

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

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

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

vs.

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

ORDER

THIS CAUSE came on to be heard on October 27, 2004, upon Petitioner's Motion to Vacate Order of Emergency Stay, or in the Alternative, Motion for Reconsideration of Order of Emergency Stay, and Respondents' Motion for Stay of Any Order and All Orders to Withhold Theresa Schiavo's Nutrition and Hydration Pending Appellate Review. Before the court and presenting argument were George J Felos, Esquire, attorney for Petitioner, and David C. Gibbs, III, Esquire, attorney for Respondents. The court has reviewed the motions and the pertinent portions of the court file, and makes the following findings of fact and conclusions of law:

This court on October 22, 2004 entered its Order dismissing Respondents' Motion for Relief from Judgment and Motion to Reconsider. On that same date, the court entered another order that stayed its February

11, 2000 order until December 6, 2004 to permit an orderly appeal if one were undertaken. Respondents filed their Notice of Appeal on October 26, 2004. Petitioner urges the court to follow the procedure it utilized last fall and deny the stay but give Respondents 9 days to bring the issue before the Second District Court of Appeal. Respondents, on the other hand, urge the court to issue a stay to continue through the appellate process. Both parties agree that this court vacate the October 22, 2004 Order of Emergency Stay.


Mr. Felos persuasively argues that the dismissal of the Motion for Relief from Judgment and Motion to Reconsider is identical to this court's denial of the Petition for Immediate Therapy on September 17, 2003. Thereafter, on October 9, 2003, this court denied the Respondents' Motion for Stay, which was affirmed on appeal some 5 days later. At first blush, this analysis appears sound and this court should again deny the current motion for stay. Mr. Gibbs argues, however, that under Rule of Appellate Procedure 9.310(a) the court has discretion to enter this stay and should do so since the matter is being brought on good faith and not for purposes of delay. Without ruling upon the "good faith" issue, the court agrees with Mr. Gibbs that it has broad discretion and in this instance should grant relief.

What differentiates this Motion for Stay from the one filed eleven months ago is that on September 17, 2003, after hearing, this court entered its order setting a date and time to discontinue life support as required by the Second District Court of Appeal in its June 6, 2003 order and its August 25, 2003 Mandate. That Motion for Stay was filed some twelve days later. Other than in that unique circumstance, this court has consistently entered stays and allowed Respondents to orderly prosecute their appeal. The court is not persuaded to do otherwise now. Accordingly it is

ORDERED AND ADJUDGED that the Order of Emergency Stay entered October 22, 2004 is vacated and set aside, and it is

FURTHER ORDERED AND ADJUDGED that this court's order of February 11, 2000 is hereby stayed to permit Respondents, Robert and Mary Schindler, to pursue their appeal to the Second District Court of Appeal pursuant to the October 26, 2004 Notice of Appeal filed herein, and such stay shall terminate and be of no further force and effect upon the earlier of a dismissal of that appeal or the issuance of a Mandate by the Second District Court of Appeal thereon.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida, on this 28 day of October, 2004.


GEORGE W. GREER
CIRCUIT JUDGE

Copies furnished to:
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