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**In re: Amendments to the Florida Rules of Juvenile Procedure**

**SC05-1303**

HEAR YE, HEAR YE, HEAR YE, SUPREME COURT OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION, AND YOU SHALL BE HEARD. GOD SAVE THE UNITED STATES, THIS GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

GOOD MORNING FRIENDS. WELCOME TO THE FLORIDA SUPREME COURT FOR OUR DOCKET FOR MONDAY, OCTOBER 30, 2006, I WOULD REMIND ALL PARTICIPANTS IN THE ARGUMENT THIS MORNING TO PLEASE MAKE JUDICIOUS USE OF YOUR TIME. WE DO HAVE LOTS OF QUESTIONS ON THESE CASES, AND I WANT ALL OF YOU AS YOU WALK AWAY TO FEEL AS THOUGH YOU'VE HAD THE OPPORTUNITY TO HAVE YOUR SAY. ON THE FIRST CASE, LET ME FIRST ANNOUNCE THAT WE'RE NOT GOING TO ADDRESS THE LARGE NOTICE OF FILING THAT WAS FILED VERY LATE ON FRIDAY. PLEASE DO NOT ADDRESS THAT DURING THE ORAL ARGUMENT SESSION THIS MORNING. SO WITH THAT, WE'RE READY TO PROCEED.

MAY IT PLEASE THE COURT, MY NAME IS MARY KAY WINSLETT I'M THE CHAIR OF THE JUVENILE CHAIRS COMMITTEE. IN JUNE OF 2005, PURSUANT TO THE FLORIDA LEGISLATURE'S CREATION AND ENACTMENT, THE FLORIDA STATUTE 394073A. THE COMMITTEE AGAIN REVIEWED THE RULE AT TWO SEPARATE MEETINGS ON SEPTEMBER 14 OF THIS YEAR, AND AGAIN ON SEPTEMBER 19 OF THIS YEAR. PURSUANT TO THE RULE CHALLENGERS COMMENTS THAT WERE FILED. AT BOTH OF THESE MEETINGS, THE COMMITTEE AGAIN VOTED TO STAND BY THE RULE AS ORIGINALLY DRAFTED.

IT SEEMS TO ME WHAT WE HAVE HERE IN BOTH THE ADVOCACY CENTER AND THE CHILDREN AND YOUTH CLINIC ARE CONCERNED ABOUT WHETHER OR NOT JUVENILES SHOULD BE GIVEN AN ATTORNEY AD LITEM OR A GUARDIAN AD LITEM, SO WOULD YOU TELL US WHAT THE COMMITTEE SEES AS FEASIBILITY OR NOT OF THAT PARTICULAR RECOMMENDATION.

WELL, YOUR HONOR, THAT IS EXACTLY THE ISSUE THAT OUR COMMITTEE CONSIDERED AT OUR TWO MEETINGS IN SEPTEMBER. THERE ARE ESSENTIALLY TWO REASONS THAT THE COMMITTEE FELT THAT IT WAS IMPROPER TO INCLUDE THE MANDATORY APPOINTMENT OF AN ATTORNEY AD LITEM AND A GUARDIAN AD LITEM IN THE RULES. THEY ALREADY PROVIDED FOR A GUARDIAN AD LITEM. THE COMMITTEE WAS CONCERNED OF STRIPPING THE JUDGES OF THAT DISCRETION TO APPOINTMENT. THE COMMITTEE WAS CONCERNED BY REQUIRING THE MANDATORY APPOINTMENT FOR TWO ADVOCATE FOR SOME CHILDREN, THAT WOULD LEAVE OTHER CHILDREN WITH NO ADVOCATES, GIVEN THE FACT THAT NEITHER THE GUARDIAN AD LITEM PROGRAM FOR THE ATTORNEY AD LITEMS ARE FULLY FUNDED IN THIS STATE.

MOST OF THE CHILDREN THOUGH WOULD FALL UNDER THIS RULE OF D.C.F. ATTEMPTING TO HAVE PSYCHOTROPIC MEDICATION BE GIVEN IT TO THEM, WOULD THESE CHILDREN BE CHILDREN IN THE DEPENDENCY SYSTEM.

YES YOUR HONOR. THE RULE IN THE STATUTE CLEARLY REQUIRES THE DEPARTMENT TO OBTAIN CONSENT OF THE PARENTS, SO THESE ARE GOING TO BE CHILDREN WHERE THE PARENTS ARE OUT OF OCTOBER OR THE CHILD HAS BEEN PERMANENTLY COMMITTED TO THE DEPARTMENT, AND THE PRACTICAL EXPERIENCE OF THE COMMITTEE WAS THAT THESE CHILDREN -- THE MAJORITY OF THESE CHILDREN ALREADY HAD A GUARDIAN AD LITEM APPOINTED.

