

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

IN RE: GUARDIANSHIP OF

Case No. 90-002908-GD

THERESA MARIE SCHIAVO,

Ward.

AMENDED RESPONSE AND OBJECTION TO MOTION TO INTERVENE

COMES NOW, MICHAEL SCHIAVO ("MR. SCHIAVO"), surviving Spouse of THERESA MARIE SCHIAVO, an Interested Person, and formerly Guardian to THERESA MARIE SCHIAVO, by and through his undersigned counsel and files this his Amended Response and Objection to Motion to Intervene heretofore filed in this cause by BOBBY SCHINDLER and the TERRI SCHIAVO LIFE & HOPE NETWORK ("Movants"), and for that shows the Court as follows:

1. That MR. SCHIAVO served as Guardian of his Wife, THERESA MARIE SCHIAVO, since its inception in 1990 until her passing in 2005.

2. The case was well publicized, and at times, extremely contentious. MR. SCHIAVO has been served with this Motion to Intervene by Non-Party, Non-Interested persons, in his capacity as surviving spouse, and as former Guardian and surviving Spouse of THERESA MARIE SCHIAVO, who died on the March 31, 2005. There is NO pending litigation, save the Amended Motion to Unseal Guardianship Records, filed by Non-Party/Non-Interested Persons, BOBBY SCHINDLER and the TERRI SCHIAVO LIFE & HOPE NETWORK.

3. That BOBBY SCHINDLER ("MR. SCHINDLER") is the brother of THERESA MARIE SCHIAVO, and asserts that he is President of the TERRI SCHIAVO LIFE & HOPE NETWORK ("NETWORK").

4. BOBBY SCHINDLER and the TERRI SCHIAVO LIFE & HOPE NETWORK have filed two Motions in this cause. The first, referenced herein, is the Motion to Intervene in this cause because they are not "Interested Persons" in the Guardianship, and second, the Movants have filed an Amended Motion to Unseal Guardianship Records, and in response thereto, MR. SCHIAVO shows the Court, that both Motions should be Denied.

5. MOVANT'S claim to intervene asserts a circular argument to support standing in this action. MOVANTS cite the Rules of Civil Procedure, Rule 1.230, which sets forth that anyone claiming an "Interest" in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the Court in its discretion. MOVANTS are not interested persons in this action because they are not affected by the outcome, as there is no pending litigation. See *Wertheim v. Golden Pond Assisted Living Facility*, 905 So.2d 1002 (Fla. 5th DCA 2005). As set forth more fully below in Respondent's first affirmative defense, any effect the disposition might have on the proposed intervenors' purported interest in their "their public advocacy mission" (Motion to Intervene at ¶8) is, if anything, merely *indirect*. A "showing of indirect, inconsequential, or contingent interest is inadequate to meet the test" for intervention. *Kissoon, v. Araujo, supra*, 849 So.2d 426, 429 (Fla. 1st DCA 2003).

6. Here, there is no pending litigation, all such litigation ended at the time of THERESA MARIE SCHIAVO'S passing in 2005. The claim that standing can be bootstrapped by the contemporaneous filing of an Amended Motion to Unseal Court Records to create litigation should be denied as a sham. Movant's cite Rule 1.230 FRCP, asserting thereunder that they claim an interest in pending litigation, but fail to articulate what litigation is pending, save for Movant's own Motion to Intervene. The argument is specious, as was found in the First District's holding in *In Interest of S.S. J.*, 634 So.2d 198 (Fla. 1st DCA 1994) where the Movant seeking to Intervene argued that the statutory provisions providing for who may file a Petition for Dependency allowed it to intervene in a proceedings to request that the trial court consider ordering a mother to submit to involuntary birth control. The Court disagreed, holding:

These statutory provisions apply when determining who may file a petition for dependency or termination of parental rights. They should not, however, be confused with the applicable test for determining a party's entitlement to intervention.

[T]he interest which will entitle a person to intervene ... must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of the litigation.

Union Central Life Insurance Company v. Carlisle, 593 So.2d 505, 507 (Fla.1992) (citing *Morgareidge v. Howey*, 75 Fla. 234, 238–39, 78 So. 14, 15 (1918)). VOCAL’s motion for intervention expresses an “interest in preventing any other children of Mrs. [J.] from being abused or becoming wards of the state,” and requests that the court consider “involuntary birth control (Norplant)” for Mrs. [J.]. In applying the test for intervention to the interest identified by VOCAL we conclude that VOCAL failed in the proceedings below to articulate an interest of such a “direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.” Accordingly, we find that the trial court abused its discretion in granting VOCAL’s motion to intervene.

7. Clearly, the Movant’s Motion to Intervene is self-serving, as MOVANTS themselves set forth, that they wish to exploit the Guardianship Records in furtherance of their own mission, in total disregard to the privacy wishes and desires of THERESA MARIE SCHIAVO, her husband, MICHAEL SCHIAVO, and many others.

8. MOVANTS claim they have the right to seek records because they claim an Interest in litigation by right. MOVANTS have no right of litigation, the so-called NETWORK did not exist at the time of THERESA MARIE SCHIAVO’S death on March 31, 2005, and MR. SCHINDLER himself was not a party in the Guardianship case. Notwithstanding the same, even if MR. SCHINDLER claims to have been an Interested Party to the suit regarding THERESA MARIE SCHIAVO’S right to exercise her rights under her Living Will, that case has ended, and what remains are privacy rights of THERESA MARIE SCHIAVO, which do not expire at her death.

