

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

UCN: 521990GA002908XXGDXX 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 DENYING MOTION FOR ORDER TO SHOW CAUSE

THIS MATTER came before the Court at a hearing on March 26, 2004 on the Respondents' Motion for an Order to Show Cause why **MICHAEL SCHIAVO** as Guardian of the Person of Theresa Marie Schiavo should not be held in indirect criminal contempt for violation of the Order Requiring Service of Copy of Annual Reports of Person on Parents of the Ward, entered June 18, 1996, by the Hon. Thomas E. Penick, Jr. Paragraph 3 of that Order provides as follows:

"**MICHAEL SCHIAVO**, as Guardian of the Person of Theresa **SCHIAVO**, shall notify in writing any nursing home, which now or in the future provides care or medical services for **THERESA SCHIAVO** that he has no objections to the nursing home discussing **THERESA SCHIAVO**'s medical condition with **ROBERT SCHINDLER** or **MARY SCHINDLER**. **MICHAEL SCHIAVO** shall promptly provide **ROBERT SCHINDLER** or **MARY SCHINDLER** a copy of any neurological reports regarding **THERESA SCHIAVO**. In addition, **MICHAEL SCHIAVO** agrees to inform **ROBERT**

SCHINDLER and MARY SCHINDLER as to any significant changes in THERESA SCHIAVO's medical condition."

The Motion was apparently triggered by incidents occurring in February 2004.

Fla. R. Crim. P. 3.840(a) provides that a judge, based on the affidavit of a person "having knowledge of the facts", may issue an Order to Show Cause. While Mrs. Schindler's reason for not disclosing the sources of her information is understandable, the Rule nevertheless requires personal knowledge. See *Hagan v. State*, 853 So.2d 595 (Fla. 5th DCA 2003). On their face, the affidavits submitted in support of the Motion for an Order to Show Cause do not demonstrate personal knowledge by the movant, MARY SCHINDLER or by HEIDI LAW, the other affiant, of noncompliance with the 1996 Order. While Mary Schindler does in the second sentence of paragraph 7 of her March 23, 2004 affidavit speak with personal knowledge, that knowledge is predicated upon the hearsay statement of the preceding sentence. Therefore it is

ORDERED AND ADJUDGED that the Motion for an Order to Show Cause is denied without prejudice for Respondents to file anew in accordance with the above-cited Rule.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this 29 day of March, 2004.


GEORGE W. GREER
Circuit Judge

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