

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

No. 8:05-CV-530-T-27TBM

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

Plaintiffs,)

vs.)

MICHAEL SCHIAVO, as Guardian of the)
Person of Theresa Marie Schindler Schiavo,)
Incapacitated; JUDGE GEORGE W. GREER)
and THE HOSPICE OF THE FLORIDA)
SUNCOAST, INC.,)

Defendant.)
_____)

**PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER**

Plaintiff, by and through her parents and next friends, Robert and Mary Schindler, and pursuant to FED. R. CIV. P. RULE 65(b), hereby submit their first amended motion for a temporary restraining order restraining, and preliminary injunction enjoining, Defendants Michael Schiavo, Judge George Greer, Hospice, and his, its, and their agents, employees, successors, attorneys, and all those acting in active concert or participation with him and them, from further withholding nutrition and hydration from Plaintiff Theresa Marie Schiavo pending a hearing

and determination of Plaintiff's First Amended Complaint for Preliminary and Permanent Injunction and for Declaratory Relief and Damages, filed with this Court on March 22, 2005. Plaintiff shows the following in support of her First Amended Motion for Temporary Restraining Order.

1. On February 25, 1990, Plaintiff's brain was deprived of oxygen during a medical incident. Due to her incapacity resulting from this incident, her husband, Respondent Michael Schiavo, was appointed plenary guardian of his wife on June 18, 1990.

2. On May 11, 1998, Michael Schiavo petitioned the Circuit Court for Pinellas County, Florida, Sixth Judicial Circuit, Probate Division, for authority to discontinue Terri's "artificial life support," which consisted only of assisted feeding through a PEG (percutaneous endoscopic gastrostomy) tube.

3. The case was tried before the state trial court and on February 11, 2000, the trial court:

ORDERED AND ADJUDGED that the Petition for Authorization to Discontinue Artificial Life Support of Michael Schiavo, Guardian of the Person of Theresa Marie Schiavo, an incapacitated person, be and the same is hereby GRANTED and Petitioner/Guardian is hereby authorized to proceed with the discontinuance of said artificial life support for Theresa Marie Schiavo.

The execution of the Order was stayed to permit the Schindlers time to appeal.

4. On February 25, 2005, the state trial court ordered the removal of all nutrition and hydration from Terri. In relevant part, the Order provides that it is:

ORDERED AND ADJUDGED that absent a stay from the appellate courts, the guardian, Michael Schiavo, shall cause the removal of nutrition and hydration from the Ward, Theresa Schiavo, at 1:00 P.M. on Friday, March 18, 2005.

5. On March 8, the trial court denied the Schindlers' motion to allow health care professionals to attempt to feed and hydrate Terri by normal means after the removal of the feeding tube.

6. On March 18, 2005, at approximately 1:45 p.m., pursuant to the instructions of Michael Schiavo as ordered by the trial court, Hospice health care staff removed the port through which Terri's nutrition and hydration received her food and water.

7. Since that date and time, Terri has had no food or water.

8. Unless this motion is granted, and until a hearing may be had on Plaintiff's motion for injunctive relief, Plaintiff will suffer immediate and irreparable injury, including death, by Defendants' intentional denial to her of nutrition and hydration.

9. The First Amended Complaint adds Count Six, which alleges that by authorizing the withholding and withholding Mrs. Schiavo's nutrition and hydration, appropriate speech and motor skills therapy, rehabilitation service, and basis medical services, Defendant Schiavo and Defendant Greer have violated the Americans With Disabilities Act which provides that "[n]othing in the Act or this part authorizes the representative or guardian of an individual with a disability to

decline food, water, medical treatment, or medical services for that individual.” (cf. 28 C.F.R. Ch. 1, Subpart B, § 35.130.). In support of this claim Plaintiffs file herewith the Florida Department of Children and Families’ Notice to Court Pursuant to Section 415.1055(9), F.S. and Petition/Motion for Intervention filed with the Circuit Court, Sixth Judicial District for Pinellas County, Florida, in Probate Case No. 90-2908GD-003, *In re Guardianship of Theresa Marie Schiavo*, in which the DCF alleges that “Credible evidence through the analysis of our Board Certified Neurologist on our APT that seriously challenges the diagnosis that Ms. Schiavo is in a PVS. . . . The significance of not being PVA would shatter the legal basis for the removal of life support.” (App. 1).

