

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION
File No. 90-2908GD-003

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

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

vs.

ROBERT SCHINDLER and MARY
SCHINDLER,
Respondents.

ORDER

THE COURT held a hearing on September 11, 2003 pursuant to the Mandate of the Second District Court of Appeal dated August 25, 2003. The hearing was scheduled by Order of this court rendered August 28, 2003 to immediately follow another hearing previously scheduled by counsel.

The purpose of the hearing was to schedule the removal of the nutrition and hydration tube in this very long and extremely difficult case. The Second District Court of Appeal in *Schindler v Schiavo*, 851 So.2d 182 (Fla. 2d DCA 2003), made observations with which this court fully concurs.

The judges on this panel are called upon to make a collective, objective decision concerning a question of law. Each of us, however, has our own family, our own loved ones, our own children. From our review of the videotapes of Mrs. Schiavo, despite the irrefutable evidence that her cerebral cortex has sustained the most severe of irreparable injuries, we understand why a parent who had raised and nurtured a child from conception would hold out hope that some level of cognitive

function remained. If Mrs. Schiavo were our own daughter, we could not but hold to such a faith.

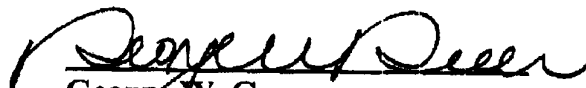
But in the end, this case is not about the aspirations that loving parents have for their children. It is about Theresa Schiavo's right to make her own decision, independent of her parents and independent of her husband. In circumstances such as these, when families cannot agree, the law has opened the doors of the circuit courts to permit trial judges to serve as surrogates or proxies to make decisions about life-prolonging procedures. See *In re Guardianship of Browning*, 568 So.2d 4 (Fla. 1990) (affirming *In re Guardianship of Browning*, 543 So.2d 258, 273-4 (Fla. 2d DCA 1989)); see also § 765.401(3), Fla. State. (2000). It is the trial judge's duty not to make the decision that the judge would make for himself or herself or for a loved one. Instead, the trial judge must make a decision that the clear and convincing evidence shows the ward would have made for herself. § 765.401(3). It is a thankless task, and one to be undertaken with care, objectivity, and a cautious legal standard designed to promote the value of life. But it is also a necessary function if all people are to be entitled to a personalized decision about life-prolonging procedures independent of the subjective and conflicting assessments of their friends and relatives.

At the hearing, the Court heard from counsel and, based upon the Mandate, it is

ORDERED AND ADJUDGED that the Guardian, Michael Schiavo, shall cause the removal of the nutrition and hydration tube from the Ward, Theresa Marie Schiavo, at 2:00 p.m. on the 15th day of October, 2003.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this 17 day of September, 2003 at 3:30 o'clock p. m.

TRUE COPY


George W. Greer
Circuit Judge

90-2908-GD-003

Copies furnished to:

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