

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION  
File No. 90-2908GD-003**

**IN RE: THE GUARDIANSHIP OF  
THERESA MARIE SCHIAVO,  
Incapacitated.**

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**ORDER**

**THIS CAUSE**, came on to be heard on March 2, 2000, upon the Petition for Order Authorizing Evaluation filed herein by Respondents, Robert Schlinder and Mary Schindler. Before the court were the Respondents and their attorneys, Pamela A. M. Campbell, Esquire, and Joseph D. Magri, Esquire. Also present were Petitioner, Michael Schiavo, as Guardian of the Person of Teresa Marie Schiavo, and his attorneys, George J. Felos, Esquire, and Deborah J. Bushnell, Esquire. The court took testimony from three physicians, Jay E. Carpenter, M.D., and John David Young, M.D., for the Respondents; and James Barnhill, M.D., for the Petitioner. The court also received excellent closing arguments from the attorneys. Upon due consideration, the court makes the following findings of fact and conclusion of law.

At the outset of the hearing, the attorney for the Petitioner moved for dismissal of this Petition on two grounds. The first ground was that paragraph 7 of the Petition for Authorization to Discontinue Artificial Life Support was admitted by Respondents in their answer. The second ground was that the issue was res judicata inasmuch as the court in its Order of February 11, 2000 had found "that without the feeding tube she will die in seven to fourteen days". The court denied a Motion for Rehearing, part of which was based upon the matter set for this hearing. The court took said motion under advisement and proceeded with the hearing.

The request is to have Terri Schiavo undergo a swallowing test to determine if she can orally consume nutrition and hydration without a feeding tube. All of the evidence in support of this motion is from doctors Carpenter and Young who

have observed her for 45 minutes and 25 minutes respectively. These observations occurred after the trial and neither doctor consulted any medical evidence with regard to her condition before executing affidavits and then testifying at this hearing.

The uncontroverted evidence from Dr. Barnhill was that the ward had been administered swallowing tests in 1990, 1991, and 1992 with the earliest test having been done at Bayfront Medical Center. This test resulted in a finding that she was not a future candidate. The last of these tests was done at Largo Medical Center and resulted in a finding that there was no swallowing reflex initiated and that the liquid went nowhere. Thereafter, and annually from 1993 through 1996 or 1997, the ward had a speech pathologist examine her and the finding was that she could not be rehabilitated in this regard and that there was a high risk of aspiration.

The physicians for the Respondents testified that it appeared to them that Terri Schiavo was able to handle the normal secretions such as saliva and sinus drainage orally with no drooling. Dr. Carpenter had observed her in a sitting position while Dr. Young did not mention whether she was sitting or in bed. One of the physicians would not say when she would have stabilized after the February 1990 cardiac arrest and would not concede that her treating physician would be in a better position than he to make that diagnosis. The credibility of this witness was therefore compromised.

Dr. Barnhill who had testified at trial had physically examined Terri Schiavo on several occasions. He has also reviewed her records, especially on her ability to swallow. He testified that he agreed with the prognosis of the treating physician, Dr. Gambone, that there was no point in doing another swallowing study since she had not changed since the last study. Dr. Barnhill testified that Terri Schiavo has uninhibited reflex activity which includes a bite reflex resulting in a clenched jaw. This would create a real problem in oral feeding, assuming this was a possibility. He testified that normal people have one-third upper esophagus voluntary reflex with the lower two-thirds of the esophagus being an involuntary reflex. The voluntary reflex is necessary for swallowing.

Dr. Barnhill testified that in his opinion attempting oral nutrition would result in aspiration with insufficient nutrition passing to the stomach to maintain her, thereby prolonging her death, if the feeding tube were withdrawn. He testified that such aspiration would lead to infection, fever, cough and ultimately pneumonia. This would require suctioning which likely would be fatal.


Dr. Barnhill further testified that it is common for patients to be able to swallow saliva but still need feeding tubes. On redirect examination, he testified that it was impossible for Terri Schiavo to be able to take in sufficient sustenance orally to stay alive.

It is clear that the credible testimony was that given by Dr. Barnhill for various reasons, not the least of which is that he has examined Terri Schiavo and reviewed her medical records. While the attorney for Respondents did get him to acknowledge that he could not say with certainty how much of her nutritional requirement she might be able to ingest orally, he was quite positive that in no way could she consume enough in this manner to sustain herself. The court does not feel that another medical procedure merely to specify what portion of insufficiency would result from the removal of the feeding tube warrants the granting of this Petition. Accordingly, it is

**ORDERED AND ADJUDGED** that the Petition for Order Authorizing Evaluation, be and the same is hereby **denied**.

**DONE AND ORDERED** in Chambers, at Clearwater, Pinellas County Florida, this 7 day of March, A.D., 2000.

*A True Copy*

  
George W. Greer  
Circuit Judge

GWG/cl  
CC: Pamela A. M. Campbell, Esquire  
George J. Felos, Esquire  
Deborah J. Bushnell, Esquire  
Joseph D. Magri, Esquire