I HAVE A QUESTION THOUGH. THE STATUTE, SINCE THIS IS A RULE THAT SHOULD BE ENACTING PROCEDURE FOR A STATUTE, THE STATUTE SAYS THAT IF ANY PARTY OBJECTS TO THE DEPARTMENT'S MOTION, AND I'M -- IT'S C1, BUT IF A PARTY OBJECTS, THE PARTY SHALL FILE THE OBJECTION WITHIN TWO WORKING DAYS. IF THE CHILD DOESN'T HAVE -- IT'S FINE IF THEY ALREADY HAVE A GUARDIAN AD LITEM, BUT IF THE CHILD DOESN'T HAVE A GUARDIAN AD LITEM

OR A ATTORNEY AD LITEM, HOW IS THE CHILD WHO IS A MINOR AND MAY BE AS YOUNG AS -- I'M NOT SURE WHEN THEY START THE PSYCHOTROPIC MEDICATION, BUT IN SOME CASES I IMAGINE IT'S MUCH YOUNGER THAN WE WOULD EVER EXPECT, HOW IS THE CHILD SUPPOSED TO MEANINGFULLY FILE AN OBJECTION?

THE DEPARTMENT WITH THEIR MOTION IS REQUIRED TO FILE AN AFFIDAVIT FROM THE TREATING PHYSICIAN, WHICH HAS A NUMBER OF SAFEGUARDS IN THE AFFIDAVIT.

I'M NOT CONCERNED WHAT OTHER STATES ARE. IT SAYS ANY PARTY FILING AN OBJECTION, IS THE CHILD NOT CONSIDERED A PARTY AND THAT'S WHY THEN THERE WOULD NOT BE ANY RIGHT OF THE CHILD TO FILE AN OBJECTION?

NO, THE CHILD IS CLEARLY A PARTY, YOUR HONOR, UNDER THE STATUTE.

HOW DOES --

WELL, THE COMMITTEE'S SUGGESTION WOULD BE THE DEPARTMENT, IF THE CHILD IS NOT REPRESENTED BY A GUARDIAN AD LITEM OR AN ATTORNEY AD LITEM, THAT THE DEPARTMENT SERVE THE CHILD WITH THE MOTION, BUT THE COURT WOULD HAVE IN FRONT OF IT THE MOTION WITH THE AFFIDAVIT, AND THE COURT ON ITS OWN MOTION CAN ORDER A SECOND OPINION, SO THE HOPE IS THAT THE COURTS WOULD BE CAREFULLY REVIEWING THESE MOTIONS AND CAREFULLY REVIEWING THE AFFIDAVIT SIGNED BY THE PHYSICIANS, AND IF THE AFFIDAVIT IS INSUFFICIENT, OR IF THE GUARDIAN AD LITEM OR ATTORNEY AD LITEM IS NOT APPOINTED TO THE CASE, THEY WOULD TAKE IT AT THAT POINT UPON THEMSELVES TO APPOINT A GUARDIAN AD LITEM OR AN ATTORNEY AD LITEM.

WHILE ON THAT QUESTION WITH REFERENCE TO SERVING AND NOTICE, THE G.A.L. PROGRAM HAS SUGGESTED THAT THE -- SOMEBODY BE ABLE TO FILE AN OBJECTION TO THE USE OF THESE MEDICATIONS AT ANY TIME AS OPPOSED TO THIS INITIAL TWO DAY OBJECTION PERIOD. NOW, WHAT'S WRONG WITH THAT?

I DON'T BELIEVE THE COMMITTEE WOULD HAVE AN OBJECTION TO THAT CHANGE IN THE RULES. IN OTHER WORDS, AT ANY TIME, IF SOME CONCERNED PARTY OR INVOLVED PERSON HAS AN ISSUE WITH REFERENCE TO THE ADMINISTRATION OF THE DRUG, YOU AGREE THAT SOMEBODY SHOULD BE ABLE TO FILE AN OBJECTION.

YES, YOUR HONOR.

THANK YOU.

BUT I'M STILL CONCERNED ABOUT THE QUESTION JUSTICE ASKED, HOW CAN A CHILD WHO DOES NOT HAVE A GUARDIAN AD LITEM OR AN ATTORNEY AD LITEM MEANINGFULLY OBJECT IN TWO DAYS IF THE CHILD IS SOMEONE OF TENDER YEARS, AND EVEN TEENAGERS MAY NOT TRULY UNDERSTAND WHAT IS HAPPENING IF IF THEY GET A COPY OF THE MOTION.

THE COURT HAS THE AUTHORITY TO APPOINT A GUARDIAN AD LITEM, IF ONE HASN'T BEEN APPOINTED, THE EXPERIENCE OF THE COMMITTEE AND THE JUDGES ON THE COMMITTEE WAS THAT GUARDIANS WERE ON THE MAJORITY OF THOSE CASES AND THE JUDGES FELT THAT IF A GUARDIAN WASN'T ON THE CASE AT THAT TIME THAT THEY WOULD APPOINT AN GUARDIAN AD LITEM OR ATTORNEY AD LITEM.

