ALAIN KARTUZINSKI, and DAVID HOUGHTON,

Defendants.

_______________________________________/

AMENDED ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OF NEGLIGENCE SURVIVAL CLAIM (COUNT V)

This cause came on to be heard on the Defendants' Motion for Summary Judgment on Fifth Cause of Action (Negligence Survival Claim). The Plaintiff filed a response thereto styled Amended Plaintiff's Response to Defendants' Motion for Summary Judgment on Wrongful Death and Negligence. The Defendants filed a Reply Memorandum in Support of Motion for Summary Judgment on Fifth Cause of Action (Negligence Survival Claim). It was agreed that this court could rule on this motion without further hearing. It was also agreed that in addition to considering affidavits, depositions, and other sworn testimony from other hearings previously filed in this case, that this court could consider all sworn testimony, affidavits, and evidence submitted during a 35 day hearing on Defendants' Omnibus Motion for Terminating Sanctions and Other Relief in deciding Motions for Summary Judgments filed as to both Counts I and V. After having read the Defendants' motion, the Plaintiff's response, and the Defendants' reply, and being otherwise thoroughly advised, this court denies the Defendants' Motion based on the following analysis.

The parties and all counsel are reminded that in reading this Order that any facts discussed concerning negligence, cause of death and the like are those facts alleged by the Plaintiffs, not the Defendants, unless otherwise indicated. Further, while this Order speaks often of "negligence", the Plaintiff has alleged in Count V of her complaint either intentional actions, or culpable, or gross negligence on the part of the Defendants. It is obvious that if a claim for simple negligence is not barred by the First Amendment or RFRA, a claim for gross or culpable negligence, or intentional actions is even less likely to be barred.

A motion for summary judgment may only be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. Fla. R. Civ. P. 1.510(c), and cases too numerous to cite. The burden is on the Defendants, as the moving party herein, to demonstrate conclusively that the Plaintiff cannot prevail. *St. Pierre v. United Pacific Life Insurance Company*, 644 So 2d 1030 (Fla. 2d DCA 1994); *Snyder v. Cheezem Dev. Corp.*, 373 So 2d 719 (Fla. 2d DCA 1979). Not only must there be no genuine issue of material fact, but the court must draw every possible inference in favor of the party against whom the summary judgment is sought. *Moore v. Morris*, 475 So 2d. 666 (Fla. 1985). Even if the facts are uncontroverted, the entry of a summary judgment is erroneous if different inferences can be drawn reasonably from the facts. *Staniszesky v. Walker*, 550 So. 2d 19 (Fla. 2d DCA 1989). If the record reflects the existence of any genuine issue of material fact or the "possibility of any issue, or if the record raises even the slightest doubt that an issue might exist, summary judgment is improper". *St. Pierre* @ 1031, emphasis mine. A summary judgment should not be granted unless the facts are "so crystallized that nothing remains but questions of law." *Moore* @ 668.

In this case, there are many genuine issues of material fact. One such issue is what is the cause of Lisa McPherson's death, or injury which did not cause death, which has been hotly contested since this litigation began over 5 years ago. Thus, as a pure summary judgment motion, it seems that this motion must fail. However, since it is always confusing to this court whether matters such as those the Defendants raise in this motion should be raised in a motion to dismiss, a motion for judgment on the pleadings, a motion to strike, or a motion for summary judgment, this court will discuss the two theories the Defendants raise in their motion. As will be seen, this

court would deny not only this motion, but also any of the others mentioned above based on the two theories raised by the Defendants. In other words, neither merger nor the First Amendment or RFRA will prohibit the Plaintiff from proceeding on Count V of the complaint.

THE MERGER THEORY

The first theory the Defendants raise as to Count V is one of merger. The Defendants suggest that Count V, the survival count, merges with Count I, the wrongful death count. They suggest that since the Plaintiff is proceeding to trial based on the theory of her forensic pathologists and other experts that Lisa was severely dehydrated, and this dehydration was the ultimate cause of her death, the Plaintiff cannot turn around in Count V, and allege the same basic facts as in Count I, but conclude the opposite—that the severe dehydration did not cause her death. Since severe dehydration is the cornerstone of the Plaintiff's wrongful death count, the Defendants say that F. S. §768.20 precludes the survival action under F. S. §46.021, based on the same dehydration.

