

Remembering Terry Schiavo — Why every adult needs a living will and a health care power of attorney.

Terri Schiavo collapsed in her St. Petersburg, Florida home after a massive heart attack on February 25, 1990. Because of a lack of oxygen, she suffered extensive brain damage and after two and one half months in a coma physicians ruled that she was nonresponsive and in a vegetative state.

Unfortunately, Ms. Schiavo had not previously conducted any formal estate planning and had neither a Health Care Power of Attorney nor a Living Will. Because her actual wishes were unclear, Ms. Schiavo was kept alive in a persistent vegetative state (PVS), while never improving, for 15 additional years despite formidable legal attempts by her husband to allow her to die a natural death.

Nightmare Government Involvement

For any citizen who cringes at the thought of government intervention into private life, this case remains an absolute nightmare. The courts eventually involved included all levels of the Florida courts up to the Florida Supreme Court and the Federal Appeals Courts, and they entertained challenges from a host of entities claiming to represent Terri's interests, including the Florida legislature, Florida Governor Jeb Bush, various disability rights groups, the U.S. Congress, and President George Bush.

What exactly went wrong here?

Terri's Husband, Michael Schiavo, who claimed that he knew that Terri would not want to live for an extended period in a persistent vegetative state, tried to serve as Terri's sole legal representative determining Terri's wishes. But because Terri had not executed a Health Care Power of Attorney formally giving Michael sole authority to make Terri's health care decisions if she became incompetent, the courts ruled at various times that other parties, including Terri's parents, could also represent Terri's wishes. Indeed Terri's parents maintained that their Catholic Church beliefs were also Terri's beliefs, and that Terri would not want to violate the Church's teachings against euthanasia (intentionally ending a life in order to relieve pain and suffering.)

Terri Schiavo still could have made her own wishes formally known in a way protected by the Florida courts if she would have executed a proper Living Will. Indeed, in 1990, the Florida Supreme Court had ruled in *Guardianship of Estelle Browning* that because elderly Estelle Browning had expressed in a Living Will her wish not to be kept alive by artificial means including a feeding tube, that Browning had "the constitutional right to choose or refuse medical treatment, and that right extends to all relevant decisions concerning one's health."

Good Lawyering Cannot Undo Bad Planning

Michael Schiavo hired the same noted Florida attorney who had



argued the 1990 *Guardianship of Estelle Browning* case before the Florida Supreme Court, George Felos. Felos argued to a January, 2000 Pinellas (Florida) County Court that Terri Schiavo would not want to be kept alive artificially when her chance of recovery was miniscule. Felos won the initial case, but, even with the prior Browning decision, because Terri Schiavo had not executed a formal Living Will document expressing her actual wishes, Michael Schiavo's attorneys could not successfully stave off the multitude of court challenges seeking to keep Terri Schiavo on life support for almost five more years.

Preventing Problems

The goal of all legal planning should be to prevent problems. Preventing problems is always less expensive than fighting a battle in court, and is much more predictable and much less harrowing for the client.

If, because of poor legal planning, one of the parents in a family is kept alive beyond her actual wishes, what would the cost of the additional medical expenses and additional legal bills do to a typical family? These costs could be devastating, and could quickly wipe out an estate as well as wipe out the plans that the parent intended.

North Carolina Recognizes the Living Will and the Health Care Power of Attorney

North Carolina law provides two methods for an adult to make his or her health care wishes known in advance--the Living Will and the Health Care Power of Attorney.

An adult may use a Living Will to communicate to her doctors that she does not want to be kept alive by extraordinary medical treatment or by artificial nutrition or hydration if she is terminally ill or in a persistent vegetative state. An adult may use a Health Care Power of Attorney to appoint someone to make his medical decisions if he is unable to make them himself. Because each of these documents has a different purpose, the best estate planning practices include both the Living Will and the Health Care Power of Attorney to be used in tandem. All North Carolina adults should utilize the Living Will and the Health Care Power of Attorney as part of a comprehensive estate planning process.



Vance Parker Law, PLLC • Phone: 336.768.0481 • Fax: 336.245.8041
Address: 1035 Chester Road • Winston-Salem, NC 27104
Website: www.vparkerlaw.com • Email: vance@vparkerlaw.com