9. In fact, MR. SCHINDLER admits, in Paragraph 10, that there is no active litigation in the case; and therefore they bootstrap again, claiming that because there is no active litigation, they will not interfere with the rights of any other Party. This argument is circular, and BOBBY SCHINDLER and the TERRI SCHIAVO LIFE & HOPE NETWORK should be denied any right of intervention.

10. In Paragraph 11 of his Motion to Intervene, MOVANTS assert that the Florida Supreme Court established a two-part test for determining whether intervention is proper. Indeed, the Court held in *Union Central Life Insurance Co. v Carlisle*, 593 So. 2d 505 (Fla. 1992) that

Florida Rule of Civil Procedure 1.230 provides that “[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by

intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.” Despite the rule’s seemingly expansive language, intervention is not unrestrained.

Id., at 507.

The *Carlisle* Court further clarified that the interest must be directly involved in the underlying litigation, *viz*:

The test to determine what interest entitles a party to intervene is set forth in *Morgareidge v. Howey*, 75 Fla. 234, 238–39, 78 So. 14, 15 (1918):

[T]he interest which will entitle a person to intervene ... must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of litigation.

Id., at 507.

11. MOVANTS’ attempt therefore to bootstrap an interest to support a claim of standing is misguided. They have no interest in the matter, and certainly not one of direct and immediate character that intervenor (MOVANTS) will either gain or lose by the direct legal operation and effect of a judgment. They cannot be so affected because there is no litigation. The intervention could not be more inappropriate. THERESA MARIE SCHIAVO has a right to dignity in her death, and intervention to allow MR. SCHINDLER to exploit her case and her death, should be Denied.

12. Further, MOVANTS assert that the trial court should consider a number of factors including the derivation of the interest, any pertinent contractual language, the size of the interest, the potential conflicts or new issues, and any other relevant circumstances. The foregoing could not be more convoluted in the case of MOVANTS. There are no contractual rights and there is no direct interest other than to exploit the memory and proceedings undertaken by the Court in determining the life and death decisions of THERESA MARIE SCHIAVO.

13. This Court should dismiss the case at the outset by determining that MOVANTS have no interest in this case, and therefore, not only dismiss the Motion to Intervene, but also the Amended Motion to Unseal Guardianship Records.

AFFIRMATIVE DEFENSES

COMES NOW, MICHAEL SCHIAVO, by and through his undersigned counsel, and files this his Affirmative Defenses to the above Motion to Intervene, and for that shows the Court as follows:

1. Absence of any interest of the proposed intervenors in “the direct legal operation and effect of the judgment.”

A proposed intervenor must have an interest of “such a direct and immediate character that the intervenor will either gain or lose by the *direct legal operation and effect of the judgment.*” *Kissoon v. Araujo*, 849 So.2d 426, 429 (DCA Fla. 2003, emphasis added), citing *Morgarredige v. Howey*, 75 Fla. 234, 238-39 (1918). Given that TERRI is long deceased, neither of the proposed intervenors will either gain or lose by the *direct* legal operation and effect of the judgment, which was simply the removal of TERRI’S feeding tube and her consequent death. With her death, the judgment no longer has any *direct* effect on anyone. Any effect it might have on the proposed intervenors’ purported interest in their “their public advocacy mission” (Motion to Intervene at ¶8) is, if anything, merely *indirect*. A “showing of indirect, inconsequential, or contingent interest is inadequate to meet the test” for intervention. *Kissoon, v. Araujo, supra*, 849 So.2d at 429. The situation is analogous to *In Interest of S.S.J.*, 634 So.2d 198, 199 (DCA Fla. 1994), where the trial court erred by granting intervention in a child dependency proceeding for a public advocacy group called “VOCAL (Valuing Our Children and Laws”—which sought an order requiring the child’s mother to submit to involuntary birth control—because VOCAL had failed to “articulate an interest of such a ‘direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.’”

2. Absence of pending adversarial proceeding.

Intervention requires that the proposed intervenor’s asserted interest must “already be at issue in the proceeding.” *Y.H. v. F.L.H.*, 784 So.2d 565 (DCA Fla. 2001). If, at the time of the intervention motion, “there were no adversarial proceedings” pending, then intervention is impermissible. *In re Estate of Arroyo v. Infinity Indemnity Ins. Co.*, 211 So.3d 240, 246 (DCA Fla. 2017). At the time BOBBY SCHINDLER and the TERRI SCHIAVO LIFE & HOPE

NETWORK filed their intervention motion, no adversarial proceedings were pending—not for almost two decades.


3. Improper injection of new issue in the proceeding.

“[A]n intervenor may not inject a new issue into the case.” *Estate of Arroyo, supra*, 211 So.3d at 246. The propriety of unsealing to further the public advocacy mission of the TERRI SCHIAVO LIFE & HOPE NETWORK is a new issue that may not be injected into this Guardianship proceeding.

WHEREFORE, it is respectfully prayed this Honorable Court enter its Order, the terms of which will Deny intervention, and thereby also Deny the request to unseal records, and grant such other relief as to the Court is just and proper.

DATED this 3 day of October 2024.

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