

IN THE UNITED STATES COURT OF APPEAL
FOR THE ELEVENTH CIRCUIT
CASE NO. 05-11556-D

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAR 22 2005

THOMAS H. KAHN
CLERK

THERESA MARIE SCHINDLER SCHIAVO,
Incapacitated ex rel., ROBERT SCHINDLER
and MARY SCHINDLER, her Parents and
Next Friends,

Appellants,

vs.

Lower Court Case No.
8:05-CV-530-T-27TBM¹

MICHAEL SCHIAVO, JUDGE GEORGE
W. GREER and THE HOSPICE OF THE
FLORIDA SUNCOAST, INC.,

Appellees.

NOTICE OF AFFIDAVIT AND PRELIMINARY REQUEST

COMES NOW the appellee, MICHAEL SCHIAVO, as Guardian of the
person of THERESA MARIE SCHIAVO, and states:

1. Attached hereto is the March 21, 2005 affidavit of Mrs. Schiavo's
treating physician, which was filed yesterday in the lower court. As stated in
paragraph 5 of the affidavit:

¹Appellants chose to not to follow this Court's mandate in Case No. 05-
11517-A, and filed a new action in federal district court.

Within reasonable medical probability, Mrs. Schiavo would not sustain any physical damage if artificial of sustenance and hydration were restored six days after cessation, as occurred in October 2003.

As this Court is aware, Mrs. Schiavo's feeding tube was removed at approximately 1:45 p.m. on March 18, 2005, and she is in now her fourth day of cessation of artificial life support.

2. As a result, while time is of the essence here, there remains adequate time for this Court to conduct an expedited and deliberate review of appellants' claims and appellee's responses, while maintaining the status quo.

3. Reinstitution of artificial life support, even on a temporary basis, would violate the physical body, adjudicated medical treatment wishes, vested rights, state court final judgments rendered in her favor, and liberty of Theresa Marie Schiavo, all contrary to various provisions of the United States Constitution and the Florida Constitution. (See paragraph 4 of the doctor's affidavit, describing the surgical procedures Mrs. Schiavo would be forced to undergo.)

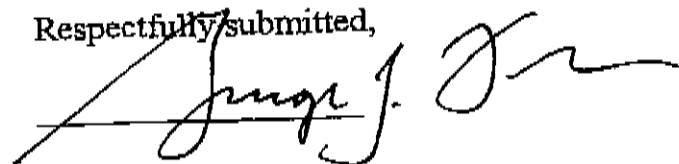
4. Reinstating artificially provided hydration or nutrition, even on a temporary basis, would force Mrs. Schiavo, once cessation reoccurs, to commence her death process again from the beginning. That would be a horrific intrusion upon Mrs. Schiavo's personal liberty, and the status quo should therefore be maintained until this Court issues its final ruling.

WHEREFORE, appellee respectfully requests this Court to:

A. Deny any request to reinstitute artificial life support during the pendency of this action; and,

B. Should this Court enter any order requiring the reinstatement of artificial life support, stay the effect of such order for 8 hours, in order to permit appellee to seek United States Supreme Court review.

Respectfully submitted,



George J. Felos
(Fla. Bar No. 226653)
Felos & Felos, P.A.
595 Main Street
Dunedin, FL 34698
(727) 736-1402

Randall C. Marshall, Legal Director
(Fla. Bar No. 0181765)
Rebecca Steele
American Civil Liberties Union of
Florida
4500 Biscayne Boulevard -- Suite 340
Miami, FL 33137
305-576-2337

Thomas J. Perrelli
Robert M. Portman
Iris Bennett

Jenner & Block LLC
601 13th Street, NW, Suite 1200
Washington, DC 20005
(202) 639-6000

Jon B. Eisenberg
1970 Broadway
Suite 1200
Oakland, CA 94612

I HEREBY CERTIFY that a copy of the foregoing was furnished this 22nd
day of March 2005 by U.S. mail and fax to David C. Gibbs III, 5666 Seminole
Blvd., Ste. 2, Seminole, FL 33772.

FELOS & FELOS, P.A.



GEORGE J. FELOS

595 Main Street
Dunedin, Florida 34698
Telephone: (727) 736-1402
Attorneys for Appellee
FBN: 226653

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF PINELLAS

COMES NOW STANTON TRIPODIS, M.D., and after being duly sworn, states:

1. Affiant is a medical doctor, licensed in the State of Florida, and the matters stated herein are based on personal knowledge.

2. Affiant is an internist, and is well familiar with the procedures for inserting feeding tubes, and the process of withdrawing artificial provision of sustenance and hydration.

3. Affiant is and has been the treating physician for Theresa Marie Schiavo since 2003.

4. Reinsertion of Theresa Schiavo's feeding tube would require that surgery be performed on her. Her abdomen must be cut, an endoscope instrument must be passed down her mouth through her throat into her stomach, a hole is put in her stomach, then a guide wire is passed through the hole into the stomach. The guide wire is then grasped by the endoscope and pulled out of the mouth. The feeding tube is then attached to the guide wire outside of the mouth, the end of the guide wire at the stomach hole is pulled, thus pulling the feeding tube into the mouth, down the throat, and into the stomach. The tube is then anchored in the stomach and then an adapter piece is put on the end. In order to perform this procedure, Mrs. Schiavo will have to be transported to a hospital.

5. Within reasonable medical probability, Mrs. Schiavo would not sustain any physical damage if artificial of sustenance and hydration were restored six days after cessation, as occurred in October 2003.

6. Affiant further saith not.

Stanton Tripodis, MD
STANTON TRIPODIS, M.D.

Sworn to and subscribed before me this 21ST day of March 2005.



Franche H. Wolf
MY COMMISSION # 00289028 EXPIRES
February 9, 2008
BONDED THRU TROY FAH INSURANCE, INC

Franche H. Wolf
Notary Public