The Defendants' merger theory has been decided contrary to the Defendants' position. The cases cited below show that mutually exclusive alternative theories of survival negligence and wrongful death may be pled in the same action. The two claims being mutually exclusive, however, the jury must be instructed that a finding in favor of the Plaintiff on either claim precludes the other claim being considered. In reading the Plaintiff's answers to additional interrogatories, it sounds as if the Plaintiff may think that she can recover damages on both counts I and V. However, the case law makes it quite clear that she cannot. See *Smith v. Lusk*, 356 So. 2d 1309 (Fla. 2d DCA 1978); *Williams v. Bay Hospital, Inc.* 471 So. 2d 626 (Fla. 1st DCA 1985); *Poole v. Tallahassee Memorial Hospital Medical Center, Inc.*, 520 So. 2d 627 (Fla. 1st DCA 1988); *Diamond v. Whaley, Chapman & Hannah, M.D.'s, P. A.*, 550 So 2d 54 (Fla. 2d DCA 1989).

The way this will work, stated simply, is as follows: If the jury believes that the Defendants allowed Lisa McPherson to become severely malnourished and/or dehydrated, and she died because of it, the defendants will be responsible for compensable damages due to causing Lisa's wrongful death, but will not be responsible for any survival damages. If, however, the jury determines that the Defendants allowed Lisa McPherson to become dehydrated, but she did not die from severe dehydration, but something else,

(such as a pulmonary embolism, as contended by the Defendants), but that nonetheless the Defendants' gross or culpable negligence, while not causing death, nonetheless caused Lisa McPherson to suffer injuries for which she is entitled to compensable damages, the Defendants will be responsible for those damages, but the Defendants will not be responsible for any damages due to her wrongful death. Of course, if the Defendants' alleged intentional or negligent actions or inactions neither caused injuries nor death to Lisa McPherson, no damages under either Counts I or V will be allowed. Although there are issues involved which must be answered by the jury other than those mentioned in this simple explanation, perhaps this will help the attorneys understand where this court is coming from on this issue.

In the event this case goes to trial, the attorneys are hereby instructed to prepare a jury instruction similar to that given in *Poole v. Tallahassee Memorial Hospital Medical Center, Inc.*, 520 So. 2d 627 (Fla. 1st DCA 1988) @629.

THE FIRST AMENDMENT

The second theory the Defendants raise as to Count V is that the First Amendment and Florida's Religious Freedom Restoration Act ("RFRA") operate as a bar to any recovery of damages on Count V. The case principally relied on by the Defendants is *Baumgartner v. First Church of Christ Scientist*, 490 N. E. 2d 1319 (Ill. 1st DCA 1986). This case is not persuasive to this court for several reasons. Two of those reasons bear further discussion here.

First, *Baumgartner* involves the Christian Science religion. As stated in the opinion, "As plaintiff concedes in her complaint, followers of Christian Science do not use medical aid to treat illness, but instead rely solely upon spiritual means." *Baumgartner* @ 1323. Likewise in *Hermanson v. State*, 570 So. 2d 322 (Fla. 2d DCA 1990), *quashed on other grounds*, 604 So. 2d 775 (Fla. 1992), the Second District notes that a Christian Scientist "eschews conventional medical treatment in favor of spiritual treatment through prayer." *Hermanson* @ 325. Scientology is the religion involved in this case. While Scientology may treat physical illness by spiritual means, <u>as do many other religions</u>, there is no <u>prohibition</u> in the Scientology religion against using medical aid to treat physical illness, except there is a prohibition against using psychiatric care to treat mental illness. The fact that Scientology does not prohibit medical care for physical

illness is not this court's interpretation of Scientology's tenets, but is a fact that every Scientology spiritual leader speaking on this issue admits. Additionally, those spiritual leaders who have spoken on the Lisa McPherson case admit that regardless of the fact that Lisa may have been undergoing spiritual care for her PTS III condition called, in the Church of Scientology, Introspection Rundown, that they would have gotten medical care for Lisa, had they known she needed it, as medical treatment is not prohibited by the Scientology religion, nor by the Introspection Rundown. To emphasize that this is not my interpretation of Scientology tenets, but that of the spiritual leaders of the Church, let me quote from these spiritual leaders.