YOU ARE INTO YOUR COLLEAGUE'S TIME AT THIS POINT. IF YOU WANT TO FINISH UP YOUR ANSWER TO THAT ONE QUESTION, PLEASE DO. IT'S A SERIOUS QUESTION THAT BOTH JUSTICES RAISED.

I WOULD ADD THAT I THINK THE DEFENSE AND THE COMMITTEE WAS LIMITED BY WHAT'S IN THE STATUTE, BECAUSE THE STATUTE DOES NOT CALL FOR THE COMMITTEE WAS --

THAT WAS WHERE MY POINT WAS. ALTHOUGH THE STATUTE DOESN'T SPECIFICALLY CALL FOR IT IN ENACTING PROCEDURES TO MAKE WHAT IS IN THE STATUTE HAVE MEANING, THAT'S WHERE I THOUGHT IT ONLY MAKES SENSE THAT THERE HAS TO BE IN THESE CASES, NO, THERE SHOULD BE A GUARDIAN AD LITEM FOR EVERY CHILD, IT'S BEFORE A DEPARTMENT IS GOING TO ADMINISTER PSYCHOTROPIC MEDICATION TO A CHILD, AREN'T THOSE THE CHILDREN THEN THAT SHOULD DEFINITELY BE HAVING THE MINIMUM OF A GUARDIAN AD LITEM, INSTEAD IN THE MAJORITY OF CASES, SHOULDN'T THEY BE IN ALL THOSE CASES.

WELL, THE COMMITTEE FELT THAT BECAUSE THAT WAS SPECIFICALLY LOBBIED FOR BY CHILD ADVOCATES TO BE IN THE STATUTE AND THE LEGISLATURE SPECIFICALLY REJECTED THAT POSITION, THAT THE COMMITTEE WOULD BE OVERSTEPPING ITS RULE MAKING AUTHORITY TO

PUT THAT PROVISION IN THE RULE. LITEM, LITEM.

GOOD MORNING. DENNIS MOORE REPRESENTING THE GUARDIAN AD LITEM PROGRAM. THE PROGRAM SUPPORTS THE RULE AS ADOPTED. WE ARE NOT FOR AMENDING THE RULE TO ADD APPOINTMENT OF GUARDIAN AD LITEM AND ATTORNEY ADD LITEM BECAUSE WE FEEL THAT WOULD RESULT IN SOME CHILDREN HAVING TWO ADVOCATES AND OTHER CHILDREN HAVING NONE.

WE'RE HEARING ABOUT INSUFFICIENT RESOURCES. THE COURT'S DECISION IN TERMS OF PROCEDURE IS -- DOES THE GUARDIAN AD LITEM PROGRAM FEEL THAT HOW CAN A PARTY BEING THE CHILD, IF THE CHILD DOES NOT HAVE A GUARDIAN AD LITEM, ATTORNEY AD LITEM, HOW CAN THEY MEANINGFULLY FILE AN OBJECTION AND IS THAT PROCEDURE AS SUBSTANTIVE, SO IF YOU COULD JUST ADDRESS, NOT THE PRACTICALITY AT THIS POINT, BUT THE ACTUAL EFFECT OF HOW YOU -- HOW YOU PUT A PROCEDURE IN TO PLACE, THAT ANTICIPATES THAT A PARTY HAS THE ABSOLUTE RIGHT TO FILE AN OBJECTION?

I WOULD AGREE WITH YOUR ASSESSMENT, THAT IT IS NOT PRACTICAL FOR THE CHILD TO FILE AN OBJECTION IF THE CHILD DOESN'T HAVE SOMEONE AT LEAST ADVOCATING AND ADVISING THEM THAT THEY CAN FILE THE OBJECTION AND HOW THEY GO ABOUT DOING IT. ONE OF THE WAYS THAT WE NEED TO ADDRESS IT IS BY FIRST OF ALL, HAVING THE CHILD BROUGHT TO COURT IN CASES SUCH AS THESE. THAT IS A MAJOR ISSUE.

WELL, WAS THAT PROPOSED? SEE. TO ME, THAT'S WHAT I WANT TO GET AT, TOO OFTEN I THINK RULES BECOME JUST SIMPLY -- THIS IS IN THE STATUTE, SO WE'LL MAKE IT A RULE. WE DON'T NEED A RULE, SAY WITHIN THE STATUTE. A RULE IS TO COME UP WITH PROCEDURES LIKE YOU HAD SUGGESTED THERE SHOULD BE FAX COPIES. THAT'S A PROCEDURE. THAT DOESN'T HAVE TO BE IN THE STATUTE.

RIGHT.

