

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT IN AND
FOR PINELLAS COUNTY, FLORIDA

IN RE: Guardianship of
THERESA MARIE SCHIAVO,
Incapacitated.

Michael Schiavo, as Guardian of
the person of Theresa Marie Schiavo,
Petitioner,

vs.

Probate Division
File N. 90-2908GD-003

Robert Schindler and Mary Schindler,
Respondents.

**NOTICE TO COURT PURSUANT TO SECTION 415.1055(9), F.S.
AND PETITION/MOTION FOR INTERVENTION, STAY OF ORDER OF THE
PROBATE COURT, APPOINTMENT OF LEGAL COUNSEL FOR
THERESA MARIE SCHIAVO AND SEALING OF THE PROCEEDINGS**

COMES NOW, Michael Will, Petitioner, a representative of the Department of Children and Families of the State of Florida (hereinafter referred to as DCF), by and through its undersigned counsel, and files this notice and makes application for the following forms of relief:

NOTICE PURSUANT TO SECTION 415.1055, F.S.

1. Please take notice that on or about February 18, 2005 and February 21, 2005, DCF received reports of abuse, neglect or exploitation involving allegations related to Theresa Marie Schiavo.

2. Such reports and written attachment thereto raise approximately 30 detailed allegations of abuse, neglect or exploitation in a 34 page document received by the DCF hotline on February 18, 2005 and February 21, 2005 and forwarded to DCF's Suncoast Region Office, whereupon an investigation has been commenced.

PETITION FOR INTERVENTION

3. DCF, by and through its counsel petitions for leave to intervene, and in support of this intervention states as follows: DCF and criminal investigative agencies are required by the legislature to provide for the detection and correction of abuse, neglect, and exploitation and to establish a program of protective services for all disabled adults or elderly persons in need of them. Section 415.101(2), F.S.
4. Intervention is a right of anyone claiming an interest in pending litigation that may be asserted at any time; intervention should be granted to anyone claiming an interest in pending litigation. Rule 1.230, *Florida Rules of Civil Procedure*.
5. DCF, by virtue of its aforementioned statutory mandate, asserts a right of intervention in the pending guardianship proceeding of Theresa Marie Schiavo to protect the following interests:
 - a. DCF, in its unique and legislative role as a detector of abuse, neglect and/or exploitation (Section 415.101(2), F.S.), has a heretofore unrepresented interest in whether Theresa Marie Schiavo, the subject of a substantial number of allegations of abuse, neglect, and

exploitation, remains a viable living adult during the pendency of DCF's investigation. Plainly stated, due to the investigation and the potential need for examination of the alleged victim, surroundings and circumstances as required by law, DCF is interested, directly and immediately, in that part of the guardianship proceeding which calls for the removal of life support, because such action would deny DCF's ability to meet its statutory duty. See Morgareidge v. Howey, 78 So. 14; 75 Fla 234 (1918) and Schindler v. Schiavo, 866 So.2d 140 (2nd DCA 2004).

- b. Further, DCF is interested in the guardianship proceeding as, by all accounts, Theresa Marie Schiavo, vulnerable adult who, as defined by law, may, by virtue of the allegations, be entitled to statutory services. See Sections 425.102(26) and 415.1051, F.S. The Court's final determination in the guardianship proceeding regarding the removal of the feeding tube and hydration will have a direct and immediate impact upon DCF's legislative mandated functions of not only investigation but also, the provision of services. See In re West Water Management District, 269 So.2d 405 at 407 (2d DCA 1972) where Judge Liles for the Second District Court of Appeal opined "the trial judge was in error in his failure to allow the county to participate in what has been designated to be their mandatory function."