The medical declarations filed earlier this week by Plaintiff confirm the very real evidence that Ms. Schiavo is not in PVS.

Despite the credible evidence that Ms. Schiavo is not in PVS, The Honorable Judge Greer has failed to order that Ms. Schiav’s hydration and nutrition be re-established and she continues in her seventh day without nutrition and hydration. Judge Greer has also ordered that DCF be restrained from “taking possession of Theresa Marie Schiavo or removing her from the hospice Woodside facility, administering nutrition or hydration artificially, or otherwise interfering with this Court’s final judgment, or causing the same to occur, and all those persons acting in concert with DCF are hereby also restrained.” (App.2).

10. The First Amended Complaint also adds Count Seven, which alleges that Defendant Hospice has discriminated against Plaintiff by its failure to obtain the medical, rehabilitative, and therapeutic services to which she is entitled under Rehabilitation Act of 1973.

11. The new Count Eight of the First Amended Complaint alleges that the Judge Greer violated Terri's due process right to a clear and convincing standard of proof when it discounted the testimony of Diane Meyer because of his own mistaken belief as to the date Karen Ann Quinlan died. Had that testimony been taken as true, as it should have been, the court did not have clear and convincing evidence on which it could substitute its judgment that Terri Schiavo would not want to live.

12. Finally, the new Count Nine alleges that Defendants Greer and Schiavo have violated the Eighth Amendment to the United States Constitution by imposing starvation and dehydration upon Terri Schiavo contrary to the proscription by the U. S. Supreme Court of the deprivation of food, water, and medical care as well as other basic human needs to those in custody by a judicial decree of the state.

13. Pursuant to this Court's Order of March 22, 2005, denying the first request for a temporary restraining order, Terri has successfully demonstrated three of the four elements she needs to obtain the restraining order.

It is apparent that Theresa Schiavo will die unless temporary injunctive relief is granted. This circumstance satisfies the requirement of irreparable injury. Moreover, that threatened injury outweighs any harm the proposed injunction would cause. To the extent Defendants urge that Theresa Schiavo would be harmed by the invasive procedure reinserting the feeding tube, this court finds that death outweighs any such harm. Finally, the court is satisfied that an injunction would not be adverse to the public interest.

(Order, 3-4).

14. Although the Court found that Plaintiff did not demonstrate that it would likely succeed on the merits of Counts One through Five of its original Complaint, Plaintiff contends that she is likely to succeed on the merits of Counts Six through Nine of its First Amended Complaint.

15. Section 1 of PL 109-3, under which authority Plaintiff has brought this action, states “(t)he United States District Court for the Middle District of Florida shall have jurisdiction to hear, determine, and render judgment of a suit or claim by or on behalf of Theresa Marie Schiavo for the **alleged** violation of any right of Theresa Marie Schiavo under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids or medical treatment necessary to sustain her life.” In the context P. L. No. 109-3, the merits of the action is proving an “**alleged violation**” of any of Terri’s rights and Motion for Leave to File as *Amici Curiae* from U. S. House of Representatives (App. 3).

Therefore, Plaintiff has a substantial likelihood of success in proving an alleged violation of her rights under Counts Six through Nine.

10. In support of this motion for TRO, the next friends of Plaintiff filed their Verified Complaint in Support of Motion for Temporary Restraining Order and Complaint for Injunctive Relief. They also file herewith the following:

Wherefore, the Plaintiff therefore respectfully requests this court to:

a. Enter a temporary restraining order and preliminary injunction prohibiting Defendants and anyone acting in concert or participation with them from further withholding Plaintiff's nutrition and hydration or any medical treatment necessary to sustain her life;

b. Ordering Hospice to immediately transport Terri by ambulance to Morton Plant Hospital for any medical treatment necessary to sustain her life and to reestablish her nutrition and hydration;

Dated: March 23, 2005

Respectfully submitted,

GIBBS LAW FIRM, P.A.,

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2005, I electronically filed PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ David C. Gibbs III