

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

vs.

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

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**ORDER**

**THIS CAUSE** came on to be heard on September 30, 2004 for determination of the legal sufficiency of the Motion for Relief from Judgment and Motion to Reconsider under Rule 1.540(b)(5) filed herein by Robert and Mary Schindler. Before the court and presenting argument were David C. Gibbs, III, Esquire, attorney for Mr. and Mrs. Schindler, and George J. Felos, Esquire, attorney for Michael Schiavo, Guardian of the Person of Theresa Marie Schiavo. The court heard argument of counsel and received memoranda of law which have been reviewed. Based thereupon, the court makes the following findings of fact and conclusions of law:

The motion under review alleges that Terri Schiavo "has now changed her mind about dying. As a practicing Catholic at the time of her collapse

who was reared in the Church and who received twelve years of religious schooling and instruction Terri does not now want to commit a sin of the greatest proportion by foregoing treatment to effect her own death in defiance of her religious faith's express and recent instruction to the contrary." The motion refers to a March 20, 2004 speech by Pope John Paul II wherein he stated that the administration of food and water to those in a vegetative state, even when provided by artificial means, always represents a natural means of preserving life rather than a medical act. Such withdrawal amounts to euthanasia by omission when done knowingly and willingly. According to the motion, this is the first time a Pope has taken such a position and accordingly it is a "new development."

Appended to the motion was the text of the Pope's speech, the Southern Baptist Convention's *Resolution on Euthanasia and Assisted Suicide* (June 1992), two analyses of the Pope's speech by Richard M. Doerflinger and several affidavits attesting to Terri Schiavo's Catholic upbringing.

At an earlier hearing, the Court ruled that this hearing on legal sufficiency of the motion would be limited to legal argument and guided by the test set forth by the Second District Court of Appeal in *In re Guardianship of Schiavo*, 792 So.2d 551 (Fla. 2d DCA 2001) ("*Schiavo II*"). That test required significant new evidence or substantial change in circumstances arising after judgment so that it is "no longer equitable" to enforce the judgment. That court went on to say that any proceeding brought to challenge a final order pursuant to Rule 1.540(b)(5) is extraordinary and should not be filed merely to delay an order with which an interested party disagrees. Such a motion should not be summarily dismissed without an evidentiary hearing unless it fails to allege "colorable entitlement" to relief.

*In re Guardianship of Schiavo*, 800 So.2d 640 (Fla. 2d DCA 2001) (“*Schiavo III*”).

The Schindlers’ motion alleges that the Pope’s March 2004 pronouncement represents a substantial change of circumstance subsequent to the judgment to withdraw life support and that Terri would no longer opt to discontinue the life-prolonging procedures since such action is now contrary to the teachings of the Roman Catholic Church. Counsel for the Guardian asserts, however, that the motion does not demonstrate the claimed spiritual consequence and that the motion also fails to demonstrate that the Pope’s speech constitutes a substantial change in church policy. He also contends that the ward’s religious beliefs are irrelevant since she left specific oral advance directives that were clear and convincing evidence of her intention to terminate this medical treatment.

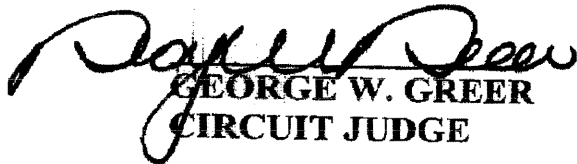
When the Court made its decision in February of 2000, it had the benefit of testimony from Mr. and Mrs. Schindler and others as to Terri Schiavo’s religious background. The affidavits appended to the motion as to these matters, therefore, present nothing new. The court also heard from Father Murphy, a Roman Catholic priest. In their Motion for Rehearing, movants presented evidence from “Life, Death and the Treatment of Dying Patients, a Pastoral Statement of the Catholic Bishops of Florida,” a paper that drew heavily from the church’s 1980 *Declaration of Euthanasia*, among other sources, and which, when paraphrased, is consistent with the words of Pope John Paul II uttered in March of this year.

In affirming this court’s February 2000 ruling, the Second District Court of Appeal held that Terri Schiavo “had been raised in the Catholic faith, but did not regularly attend mass *or have a religious advisor who could assist the court in weighing her religious attitude about life-support*

methods.” (emphasis added). *In re Guardianship of Schiavo*, 780 So.2d 176 (Fla. 2d DCA 2001) (“*Schiavo I*”). Nothing has changed. There is nothing new presented regarding Terri Schiavo’s religious attitude and there still is no religious advisor to assist this or any other court in weighing her desire to comply with this or any other papal pronouncement. *Schiavo III* set forth a definable methodology that this court followed in determining the prior Rule 1.540(b)(5) motion. There is no similar definable methodology available for this new motion. It is therefore

**ORDERED AND ADJUDGED** that the Motion for Relief from Judgment and Motion to Reconsider under Rule 1.540(b)(5) filed on July 20, 2004, by Robert and Mary Schindler is hereby **DISMISSED**.

**DONE AND ORDERED** in Chambers, at Clearwater, Pinellas County, Florida, at 2:41 p.m. this 22 day of October, 2004.

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

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