

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

2005 OCT 11 3:45

Case No. 8:05-cv-530-T-27TBM

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

Plaintiffs,)

vs.)

MICHAEL SCHIAVO,)
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 moves this Court for a temporary restraining order restraining and preliminary injunction enjoining Respondent Michael Schiavo, his agents, employees, successors, attorneys, and all those acting in active concert or participation with them, from further withholding nutrition and hydration from Petitioner Theresa Marie Schiavo pending a hearing and determination of Petitioner's Complaint for Preliminary and Permanent

Injunction and for Declaratory Relief and Damages, filed with this Court on March 21, 2005. Petitioner shows the following in support of her Motion for Temporary Restraining Order.

1. On February 25, 1990, Petitioner'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 Terri by normal means.

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 received her food and water.

7. Since that time, more than three days as of the time of this filing, Terri has had no food or water.

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

9. In support of this motion, the next friends of Plaintiff file herewith their Verified Complaint in Support of Motion for Temporary Restraining Order and Complaint for Injunctive Relief.

10. The Complaint alleges that Defendant Greer ordered Defendant Schiavo, pursuant to Schiavo's request for authorization, to discontinue Terri's nutrition and hydration without ever having given her the due process of law

protections of a guardian *ad litem*, her own independent counsel, notice of the proceedings, and access to the courts.

11. Terri also alleges that she was denied a fair and impartial trial when Defendant Judge Greer became an advocate in the case by acting in the dual role of Terri's surrogate decisionmaker and the judge purportedly reviewing the decisionmaker's conclusion that Terri's assisted feeding should be withheld. This fundamentally flawed dual role has compromised the integrity of the factual and legal findings made in the state court's proceedings.

12. Terri was also denied the equal protection of the law when Judge Greer appointed himself her "proxy" simply because she is a member of the suspect class of incapacitated persons whose rights must be determined in "substituted judgment" proceedings.

13. Finally, Terri alleges that her right to the free exercise of religion as guaranteed by the First Amendment and 42 U.S.C. § 2000cc was violated when she was compelled to engage in conduct contrary to the tenets of her Roman Catholic faith as declared by Pope John Paul II that continued provision of nutrition and hydration of patients in PVS is morally obligatory for a faithful practicing Catholic.

14. Terri will suffer irreparable harm if this Court does not grant an immediate temporary restraining order. Her nutrition and hydration were

terminated on March 18, 2005, and she has been without food or water since that time. If this Court does not order the reinsertion of the PEG tube providing her with food and water, her death may come at any moment from starvation and dehydration.

15. The immediate risk of Terri's impending death far outweighs any harm to Defendants threatened by the proposed injunction. Defendants purport to be protecting the right of Terri to die. The Defendants can cause her death at any time in the future if they prevail in this Court. Her death, on the other hand, is irremediable.

16. The injunction, if granted would further the public interest in making absolutely certain Terri's end-of-life wishes are truly known. Death is permanent. America's culture of life demands accuracy in any decision to terminate life support.

17. Terri is likely to succeed on the merits of her claim in light of the newly adopted Public Law (S.686, P.L.#_____) that gives her parents the right to take to this Court the alleged violations 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.

18. Mrs. Schiavo's life literally hangs in the balance. Mr. and Mrs. Schindler therefore pray that this Court expedite its consideration of the matters raised herein and make its Order effective immediately.

19. A woman is dying from dehydration and starvation. President Bush recognized this emergency situation where every minute counts by re-arranging his schedule to be in Washington D.C. immediately upon passage of this bill. We would respectfully request that this Court honor the good and noble intentions of the U.S. Congress and the personal sacrifice of the President with the same commitment to save life. A tragedy of unbelievable proportions would occur if the this Court does not respond in time to save Terri Schiavo's life.

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; and

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 20, 2005

Respectfully submitted,

GIBBS LAW FIRM, P.A.,

A handwritten signature in black ink, appearing to read "David Gibbs III", written over a horizontal line.

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