HAVING A CHILD COME TO COURT WOULD BE A PROCEDURE, NOT NECESSARILY A SUBSTANTIVE THING AND I FEEL LIKE WE DON'T -- WE HAVEN'T REALLY GOTTEN THAT WITH THIS RULE, TO MAKE MEANINGFUL WHAT'S IN THE STATUTE SO WE CAN MAKE SURE IN THESE SERIOUS SITUATIONS, LEGISLATURE OBVIOUSLY THOUGHT IT WAS SERIOUS, IF THEY HAD THIS WHOLE LONG STATUTE, THAT WE HAVE A MEANINGFUL PROCEDURE TO PROTECT A CHILD THAT MAY BE SUBJECTED TO PSYCHOTROPIC MEDICATION.

AND I WOULD AGREE, AND THAT'S WHY WE DID MAKE SOME ADDITIONAL RECOMMENDATIONS. YOU MAKE THE RECOMMENDATION OF THE CHILD BEING BROUGHT TO IN SUPPORT?

WE SEE THAT HAS AN OVERARCING PRINCIPLE, JUSTICE PARIENTE. WE UNDERSTAND THAT'S THE ISSUE BEFORE THE COURT, BUT IF YOU LOOK AT THIS AS A SYSTEMIC PROGRAM, WE HAVE SO MANY CHILDREN WITH DEVELOPMENTAL DISABILITIES, CHILDREN THAT ARE GOING TO AGE OUT OF FOSTER CARE AND THEY'RE GOING TO BE HOMELESS.

YOU'LL HAVING DIFFICULTY WITH WHAT I PERCEIVE TO BE SORT OF AN INCONSISTENCY HERE, REALIZING THAT EVERYBODY HAS A CONCERN ABOUT THE FINANCIAL ASPECT OF IT. AND THE AUTHORIZATION OF GUARDIAN AD LITEMS OR ATTORNEY AD LITEMS, BUT THE COMMITTEE REALLY HAS SAID THAT THEIR EXPECTATION IS THAT IN THE VAST MAJORITY OF THESE CASES, THERE WILL ALREADY BE GUARDIAN AD LITEM OR AN ATTORNEY AD LITEM. AND THAT THE JUDGE HAVING THEN THE DISCRETION TO ACT TO APPOINT A GUARDIAN AD LITEM OR ATTORNEY AD LITEM SITUATION ANYWAY, WILL DO SO. AND SO -- SO WHAT WE'RE REALLY SAYING IS THAT, WELL, OUR EXPECTATION, NOT ACTUALLY FORMALLY RECOMMENDING THE APPOINTMENT OF A GAL IS THERE WILL BE ONE -- GUARDIAN AD LITEM IS THERE WILL BE ONE ON THE GROUND ANYWAY, AND I'M -- YOU KNOW, THIS IS LIKE CIRCLING ALL AROUND THIS THING. THIS IS A VERY NARROW ISSUE AND WHY SHOULDN'T, SUNDAYS THE MAJORITY OF MENTAL HEALTH TREATMENTS NOW ARE BY MEDICATIONS, YOU KNOW, THAT WE KNOW THAT, AND IT SEEMS LIKE THIS WOULD BE A NARROWER APPOINTMENT OF THE GUARDIAN AD LITEM, THAT IS JUST TO FOCUS ON THAT ONE PARTICULAR THING. THE WORK OF THE GUARDIAN WOULD JUST BE TO PROBABLY READ THE DOCTOR'S REPORT AND DO SOME MINIMUM INVESTIGATION AND CONSULT WITH THE CHILD AND PERHAPS THE PARENTS, WHATEVER, AND THEN SORT OF PROVIDE A BACKUP ONE WAY OR THE OTHER TO THE COURT. BUT EVEN BRINGING THE CHILD TO COURT ISN'T GOING TO CURE THAT PARTICULAR PROBLEM OF SOMEBODY LOOKING OUT FOR THE CHILD,

IS IT?

NO, IT WON'T, AND I AGREE WITH THAT. AND THAT'S WHY -- IF THE COMMITTEE IS RIGHT, AND IN THE VAST MAJORITY OF THE CASES, THERE IS ALREADY A GUARDIAN, AND IF WE'RE TALKING ABOUT A LIMITED PURPOSE OF THE APPOINTMENT HERE, WHY WOULDN'T THAT BE THE BETTER WAY TO GO, BECAUSE OF THE SERIOUSNESS OF WHAT'S GOING ON?

WELL, I CAN'T SAY THAT IT IS -- THAT WE ARE -- I DON'T KNOW THAT I CAN AGREE WITH THAT STATEMENT, THAT WE'RE APPOINTED IN A MAJORITY OF THE CASES. I WOULD ASSUME THE COURTS AND JUDGES ARE APPOINTING US IN THOSE INSTANCES BECAUSE OF THE IMPORTANCE OF IT, THE REALITY IS -- I'M SORRY.

GO AHEAD.

