

**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 on March 22, 2001 upon the Motion to Life Stay and the Amendment to Motion to Lift Stay filed by Petitioner, Michael Schiavo, as Guardian of the Person of Theresa Marie Schiavo. Before the court were George J. Felos, Esquire, attorney for Petitioner; and Joseph D. Magri, Esquire, attorney for Respondents, Robert and Mary Schlinder. Petitioner and Respondents were also present. Approximately one and one half-hours before the commencement of the hearing, the undersigned was advised by the Second District Court of Appeal that it had withdrawn the Mandate issued on March 20, 2001.

Counsel for Petitioner advised the court that the matter at issue was the March 24, 2000 order of this court which stayed the effectiveness of the final order herein until thirty days beyond the exhaustion of all appellant remedies. Mr. Felos argued that this court had no power to continue the stay of the order once the Appellant Court has issued its Mandate. He cited as his authority for this proposition the cases of *Robbins v Pfeiffer*, 407 So. 2nd 1016 (Fla App 5 Dist.1982) and *Aetna Insurance Company v Buchanan*, 372 So. 2nd 172 (Fla App 2 Dist.1979). Since those cases involve efforts by the trial court to enter stays after the issuance of a Mandate, they are clearly distinguishable from the case at bar. Mr. Felos also urged the court to amend its prior order pursuant to Rule 9.310 (e) of the Florida Rules of Appellant Procedure.

Counsel for Respondent, on the other hand, reminded the court that the March 2000 order was entered pursuant to a stipulation which was predicated upon compassion in order to allow grieving relatives a reasonable opportunity to confront closure. He also distinguished the cited cases since

this court clearly had jurisdiction to enter the order at issue. He urged the court to deny the Motion and allow the appellate process to run its normal course.

Rule 9.310 (e) of the Florida Rules of Appellant Procedure states simply that a stay ordered by a lower court remains in effect only until a Mandate is issued, it is modified or it is vacated. In a case very similar to the case at bar, the First District Court of Appeal outlined the law as it applies to stays. *City of Miami v Arostegui* 616 So. 2nd 1117 (Fla App 1 Dist. 1993) While the cited case involved an automatic stay as opposed to a court-granted stay, the law and the reasoning applying the law readily applies to all cases. Based thereupon, it is clear that when a Mandate is issued by the Second District Court of Appeal the stay as ordered by this court in March of 2000 will automatically be vacated. As the last cited case indicates, any further stay would have to be granted by a higher court.

The court has found no authority, either statutory or contained in legal precedent, which makes the requested modification mandatory. Clearly, the court does have the discretion to make such a change to its prior order. However, the court is convinced that Florida law makes such modification unnecessary and the court is also reluctant to modify an order approving a stipulation unless compelled to do so. Accordingly, it is, therefore

ORDERED AND ADJUDGED, that the Motion to Lift Stay and the Amendment to Motion to Lift Stay be and the same are hereby denied.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County Florida, this 29 day of March, A.D., 2001.

A true copy


George W. Greer
Circuit Judge

CC: George A. Felos, Esquire
Joseph D. Magri, Esquire