Alain Kartuzinski, a Defendant, and the Acting Senior Case Supervisor and thus the highest ecclesiastical minister at the Defendant Church during Lisa's stay, and the person in charge of her spiritual care says, Q. And what is the---the plan when you have someone who's psychotic and doesn't get---doesn't eat enough or doesn't get healthy enough, doesn't sleep enough to actually undergo auditing? You just let them stay there indefinitely, or do you seek medical treatment or psychiatric treatment or—A. Not psychiatric treatment, definitely not. That is definitely against our beliefs, but medical treatment, yes, absolutely. See Kartuzinski's filed, and sworn testimony @ p. 89, emphasis mine. This testimony was taken before Doug Crow, Assistant State Attorney on October 13, 1998. Mr. Kartuzinski was immunized against criminal prosecution for any of his actions toward Lisa McPherson, but he was not immunized for any perjury committed during his sworn statement. He was represented by counsel who was present throughout his testimony. Later, in that same sworn testimony @ p. 159, Mr. Kartuzinski says, "As soon as I thought there was something bad occurring, then, okay, 'Wow, yes, let's go to the hospital.'" And, in fact, when Janis Johnson says she thought Lisa had an infection, and wanted Dr. Minkoff to call in a prescription, and he refused, and said she needed to go to a hospital, Mr. Kartuzinski asked Dr. Minkoff to see Lisa and Dr. Minkoff agreed and Lisa was put in a car and driven to a hospital to see the doctor. Kartuzinski @ 159-160. Calling Dr. Minkoff and going to the hospital for medical care occurred when Lisa was, according to the Defendants, in Step 0 and 00 of the Introspection Rundown.

In his filed Affidavit, dated August 9, 2001, Mr. Kartuzinski says in part: ¶ 3. "In November 1995, I was the Acting Senior Case Supervisor for FSO and thereby had responsibility for the spiritual guidance and

advancement of all Church parishioners and for the orthodox practice of Scientology at FSO." Emphasis mine. ¶4. "As the Acting Senior Case Supervisor, I was responsible for the well-being of Lisa McPherson while she was at the Fort Harrison Religious Retreat from November 18 to December 5, 1995, and was, therefore, overall in charge of her care." ¶ 13. "With the exception of December 5, 1995, I never received a report from anyone that contained any suggestion or indication of any kind that Lisa was actually physical ill or had a physical problem. On December 5, 1995, when Janice Johnson told me that she had visited Lisa and it appeared that Lisa had developed what I understood to be a large infection, I immediately told Janis to call Dr. Minkoff to address the issue of medical care for Lisa and Janice immediately did so. Following Janis' contact with Dr. Minkoff, Lisa was taken to the hospital to see Dr. Minkoff." Emphasis mine. ¶ 14. "If I had been advised or believed for any reason that Lisa might be physically ill, I would have immediately insisted that she see a doctor for care. None of the reports which I received about Lisa prior to December 5, 1995, indicated to me in any way that Lisa had any type of physical problem that would require the attention of a medical doctor. If I had received reports that Lisa was showing signs of a physical illness, I would have responded immediately in the same manner as I did when Janis Johnson told me of Lisa's physical condition on December 5, 1995, and I would have immediately insisted that Lisa see a doctor." Emphasis mine.

It must be noted that Lisa, according to the Defendants, was in Steps 0, and 00 of the Introspection Rundown from either November 19, or 20 until December 5, 1995, the date she died. The "reports" Mr. Kartuzinski refers to were the daily reports of the caretakers that they were required to prepare for and submit to Mr. Kartuzinski for his use. Obviously, therefore, according to the sworn testimony and affidavit of the highest ecclesiastical leader present at the Defendant Church and in charge of Lisa's care, it is eminently clear that the fact that Lisa was undergoing Steps 0 and 00 of the Introspection Rundown did not prohibit necessary medical care from being obtained by the Defendants.

Reverend Richard Reiss, the Senior Case Supervisor at the Defendant Church, who was gone during the time Lisa was at the Church facility, (which is why Defendant Kartuzinski was the Acting Senior Case Supervisor) and the person offered and listed as Defendant's expert on the Scientology religion says, in his filed Affidavit, signed October 17, 1999, ¶17. "Scientology follows the tradition of psyche being exclusively of the

soul and matters spiritual. Accordingly, as a matter of religious faith and doctrine, Scientologists do not seek "psychological" help anywhere but at a Church of Scientology. Scientologists reject any form of treatment for the mind in the physical sciences, including psychiatric treatment. This is a core religious belief of all Scientologists." ¶52. "...The Scientology Scripture also counsels that sometimes the PTS Type III (which is what Lisa was according to the Defendants) has an illness with a known physical cure and rather than prohibit such medical treatment, the Scripture recommends it." Emphasis and parenthetical mine. ¶57. "To assist the Court (in understanding the procedure used in isolating a "Type III PTS"), I will summarize these concepts:...G. There is no prohibition in Scientology of medical treatment for a Type III PTS or one suffering a psychotic break." Emphasis and parenthetical mine, but the words in the parenthetical are those of Rev. Reiss. ¶60. "I have never in my position as a Case Supervisor and Senior Case Supervisor prevented any parishioner from receiving any form of medical treatment where a physical condition was brought to my attention or where I detected such a physical condition. I similarly have never, in my 31 years as a Scientologist, ever seen any Church staff member prevent any parishioner from receiving any form of medical treatment where they saw it was necessary. To the contrary, I have seen Church staff insist on a parishioner seeing a medical doctor where a physical symptom appeared to be present." Emphasis mine.

