guardian Ad Litem for the Terri, dated December 23, 2003, and say:

1. Despite the Second District's holding in this case, no person can be nor should be expected to be both a neutral arbiter and a zealous advocate. "Under these circumstances, the two parties, as adversaries, present their evidence to the trial court. The trial court determines whether the evidence is sufficient to allow it to make the decision for the ward to discontinue life support. In this context, the trial court essentially serves as the ward's guardian." *In re Guardianship of Schiavo*,

780 So.2d 176, 179 (Fla. 2d DCA 2001)(“*Schiavo I*”). Schiavo himself, acknowledging his own serious conflicts of interest, recognized the need for an independent voice for Terri, when he asked the Court to appoint a guardian ad litem back in May, 1998 for the duration of the adversary proceeding to end her life, *See* Fla. Stat. § 744.391.

2. Governor Jeb Bush now has requested the Court to reappoint Professor Jay Wolfson in order to obtain additional information to aid him in his statutory duties. The Schindler family supports the Governor’s request but asserts that answers to the questions posed by the Governor in his recent letter to Professor Wolfson must be addressed on Terri’s behalf.
3. It is no secret that Michael Schiavo has been living with a woman since at least 1995, whom he describes publicly as his “fiancee,” and that he has conceived two children with this woman. A more fundamental conflict of interest would be difficult to imagine. Under these circumstances, one can hardly fault Schiavo for wanting to be shed of his wife – recently described as “biologically tenacious” – so that he may attend to his new family. However, his desire to attend to his other responsibilities does not and should not equate to Terri’s death, especially in equitable proceedings.
4. In this context, the trial court *cannot* “essentially serve as the ward’s guardian.” The appointment of a guardian ad litem is statutorily mandated and pragmatically necessary on these facts.
5. A true guardian ad litem is more than a special master, engaged and appointed merely as a fact-finder and advisor to the Court. A true guardian ad litem is an advocate for the ward during the pendency of adversary proceedings, with all the powers and responsibilities attendant to zealous advocacy, including a fiduciary

obligation to the ward. *Rodriguez v. Levin*, 524 So.2d 1107 (Fla. 3d DCA 1988); Fla. Stat. § 744.102(9).

6. In that regard, the guardian ad litem in this case should be given the extraordinary authority set forth in Fla. Stat. § 744.3725 to investigate the advisability of a dissolution of the marriage of Terri and Schiavo. Schiavo's present living arrangements amount to his desertion of the marital relationship, a well-settled fact basis for dissolution of a marriage. *Burton v. Burton*, 448 So.2d 1229 (Fla. 2d DCA 1984); *Wilburn v. Wilburn*, 143 So.2d 518 (Fla. 2d DCA 1962).
7. Furthermore, Professor Wolfson has recommended that Terri's swallowing abilities be evaluated by a suitable professional, a recommendation the Schindler family also strongly supports. As the Court well knows, it is a felony to withhold food from a disabled or vulnerable adult, pursuant to Fla. Stat. § 825.102(3). The Court has entered no order forbidding oral feeding, although the Court has denied attempts to secure swallowing therapy to teach Terri to eat by mouth again, on the grounds that such therapy might result in her death.
8. It is the Schindlers' understanding that Professor Wolfson was in the process of locating a suitable medical professional to diagnose, evaluate and treat Terri's swallowing disorders. He should be re-appointed in order to be able to finish that task, with which the Schindlers are prepared to assist.
9. The Schindlers have reason to believe Terri is presently being sedated, which, if true, would have profound effects upon the evaluation of her swallowing abilities and would be a form of chemical restraint. Thus, this diagnosis-and-therapy enterprise would need to be carefully supervised by someone, such as a guardian ad litem, who is not advocating her death, as is Schiavo.

10. Finally, there are several serious fact errors in Professor Wolfson's report to the Court, which appear to be based upon court documents. Professor Wolfson was only given thirty days to accomplish the Herculean task of summarizing the contents of more than thirty volumes in the Court file in the guardianship case, so it is little wonder he had no time to examine the primary, underlying documents in making his report. If Terri Schiavo is to die upon her estranged husband's order and with the Court's blessing, the least we can do is to honor her life with accuracy. For this reason, Professor Wolfson should be afforded the opportunity that comes with more time to refine and adjust his report to the Court.

WHEREFORE the Schindler family respectfully requests the Court to appoint Professor Jay Wolfson as Terri's Guardian Ad Litem for the foregoing reasons and given the foregoing authority.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of January, 2004, a copy of the foregoing has been furnished by U.S. Mail to:

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