

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION
File N. 90-2908GD-003**

**In re: THE GUARDIANSHIP OF
THERESA MARIE SCHIAVO,
Incapacitated.**

**MICHAEL SCHIAVO
Petitioner,**

v.

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

//

**MOTION FOR REHEARING OF RESPONDENTS'
FLA. R. CIV. P. 1.540(b)(4) MOTION
FOR RELIEF FROM A VOID JUDGMENT**

ROBERT and MARY SCHINDLER, Respondents herein, pursuant to Fla. R. Civ. P. 1.530 and through their undersigned counsel, move this Court for an order setting aside the decision made by the above-entitled court of February 11, 2005, in favor of Petitioner and granting a new hearing on Respondents' Motion for Relief From A Void Judgment, on the basis of the following errors:

1. Substantial rights were denied movants, who were prevented from having a fair hearing on their Rule 1.540(b)(4) Motion when the court did not limit its review of the motion to its four corners, but, instead,

reviewed portions of the record. *Noack v. Blue Cross and Blue Shield of Florida, Inc.*, 742 So. 433, 434 (Fla. 1st DCA 1999).

2. The court erred when it failed to adequately address Theresa Schiavo's right to independent counsel under the Florida and United States Constitutions. The fact that it is a matter of first impression as to whether an incapacitated person has a constitutional due process right to her own independent counsel in a contested legal proceeding to discontinue her life support, the denial of which would void the order authorizing letting her die, does not mean she has no such right. It means the court must most carefully explore whether state authorization to discontinue her life support, is such a constitutional deprivation of her life, liberty, and property interests that she is entitled to due process protection. In *Lavender v. State*, 889 So.2d 882, (Fla. 5th DCA 2004), another due process case of first impression the Fifth District Court of Appeal found that "[i]n proceedings where the 'individual interests at stake . . . are both 'particularly important' and 'more substantial than mere loss of money,' due process places a higher burden on the state. *Pullen v. State*, 802 So.2d 1113, 1117 (Fla. 2001) (quoting *Santosky v. Kramer*, 455 U.S. 745, 746, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982))".

3. The court erred when it failed to rule on whether Mrs. Schiavo was given sufficient notice to give the court jurisdiction over her for the conduct of the proceeding pursuant to Fla. Stat. 744.3215(1)(n).

4. The court erred when it failed to rule on whether Mrs. Schiavo has a retained right to have access to the court to appear and be heard in defense of a proceeding to terminate her life support pursuant to Fla. Stat. 744.3215(1)(k).

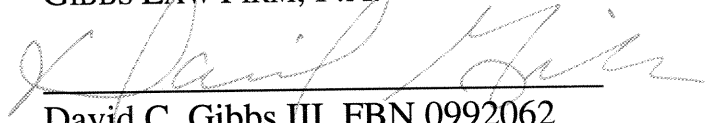
5. The court erred when it failed to balance Mrs. Schiavo's constitutional right to privacy with her constitutional right to due process of law.

6. The court erred when it ruled that by acting as the guardian ad litem for Mrs. Schiavo pursuant to *Guardianship of Theresa Marie Schiavo*, 780 So.2d 176 (Fla.2d DCA 2001), it adequately protected her due process right to her own independent counsel. The role of a guardian ad litem in advising the court and the role of an attorney advocating for his client are different roles and one cannot substitute for the other. *Perez v. Perez*, 769 So.2d 389, 393 (Fla. 3d DCA 1999) (“[T]he duties and responsibilities of a guardian ad litem are not coextensive with those of an attorney.”).

This motion is based on the transcript of the January 28, 2005, hearing before this Court as well as Respondents' 1.540(b)(4) motion, and the court's February 11, 2005, Order.

Respectfully submitted,

GIBBS LAW FIRM, P.A.



David C. Gibbs III, FBN 0992062

5666 Seminole Blvd., Ste. 2

Seminole, FL 33772

Telephone: 727-399-8300

Facsimile: 727-398-3907

ATTORNEY FOR RESPONDENTS

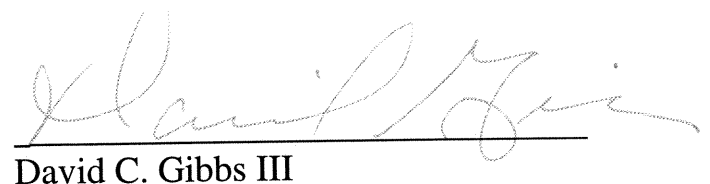
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been mailed on this eighteenth day of February 2005 to the following addressees:

GEORGE FELOS
Felos & Felos, P.A.
595 Main Street
Dunedin, FL 34698

DEBORAH A. BUSHNELL
204 Scotland Street
Dunedin, FL 34698

HAMDEN H. BASKIN, III
Baskin & Fleece
13577 Feather Sound Drive, Ste. 550
Clearwater, FL 33762-5527



David C. Gibbs III