BUT THE REALITY IS IS THAT WHEN YOU'RE LOOKING AT THIS MYRIAD OF OTHER ISSUES HAS WELL, EVEN IF IT'S A LIMITED AMOUNT, WHAT YOU'RE GOING TO HAVE IS SOME OF THOSE CHILDREN HAVING TO HAVE DISCHARGE OF THEIR G.A.L. ON THOSE CRITICAL AND MOST IMPORTANT ISSUES IN ORDER TO MOVE THE ADVOCATE OVER TO THIS ISSUE IN ORDER TO DEAL WITH IT.

AND IT SEEMS TO ME THAT WE'VE GOT TO DEAL WITH THIS WITHIN THE BOUNDS THAT WE DEAL WITH MATTERS, AND THAT IS EITHER THERE'S A CONSTITUTIONAL RIGHT -- IS THERE A CONSTITUTIONAL RIGHT TO BE PRESENT?

MY REVIEW -- OUR REVIEW OF THE CURRENT CASE LOAD IS THAT THERE IS NO CURRENT CONSTITUTIONAL RIGHT.

OK. IS THERE A STATUTORY RIGHT TO BE PRESENT?

THERE IS A RIGHT AND A RULE. THE RULE --

THAT'S A RULE. I'M -- HAS THE LEGISLATURE SAID THAT THERE'S A RIGHT FOR THE CHILD TO BE PRESENT?

I CAN'T -- I KNOW THAT THE LEGISLATIVE INTENT IS THAT THE CHILD BE REPRESENTED AND THE CHILD BE AWARE OF ALL THE PROCEEDINGS. I DON'T -- I CAN'T TELL THE COURT THAT THERE IS AN ABSOLUTE STATUTORY RIGHT FOR THE CHILD TO BE PRESENT.

AT ANY RATE, THE LEGISLATURE HASN'T PROVIDED ANY FUNDS FOR A COUNSEL OR FOR A GUARDIAN AD LITEM IN EACH CASE.

THAT'S CORRECT.

INSTEAD, YOU SAID, AGAIN SO WE UNDERSTAND THIS, IS THAT THERE BE A GUARDIAN AD LITEM FOR THE CHILD.

YES, MA'AM.

THAT'S ALREADY IN THE STATUTE AND THE QUESTION IS IS TO MAKE THIS PARTICULAR ISSUE MEANINGFUL, THAT IS, THIS IS A SPECIFIC ISSUE AS FAR AS THE PARTY FILING AN OBJECTION, THERE HAS TO BE SOMEBODY TO SPEAK FOR THE CHILD IN ORDER FOR THE CHILD TO BE ABLE TO FILE AN OBJECTION. AND I UNDERSTAND WHAT JUSTICE WELLS IS SAYING, BUT WE ALREADY HAVE THE ISSUE THAT THE LEGISLATURE HAS REQUIRED A GUARDIAN AD LITEM FOR EVERY CASE.

I AGREE WITH EVERYTHING THAT YOU'RE SAYING IN PRINCIPLE, JUSTICE, AND THE ONLY REASON WE ARE STANDING HERE IN OPPOSITION TO THAT RIGHT NOW IS WE SEE IT AS A PURE FUNDING ISSUE, PLAIN AND SIMPLE, AND WE BELIEVE WE CAN OVERALL SYSTEMICALLY IMPACT IT. WE'VE BELIEVE WE'VE BEEN SUCCESSFUL IN DOING THIS. WHAT WE FOUND IS EVEN IN A STATUTORY CONTEXT, THE LEGISLATURE HAS SHOWN AN INABILITY TO WANT THE FUND ISSUES SUCH AS THIS, BUT WHAT WE HAVE BEEN SUCCESSFUL AT GETTING FUNDING IS DEMONSTRATING TO THEM THE IMPACT OF ADVOCACY.

HOW SO THE PRESENCE OF THE CHILD A FUNDING ISSUE? THE PUBLIC OF THE STATE OF FLORIDA, WATCHING THESE PROCEEDINGS AND HEARING THAT A CHILD WHO MAY HAVE THESE MIND ALTERING DRUGS, YOU KNOW, ADMINISTERED TO THEM, AND WE'RE SAYING THAT THAT CHILD WILL HAVE THESE DRUGS ADMINISTERED TO THEM, DOESN'T EVEN HAVE A CONSTITUTIONAL OR STATUTORY OR ANY RIGHT, OR HAVING THE GUARDIAN AD LITEM PROGRAM TELLING US THAT, THAT THAT CHILD DOESN'T HAVE A ROUTE TO EVEN BE THERE, -- RIGHT TO EVEN BE THERE AT THE TIME THAT THAT DECISION IS MADE, I FIND THAT JUST TO BE SHOCKING.