PTS Type III's like Lisa are initially isolated and Steps 0 and 00 of the Introspection Rundown are done to rest, give vitamins, food, and otherwise prepare the parishioner for the auditing portion of the Introspection Rundown. Reverend Reiss knows there is no prohibition for one in Steps 0/00 of the Introspection Rundown from receiving necessary medical care.

David Miscavige, the unequivocal leader of the Church of Scientology proposes at p. 5 of a letter to Bernie McCabe, Plaintiff's Exhibit No. 128 at the hearing on Defendants' Motion for Terminating Sanctions and Other Relief, "That the Church lay out a 'compliance program' to include: d) Providing to all local hospitals and doctors a standard protocol for treatment of Scientologists that would make clear that the only treatments precluded by Scientology scripture are those in the field of psychiatry. This Church-authored protocol would also make clear that although Scientologists are opposed to psychiatric treatment, they are certainly not opposed to receiving medical treatment. e) Clarifying that those who dealt with Lisa McPherson violated longstanding Church policy barring the housing or care of

psychotics on Church premises." Emphasis mine. And later in the letter @ p. 11, Mr. Miscavige says, "It is critical to note that this Church has been attacked for the conduct of individuals who did *not* follow or forward Church policy. I do not understand anyone to say otherwise. Indeed, the alleged conduct *violated* Church policy which fully supports medical care and has long been opposed to housing psychotics on Church premises." Emphasis by underlining mine; emphasis by italics in the original.

In an article in the St. Petersburg Times, dated October 25, 1998, about the Church of Scientology and its leader, David Miscavige, Mr. Miscavige says, in discussing the Lisa McPherson case, "Do I think that we should work with the community or the police or the medical people down there (Clearwater, where the church facilities are located and where Lisa McPherson stayed from November 18 until her death December 5, 1995) to work out what to do if there's another Scientologist who needs care (obviously medical care) and we want to avoid psychiatric treatment? Yes I do. And why is that? No matter what the circumstance...anybody would want to do something to avoid someone dying." Parentheticals mine. Please note that this court would not normally resort to a quote from a newspaper article, but this article was attached to Church counsel's "letter", considered by me as a Motion to Rehear and Reconsider my original Order, and which prompted this Amended Order. This court was referred to this newspaper article by Church's counsel without any suggestion that there were errors or misquotes in the article. Thus it is included, but by no means necessary to this court's conclusions in this Amended Order.

Mr. Miscavige may not have known that Lisa McPherson was undergoing the Introspection Rundown at Flag when it was occurring, but he certainly knew it when he wrote his letter to Bernie McCabe, and gave his interview to the St. Petersburg Times. As the unequivocal leader of the Church of Scientology, Mr. Miscavige knows that Scientology does not prohibit Scientologists, even psychotics like Lisa in the Introspection Rundown, from receiving necessary medical care. In fact, he makes it clear that those who were in charge of Lisa McPherson's Introspection Rundown violated Church policy by both housing Lisa McPherson on Church premises, and in allegedly failing to obtain necessary medical care for her.

L. Ron Hubbard, the founder of Scientology whose writings—and all of them—comprise the Scripture of Scientology, says over and over the same thing about using and working with medical doctors. A few

