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THE ELDER LAW VOICE

THIRD QUARTER 2005

The Lasting Legacy of Terri Schiavo

Time will pass but few Americans will forget the tragic story of Terri Schiavo, which began when her battle with an eating disorder led to heart failure that left the young Florida woman with severe brain damage. Complicated legal battles between her husband and her parents followed due to a significant difference of opinion regarding her wishes to be kept alive under such circumstances. Her husband, Michael, insisted that she

The Schiavo case has asked us to look at our own definition of life, whatever that may be. It has also illustrated the importance of making your end of life wishes very clear.

expressed a strong wish to not be kept alive by artificial means, such as the feeding tube that was her sole source of food and water; with her parents arguing the opposite. The battle consumed the lives of both parties for the last seven of the fifteen years since her accident. Countless judges ruled, politicians voted, organizations lobbied, reporters reported and Americans

weighed in with their opinions before the decision to terminate her life support was final. No one will ever know what Terri's true wishes were. She never left a written directive explaining what to do if she could no longer communicate.

Perhaps the silver lining behind the dark cloud of court battles, family fighting, and political debate, is the impact Terri's story has made on the way people are communicating about what they would have wanted to happen if they were in Terri's shoes. The Schiavo case has asked us to look at our own definition of life,

whatever that may be. It has also illustrated the importance of making your end of life wishes very clear.

Since Terri's saga splashed across the national news, people have started talking to their loved ones, doctors, and even strangers about how these sensitive issues might play out in their own lives. Many have taken the important next step to sign documents that are designed to prevent the

guessing game, most commonly a health care power of attorney and a living will. While details of the documents vary by state law, the ba-

sics are the same. A health care power of attorney appoints someone your trust, called an agent or proxy, to make health care decisions for you if and when you lose the ability to make them yourself. A living will on the other hand, deals solely with the end-of-life. It can direct how a person wants to be treated if they ever 1) enter into a persistent vegetative state and/or 2) suffer from a terminal and incurable illness and are unable to communicate. Talking about and documenting your wishes does not guarantee that controversy will never arise. However, making your wishes clear certainly reduces the likelihood of the tragic, consuming suffering endured by Terri Schiavo, her husband and the rest of her family.



Terry Schiavo in her prime, prior to her collapse in 1990.

What is a Living Will?

In the wake of the sad story of Terri Schiavo, the attention of the country has been turned to end of life issues. More and more of us are now aware that given medical and scientific advances, the difference between extending life and prolonging death may not be a clear one. Addressing these questions now can protect your family from the grief experienced by the family of Terri Schiavo.

In North Carolina, a living will is also known as "Declaration of a Desire for a Natural Death." A living will lets you make clear your choice regarding the use of extraordinary means at end of life. Your living will does not come into play unless you are unable to communicate with your physicians regarding your medical choices under specific circumstances.

North Carolina's version of a living will addresses two specific medical conditions: terminal and incurable, or a persistent vegetative state. Your living will only activates if your physician(s) determine that you are either terminal and incurable or in a persistent vegetative state. If your physician(s) make that determination, then your choices regarding use of machinery and/or feeding tubes can be implemented.

Under each medical condition, you can authorize the withholding of "extraordinary means" only. In layman's terms, this means that you can indicate that you do not want to be kept alive on machines such as ventilators. In addition to that, you can also authorize the withholding of "artificial nutrition and hydration" – i.e., feeding tubes. Again, neither of these choices would come into play unless you were not able to communicate with your physician, and your doctors had determined that you were either terminal and incurable or in a persistent vegetative state.

If you authorize the withholding of extraordinary means and/or artificial nutrition and hydration, medications would continue to be administered to keep you comfortable – unless, of course, you instructed otherwise. Your direction regarding this or any other medical matter must be written to make clear your wishes at a time when you could not communicate them yourself.

Living wills must be signed by you in front of two witnesses and a notary. The witnesses cannot be related to you, and cannot be health care providers. A copy of your living will should be given to your doctor to be added to your patient records.

Living wills, like other planning documents, must be prepared now - when you don't need them.

