

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION**

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

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**MICHAEL SCHIAVO**, as Guardian of  
the person of **THERESA MARIE SCHIAVO**,  
Petitioner,

vs.

**UCN:521990GA002908XXGDXX**

**File No. 90-2908-GD-003**

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

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**ORDER**

**THIS CAUSE** came on to be heard on March 9, 2005 upon the Florida Department of Children and Families (DCF)'s Petition for Intervention. The request for leave to intervene in the guardianship proceeding is for the limited purpose of obtaining 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. Before the Court were Jennifer Lima-Smith, Esq, DCF Region Counsel; Kelly J. McKibben, Esq, attorney for Department of Children and Families; and George J. Felos, attorney for the Petitioner.

Although the Department of Children and Family Services (DCF) filed an "Amended Notice to Court Pursuant to section 415.1055(9), F.S. and Petition/Motion for Intervention, Stay of Order of the Probate Court, Appointment of Legal Counsel for Theresa Marie Schiavo and Sealing of the Proceedings," only the Petition/Motion for Intervention and the request for closed court proceedings were heard,<sup>1</sup> since standing to hear the rest of the motions was dependent upon the outcome of the petition to intervene.

DCF, as the proposed intervenor, listed to this Court several instances of abuse, neglect, and exploitation of Theresa Marie Schiavo that were reported to it on February 18, 2005 and argued that it has a statutory duty under Chapter 415, Florida Statutes (the Adult Protective Services Act) to investigate the reports and to complete its investigation within 60 days. It asserted that this Court's final determination that Theresa Marie Schiavo's assisted nutrition and hydration be removed has a direct and immediate impact upon DCF's legislatively-mandated functions of investigation and the provision of services. DCF is interested, directly and immediately, in that part of the guardianship proceeding that calls for the removal of life support, because such action would deny DCF's ability to meet its statutory duty. This Court has ordered that Theresa Marie Schiavo's assisted nutrition and hydration be removed on March 18, 2005.

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<sup>1</sup> The Court considered DCF's motion to close the proceedings based on Chapter 415, Florida Statutes, confidentiality provisions. Upon the taking of testimony *in camera* that related to the specific allegations of abuse received by DCF, the Court employed a balancing test and separately ruled that since the testimony consisted of allegations that had previously been heard and determined by the court in public guardianship proceedings, the public interest in open court proceedings outweighed any privacy or confidentiality requirements. The proceedings on the motion to intervene in the guardianship were therefore determined to be open to the public.

The instances of abuse, neglect, or exploitation recounted by DCF include such complaints as the failure to provide independent legal counsel to Theresa Marie Schiavo; improper expenditures in her medical trust for legal fees; failure to timely file guardianship plans; medical neglect in failing to provide therapy and rehabilitation and the placement of her in a hospice setting, all of which deal with matters that have been the subject of court guardianship proceedings, with the possible exception of the matter of a broken wheelchair.

Ruling on a motion to intervene involves a two-step process. First, the court determines whether intervention is proper, i.e., whether the interest asserted is appropriate to support intervention. Then, if it is proper, the court considers the merits of the intervenor's claim. To support intervention, the interest asserted "must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." See *Sullivan v Sapp*, 866 So.2d 28 (Fla. 2004); *Union Central Life Insurance Co. v. Carlisle*, 593 So.2d 505 (Fla. 1992); and *Morgareidge v Howey*, 75 Fla. 234, 78 So. 14 (1918).

In this case, a final judgment was rendered on February 11, 2000, which was affirmed on appeal, *In re Guardianship of Schiavo (Schindler v Schiavo)*, 780 So.2d 176 (Fla. 2001) (*Schiavo I*). The judgment granted the petition to have life support for Theresa Marie Schiavo terminated. The final order to which DCF seeks standing to object is an order setting the date for the removal of the life support. That date is less than 60 days after the date the abuse reports were received by DCF. Intervention after final judgment is rarely permitted. It is allowed only if the interests of justice so require and the intervenor stands to lose or gain valuable rights dependent upon the outcome of the case. *Schiller v Schiller*, 625 So.2d 856 (Fla. 5<sup>th</sup> DCA 1993).