illustrations, every one of which comes from the Technical Specialist Course, "Introspection Rundown, the Auditor's Course", by L. Ron Hubbard, and used by Scientologists studying psychotic persons and Scientology care for them, including the Introspection Rundown, and which was introduced into evidence at the hearing on Defendants' Motion for Terminating Sanctions and Other Relief as Defendants' Exhibit No. 306, are as follows: In Dianetic Auditor's Bulletin, Vol. 1, No. 6, December, 1950, which is entitled "Handling the Psychotic", @ p. 20 of the Introspection Rundown course, Mr. Hubbard says, "Work with a physician whenever possible. Nothing in Dianetics is at variance with the best medical thought, and Dianetics has no quarrel with the medical profession. Enlist the aid of a doctor whenever possible, always specifying that no technique other than Dianetics is to be used on the preclear." In Professional Auditor's Bulletin, Case Opening, dated 1953, Mr. Hubbard says, @ pp. 23 and 24 of the Introduction Rundown course, "You won't find in any of my lectures or writings any discounting of the physical ills of the body. They comprise 30% of the 100% of man's ills. On the contrary, you will find me asking time after time to be aware of, to observe, that your preclear may be physically sick. Physical illness is predisposed by, precipitated by and prolonged by mental aspects and difficulties....Being particular about my practice, unlike some people I won't name, I always send a preclear to a medico before I audit whenever I suspect some chronic illness for maybe the medico can cure it quickly." In HCO Bulletin of 24 November, 1965, entitled "Search and Discovery", Mr. Hubbard says, @ pp. 28, 31, and 32, "There are three types of PTS....Type III (which is what Lisa McPherson was from either November 19 or 20 to December 5 when she died) is beyond the facilities of orgs not equipped with hospitals as these are entirely psychotic....The task with a Type III is *not* treatment as such. It is to provide a relatively safe environment and quiet and rest and no treatment of a mental nature at all....Medical care of a very unbrutal nature is necessary as intravenous feeding and soporifics (sleeping and quieting drugs) may be necessary. Such persons are sometimes also physically ill from an illness with a known medical cure....The modern mental hospital with its brutality and suppressive treatments is not the way to give a psychotic quiet and rest. Before anything effective can be done in this field, a proper institution would have to be provided, offering only rest, quiet and medical assistance for intravenous feedings and sleeping drafts where necessary...." Emphasis in italics in original; emphasis by underlining, mine; first parenthetical mine, second parenthetical in original.

I do not include the writings of L. Ron Hubbard so as to be able to personally interpret his writings. Frankly, they don't need interpretation. They are as clear as a bell. I include them only to show why it is as clear to me, as it is clear to Alain Kartuzinski, Richard Reiss, and David Miscavige that there was no prohibition in the Scripture of Scientology to the Defendants' obtaining necessary medical care for Lisa McPherson, a psychotic, deemed PTS Type III by her spiritual leader, Defendant, Alain Kartuzinski. He had taken the course, and knew of these L. Ron Hubbard writings. As the Defendants' expert on the Scientology religion, Reverend Reiss says, rather than prohibit medical treatment for a PTS Type III, "the Scripture recommends it." See p. 7 of this Order. Indeed it does.

In one attachment to the "letter" submitted by Defendant Church's counsel dated August 23, 2002, which I have considered a Motion to Reconsider or Rehear my Order Denying Defendants' Motion for Summary Judgment of Negligence Survival Claim (Count V), and which prompted this Amended Order, I saw an argument that seems to suggest that once HCO Bulletin of January 23, 1974, entitled "The Technical Breakthrough of 1973! The Introspection Rundown" was published, that it somehow superseded HCO Bulletin of November 24, 1965, entitled "Search and Discovery". The attachment specifically mentioned that portion of Search and Discovery which said that a person who is Type III is beyond the facilities of orgs not equipped with hospitals was superseded. The attachment went so far as to describe "Search and Discovery" as "old". See Church's Response to State's Memorandum in Response to Amicus Brief, p. 7, fn6, which was attached as an exhibit to the "letter". I feel it necessary to refer counsel for the Defendant Church to the sworn testimony of Defendant Kartuzinski before the state attorney @ pp.185-191, and the previously mentioned letter of the Church of Scientology's leader, David Miscavige @ pp. 5 and 11 to show that the suggestion in the attachment that Type III's being treated at an org such as Flag is now appropriate after HCO Bulletin of January 23, 1974 is incorrect. I would further refer counsel to HCO Policy Letter of June 17, 1970, entitled, "Keeping Scientology Working, Series 5R, Technical Degrades", which is included in the Introspection Rundown course, and every other course given in Scientology to suggest it would be inappropriate for any of Defendants' attorneys to suggest that Mr. Hubbard's writing "Search and Discovery" is "old", "not used now" or any other such description of what is still valid Scripture, according to Scientology's founder, L. Ron Hubbard, its present day leader, David Miscavige, and Lisa's spiritual leader, Alain Kartuzinski.

Based on all of the above, it is readily apparent to me that the First Amendment issue involved in this case is not the same as it was in the *Baumgartner* case, unless this court is asked to permit the jury to determine the Defendants' negligence, if any, in not getting mental health care for Lisa's mental illness. That type of inquiry would seem to be more akin to the *Baumgartner* case, since Christian Scientists have a religious prohibition for medical treatment by physicians for a medical illness, which the Church of Scientology does not; but The Church of Scientology does have a religious prohibition for mental health care by psychiatrists or psychologists for a mental illness. Thus far, I do not believe I have been asked by the Plaintiff to explore that theory of negligence, if any. Thus, it need not be addressed.