6. DCF's ability to perform its governmental mandated function will be gained or lost by the direct legal operation and effect of the court's final order in the guardianship proceeding.
7. DCF's petition to intervene is timely. Allegations raised in the report of abuse, neglect and/or exploitation raise factual issues heretofore not seen by DCF nor noticed to the Probate Court pursuant to Section 415.1055 (9), F.S. Allegations which predate the order of removal of nutrition and hydration of September 17, 2003 (hereinafter referred to as the referral order) are particularly supportive of a grant for intervention. Smith v. Elliott, 56 Fla. 849, 47 So. 387 (Fla. 1908). Intervention is allowed even after final judgment where "the interests of justice so require and intervener stands to lose or gain valuable rights dependant upon the outcome of the case." Schiller v. Schiller, 625 So.2d 856 at 860. It is respectfully submitted that where the issue of one's life is the very subject of the proceeding, the interest of justice is, no doubt, very heightened.
8. DCF seeks at this time intervention for the limited purpose of standing to object to the entry of a final order allowing termination of life support during the pendency of DCF's investigation which has a statutory 60 day deadline (Section 415.104(4)). DCF makes no claim or interest in any other relief addressed by this court throughout the years of this guardianship's proceedings.

PETITION/MOTION FOR STAY OF REMOVAL ORDER

9. Additionally, and, or alternatively, DCF seeks a stay of the removal order dated October 17, 2003 pursuant to FRCP 1.610(a)(1) and 1.550(b).
10. A stay is permitted where the court finds it would be unwise to proceed in the litigation until a regulatory agency has rendered final determination over matters raised in the litigation. Eastern Airlines, Inc. v. Mobil Oil Corporation, 403 F. Supp. 757 (S.D. Florida 1975).
11. A stay postpones an action until some contingency occurs. Williams v. Edwards, 604 So.2d 930 (5th DCA 1992). DCF seeks a stay until its investigation is completed. The statute requires completion of an investigation within 60 days of a report. Section 415.104(4), F.S.
12. A stay requested by DCF is in order where DCF's pursuit of its statutorily mandated duties of investigation and provision of services will be determinative of the issues in the guardianship proceeding. The allegations in the abuse reports go to the heart of whether abuse, neglect and/or exploitation has been perpetrated by the Guardian such that any relief afforded by this court to this Guardian prior to the conclusion of such investigation would be tragically misplaced.
13. DCF, not having been a party to the previous proceedings and having an open investigation before it, should be allowed to complete its statutory duties within time frames set by law.

14. Irreparable and immediate harm, as pleaded above and repeated herein by reference, will result to DCF unless an injunction for a stay is issued. More particularly:

- a. Termination of the life of Theresa Marie Schiavo would hamper the investigation into abuse, neglect, and/or exploitation allegations, many of which have previously gone on uninvestigated by the governmental agency charged to conduct such investigations, i.e. DCF.
- b. Termination of the life of Theresa Marie Schiavo would prevent investigation into her surroundings and circumstances by creating a mootness under the Adult Protection Statute and thus divest DCF of its jurisdiction to detect, correct and protect vulnerable adults from abuse, neglect, and/or exploitation. See Section 415.101(2), F.S.

15. It is specifically averred that in 34 pages of allegations of abuse, neglect and/or exploitation, a meaningful and detailed investigation is warranted by DCF. The allegations are such that they:

- a. Affect the health of the ward
- b. Call into question the medical informed consent requirements of a Proxy under Chapter 765, F.S.
- c. Allege abuse, neglect and/or exploitation in pertinent part, including but not limited to:
 - i. Failure to file proper guardianship plan or report and the impact upon the health of the ward.

- ii. Current confinement issues at the ward's residence.
- iii. Failure to educate using certain therapies in violation of guardianship.
- iv. Investigation of rehabilitation entitlements in light of technologies available.
- v. Denial of access to legal counsel on different occasions is a supervision issue never previously investigated and goes directly to health decisions.
- vi. Lack of communication/visitation is a maintenance of mental health and supervision issue.
- vii. Denial of legal notice to ward or ward's own counsel.
- viii. Experimental procedures performed without proper medical and legal procedures observed.
- ix. Lack of manipulation of the ward's arms causing severe contractures.

16. Additionally, there are allegations that DCF has investigated that have been closed as unfounded. While DCF stands by its past decisions, it nevertheless reserves its rights to review any updated or relevant information in the full fair and final determination of this matter given the totality of the circumstances.

