

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

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

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**MICHAEL SCHIAVO,**  
Petitioner,

vs.

**ROBERT SCHINDLER and MARY  
SCHINDLER,**  
Respondents.

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**ORDER**

**THIS CAUSE** came before the court for hearing on March 8, 2005, for determination of the facial sufficiency of Respondents' Fla. R. Civ. P. 1.540(b)(5) Motion for Relief from Judgment. The Respondents move the court for relief from its final Order rendered February 11, 2000 on the ground that the court lacked clear and convincing evidence as to Theresa Marie Schiavo's end-of-life statements. The court, having heard the argument of Daniel C. Gibbs, III, Esq., for the SCHINDLERS, and of George J. Felos, Esq., for the Guardian, MICHAEL SCHIAVO, and having been duly advised in the premises, now finds as follows:

The Respondents in their Motion allege that the court made a mistake of fact regarding the death of Karen Ann Quinlan and that this mistake of fact should reverse the court's determination of the credibility of the witness, Diane Christine Meyer, who testified at the trial in 2000.

When a mistake is made during the course of a case, the matter can later be rectified either by requesting relief from judgment based on Fla. R. Civ. P. 1.540(b)(1) for inadvertent error, by asking for rehearing and/or by filing an appeal. See *Commonwealth Land Title Insurance Company v Freeman*, 884 So.2d 164 (Fla. 2d DCA 2004). In either case, the applicable time limitations are long since past in this case.

Respondents, however, have titled their motion as a 1.540(b)(5) motion for relief from judgment. They argue that because of the mistake of fact, the "facts" upon which this court made its decision have changed and that this court is no longer bound by the "law of the case" imposed by *In re Guardianship of Schiavo (Schindler v Schiavo)*, 780 So.2d 176 (Fla. 2d DCA 2001) (*Schiavo I*). They contend that when subsequent events or development of facts make the "law of the case" unjust or inequitable, the court need not, and should not, be bound by it.

Petitioner cites the decision of *Hensel v Hensel*, 276 So.2d 227 (Fla. 2d DCA 1973) in which it was pointed out that (b)(5) motions are only concerned with equities that occur after a final judgment is entered. The fact that it is *no longer equitable* that a judgment be given prospective effect presupposes that at one time the final judgment was equitable or correct. Here, however, the Respondents are arguing that the mistake was made in the final judgment and that it was never correct. Therefore, a (b)(5) motion would not be the correct vehicle to address the error.

The court has reviewed the transcript of the testimony of Diane Meyer that was attached to the motion and assessed the potential impact of this new evidence of Karen Ann Quinlan's death date upon the evidence and testimony that the court considered at the initial trial. See *In re Guardianship of Schiavo*, 800 So.2d 640, 643 (Fla. 2d DCA 2001) (*Schiavo III*). Her applicable testimony regarding the conversations about Karen Ann Quinlan

was in the present tense. Since the subject was the removal of the life support that occurred in the 1970s, her testimony that the conversations occurred in 1982 was not credible. The fact that Karen Ann Quinlan did not die until 1985 does not change the impact of her testimony. Moreover, although the witness appeared credible at first, as her testimony progressed it became clear to the court that she was not an unbiased witness as now argued by Mr. Gibbs. Also, as noted in the February 11, 2000 Order, the witness lost credibility due to her regaining memory between her deposition and trial. The court gave less weight to conversations Terri Schiavo had regarding what others would do, such as in the Karen Ann Quinlan case. Based on this review, the error regarding Karen Ann Quinlan's death date does not change the court's conclusion that there was clear and convincing evidence supporting its decision on what Theresa Marie Schiavo would have chosen and that Respondents have failed to present a colorable claim for entitlement to relief from the judgment. It is therefore

**ORDERED AND ADJUDGED** that Respondents' Fla. R. Civ. P. 1.540(b)(5) Motion for Relief from Judgment filed on March 2, 2005, is **DENIED** because the movants have not shown that their motion is legally sufficient to go forward.

**DONE AND ORDERED** in Chambers, at Clearwater, Pinellas County, Florida this 9 day of March, 2005.

  
GEORGE W. GREER  
CIRCUIT JUDGE

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