In deciding whether or not the Defendants intentionally or negligently failed to obtain medical care for Lisa, and whether or not that failure caused her death, or alternatively, did not cause her death, but did cause compensable injury, that will not involve the jury, or this court interpreting the Scientology religion at all, since that religion had no prohibition for obtaining necessary medical care for Lisa McPherson, a PTS Type III, whom the Defendants placed in their exclusive care, custody and control. This is true even though Lisa McPherson was involved in Steps 0 and 00 of the spiritual service called Introspection Rundown. While counsel for the Defendants disagree, sworn testimony, affidavits, and other evidence from all of the spiritual leaders of the Defendant Church make it clear to this court that counsel is incorrect. Put quite simply, the jury will examine the actions of the individual Defendants in this case to determine if any or all of them intentionally or negligently failed to get medical care for Lisa when they knew or should have known to do so. If the jury finds any or all of the individual Defendants responsible, the agency relationship between that Defendant(s) and the Defendant Church will be examined to determine if the Church Defendant is also responsible for its agent's torts. Causation will be examined, with both sides calling expert forensic experts. If the jury determines that the Defendants' failure to obtain medical care either caused Lisa's death, or injury but not death, the jury will decide damages.

The Defendants seems to suggest that the brief physical examination conducted in the emergency room on November 18, and according to the Defendants, before Lisa was either PTS III, physically ill, and certainly before she was malnourished or dehydrated, was all the Church or its agents

were required to have done by way of physical examination, or medical care. That argument needs to be made to a jury. It is a question of fact, not law, including the law of the First Amendment.

The second reason that *Baumgartner* is not persuasive is because *Baumgartner* involved a competent adult Christian Scientist, who chose to undergo Christian Science treatment for a medical problem--acute prostatitis. Illinois law permits a competent adult to reject medical care. In discussing the negligence portion of the complaint, the Illinois Court notes, "Plaintiff does not allege that decedent was not rational or mentally incompetent. Nor does she allege that decedent or herself was physically imprisoned by the defendants and thus unable to contact a physician. The facts alleged by plaintiff fail to show that the Christian Science treatment provided to decedent, a competent adult, was not a matter of his own choice and free will at all times prior to his death. Our Supreme Court has made it clear that a competent adult has the right under the first amendment to refuse medical treatment when it conflicts with his religious beliefs." *Baumgartner* @ 1326, emphasis mine.

The Plaintiff in this case alleges that Lisa McPherson was mentally incompetent and imprisoned at the Defendant Church's facility. The Defendants and other witnesses agree that Lisa was incompetent from November 19 or 20 until her death on December 5, 1995. And while it has been determined by another judge that Lisa was not falsely imprisoned, and that same judge granted a summary judgment on that count of the complaint, it is a fact without controversy that after November 20, at the latest, Lisa was incapable of using a phone, if one was even in the room for her to use, and was further incapable of leaving the Church premises to seek medical care for herself. She was completely dependent on the Church and its agents to get medical help for her if it was necessary.

Lisa McPherson was a Scientologist, who may have been a competent adult on November 18, 1995. She apparently was suffering from some form of mental illness, as she took her clothes off and walked naked down the street. However, according to the Defendants, she was not yet PTS III. In accordance with her religious beliefs, she may have agreed to treat her mental illness using Scientology's spiritual services for her mental illness. Indeed, Scientologists are prohibited from treating mental illness with traditional psychiatrists and psychologists, or from obtaining treatment at a traditional psychiatric hospital. This is not my interpretation of the

Scientology tenets. See Affidavit of Reverend Reiss, the Defendant's expert on the Scientology religion, and, for that matter, the testimony of all the witnesses who are Scientologists. This is a fact that should be stipulated to by the parties as there doesn't seem to be any issue of controversy as to this fact. However, Lisa had every reason to believe that if she developed a medical illness, especially malnutrition or severe dehydration, due to her acknowledged psychotic state, and thus, her apparent inability to consume sufficient food and water to survive, and she was too incompetent/psychotic to take herself to the doctor or hospital for simple IV treatment, which not only was not prohibited by the Church, but is recommended by its founder, L. Ron Hubbard, (see above @ page 9), the Church, through its agents, would see to it that she received such necessary medical treatment. Indeed, all the Defendants insist that when they became aware of Lisa's acute medical condition, they attempted to take her to a medical doctor at a hospital for medical treatment. Unfortunately, she died before any medical treatment could take place. The Plaintiff's experts opine Lisa would have lived if she had gotten proper medical treatment for her dehydration up until shortly before she died.

