

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

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.)

JURY TRIAL
DEMANDED

**PLAINTIFF'S COMPLAINT FOR TEMPORARY RESTRAINING
ORDER, DECLARATORY JUDGMENT, AND PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF**

PLAINTIFF THERESA MARIE SCHINDLER SCHIAVO, by and
through her Parents and Next Friends, PLAINTIFFS ROBERT
SCHINDLER and MARY SCHINDLER, and through their undersigned
counsel, respectfully request this Court to issue a Temporary Restraining
Order, Declaratory Judgment, and Preliminary and Permanent Injunctive

Relief and Damages. In support thereof, Plaintiffs show unto the Court as follows:

PRELIMINARY STATEMENT

1. THERESA MARIE SCHINDLER SCHIAVO [hereinafter, "Terri"] is a forty-one-year-old incapacitated and disabled woman who needs no medical equipment or apparatus to keep her alive other than a feeding tube.
2. On March 18, 2005, the staff of Hospice Woodside in Pinellas Park [hereinafter "Hospice"] removed Terri's feeding tube pursuant to an order from Pinellas County Probate Judge George W. Greer [hereinafter, "Judge Greer"] mandating that Terri's guardian, Michael Schiavo [hereinafter, "Schiavo"], discontinue her nutrition and hydration.
3. As of the filing of this action, Judge Greer, Hospice staff, and Schiavo continue to deny Terri food and water for the third day after her feeding tube was initially withdrawn.
4. This is a civil action whereby Plaintiffs pray for a temporary restraining order, declaratory judgment, damages, and injunctive relief enjoining Defendants, their agents, servants, employees and those acting in concert with actual notice thereof from any further withholding of Terri's nutrition and hydration. The Plaintiffs are entitled to the requested relief

because Defendant Judge Greer has violated and continues to violate Terri's below-referenced rights under the Constitution and laws of the United States and, further, by executing and continuing to execute Defendant Judge Greer's Order to withhold or withdraw food, fluids, and medical treatment necessary to sustain her life, Defendants Schiavo and Hospice have violated and will further violate Terri's below-referenced rights under the Constitution and laws of the United States. The Plaintiffs seek a declaration from this Court that Defendant Judge Greer's Order violates and continues to violate, and that Defendants Schiavo's and Hospice's execution of said Order, violates and continues to violate the First and Fourteenth Amendments to the United States Constitution, the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc et seq., and Title 42 U.S.C. § 1983. Plaintiffs seek a temporary restraining order, and preliminary and permanent injunction requiring Defendant Judge Greer to rescind his Order to withhold food and water from Terri, and to refrain from issuing any further orders that would result in the starvation and dehydration of Plaintiff Terri in order to cause her death. Plaintiffs further seek a temporary restraining order, and preliminary and permanent injunction requiring Defendants Hospice and Schiavo to refrain from further depriving

Terri of nutrition and hydration in order to cause her death. The Plaintiffs also request actual damages, costs, and attorneys fees.

JURISDICTION AND VENUE

5. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and under federal law, specifically, Title 42 U.S.C. § 1983, and § 2000cc et seq. This court has jurisdiction:

- a. Over Plaintiffs' claims relating to the withdrawal of Terri's food, fluids, and medical treatment necessary to sustain her life pursuant to S686, enacted by the Congress and signed into law by President George W. Bush at 1:11 a.m. on March 21, 2005 (see attached exhibit);
- b. Over Plaintiffs' civil claims arising under the United States Constitution and federal law pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983;
- c. Over Plaintiffs' prayer for preliminary and permanent injunctive relief and damages under F.R.C.P. 65(a);
- d. Over Plaintiffs' prayer for declaratory relief under Title 28 U.S.C. § 2201; and,
- e. To award attorneys fees pursuant to Title 42 U.S.C. § 1988.

6. Venue is proper under 28 U.S.C. § 1391 in the Middle District of Florida because this claim arose therein. Each and all of the acts alleged herein were done by the Defendants under the color and pretense of state law, statutes, ordinances, regulations, or customs.