17. An injunction would prevent irreparable and immediate harm from occurring by allowing these and other allegations to be investigated.

18. The court's determination that it has reviewed some or all of these facts does not relieve DCF from discharging its investigative duties.

INJUNCTION AGAINST MICHAEL SCHIAVO AND/OR HIS AGENTS

19. DCF re-alleges paragraphs 9 – 18 in support of an injunction against Michael Schiavo and/or his agents, preventing him or his agents from removing the feeding tube until such time as DCF has been able to fully investigate the allegations in the reports just received.

20. A temporary injunction is properly granted where: 1) immediate and irreparable harm will otherwise result, 2) the moving party has a clear legal right thereto, 3) the movant has no adequate remedy at law, and 4) where the public interest will not be disserved. See Florida High School Activities Ass'n v. Kartenovich, 749 So.2d 1290 (Fla. 3d DCA 2000); Miami-Dade Cty. v. Church & Tower, Inc., 715 So.2d 1084, 1087 (Fla. 3d DCA 1998); and Cordis Corp. v. Prooslin, 482 So.2d 486, 489-90 (Fla. 3d DCA 1986). In re Estate of Barsanti, 773 So.2d 1206 (Fla.App. 3 Dist.,2000).

- a. Immediate and irreparable harm will otherwise result; the removal of the feeding tube and hydration will have a direct and immediate and irreparable result on the subject of the investigation, Theresa Marie Schiavo.
- b. The moving party has a clear legal right thereto; the Department restates and adopts items 4 and 5 under its Petition for Intervention.
- c. The movant has no adequate remedy at law; the Department restates and adopts item 5 under its Petition for Intervention.
- d. The public interest will not be disserved; the public has an interest in protecting its most vulnerable citizens, that interest would not be disserved by the Department completing its statutorily mandated duty to complete its abuse investigation.

COUNSEL FOR THERESA SCHIAVO

21. When an investigation of abuse, neglect or abandonment is commenced, the victim's legal counsel is entitled to a copy of the abuse report pursuant to Section 415.104(1)(c), F.S.
22. Additionally, in the event that adult protective services are necessary, legal counsel must be appointed.
23. Given the nature of this proceeding, DCF moves this court to appoint legal counsel for Theresa Marie Schiavo in the interest of justice and in fulfillment of statutory references.

COURT PROCEEDINGS SHOULD BE CLOSED

24. Since information pursuant to Chapter 415 of the Florida Statutes is confidential and exempt from public disclosure, this court proceeding and all filings made by DCF should be closed to the public.

WHEREFORE, the Department of Children and Families, State of Florida, prays this Court grant this Application for Intervention, for Stay of Order of the Probate Court, and for the Appointment of Legal Counsel for Theresa Marie Schiavo and to seal the proceedings since the Chapter 415 reports and information is confidential pursuant to law.

Michael Will

Michael Will
Adult Protective Investigations Supervisor

Kelly J. McKibben For (FBN 0143420)

Kelly J. McKibben, Esquire
Fla. Bar Number 0033731
Department of Children and Families
400 W. Robinson Street
Suite S-1114
Orlando, FL 32801
(407)245-0530

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was sworn to before me this 23rd day of February, 2005 by Michael Will who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC

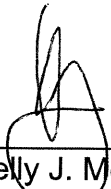


Jennifer Andreassen
Commission # DD347037
Expires: AUG. 16, 2008
Bonded Thru
Atlantic Bonding Co., Inc.

Sign: *Jennifer Andreassen*
Print: Jennifer Andreassen
State of Florida at Large (Seal)
My Commission Expires

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery, facsimile or United States mail this 23rd day of February 2005, to the following: David Gibbs, Gibbs Law Firm, PA, 5666 Seminole Boulevard, Suite 2, Seminole, Florida 33772 and George Felos, 595 Main Street, Dunedin, Florida 34698-4998.

 for (FBN 0143420)

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