IT'S NOT THAT I BELIEVE THEY SHOULDN'T HAVE THE RIGHT. WE BELIEVE THEY DO HAVE THE

RIGHT TO BE THERE UNDER THE RULE. WE THINK THAT IS SUFFICIENT, AND THAT -- I MEAN, JUSTICE, THAT IS ABSOLUTELY NOT THE CASE. WE SEE THAT AS AN OVERALL SYSTEMIC PROBLEM, IN THIS CASE, AS WELL AS ALL OF THE OTHERS THAT I MENTIONED AND EVEN MORE. THAT IS OUR JOB AND OUR MISSION. WE ALREADY HAVE WHAT'S ON THE BOOKS TO GET THAT CHILD TO COURT IF WE ENFORCE IT AND THAT'S WHAT WE NEED TO DO. THE DEPARTMENT MAY SEE THAT HAS A FUNDING QUESTION.

UNDER CURRENT EXISTING LAW, HIS QUESTIONS WENT TO IS THERE A CONSTITUTIONAL RIGHT AND IS THERE A STATUTORY PROVISION, AND I ANSWERED THOSE QUESTIONS AND WHAT I THOUGHT WAS A CORRECT MANNER. IF YOU'RE ASKING ME WHAT IS THE RIGHT THING TO DO? THE RIGHT THING TO DO IS TO GET THOSE CHILDREN TO THE COURTROOM, ESPECIALLY WHEN THEY'RE INCAPACITATED -- WHEN THEY'RE ABLE TO TAKE PART IN THE PROCEEDINGS. WE'RE WELL OVER YOUR TIME. IF THERE'S QUESTIONS, MAKE SURE YOU GET THE QUESTIONS OUT BUT ANSWER THEM IF YOU CAN CONCISELY. GO AHEAD, JUSTICE.

HOW OFTEN DOES THIS HAPPEN, HOW OFTEN ARE THE COURTS ASKED TO ADMINISTER PSYCHOTROPIC MEDICATIONS WITHOUT THE CONSENT OF THE PARENTS. WHAT TYPE OF PROBLEM ARE WE REALLY DEALING WITH HERE?

I DO NOT HAVE THE DATA TO ANSWER THAT EXACTLY. BUT THE POINT TO US WOULD BE THAT IT DOES HAPPEN AND WHEN IT HAPPENS FOR THAT CHILD, IT IS THE MOST CRITICAL AND IMPORTANT THING.

JUSTICE BELL?

OF THOSE CHILDREN THAT PSYCHOTROPIC MEDS WERE ADMINISTERED, HOW MANY WERE RECEIVING THEM BEFOREHAND ABANDON IT'S JUST A MATTER OF CONTINUING PRIOR TREATMENT AS OPPOSED TO NEW TREATMENT?

AND AGAIN, I UNFORTUNATELY HAVE TO ANSWER IN THE SAME WAVE AND I WOULD JUST TELL THE COURT ONE OF THE THINGS WE HAVE DONE, WE HAVE JUST HIT THIS ISSUE HEAD ON THIS YEAR AS THE STATUTE WAS ADOPTED, WE PUT OUT OUR GUIDELINES, WHICH WE SUBMITTED, INCLUDED AS PART OF OUR RESPONSE. WE ARE AT THE POINT NOW WHERE WE'RE AT THE ENFORCEMENT POINT AFTER TRAINING AND GETTING ADMINISTRATIVE PROCEDURES IN EACH CIRCUIT FOR MAKING SURE THOSE GUIDELINES ARE FOLLOWED AND SO THE THING WE NEED TO DO NOW SO FOLLOW UP AND FIND OUT THE ANSWERS TO THESE QUESTIONS. THAT QUESTION THAT BOTH YOU AND JUSTICE QUINCE HAVE ASKED ARE QUESTIONS WE CAN APPROPRIATELY GET FROM THE DATA COLLECTED FROM THE DEPARTMENT OF FAMILY AND CHILDREN I BELIEVE. THANK YOU FOR VERY MUCH. YOU'VE WELL EXHAUSTED YOUR TIME.

THANK YOU. JUSTICE PARIENTE.

GOOD MORNING. I'LL BE REPRESENTING THE DEPARTMENT OF CHILDREN AND FAMILIES. I HAVE THREE POINTS THAT I'D LIKE TO MAKE BEFORE THE COURT TODAY. ONE IS THAT RULE 8.355 AS WRITTEN AND SUBSEQUENTLY PROMULGATED BY THIS COURT IN NOVEMBER OF 2005 PROVIDES ADEQUATE SAFEGUARDS FOR THE CHILD. TWO IS THAT A BLANKET MANDATE OF A G.A.L. OR A.L.L. PRIOR TO THE ADMINISTRATION OF THE PSYCHOTROPIC MEDICATION, WOULD CAUSE UNNECESSARY DELAY TO A CHILD IN CRISIS. AND THIRD, REQUIRING THE APPOINTMENT OF A G.A.L. OR A.L.L. AND RULE WHEN THE STATUTE DOES NOT PROVIDE FOR THE SAME WOULD GO BEYOND THIS COURT'S RULE-MAKING AUTHORITY.