After the first or second day of Lisa's stay at the Ft. Harrison Hotel, where the Church is located, <u>Lisa was no longer a competent adult, but a severely psychotic and incompetent adult</u>, and unable to take care of her own medical needs. This fact is another of the few facts in this case that does not appear to be in controversy. It should also be stipulated to by the parties. For a case that discusses the inapplicability of *Baumgartner* to a child treated by Christian Science methods, see *Lundman v. McKown*, 530 N. W. 2d 807, 827 (Minn. App. 1995). Lisa McPherson, from either November 19, the second day of her stay, or November 20, the third day of her stay, until her death on December 5, 1995, the eighteenth day of her stay, was more like the child in *Lundman*, rather than like the competent adult in *Baumgartner*.

This distinction, i.e. a <u>competent</u> adult <u>at all times until death</u>, making a religious decision to reject medical care in *Baumgartner*, verses Lisa McPherson, a tenuously competent adult making an <u>initial</u> religious decision to reject mental care, but who was clearly <u>incompetent</u> from November 19, or 20, until her death on December 5, may call into question the Defendants' negligence, if any, in failing to obtain traditional mental health care to address Lisa's mental illness from the time she became incompetent until her death. However, as previously stated, I have not been asked to address this

issue and thus, it is not necessary to do so in this order. However, in this court's opinion, the distinction strengthens this court's decision that the Church may be held responsible for their intentional acts or negligence, if any, in failing to get unprohibited medical care for her malnourishment and/or severe dehydration if such caused her injury or death.

Recently, the Florida Supreme Court has had the opportunity to address negligence claims against a Church. See *Malicki v. Doe*, 814 So. 2d 347 (Fla. 2002), and *Doe v. Evans*, 814 So 2d 370 (Fla. 2002). The Plaintiff in her response, and the Defendants in their Reply Memorandum discuss *Malicki*. Only the Plaintiff briefly discussed *Doe v. Evans*. The Defendants, in trying to distinguish *Malicki*, say, "The clergy malefactors in such cases were charged with intentionally carrying out criminal acts having nothing to do with religious services or beliefs." Defendant's Reply Memorandum, p. 5. This may be a distinction without a difference. First, it is a felony in the State of Florida to abuse or neglect a disabled adult. Second, *Doe v. Evans* does not involve a criminal act on the part of the clergy, and the Florida Supreme Court quashed the holding of the Fourth District Court of Appeal that said a criminal act is necessary to impose civil liability for negligence. See the opinions of both *Malicki* and *Evans*. Regardless of what the non-criminal acts of the clergy were in *Evans*, they were done in conjunction with carrying out marital counseling, which was part of the religious services offered by the Defendant church. Therefore, the Defendants' suggestion that the clergy in *Malicki* was not carrying out any religious services is unavailing. The clergy in *Evans* was carrying out religious services when his non-criminal "romantic" acts, which brought the negligence action against the clergy and the Church, occurred.

There is no question in this court's mind that the opinions of the majority in both cases go far beyond that which is suggested by the Defendants. One need only read Justice Quince's concurring opinions in each case to see how far she says the majority goes in the two cases. In *Malicki*, Justice Quince says, "Today's opinion simply holds that when religious organizations undertake to provide services to the public, they have a duty to protect the citizens who use those services from the tortious conduct of their employees." *Malicki*, Quince, J., concurring @ 367. In *Evans*, which unquestionably is an extension of *Malicki* to non-criminal acts, Justice Quince says, "[T]he dissent's views in this case place the protection of religious institutions over the protection of innocent victims of sexual and other abuse." *Evans*, Quince, J., concurring @ 377, emphasis mine. This, of

course, suggests the majority does not place the protection of religious institutions over the protection of innocent victims of sexual and other abuse. Based on the decisions, "other abuse" would include that alleged in this case, which is failing to obtain necessary medical care for a disabled adult who was allegedly malnourished and severely dehydrated, and who had submitted herself to the care, custody and control of the Church, and its agents, and who was unable to obtain such necessary medical care for herself.

The *Malicki* and *Evans* decisions may be troublesome to church leaders, to First Amendment lawyers, and indeed, *Evans* may be troublesome to this court. But these two cases are the latest pronouncement of the Florida Supreme Court on the issue of a Church's liability for negligence, and, of course, they must be followed. It is my opinion that even without these two cases that the Church of Scientology, Flag Service Organization, Inc. and its agents, Kartuzinski, Johnson, and Houghton, can be held to answer for their negligent, as well as intentional torts, if any, committed against Lisa McPherson in failing to obtain necessary medical care for Lisa's medical illness. This is so principally because obtaining necessary medical care is not prohibited by the Church of Scientology, even during Steps 0 and 00 of the Introspection Rundown. Therefore, it is unnecessary for either this court or a jury to "read, and interpret, a *vast* body of Scientology literature and doctrine" to resolve the issues which need to be resolved to adjudicate the Plaintiff's negligence claim. See counsel's "letter", p 5, emphasis in original. These cases are mentioned here because, in this court's opinion, they strengthen the rest of the court's rulings in this Amended Order.