THE PARTIES

PLAINTIFFS

7. Plaintiff Theresa Marie Schindler Schiavo is a citizen of the United States and was, at all times relevant to this complaint, a resident of Pinellas County.

8. Plaintiff Robert Schindler is a citizen of the United States and was, at all times relevant to this complaint, a resident of Gulfport, Pinellas County, Florida; and he is Terri's natural father.

9. Plaintiff Mary Schindler is a citizen of the United States and was, at all times relevant to this complaint, a resident of Gulfport, Pinellas County Florida; and she is Terri's natural mother.

DEFENDANTS

10. Defendant Michael Schiavo is Terri's husband and guardian and was, at all times relevant to this complaint, a resident of Pinellas County, Florida.

11. Defendant Judge George W. Greer is a Circuit Judge for the Sixth Judicial Circuit of the State of Florida and Terri's proxy-guardian and surrogate decision-maker. He is sued in his official capacity and for declaratory and injunctive relief only. At all times relevant to this complaint, the conduct of Defendant Judge Greer was under color and authority of state law.

12. Defendant The Hospice of Florida Suncoast, Inc., a Florida not-for-profit corporation d/b/a Hospice Woodside, is an extended care facility for terminally ill or severely disabled patients. Defendant Hospice's principal place of business is 300 East Bay Drive, Largo, Pinellas County, Florida. The registered agent for the corporation is Mary Labyak, 300 East Bay Drive, Largo, FL 33770. Terri currently resides at Defendant Hospice.

SUMMARY OF FACTS

13. In the early morning hours of February 25, 1990, while at home, Plaintiff Terri Schiavo was deprived of oxygen to her brain for a significant period of time. The incident left her severely brain damaged.

14. Michael Schiavo was appointed plenary guardian of his wife on June 18, 1990.

15. In 1993, Schiavo received a net medical malpractice award of \$300,000 and Terri received a net medical malpractice award of \$700,000.

16. Until the malpractice award was issued, Schiavo was providing his wife, Terri, with food and water, medical treatment, rehabilitation, and therapy.

17. In late 1993, however, after receiving the medical malpractice award money, Schiavo stopped all treatment, rehabilitation, and therapy for Terri.

18. Since 1993, Terri's rehabilitation, therapy, education, socialization, and medical and dental treatment have been virtually non-existent.

19. Schiavo abandoned his marriage to Terri in 1995 by cohabiting with and having two children by a woman other than his wife.

20. Schiavo exploited his ward, Terri, by using, with approval of Judge Greer, the medical malpractice money awarded for Terri's care for "the rest of her life" in order to pay his own attorney fees to seek court authorization to terminate Terri's "artificial life support," which consisted only of a feeding tube to provide Terri with nutrition and hydration.

21. Schiavo, who is not a Roman Catholic, further refused to permit Terri, who is a Catholic, to be taken to Mass. Additionally Schiavo refused, in his role as Terri's guardian, to respect the teachings of her Catholic faith by seeking a court order from Defendant Judge Greer granting him

permission after her death to dispose of her body by cremation, rather than by the preferred method of Terri's church, which is burial.

22. Because of the neglect and abuse Terri has suffered at the hands of Defendants Hospice and Schiavo, and at the orders of Defendant Judge Greer, all done under the color of law, Terri suffers from severe contractures of her wrists and feet.

23. On May 11, 1998, Schiavo, as guardian of his wife, 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. The petition was filed as an adversary action, with the Schindlers, as Terri's parents, being served with notice of the proceeding to terminate her assisted feeding and hydration in order to cause her death.

24. Terri did not have a guardian *ad litem* appointed to represent her own interests during the critical legal proceedings that were intended to terminate her assisted feeding and hydration intended to cause her to die.

25. Terri was never given notice of the proceeding to terminate her assisted feeding and hydration intended to cause her to die.

26. Terri never had an independent attorney appointed to represent her interests in the legal proceedings to terminate her assisted feeding and hydration intended to cause her to die.

27. Terri was never brought to court so that Defendant Judge Greer could make his own assessment as to her cognitive abilities and her responsiveness. Furthermore, Defendant Judge Greer never personally saw or observed Terri in any setting prior to ordering her death by starvation and dehydration.

28. Judge Greer became the “surrogate decision-maker” regarding Terri’s purported wish to die by starvation and dehydration rather than to live on “artificial life support,” which consisted only of a feeding tube.

29. Judge Greer was charged with the statutory duty to conduct an impartial review of the “surrogate’s decision-maker” (i.e., himself) regarding Terri’s end-of-life wishes.

30. The case was tried before Judge Greer, and on February 11, 2000, the judge/surrogate decision-maker found, without ever having seen her, that Terri was in a persistent vegetative state (pvs), and that it would not be her wish to live that way, and he, therefore:

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 to appeal it.

32. On January 24, 2000, the Florida District Court of Appeal, Second District, affirmed the trial judge/surrogate's decision that Terri wanted to die. *In re Guardianship of Schiavo*, 780 So. 2d 176 (Fla. 2nd DCA 2001).

33. Terri's assisted feeding was discontinued for the first time on April 24, 2001, when her feeding tube was capped; however, it was later restored pursuant to an order of another judge of in the civil division of the circuit court in response to an injunctive action filed by the Schindlers.

34. Terri's assisted feeding was discontinued again on October 15, 2003, when her nutrition and hydration PEG tube was entirely removed. This time, Judge Greer no longer authorized, but mandated, the removal of Terri's feeding tube when he:

ORDERED AND ADJUDGED that the Guardian, Michael Schiavo, shall cause the removal of the nutrition and hydration tube from the Ward, Theresa Marie Schiavo, at 2:00 p.m. on the 15th day of October, 2003.

35. Terri's feeding tube was reinserted six days later by Executive Order of Florida Governor Jeb Bush pursuant to Chapter 2003-418, Florida Laws (referred to herein as "Chapter 2003-418").

36. During the six days Terri was without food and water in 2003, Schiavo, Hospice, and Judge Greer, or one or more of them, prohibited Monsignor Malanowski, Terri's spiritual advisor, from administering the Catholic sacrament of the Extreme Unction, either prior to or during Terri's starvation and dehydration as a result of the removal of Terri's feeding tube.

37. Terri's third and most recent death order, which is the ongoing cause of this prayer for relief, was issued by Judge Greer on February 25, 2005, mandating the removal, not only of Terri's feeding tube, but also of all nutrition and hydration in any form. In relevant part, the Order provided:

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.

38. On March 9, 2005, Judge Greer denied the Schindlers' request to give Terri a swallowing test and/or swallowing therapy in order to determine whether she could swallow and intake nutrition and hydration without the assistance of her feeding tube.

39. On March 7, 2005, Judge Greer denied the Schindlers' request to have medical personnel attempt to feed and/or hydrate their daughter by mouth after her feeding tube was removed, despite some evidence, such as swallowing her saliva, that Terri has some swallowing ability.

40. On March 9, 2005, Judge Greer denied the Schindlers' request to conduct up-to-date medical and rehabilitative tests on Terri, using advanced 2005 medical technology, rather than causing Terri to die based upon out-dated medical evaluations of pvs conducted more than three years ago without state of the art equipment and evaluative techniques.

41. On March 7, 2005, Judge Greer denied the Schindlers' request to allow them to bring their daughter home to die.

42. On March 7, 2005, Judge Greer denied the Schindlers' request to have Terri's body buried rather than cremated in violation of her religious faith.

43. The Florida District Court of Appeal, Second District, affirmed the trial court's order to deprive Terri of food and water on March 16, 2005. (*In re Guardianship of Schiavo*, No. 90-2908- GD-003, 2005 WL 459634 at *5 (Fla. Cir. Ct. Feb. 25, 2005) (*Schiavo V*).