CAN I ASK YOU JUST ONE QUESTION. THE G.A.L. HAS SUGGESTED THAT AS THESE PROCEEDINGS ARE OCCURRING, THAT PART OF WHAT THE JUDGE SHOULD KNOW IS WHAT'S THE PLAN FOR THIS? NOT JUST A MOMENTARY POINT IN TIME, DON'T HAVE A PLAN, WHAT'S YOUR THOUGHTS HEY LONG THOSE LINES?

YES, YOUR HONOR. PART OF THE REPORT THAT'S REQUIRED BY THE PHYSICIAN, INCLUDES A TREATMENT PLAN FOR THE CHILD, NOT JUST THIS IS A MEDICATION THE CHILD IS GOING TO BE TAKING, BUT HOW LONG THE CHILD IS EXPECTED TO TAKE THE MEDICATION, ANY OR OUTSIDE SOURCES THAT THE CHILD MAY RECEIVE FOR COUNSELING OR THERAPY, SOMETHING ALONG THOSE LINES, IN ADDITION TO THE TREATMENT OF THE MEDICATION. AS WELL AS HOW LONG THE CHILD IS ANTICIPATED TO BE ON THIS MEDICATION AND ANY SIDE EFFECTS THE CHILD MIGHT ENCOUNTER.

IS THAT ALREADY WRITTEN IN THE RULES OR THE STATUTE THAT PRECISELY?

YES YOUR HONOR. RULE 8.355 PROVIDES FOR APPROPRIATE SAFEGUARDS FOR THE CHILD. THIS COURT IN N.Y. AND IN REAL ESTATE D. -- IN N.W. WAS PRIMARILY CONCERNED THAT THE CHILD HAVE A VOICE BEFORE THE COURT. RULE 8.355 PROVIDES THE CHILD WITH A VOICE TO BE HEARD. I KNOW JUSTICE PARIENTE WAS CONCERNED ABOUT THE CHILD'S ABILITY TO FILE AN OBJECTION BEFORE THE COURT. 39.822 MANDATES THE REQUIREMENTS OF THE APPOINTMENT OF A G.A.L. IN EVERY CASE, IN EVERY DEPENDENCY AND C.P.R. CASE. THE CHILD IS NOT REPRESENTED SPECIFICALLY BY A G.A.L., TYPICALLY THE G.A.L. PROGRAM IS APPOINTED, IN THOSE DISTRICTS WHERE THE G.A.L. PROGRAM IS APPOINTED AND THERE IS NO G.A.L. TO REPRESENT THE CHILD, THE PROGRAM IS REPRESENTED BY AN ATTORNEY. THAT ATTORNEY WOULD HAVE THE SAME OPPORTUNITIES TO REVIEW THE MATERIALS AND THE REPORT SUBMITTED BY THE PHYSICIAN AS ANY OTHER PARTY WOULD HAVE THE OPPORTUNITY TO DO THAT.

ARE YOU TRYING TO TELL US THAT EVERY CHILD WOULD IN FACT HAVE EITHER ATTORNEY AD LITEM OR GUARDIAN AD LITEM, BECAUSE AS I UNDERSTOOD THE INFORMATION THAT CAME BEFORE US, THAT THEY REALLY ONLY REPRESENT, THE GUARDIAN AD LITEM PROGRAM, ABOUT 75% OF THE CHILDREN.

THAT WOULD BE CORRECT, YOUR HONOR. AND I DON'T -- I'M NOT TRYING TO MISLEAD THE COURT AND ANTICIPATING THAT EVERY CHILD THAT IS BEFORE THE COURT WOULD HAVE A G.A.L. OR AN A.L.L. NO. THAT'S NOT MY STATEMENT HERE. MY POINT IS THAT TYPICALLY IN THOSE CASES, WHERE THE JUDGE IS ABLE -- NEEDS TO APPOINT THE G.A.L. PROGRAM AND UNDER RULE 39.822 SAYS SHALL APPOINT A G.A.L. AT THE EARLIEST POSSIBLE PROCEEDING, WHICH WOULD BE THE SHELTER HEARING, ONLY 24 HOURS AFTER THE CHILD IS REMOVED, THE G.A.L. PROGRAM IS APPOINTED. AFTER THAT, THE G.A.L. PROGRAM WILL INITIATE TRYING TO FIND A G.A.L. FOR THAT CHILD. BUT THE PROGRAM IS STILL REPRESENTED. IF THE CHILD IS GOING TO BE ADMINISTERED PSYCHOTROPIC MEDS, THE ATTORNEY IN THAT CASE WOULD STILL RECEIVE THE REPORT FROM THE PHYSICIAN AND THE MOTION BY THE DEPARTMENT SEEKING TO ADMINISTER PSYCHOTROPIC MEDS.

WHETHER OR NOT A SPECIFIC ONE HAS BEEN APPOINTED.

THAT'S CORRECT, YOUR HONOR.

YOU'RE INTO YOUR TIME, BUT JUSTICE PARIENTE HAD A FOLLOW-UP.