Living wills are not the same as a Do Not Resuscitate or a "DNR" order. A DNR order states that if an emergency situation arises, your health care providers are not to try to revive you. The types of emergency situations include a cardiac arrest (your heart stops beating) or if you have respiratory arrest (you stop breathing).

Living wills, like other planning documents, must be prepared now - when you don't need them. Living wills are a gift to your family and loved ones. Letting them know your wishes relieves them of the burden of guessing what you would have wanted under circumstances you cannot possibly predict today.

When Friends and Colleagues Move On

In the last two issues of our newsletters, as in this newsletter, we have spotlighted our long-standing staff members—celebrating their many contributions to our firm. As this kind of longevity illustrates, we have been fortunate to have a staff that remains on board, providing continuity that serves our clients in the best way possible. Once in a while we are faced with the sad reality of a colleague who moves on to other pastures.

Andrew Atherton came to Booth Harrington and Johns in January of 2003 from a practice in Greensboro where he specialized in divorce law.



Having had his fill of contentious divorces, Andrew made his transition to Elder Law where all the sensitivity that is at the core of his personality could fully blossom—handling clients with a kindness and care that reflects his values and his devotion to families in need of

expert counseling. He served his fellow staff members in the same manner that he served his clients—with care, with thoughtfulness, with his insights and with everyone's best interest at heart.

Andrew and his wife, Mary Beth, recently

(Continued on Page 3)

(Continued from page 2)

experienced the joyful arrival of their second child, George Reed, giving their oldest child, Graham, a baby brother.

Andrew has left Booth Harrington and Johns to join another firm in beautiful Asheville, NC. He will continue practicing Elder Law in their new home town and he and Mary Beth will have their hearts and their hands full with Graham and Reed.

We will miss Andrew and his family both personally and professionally. With sadness for our loss, but happiness for his continued success we wish Andrew and Mary Beth all the best.

Stephanie McIntire - Marking 13 Years at Booth Harrington and Johns

She moves through the offices with the stealthy quiet of a cat but don't let that quiet exterior fool you. Stephanie McIntire is sharp as a tack and quite a juggler—carrying around a full to overflowing plate of work and doing it with determination, grace and a keen eye watching over all the details.

Stephanie joined the firm 13 years ago, working full time while finishing up her paralegal degree at Guilford Technical Community College. She stays busy handling the paralegal work for guardianships, estates, and Special Needs Trusts.



In addition to the valuable role she plays at the firm, she is also a mom to a teenage daughter, Britnee. Stephanie has been married to her husband, Dan, for 15 years now—they met when they were merely youngsters. The fourth member of the family is of the four-legged furry Chihuahua variety—Memphis. For fun, Stephanie is a reader and a collector of antiques, though her love of antiques requires some restraint.

Stephanie has lived in a number of places throughout her life. She was born in North Carolina, lived briefly in South Carolina as a small child, and as a teen moved west, finally settling in California. After finishing high school, she returned to North Carolina, and our good fortune brought her to us.

Stephanie is a trusted and much loved colleague and we are lucky to have her as our co-worker in the same way that our clients are lucky to have her working on their behalf.

BEWARE OF THE CANADIAN SWEEPSTAKES SCAM

Using prepaid phone cards, disposable cell phones and cell phone numbers, and an answering machine to retrieve messages, literally thousands of con artists operating out of Canada are preying on vulnerable senior citizens throughout the United States. Canada has become a hotbed of this type of activity because their laws against such con artistry are not as harsh as laws in the United States. Billions of dollars have been bilked from seniors whose complete trust has been gained by a sweet-talking crook. In fact, some are so convincing that a few victims have continued sending money even after law enforcement investigators explained the fraud scheme.

