

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

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

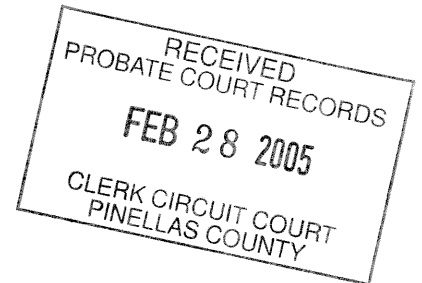
---

MICHAEL SCHIAVO  
Petitioner,

v.

ROBERT SCHINDLER and  
MARY SCHINDLER,  
Respondents.

---



**EMERGENCY EXPEDITED**  
**MOTION TO PERMIT MRS. SCHIAVO TO**  
**BE BURIED IN FLORIDA WITHOUT CREMATION**

ROBERT and MARY SCHINDLER, Respondents herein, by and through their undersigned counsel, hereby move this Court to prohibit the guardian from disposing of the body of the Ward by mean of cremation in contradiction with Mrs. Schiavo's religious faith after the death of the Ward. In support of their plea, Respondents show unto the Court as follows:

1. This Court's February 11, 2000, Order found as a fact that Mrs. Schiavo "was reared in a normal, Roman Catholic nuclear family." (February 11, 2000, Order, p. 1). *See also, In re Guardianship of Schiavo,*

780 So.2d 176, 180 (Fla. 2d DCA 2001) (“[S]he had been raised in the Catholic faith.”).

2. To a Roman Catholic such as Mrs. Schiavo, cremation, while not absolutely forbidden by the church, is not allowed where “cremation was chosen for reasons contrary to Christian doctrine.”

*Code of Canon Law* can. 1176 §3

([http://vatican.ca/archive/ENG1104/\\_\\_\\_P4A.htm](http://vatican.ca/archive/ENG1104/___P4A.htm))

3. To a Catholic such as Mrs. Schiavo, cremation is unacceptable from the historical context of pagan rituals and Gnostic heresy that hold to a dualistic nature of man. These pagan religious expressions held that the body “trapped” the soul or spirit which was the essence of a person. Cremation was seen as the pagan way the body “released” the spirit. (<http://www.credo.ndirect.co.uk/gnostic.html>) Cremation also stems from a denial of the blessed hope of the Christian’s physical bodily resurrection from the dead. Destruction of the body flies in the face of the Christian belief that the body we die in will be resurrected in the future.

4. In the instant case, the guardian has not averred or established that he has chosen cremation for reasons in accordance with Christian or Catholic doctrine. Indeed, the guardian has consistently exhibited a lack of respect toward the Catholic religion of the Ward.

5. To Mrs. Schiavo and her nuclear family, burial without cremation is a central tenet of the Roman Catholic faith. They are wholly motivated by their religious belief that burial without cremation will comfort Mrs. Schiavo in death, and will give comfort to her family that she is spiritually prepared for her eternal life with the Lord upon her death.

6. Denying Mrs. Schiavo her religious free exercise right to be buried in the manner recommended by the strictures of her Church would “forbid[ ] [her] to engage in conduct that [her] religion requires” (*Warner v. City of Boca Raton*, 887 So.2d 1023, 1033 (Fla. 2004)). Furthermore the spiritual comfort of knowing that their daughter is buried in accordance with the dogma of the Church will substantially ease the burden of their own obligations as parents in the exercise of their Roman Catholic faith, encouraging them that they are not placing in jeopardy Mrs Schiavo’s eternal destiny and their family’s peace and comfort in the Church that, although their daughter has died, they have the knowledge that she is at peace with her Lord and has been provided with all the comforts of her Church in her burial in the earth.

7. Substantially burdening Mrs. Schiavo’s religiously motivated exercise of faith without a compelling government reason for so doing

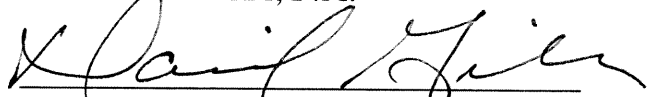
would violate U. S. Const. amend. I; Art. I, § 3, Fla. Const.; Fla. Stat. §§ 761.01 *et. seq.*; and 42 U.S.C. § 1983.

8. Since the majority of people who would be likely to visit the grave of the Ward reside in Pinellas County, Florida, it would be unkind and inappropriate for this Court to permit the remains of Mrs. Schiavo to be buried outside the local area.

Wherefore, Respondents respectfully request that, if and when Mrs. Schiavo's dies, this Court will order the guardian to allow Mrs. Schiavo to be buried without cremation, in compliance with her religious faith, within the confines of Pinellas County, Florida.

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

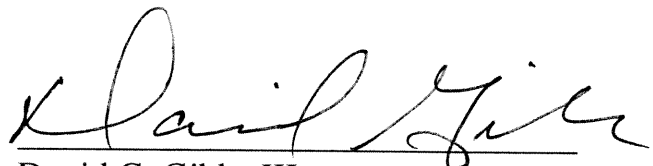
I CERTIFY that on this twenty-seventh day of February 2005, a true and correct copy of the above Emergency and Expedited Motion to Permit Mrs. Schiavo to Be Buried Without Cremation has been sent by United States mail, postage prepaid, to the following counsel of record.

GEORGE FELOS  
Felos & Felos, P.A.  
595 Main Street  
Dunedin, FL 34698  
Fax (727) 736-5050

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

DEBORAH A. BUSHNELL  
204 Scotland Street  
Dunedin, FL 34698

KEITH GANOBSIK  
Fla. Dept. of Children & Families  
11351 Ulmerton Road  
Largo, FL 33778-1630  
Fax:727-588-7078

  
David C. Gibbs III