

SUPREME COURT OF FLORIDA

Bush v. Schiavo

885 So. 2d 321 (Fla. 2004) · No. No. SC04-925 · Decided September 23, 2004

SUMMARY

The Supreme Court of Florida held that chapter 2003-418, Laws of Florida, which authorized the Governor to issue a stay preventing the withholding of nutrition and hydration from certain patients, violated the constitutional separation of powers. The court concluded that the Act encroached on the judicial branch by permitting executive interference with a final guardianship judgment concerning Theresa Schiavo. The court affirmed the trial court’s declaration that the Act was unconstitutional both on its face and as applied.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Barbara J. Pariente, Chief Justice; Charles T. Wells, Justice; Harry Lee Anstead, Justice; R. Fred Lewis, Justice; Peggy A. Quince, Justice; Raoul G. Cantero, Justice; Kenneth B. Bell, Justice
JURISDICTION	Florida
DECIDED	September 23, 2004
DOCKET	No. SC04-925
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a circuit court final summary judgment declaring chapter 2003-418, Laws of Florida, unconstitutional on its face and as applied to Theresa Schiavo. The Supreme Court of Florida reviewed the constitutional issues de novo.
STANDARD OF REVIEW	De novo review of a trial court ruling on summary judgment presenting a pure question of law and constitutional issues.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Florida
PARTIES	Jeb Bush, Governor of Florida, et al. v. Michael Schiavo, Guardian of Theresa Schiavo

TOPICS

- separation of powers
- constitutional law
- guardianships
- health law
- summary judgment

PRACTICE AREAS

constitutional law

guardianship

health law

civil procedure

QUESTIONS PRESENTED

1. Whether chapter 2003-418, Laws of Florida, unconstitutionally encroached on the judicial branch by authorizing the Governor to interfere with a final judicial judgment concerning Theresa Schiavo.
2. Whether chapter 2003-418 unconstitutionally delegated legislative authority to the Governor by providing no standards or guidelines governing issuance or lifting of the authorized stay.
3. Whether the Act violated the constitutional right to privacy or constituted unconstitutional retroactive legislation.

HOLDINGS

1. Chapter 2003-418 was unconstitutional as applied because the Governor's executive stay effectively reversed a properly rendered final judicial judgment authorizing withdrawal of Theresa Schiavo's life-prolonging procedures, thereby encroaching on the judicial power.
2. Chapter 2003-418 was unconstitutional on its face because it delegated legislative authority to the Governor without adequate standards or guidelines for deciding whether to issue a stay, how long it should remain in effect, or whether to lift it.
3. The Act was not saved by the Governor's asserted parens patriae authority or by the claim that it provided additional due process protection, because the Act failed to require consideration of the patient's wishes, supplied no procedural protections, and did not comply with the Constitution.

KEY QUOTATIONS

"The Governor may lift the stay authorized under this act at any time." (329)

"Under the express separation of powers provision in our state constitution, 'the judiciary is a coequal branch of the Florida government vested with the sole authority to exercise the judicial power,' and 'the legislature cannot, short of constitutional amendment, reallocate the balance of power expressly delineated in the constitution among the three coequal branches.'" (330)

"Thus, the Act, as applied in this case, resulted in an executive order that effectively reversed a properly rendered final judgment and thereby constituted an unconstitutional encroachment on the power that has been reserved for the independent judiciary." (331)

"This absolute, unfettered discretion to decide whether to issue and then when to lift a stay makes the Governor's decision virtually unreviewable." (334)

"Thus, chapter 2003-418 allows the Governor to act 'through whim, show[] favoritism, or exercis[e] unbridled discretion,' Lewis, 346 So.2d at 56, and is therefore an unconstitutional delegation of legislative authority." (336)

"The continuing vitality of our system of separation of powers precludes the other two branches from nullifying the judicial branch's final orders." (337)

FACTUAL BACKGROUND

Theresa Schiavo had been in a persistent vegetative state since a 1990 cardiac arrest and received nutrition and hydration through a tube. After a contested guardianship proceeding, the trial court found by clear and convincing evidence that she would choose to discontinue life-prolonging procedures if competent, and the order was affirmed on appeal. Following further unsuccessful post-judgment proceedings, the tube was removed; the Legislature then enacted chapter 2003-418 authorizing the Governor to issue a stay preventing withdrawal of nutrition and hydration, and the Governor's executive order resulted in reinsertion of the tube.

PROCEDURAL HISTORY

A guardianship court authorized withdrawal of Theresa Schiavo's life-prolonging procedures after an evidentiary hearing, and the order was affirmed by the Second District Court of Appeal; the Florida Supreme Court denied review. After the nutrition and hydration tube was removed, the Legislature enacted chapter 2003-418 and the Governor issued an executive order staying the withholding of nutrition and hydration. Michael Schiavo filed a declaratory judgment action, and the circuit court entered summary judgment finding the Act unconstitutional both facially and as applied. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Cotton, 769 So. 2d 345 (Fla. 2000)
- Chiles v. Children A, B, C, D, E, & F, 589 So. 2d 260 (Fla. 1991)
- Major League Baseball v. Morsani, 790 So. 2d 1071 (Fla. 2001)
- Trustees Internal Improvement Fund v. Bailey, 10 Fla. 238 (1863)
- Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995)
- Office of State Attorney v. Parrotino, 628 So. 2d 1097 (Fla. 1993)
- In re Advisory Opinion to the Governor, 213 So. 2d 716 (Fla. 1968)
- Microtel, Inc. v. Florida Public Service Commission, 464 So. 2d 1189 (Fla. 1985)
- Sims v. State, 754 So. 2d 657 (Fla. 2000)
- Askew v. Cross Key Waterways, 372 So. 2d 913 (Fla. 1978)
- Avatar Development Corp. v. State, 723 So. 2d 199 (Fla. 1998)
- Lewis v. Bank of Pasco County, 346 So. 2d 53 (Fla. 1976)
- State Department of Citrus v. Griffin, 239 So. 2d 577 (Fla. 1970)
- Brown v. Apalachee Regional Planning Council, 560 So. 2d 782 (Fla. 1990)
- Sarasota County v. Barg, 302 So. 2d 737 (Fla. 1974)
- In re Guardianship of Browning, 568 So. 2d 4 (Fla. 1990)
- In re Byrne, 402 So. 2d 383 (Fla. 1981)
- In re Guardianship of Schiavo, 780 So. 2d 176 (Fla. 2d DCA 2001)

- In re Guardianship of Schiavo, 789 So. 2d 348 (Fla. 2001)
- In re Guardianship of Schiavo, 792 So. 2d 551 (Fla. 2d DCA 2001)
- In re Guardianship of Schiavo, 800 So. 2d 640 (Fla. 2d DCA 2001)
- In re Guardianship of Schiavo, 851 So. 2d 182 (Fla. 2d DCA 2003)
- In re Guardianship of Schiavo, 855 So. 2d 621 (Fla. 2003)

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