

MAR 13 2002

CLERK, SUPREME COURT  
BY \_\_\_\_\_

IN THE FLORIDA SUPREME COURT  
CASE NO. SC01-2678

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

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

Petition from the Second District  
Court of Appeal  
Case No. 2D01-3626

vs. )  
)

ROBERT SCHINDLER and MARY )  
SCHINDLER, )  
Respondents. )  
\_\_\_\_\_ )

**MOTION TO STRIKE PORTION OF RESPONDENTS'  
JURISDICTIONAL BRIEF**

COMES NOW the Petitioner/Appellee, MICHAEL SCHIAVO, as Guardian  
of the person of THERESA MARIE SCHIAVO, and states:

1. Respondents either misperceive or disregard the role of "facts" in a  
jurisdictional brief. Briefs on jurisdiction are limited solely to the issue of the  
Supreme Court's jurisdiction. Fla. R. App. P. 9.120(d). For purposes of

determining jurisdiction, this court is limited to the facts which appear on the face of the opinion. *Hardee v. State*, 534 So.2d 706, 708 (Fla. 1988). Further, jurisdictional briefs, per the above rule, are subject to the formalities specified in rule 9.210, which requires supporting reference for factual recitations.

Respondents' Jurisdictional Brief is replete with unreferenced "facts" that are nowhere to be found in the subject opinion of the court of appeal.

2. The following "factual" presentations in Respondents' Jurisdictional Brief are not found in the district court's opinion and should be stricken:

- Claims regarding lack of examination of the Ward by physicians of the parents choosing, (Brief at 1)
- All reference to Monsignor Malinowski, his background and his opinions, (Brief at 1)
- Claims that Petitioner's expert testified the Ward's "brain had almost disappeared" and "is gone," and that there was "vivid testimony" that the Ward is "without a brain" and "her skull is filled with spinal fluid," (Brief at 1, 2, 6 and 9)
- That Respondents' preferred physicians are "reputable," and that Petitioner has repeatedly tried to impugn their integrity, (Brief at 2 and 5)

- The educational references of Respondents' proffered physicians, (Brief at 2)
- Claims regarding the manner and cause of the Ward's death upon eventual cessation of artificial feeding, (Brief at 3)
- That Petitioner has impeded physician examination of the Ward and keeps her "medically sequestered," (Brief at 3)
- That Respondents' physicians are interested in "symptoms and potentialities" rather than the "diagnostic label," (Brief at 6)
- References to the trial judge's role as "guardian" at trial, (Brief at 9)
- The beliefs about his wife that Respondents ascribe to Petitioner, (Brief at 10)
- References to the Ward's medical malpractice case, the testimony therein and the use of the Ward's funds, (Brief at 10)

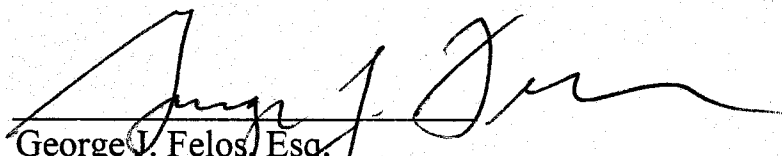
3. Most egregious in Respondents' diatribe of unsupported "facts" is the repeated erroneous claim that Petitioner's trial expert testified that the Ward has "no brain." The district court refutes this: "[the expert] testified that most, if not all, of Mrs. Schiavo's *cerebral cortex*--the portion of her brain that allows for human cognition and memory--is either totally destroyed or damaged beyond repair...", *In re Guardianship of Schiavo*, 792 So.2d 551, 560 (Fla. 2d DCA 2001), emphasis

added, and “much of her *cerebral cortex* is simply gone and has been replaced by spinal fluid”, *In re Guardianship of Schiavo*, 780 So.2d 176, 177 (Fla. 2d DCA 2001, emphasis added. As the district court notes, the expert testified about a *portion* of the Ward’s brain, which *also* consists of the “brain stem or cerebellum” that controls “motor functions,” 792 So.2d at 560, and otherwise regulates the body’s involuntary systems.

WHEREFORE, Petitioner respectfully requests this Court to strike the above referenced portions of Respondents’ Jurisdictional Brief.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail this 12<sup>th</sup> day of March, 2002, to: Patricia Fields Anderson, Esq., 447 3rd Avenue N., Suite 405, St. Petersburg, Florida 33701; and Larry D. Crow, Esq., 1247 S. Pinellas Avenue, Tarpon Springs, Florida, 34689.

  
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**FILED**  
THOMAS D. HALL

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March 12, 2002

Thomas D. Hall, Clerk  
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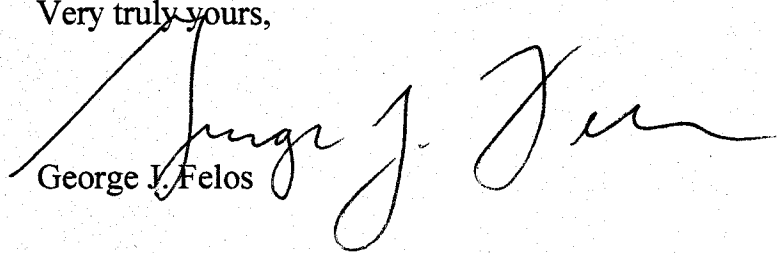
Re: The Guardianship of Theresa Marie Schiavo, Case No.: SC01-2678

Dear Mr. Hall:

Enclosed please find Petitioner's Motion to Strike Portion of Respondents' Jurisdictional Brief. Please call me should you have any questions regarding the same.

Thank you for your assistance in this matter.

Very truly yours,

  
George J. Felos

GJF/rh  
Encl.