

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION
UCN 521990GA002908XXGDXX
REF: 90-002908-GD-03

In Re: The Guardianship Of:
THERESA MARIE SCHIAVO,

Incapacitated.

_____/

ROBERT SHINDLER and MARY
SCHINDLER,

Petitioners,

v.

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

Respondent.

_____/

**CHIEF JUDGE'S ORDER DENYING RE-APPOINTMENT OF
GUARDIAN AD LITEM**

THIS CAUSE CAME ON TO BE HEARD on the request of Governor Jeb Bush, dated December 22, 2003, seeking re-appointment of the Guardian ad Litem. The Guardian ad Litem, previously appointed by the Court pursuant to Chapter 2003-418, Laws of Florida, issued his report and recommendations on December 1, 2003. On December 17, 2003, this Court entered an order discharging the Guardian ad Litem.

The Governor now seeks to have the Guardian ad Litem re-appointed. Upon receipt of the request from the Governor, the Court gave the parties 10 days to respond to

the request. Michael Schiavo, as Guardian of the person of Theresa Marie Schiavo, and Robert Schindler, et al., each filed a response. The Court has given careful consideration to the request of the Governor and these responses. The Court has also reviewed the opinion of the Second District Court of Appeal in *Bush v. Schiavo*, 2003 WL 22900478 (Fla. 2d DCA Dec. 10, 2003).

The Governor requested that the Court re-appoint the Guardian ad Litem and direct the Guardian ad Litem to report to the Governor on 11 specific matters. The Governor states that these issues are important for him to consider in determining the length of the stay.

The Schindlers requested that the Court appoint a Guardian ad Litem with extensive responsibilities and authority. Chapter 2003-418, Laws of Florida, governs the appointment of a Guardian ad Litem by the Chief Judge in these circumstances. The authority in that Act is limited to appointing a Guardian ad Litem to make recommendations to the Governor regarding the stay. The Schindlers' request is well beyond the scope of the authority under this Act. The Schindlers raise other points that the Court need not address at this time.

Michael Schiavo requested that the Court narrowly construe the authority under the Act and asserts that the Chief Judge no longer has authority to appoint a Guardian ad Litem under the Act. It is unnecessary for the Court to rule on this claim at this time.

When the Court originally appointed the Guardian ad Litem, the Court made the appointment in accordance with the terms of the Act. In that capacity, the Court followed the general rule that a state officer must presume legislation affecting the officer's duties to be valid. *Fuchs v. Robbins*, 818 So.2d 460 (Fla. 2002). That order was entered

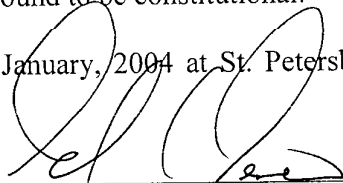
October 31, 2003. Since the entry of that order, the Second District Court of Appeal, in considering a writ of prohibition against the judge assigned to hear a challenge to the constitutionality of Chapter 2003-418, Laws of Florida, stated that the Act under which this Court previously appointed the Guardian ad Litem is presumptively unconstitutional. *Bush v. Schiavo*, 2003 WL 22900478 (Fla. 2d DCA Dec. 10, 2003). That finding must influence this Court's decision. In the present posture of this matter, it is sufficient that the Second District Court has found the Act, under which the Court would exercise authority to appoint a Guardian ad Litem, presumptively unconstitutional. As previously noted, the Governor and the parties have suggested other matters that might affect this Court's decision regarding re-appointment of the Guardian ad Litem; however, the Court need not consider them at this time.

ACCORDINGLY,

IT IS HEREBY ORDERED AND ADJUDGED that:

The request of Governor Bush that the Court re-appoint the Guardian ad Litem is denied without prejudice for the Governor to seek re-appointment of the Guardian ad Litem if Chapter 2003-418, Laws of Florida is found to be constitutional.

DONE AND ORDERED this 8th day of January, 2004 at St. Petersburg, Pinellas County, Florida.



DAVID A. DEMERS
CHIEF JUDGE
SIXTH JUDICIAL CIRCUIT

Copies to: