

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

IN RE: Guardianship of
THERESA MARIE SCHIAVO,
Incapacitated.

Michael Schiavo, as Guardian of
the person of Theresa Marie Schiavo,
Petitioner.

vs.

Probate Division
File N. 90-2908GD-003

Robert Schindler and Mary Schindler,
Respondents.

**NOTICE TO COURT PURSUANT TO SECTION 415.1055(9), F.S.
AND PETITION/MOTION FOR INTERVENTION**

COMES NOW, Susan McPhee, Petitioner, a representative of the
Department of Children and Families of the State of Florida (hereinafter referred to
as DCF), by and through its undersigned counsel, and files this notice and makes
application for the following forms of relief:

NOTICE PURSUANT TO SECTION 415.1055, F.S.

1. Please take notice that on or about March 21, 2005, DCF received reports
of abuse, neglect or exploitation involving allegations related to Theresa
Marie Schiavo regarding the administration of pain medication i.e. morphine
when said person is in a persistent vegetative state.

2. Additional reports still under investigation that the Department has duly advised this court of raise approximately 30 detailed allegations of abuse, neglect or exploitation in a 34 page document received by the DCF hotline on February 18, 2005 and February 21, 2005 and forwarded to DCF's Suncoast Region Office, whereupon an investigation has been commenced.

NEW PETITION FOR INTERVENTION

3. Again, DCF, by and through its counsel petitions for leave to intervene, and in support of this intervention states as follows: DCF and criminal investigative agencies are required by the legislature to provide for the detection and correction of abuse, neglect, and exploitation and to establish a program of protective services for all disabled adults or elderly persons in need of them. Section 415.101(2), F.S.
4. In addition to the hotline noticed above, on or about 2/18/05, DCF received Hotline calls alleging abuse neglect and exploitation of Ms. Schlavo by her Husband and Guardian, Michael Schlavo. Many of the approximately 30 allegations were allegations that had been previously reported but there was an indication that the conduct alleged was an ongoing activity requiring investigation into the pattern e.g. keeping the ward in her room as an act of isolation etc.

5. As part of our investigation, the DCF sought the assistance of additional professionals from the Adult Protection Team, which is a multidisciplinary group of professionals familiar with adult protection issues as set forth in 415.1102 F.S. This team has met as a group on two occasions and has conducted portions of the investigation outside of such meetings.

6. The allegations were divided into medical neglect, isolation and exploitation, and while the investigation is still underway some distinct signs of neglect in these areas have arisen to the point where it is truly believed that DCF must renew its request for the relief previously sought as outlined herein.

7. In our investigation into the ongoing allegation of denial of therapy and rehabilitation (and other rights of the ward), the issue of the diagnosis of Persistent Vegetative State (hereinafter referred to as PVS) had been asserted by the guardian as dispositive of the allegations. That is, if Ms. Schiavo was PVS, she would not need detailed medical reports every year as part of Michael's Guardianship plan; and not need therapy etc. Our investigation into this defense revealed:
 - a. 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. These findings are detailed in the doctor's affidavit attached hereto and made a part hereof as Exhibit A (filed under separate cover). Dr

Cheshire's' resume is attached as Exhibit B. The essence of the preliminary conclusions are that because Ms. Schiavo has been administered pain medication on a consistent basis for well defined periods of visible need (e.g. menstrual periods and tooth aches) that such needs are not consistent with PVS. The significance of not being PVS would shatter the legal basis for the removal of life support. Additionally, Ms. Schiavo's contextual response to her immediate circumstances has been cited by the neurologist as further indicators of not being in PVS. One such example has been gained from review of the Probate record containing the neurological exam of Ms. Schiavo See Exhibit C; a compressed video of said contextual response. The videotapes provided by the court were incomplete and the DCF renews its request for the full records to complete its investigation.

- b. The diagnosis of PVS did not suspend the Guardians legal duty to pursue rehabilitation and redetermine capacity at least 90 days before each filing of the guardianship plan 744.3675(b)2 and 3 F.S. In fact, the annual medical appraisals required by Michael as guardian were either not done at all or done in such a poor manner as to contribute to a perception of PVS. The medical records cite to pain on several occasions examples are attached to the neurologist's affidavit.

8. Intervention is a right of anyone claiming an interest in pending litigation that may be asserted at any time; Intervention should be granted to anyone claiming an interest in pending litigation. Rule 1.230, *Florida Rules of Civil Procedure*.
9. DCF, by virtue of its aforementioned statutory mandate, asserts a right of intervention in the pending guardianship proceeding of Theresa Marie Schiavo to protect the following interests:
 - a. DCF, in its unique and legislative role as a detector of abuse, neglect and/or exploitation (Section 415.101(2), F.S.), has a heretofore unrepresented interest in whether Theresa Marie Schiavo, the subject of a substantial number of allegations of abuse, neglect, and exploitation, remains a viable living adult during the pendency of DCF's investigation. Plainly stated, due to the investigation and the potential need for examination of the alleged victim, surroundings and circumstances as required by law, DCF is interested, directly and immediately, in that part of the guardianship proceeding which calls for the removal of life support, because such action would deny DCF's ability to meet its statutory duty. See *Morganridge v. Howey*

78 So. 14; 75 Fla 234 (1918) and Schindler v. Schiavo, 866 So.2d 140 (2nd DCA 2004).

- b. Further, DCF is interested in the guardianship proceeding as, by all accounts, Theresa Marie Schiavo, vulnerable adult who, as defined by law, may, by virtue of the allegations, be entitled to statutory services. See Sections 425.102(26) and 415.1051, F.S. The Court's final determination in the guardianship proceeding regarding the removal of the feeding tube and hydration will have a direct and immediate impact upon DCF's legislative mandated functions of not only investigation but also, the provision of services. See In re West Water Management District, 269 So.2d 405 at 407 (2d DCA 1972) where Judge Liles for the Second District Court of Appeal opined "the trial judge was in error in his failure to allow the county to participate in what has been designated to be their mandatory function."

10. DCF's ability to perform its governmental mandated function will be gained or lost by the direct legal operation and effect of the court's final order in the guardianship proceeding.

11. DCF's petition to intervene is timely. Allegations raised in the report of abuse, neglect and/or exploitation raise factual issues heretofore not seen by DCF nor noticed to the Probate Court pursuant to Section 415.1055 (9), F.S. Allegations which predate the order of removal of nutrition and hydration of September 17, 2003 (hereinafter referred to as the referral

order) are particularly supportive of a grant for intervention. Smith v. Elliott, 56 Fla. 849, 47 So. 387 (Fla. 1908). Intervention is allowed even after final judgment where "the interests of justice so require and intervener stands to lose or gain valuable rights dependant upon the outcome of the case." Schiller v. Schiller, 625 So.2d 856 at 860. It is respectfully submitted that where the issue of one's life is the very subject of the proceeding, the interest of justice is, no doubt, very heightened.

12. DCF seeks at this time intervention for the limited purpose of standing to object to the entry of a final order allowing termination of life support during the pendency of DCF's investigation which has a statutory 60 day deadline (Section 415.104(4)).

Wherefore, DCF Request a grant of intervention and for access to court records as previously requested.



Susan McPhee
Program Administrator
Department of Children and Families



Keith J. Ganobsik, Esquire
Assistant Regional Legal Counsel
Department of Children
Family Services
11351 Ulmerton Road
Largo, Florida 33778
Florida Bar No. 0143420

STATE OF FLORIDA

COUNTY OF PINELLAS

The foregoing instrument was sworn to before me this 23rd day of ~~February~~ ^{March}, 2005 by Mike Will who is ~~personally known~~ to me or who has produced _____ as identification and who did take an oath.



Jennifer Andreassen
Commission # 00347037
Expires: AUG. 18, 2008
Bounded Thru
Atlantic Bonding Co., Inc.

NOTARY PUBLIC

Sign: Jennifer Andreassen
Print: Jennifer Andreassen
State of Florida at Large (Seal)
My Commission Expires

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery, facsimile or United States mail this 23rd day of February 2005, to the following: David Gibbs, George Felos.



Keith J. Ganobysk, Esquire
Assistant Regional Legal Counsel
Department of Children
Family Services
11351 Ulmerton Road
Largo, Florida 33778
Florida Bar No. 0143420