DCF's intervention in this guardianship is not appropriate. DCF's statutorily-mandated duty of investigating abuse complaints and of providing protective services does not require intervention in a guardianship. Section 415.104, Florida Statutes, merely provides that any interference with a DCF investigation may be reported to a law enforcement agency for assistance. Section 415.1051 provides that DCF may ask a court to authorize protective services, and to subsequently determine whether protective services should be continued or not and/or to ask the court to determine whether a guardianship should be established. In cases of emergency, DCF is empowered to provide emergency services and then petition the court for authority within 24 hours. Nowhere in the Act is authority given to DCF to become a party to any guardianship as part of its duty.

The final order setting the date for removal of the life support for Theresa Marie Schiavo does not interfere with DCF's statutorily-mandated duty to investigate, such that DCF gains or loses by its operation and effect. People may die during the course of abuse investigations and the investigation may become moot. Chapter 415 even has a provision limiting DCF's provision of emergency services where there is a known health care advance directive. DCF's position before this Court, however, is that Theresa Marie Schiavo must be kept alive until it finishes its investigation so that it may furnish her with protective services if necessary. What is particularly unsettling is that when asked whether DCF believed that part of its mandated duty was to review orders of this court, the answer from DCF counsel was "yes."

DCF admits that it has received scores of abuse reports in this case which it has obviously investigated and found to be unfounded. It also admits that it received abuse reports in 2001 and 2003 and that the 60-day

investigation period was then in effect. Although previous removal dates were scheduled in 2001 and 2003, DCF did not attempt to intervene at those times. The Guardian points to *Advocacy Center for Persons with Disabilities, Inc. v. Schiavo*, 2003 WL 23305833 (M.D. Fla. Oct. 19, 2003), where the plaintiff (The Center), citing authority from Florida's executive, sought a restraining order to prohibit this guardian's interference with the plaintiff's authorized investigation of reported abuse. At the October 2003 hearing, it was asserted that the course authorized by Chapter 765, Florida Statutes, and administered closely by Florida's courts amounts inherently to an episode of abuse or neglect within the assigned responsibilities of The Center to investigate. The federal court denied the request.

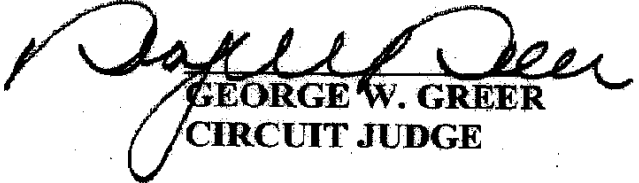
The requested intervention by DCF in this proceeding, although ostensibly brought to ensure compliance with its statutory mandate, appears to be brought for the purpose of circumventing the Court's final judgment and order setting the removal date in violation of the separation of powers doctrine. As was stated in *Bush v Schiavo*, 885 So.2d 321 (Fla. 2004):

The power of the judiciary is "not merely to rule on cases, but to *decide* them, subject to review only by superior courts" and "[h]aving achieved finality ... a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy." *Plaut*, 514 U.S. at 218-19, 227, 115 S.Ct. 1447. Moreover, "purely judicial acts ... are not subject to review as to their accuracy by the Governor." *In re Advisory Opinion to the Governor*, 213 So.2d 716, 720 (Fla.1968); see also *Children A, B, C, D, E, & F*, 589 So.2d at 269 ("The judicial branch cannot be subject in \*331 any manner to oversight by the executive branch.").

It is therefore

**ORDERED AND ADJUDGED** that the Motion To Intervene filed by DCF is hereby DENIED.

**DONE AND ORDERED** this 10 day of March, 2005 at  
2:06 p.m.

  
**GEORGE W. GREER**  
**CIRCUIT JUDGE**

Copies furnished to:  
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