44. Defendants Hospice, Schiavo, and Judge Greer caused all provision of food and water for Terri to be discontinued at approximately 2:45 p.m., on March 18, 2005.

45. Terri has been without food and water since mid-afternoon, Friday, March 18 and will continue to be without food and water until she dies unless this Court enjoins Judge Greer, Hospice, and Schiavo from

further withholding of her nutrition and hydration and directs them to immediately and without delay reinsert Terri's feeding tube in order to reestablish her assisted feeding and hydration.

COUNT ONE
VIOLATION OF FOURTEENTH AMENDMENT
DUE PROCESS RIGHT TO A FAIR AND IMPARTIAL TRIAL

46. Plaintiffs incorporate by reference paragraphs 1 through 45 as if fully restated here and further state the following.

47. Judge Greer became Terri's health-care surrogate during the proceeding for state authority to withdraw her assisted feeding.

48. Proxy Greer also purported to act as the impartial trial judge in the same proceeding for state authority to withdraw Terri's assisted feeding and hydration.

49. Once Proxy Greer became an advocate for Terri's death, it became impossible for Judge Greer to maintain his role as an impartial judge in order to review his own decision that Terri would want to die.

50. Judge Greer's dual and simultaneous roles as judge and health-care surrogate denied Terri a fair and impartial trial in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

COUNT TWO
VIOLATION OF FOURTEENTH AMENDMENT
PROCEDURAL DUE PROCESS RIGHTS

51. Plaintiffs incorporate by reference paragraphs 1 through 50 as if fully restated here and further state the following.

52. A proceeding for the purpose of obtaining state authority to terminate Terri's nutrition and hydration is a proceeding for state authorization to deprive Terri of her life, liberty, and property.

53. Judge Greer failed to appoint a guardian *ad litem* to represent Terri's own right to privacy in critical hearings and proceedings for state authority to withdraw her assisted feeding in order to cause her death by starvation and dehydration.

54. Judge Greer failed to appoint an independent attorney to represent Terri's legal rights in the proceedings for state authority to withdraw her assisted feeding in order to cause her death by starvation and dehydration.

55. Judge Greer denied Terri access to court and, he failed to ever meet Terri personally, and he did not require Schiavo to bring her to court in order for him to be able to personally assess Terri's level of cognition and her responsiveness before he authorized, and later mandated, the withdrawal of her assisted feeding and hydration in order to cause her death.

56. Judge Greer's total failure to afford Terri a guardian *ad litem*, her own independent counsel, and access to court, was a violation of Terri's right to procedural due process as guaranteed by the Fourteenth Amendment to the United States Constitution.

COUNT THREE
VIOLATION OF FOURTEENTH AMENDMENT
RIGHT TO EQUAL PROTECTION OF THE LAW

57. Plaintiffs incorporate by reference paragraphs 1 through 56 as if fully restated here and further state the following.

58. Chapter 244 of Florida guardianship law expressly forbids judges to serve as surrogate decision-makers for anyone other than a close family member.

59. Florida judges may serve as proxies only in "substituted judgment" cases where there are reasonable grounds to believe that those otherwise eligible to serve will not provide their ward with effective assistance.

60. The only Florida citizens who are not entitled under Florida law to an impartial judge are incapacitated persons like Terri whose rights must be determined in "substituted judgment" proceedings.

61. Denying Terri a fair and impartial judge merely because she is incapacitated and disabled violates her right to equal protection of the law under the Fourteenth Amendment to the United States Constitution.

COUNT FOUR
VIOLATION OF RELIGIOUS LAND USE AND
INSTITUTIONALIZED PERSONS ACT (RLUIPA)

62. Plaintiffs incorporate by reference paragraphs 1 through 61 as if fully restated here and further state the following.

63. Defendant Judge Greer is an official acting on behalf of the judicial branch of the government of the State of Florida.