The scam can take many forms, but a typical one involves the crook obtaining a mailing list of people who frequently enter various kinds of contests. They make contact by telephone with the person and tell them that they have won a second prize in a contest, but the prize money can be released to them only after they have prepaid the Canadian tax on the winnings. They are promised a \$250,000 second prize to be paid after they pay the \$10,000 tax. When the victim sends the \$10,000 payment, they are then contacted and told that the grand prize winner has been disqualified and they can move into the grand prize position of winning \$2 million upon receipt of an additional \$60,000 to \$100,000 to cover the added taxes due on the larger prize. Variations of this fraud have resulted in some people losing as much as \$300,000 to \$400,000. The funds are sent to Canada either wired through Western Union or mailed to a “blind” mail drop. Checks are processed through other foreign countries and the money ends up on deposit in secret offshore accounts and wired funds disappear without a trace. The crooks frequently switch out their cell phone numbers and criminal cases against them are extraordinarily difficult to prove.

PLEASE HEED THIS WARNING AND PASS ON THE INFORMATION TO ALL SENIOR CITIZENS YOU KNOW: DO NOT EVER, UNDER ANY CIRCUMSTANCES, FORWARD ANY MONEY AS A PREPAYMENT OF TAXES, FEES OR ANYTHING ELSE TO REDEEM A “PRIZE” THAT YOU HAVE BEEN TOLD YOU WON. NO REPUTABLE PRIZE COMPANY REQUIRES RECIPIENTS TO PAY IN ADVANCE FROM THEIR OWN FUNDS FOR THEIR PRIZE WINNINGS.

**When the rubber meets the road—
Rubber soles, that is.**

**Walking to raise monies
For our Alzheimer's Association**



Pictured top row from left to right: Martha Chasten, Jessica Chasten, Betsy Harrington, Anne Johns, Andrew Gates, Frank Johns, Jonathan Foley, Jesse Gates, Lynn Gates. Second row: Catherine Johns, Ashley King, Ronni King, Joey King and Andy King. Not Pictured: Donna Elmore and, photographer, Sarah Keel

On Saturday June 4th, staff members from Booth Harrington and Johns laced up their walking shoes and hit the road to help raise monies for the Western Carolina Chapter of the Alzheimer's Association. It was a glorious, sunny day, perfect for tackling a 3 mile walking course in and around Greensboro with over 300 other supporters of the Alzheimer's Association. More than \$56,000 was pledged by the many caring, concerned individuals dedicated to helping fund the valuable work provided by the Alzheimer's Association.

"To provide leadership to eliminate Alzheimer's disease through the advancement of research and to enhance care and support services for individuals and their families" is the stated mission of the Alzheimer's Association. We have had a long history of working with the Western Carolina Chapter of the Alzheimer's Association and, this year, our very own Frank Johns is the President of the Board of Directors – a very visible illustration of his, and our, commitment to the organization. Each year Booth Harrington and Johns staff members step up to the plate by participating in events sponsored by the Alzheimer's Association in an effort to advocate the mission and disseminate extremely valuable in-

formation to the public regarding this debilitating disease.

Coming up on Thursday, August 18th is another important educational event open to the public and free of charge. Please take note of the program notice below for time, location and the list of speakers for this event. We encourage you to make your reservation today so that you and your family will learn more about the range of community resources available to anyone who is dealing with the challenges of Alzheimer's care.

PLEASE MARK YOUR CALENDAR!

Getting Beyond the Heartbreak of Alzheimer's Disease

Please join us for

An Evening of Discovery
Thursday, August 18, 2005
Moses Cone Hospital

West Entrance (Health Education Center)
Ground Floor 1200 N. Elm Street

6:30 - 7:00 pm Reception with desserts and coffee

7:00 - 9:00 pm - Seminar Program

Admission is Free

Seating is limited to 150, so please call
(336) 239-1537 to reserve your space

This is an educational seminar.

No financial, investment or insurance products will be offered.

Featured Speakers:

A. Frank Johns, JD, CELA, RG

Charter Partner in Booth, Harrington & Johns, LLP
President of the Board of Directors of the
Western Carolina Chapter of the Alzheimer's Association

Teepa Snow, MS, OTR/L, FAOTA

Education Director, Alzheimer's Association
Eastern N. Carolina Chapter, Occupational Therapist

Michele Haber, MD, MS, MPH

Board Certified Geriatric Medicine Specialist,
Board Certified Internal Medicine,
Principal of Geriatrics Consulting Service of Greensboro
Alzheimer's Association Representative

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