Can it be seriously doubted that the State of Florida would not protect one of its incompetent citizens or residents from being allowed to die or suffer serious physical injury from malnourishment or severe dehydration---the lack of food and water---in the name of any religion? The answer is obvious to me, and appears to be just as obvious to all of the Church of Scientology's spiritual leaders, past and present. They all appear to know that if you are going to take a psychotic person and isolate them from the outside world, in a hotel, no less, you had better obtain necessary medical care for that person if they need it. Therefore, this court finds that if a Church of Scientology's agent assumes the care, custody and control of an incompetent person for the purpose of doing an Introspection Rundown, and particularly, as in this case, during Steps 0 and 00 of the Introspection

Rundown, and he, she or they fail to obtain necessary medical care, and either knew or should have known such medical care was necessary to prevent death or bodily injury, the agent(s), and if the agent was acting within the scope of his/her authority, the Church as well, can be held accountable for their intentional or negligent torts, if any, in civil court.

The last item in counsel's "letter" is a suggestion that this court's opinion does not consider the effect of RFRA. He suggests that the issue was not raised in *Malicki* or *Evans*. He concludes, "Accordingly, the negligence claim in *this* case, unlike in *Malicki* or *Doe*, cannot be adjudicated without extensive inquiry into and examination of the way the religious practice (Introspection Rundown) was carried out." Letter @ 7, emphasis in original; parenthetical mine. After receiving Defendants' letter, I obtained all of the briefs, including amicus briefs, before the Florida Supreme Court in *Malicki* and *Evans* and found that RFRA was raised in both cases. The Florida Supreme Court didn't find it necessary to discuss RFRA in their opinions, and neither did I in my original order. Suffice it to say, as I have said previously in this order, I disagree with Defendant's counsel. I believe the negligence claim can be adjudicated without any inquiry into and examination of the way the religious practice, i.e. Introspection Rundown was carried out. Actually, the uncontroverted evidence is that Lisa never progressed to be able to have auditing, the actual Introspection Rundown. The one and only auditing attempt during her 18-day stay had to be aborted as she kept licking the e-meter cans, and was unable to be audited. She never got past the two preliminary steps 0 and 00 of the practice in question. I will admit that the actual auditing procedure is beyond my comprehension, and would require Scientology knowledge beyond this court's or a jury's knowledge. But steps 0 and 00 are easily understood.

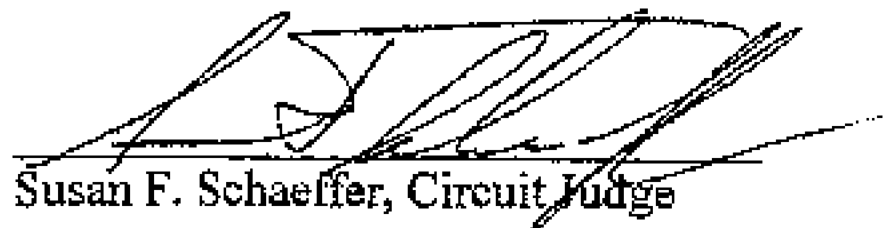
The questions for the jury in this case will be, as they are in many other cases tried by juries in Pinellas County: Did the Defendants, or any of them, know, or have reason to know that Lisa McPherson needed medical care? If so, did their intentional failure to obtain necessary medical care cause her death, or alternatively, did their intentional, culpably negligent, or grossly negligent failure to obtain necessary medical care not cause her death, but cause other injury? If so, was any agent of the Defendant Church acting within the scope of his/her authority for the Defendant Church? If so, what is the amount of damages each Defendant, singularly or collectively, must pay? There is no religious question included. In fact, this court can

assure counsel for the Defendants and the Plaintiff that I will not permit any counsel to discuss much about the Introspection Rundown, as it is not necessary for the jury to understand much about it for them to adjudicate this case. RFRA neither adds nor subtracts from this court original or amended order.

For all of the above reasons, it is hereby,

ORDERED AND ADJUDGED that the Defendants' Motion for Summary Judgment of Negligence Survival Claim (Count V) is denied.

DONE AND ORDERED in St. Petersburg, Pinellas County, Florida this 30 day of September, 2002.



Susan F. Schaeffer, Circuit Judge

Copies to:
All Counsel of Record