64. Defendant Hospice is an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), as incorporated by reference in RLUIPA (42 U.S.C. 2000cc-1).

65. Defendant Hospice is a program or activity that receives Federal financial assistance, and is thus a person acting under color of Federal law for purposes of 42 U.S.C. § 2000cc et seq.

66. Terri is a person residing in or confined to an institution, as defined in § 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), as incorporated by reference in RLUIPA (42 U.S.C. 2000cc-1).

67. Defendant Judge Greer's Order to cause Terri to die by removal of her feeding tube, in a manner disapproved by the highest ecclesiastical

authority of her Catholic Church, imposes a substantial burden on Terri's free exercise of religion.

68. Defendants Hospice's and Schiavo's execution of Defendant Judge Greer's Order to remove her feeding tube imposes a substantial burden on Terri's religious free exercise.

69. The substantial burden that Defendant Judge Greer's Order imposes and that Defendants Hospice's and Schiavo's compliance therewith further imposes is not in furtherance of any compelling governmental interest.

70. The substantial burden that Defendant Judge Greer's Order imposes and that Defendants Hospice's and Schiavo's compliance therewith further imposes is not the least restrictive means of furthering any governmental interest, whether compelling or not.

COUNT FIVE
THE FREE EXERCISE OF RELIGION CLAUSE

71. Plaintiffs incorporate by reference paragraphs 1 through 70 as if fully restated here and further state the following.

72. Terri's religious beliefs are burdened by Defendant Judge Greer's Order and by Defendants Hospice's and Schiavo's execution of that Order in that Terri is being forced to engage in an activity contrary to the tenets of her Roman Catholic faith as established by Pope John Paul II in

March 2004, namely that it is a moral obligation for persons of the Catholic faith who are in pvs to continue to receive nutrition and hydration, even though it is through a feeding tube.

73. Defendants have a constitutional duty to accommodate Terri's sincerely-held religious beliefs. Defendants' conduct, however, constitutes a failure to give reasonable accommodation to Terri's sincerely-held religious beliefs.

74. On its face, Defendants' Order forcing Plaintiff to engage in conduct proscribed by her Catholic faith specifically targets religion for special disabilities without a compelling reason for so doing. Accordingly, Defendants, acting under color of state law, have deprived and continue to deprive Plaintiff of her free exercise rights guaranteed by the First and Fourteenth Amendment to the United States Constitution, thus violating the Civil Rights Act of 1866, 42 U.S.C. § 1983.

WHEREFORE, Plaintiff respectfully prays that this Court grant the following relief.

1. An immediate hearing on Plaintiffs' Motion for Temporary Restraining Order, and, upon hearing, enter an Order restraining Defendants from further withholding Terri's nutrition and hydration.

2. Enter a declaration that the February 11, 2000, Order authorizing the termination of Plaintiff's nutrition and hydration is void because of the total denial of her procedural due process rights;

3. Award an amount over the jurisdictional limits of the court in damages to Plaintiff for denying her federal constitutional and statutory rights.

4. Award Plaintiffs the reasonable costs and expenses of this action, including attorneys fees in accordance with 42 U.S.C. § 1988.

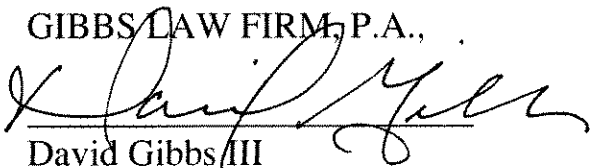
5. Grant such other and further relief as this Court shall seem just and equitable.

6. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order.

Dated: March 21, 2005

Respectfully submitted,

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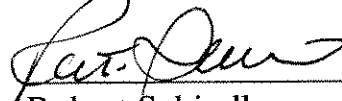
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ATTORNEYS FOR PLAINTIFFS

Verification

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: March 21, 2005



Robert Schindler

Verification

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: March 21, 2005



Mary Schindler