IN THE FLORIDA SUPREME COURT
CASE NO. SC03-1242

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| IN RE: THE GUARDIANSHIP OF<br><br>THERESA MARIE SCHIAVO,<br><br>Incapacitated. | |
| ROBERT SCHINDLER and MARY SCHINDLER,<br><br>Petitioners/Appellants,<br><br>vs.<br><br>MICHAEL SCHIAVO, as Guardian of the person of THERESA MARIE SCHIAVO,<br><br>Respondent/Appellee. | Petition from the Second District Court of Appeal<br>Case No. 2D02-5349 |

**OPPOSITION TO EMERGENCY MOTION FOR STAY**

COMES NOW the Respondent/Appellee, MICHAEL SCHIAVO, as Guardian of the person of THERESA MARIE SCHIAVO, and in opposition to Petitioners/Appellants' emergency motion for stay pending discretionary review, states:

1. Respondent has previously filed in this cause an Emergency Motion to Vacate Stay, with exhibits. That motion sets forth in detail why a stay of mandate

in this case is contrary to the prior decisions of this court, is contrary to public policy, and is in derogation of THERESA SCHIAVO'S personal liberty and constitutional right of privacy. Said Emergency Motion to Vacate Stay, including the exhibits thereto, are attached and made a part this opposition to a further stay, and Respondent specifically relies upon said motion with exhibits.

2. Further, Petitioners' motion, (as is their jurisdictional brief), is an assemblage of misrepresentation, half-truth and innuendo. For an accurate recitation of the case history and facts, Respondent refers this court to that contained in the attached Emergency Motion to Vacate Stay, (and particularly the exhibits thereto), as well as his Jurisdictional Brief.

3. It is misrepresentation, not advocacy, for Petitioners to suggest (motion at 4-5), that the appellate court and trial court now find that the ward has some cognitive function. To the contrary:

> "The guardianship court determined that Mrs. Schiavo remained in a permanent vegetative state. ...If we were called upon to review the guardianship court's decision de novo, we would still affirm it. ...At the conclusion of our first opinion, we stated [that Theresa Schiavo is]: 'in a persistent vegetative state that has robbed her of most of her cerebrum and all but the most instinctive of her neurological functions'...Nothing in these proceedings has changed this conclusion. The extensive additional medical testimony in this record only confirms once again the guardianship court's initial decision." *Schindler v. Schiavo (In re guardianship of Schiavo) (Schiavo IV)*, ___So.2d___, 2003 WL 21295656 (Fla. 2d DCA 2003).

4. It is misrepresentation to claim that "there is legitimate bona fide record evidence that Terri can improve..." (motion at 6). As stated by the trial court and affirmed by the appellate court, "There is no such testimony, much less than a preponderance of the evidence to that effect." *In re Guardianship of Schiavo*, 2002 WL 31817960 (Fla. Cir. Ct.), *5. What little evidence of any sort presented by Petitioners could hardly be called "legitimate," as their star witness and sole neurologist "certainly is a self-promoter" (per the trial court, *Id*. *4), has been sued by the Florida Department of Health for revocation of his medical license (Div. of Adm. Hearings Case Nos. 02-0165PL and 02-0219PL, appeal filed), and is listed on the "Quackwatch" website (www.quackwatch.org/01QuackeryRelatedTopics/ Tests/ tcd.html).

5. It is misleading in this case and a gross misrepresentation of the law to assert that, "It is beyond the scope of Florida law to end the life of a person who left no advance directive but who is not completely without voluntary or cognitive behaviors" (motion at 6). First, Petitioners falsely insinuate that the ward "left no advance directive," which is defined in Section 765.101(1), Florida Statutes. To the contrary, the ward's advance directives "gave the trial court a sufficient basis to make this decision for her." *Schindler v. Schiavo (In re guardianship of Schiavo) (Schiavo I)*, 780 So.2d 176, 180 (Fla. 2d DCA 2001). Second, lack of

cognition is not a prerequisite for withdrawal of life-prolonging procedures when there are no advance directives. Section 765.401(3), Florida Statutes, provides that absent evidence of patient intent, such medical procedures can be withheld or withdrawn when that decision is in the "patient's best interest." That statute by reference to Section 765.305, allows such decisions to be made for patients who are in "end-stage" or "terminal" conditions (765.305(2)(b)), said conditions not defined by lack of cognition (765.101(4) and (17)).

6. The affidavit attached to Petitioners' motion has also been filed in the trial court, and no doubt will, upon the resolution of this round of appeals, form the basis of Petitioners' next motion for relief from final judgment. After a full trial, and now after an additional 2 years of extensive medical tests and examinations and an eight-day hearing with six medical experts including four neurologists, Petitioners now seek to challenge the conclusions of the trial and appellate courts with the opinion of a speech pathologist who has worked for seven years. That fact that someone disagrees with the findings of eminent neurologists and the opinions of the courts is insufficient for this court or any court to further delay the implementation of the ward's medical treatment wishes.

7. Again, for the reasons set forth in the Emergency Motion to Vacate Stay, Respondent requests that the emergency motion for stay be denied.

WHEREFORE, Respondent respectfully requests this court to:

A. Deny the emergency motion for stay; or, in the alternative, if a stay is issued,

B. Expedite consideration of the request for discretionary review.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished this 19th day of August, 2003 by U.S. mail to Patricia Fields Anderson, Esq., 447 3rd Avenue N., Suite 405, St. Petersburg, Florida, 33701.

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