IT SOUNDS LIKE THE DEPARTMENT REALLY DOESN'T OPPOSE THE IDEA OF HAVING A G.A.L., AND THAT THE STATUTE ALREADY REQUIRES IT, SO YOU KNOW, THAT'S WHY -- I UNDERSTAND WHY JUSTICE SAID, THIS IS A NARROW, WHERE PSYCHOTROPIC MED COMPASSION IS GOING TO BE APPOINTED AND I KNOW WHAT MR. MORRIS IS SAYING, THERE'S HALL THESE OTHER IMPORTANT THINGS, BUT I THINK IN A CHILD'S LIFE, HAVING MIND ALTERING MEDICATION ADMINISTERED AGAINST THEIR WILL WOULD BE RIGHT UP THERE WITH A CRISIS, AT LEAST FOR A LIMITED APPOINTMENT, OF AN ATTORNEY TO LOOK AT THAT ISSUE.

AND I'D LIKE TO -- IT WOULD BE A POSITIVE STEP AND WORK WITH THE DEPARTMENT TO MAKE SURE THAT IN MOST CASES, HOPEFULLY IT'S JUSTIFIED FOR THE DEPARTMENT WOULDN'T BE -- IF YOU COULD RESPOND VERY CONCISELY.

YES, YOUR HONOR. I'D LIKE TO ADDRESS THAT INDUSTRY BRIEFLY. THE RULE AND IN ITS ENABLING BODY OF LAW, 39.407 REQUIRE OR PERMIT FOR A SECOND OPINION BY A MEDICAL PROFESSIONAL, IF THE COURT DEEMS IT NECESSARY. THE COURTS IN THESE CASES TYPICALLY HAVE SEEN THESE CHILDREN ON A CONTINUAL BASIS, JUST AS IN M.W. THAT WAS BEFORE THE COURT IN 2000. SO THE COURT ON ITS OWN MOTION, CAN REQUEST A SECOND OPINION OR CALL THE MEDS FAULT LINE PROVIDED BY THE UNIVERSITY OF FLORIDA IN ORDER TO DETERMINE WHETHER THE PSYCHOTROPIC MEDICATION THAT'S BEING ADMINISTERED IS APPROPRIATE AND NECESSARY FOR THIS CHILD. EVERY CHILD, AGES 0 TO 5, THE REPORT AUTOMATICALLY GOING OVER TO THE UNIVERSITY OF FLORIDA FOR THAT PURPOSE.

THANK YOU.

ON BEHALF OF THE YOUTH LAW CLINIC. I WANT TO ADDRESS THE FIRST BONE OF CONTENTION THAT WAS I THINK PART OF THE QUESTIONING HERE AND THAT IS THE QUESTION OF WHETHER OR NOT 25% OF THE CHILDREN WHO ARE CURRENTLY UNREPRESENTED BY THE GUARDIAN AD LITEM PROGRAM CAN RECEIVE THE BENEFIT OF A GUARDIAN AD LITEM IN THESE NARROW PROCEEDINGS, GIVEN THE LIMITED RESOURCES OF THE PROGRAM AND WITH THE COURT

EXERCISING DISCRETION FOR THE COURT TO APPOINT. THE REASON WE ASKED THE COURT TO MANDATE APPOINTMENT OF A GUARDIAN AD LITEM FOR THESE CHILDREN IS THE COURT CANNOT EXERCISE DISCRETION TO DETERMINE AND TO PICK AND CHOOSE AMONGST THOSE CHILDREN WHICH WILL BENEFIT FROM THE G.A.L. AND THOSE CHILDREN WHO WILL NOT HAVE BENEFIT OF A G.A.L. THE POINT BEING IS THAT THE COURT IN THESE PROCEEDINGS IS UNINFORMED OFTENTIMES.

LET ME ASK YOU A QUESTION. WHAT DO YOU THINK OF A CHILD WHO IS 14 YEARS OLD AND HAS BEEN SEEN AND TREATED IN HAND OUT OF THE SYSTEM FOR EIGHT YEARS? AND HAS BEEN ON MEDICATIONS FOR A SERIOUS PROBLEM? COULDN'T THE COURT EXERCISE ITS DISCRETION, AND THIS IS A LONG- TERM PROBLEM, AS OPPOSED TO A CHILD PULLED OUT OF THE HOME AND THE MEDICATION IS THRUST UPON THE CHILD.

THAT ILLUSTRATES MY POINT. THE POINT IS THERE'S A LOT OF ARBITRARINESS, BECAUSE OF THE LACK OF QUALITY, SOUND, ACCURATE, UP-TO-DATE AND COMPREHENSIVE INFORMATION ABOUT A LOT OF THE CHILDREN, WHO ARE GOING TO BE MEDICATED. IT MAY VERY WELL BE THE CASE THAT A JUDGE WILL HAVE AN EIGHT YEAR HISTORY OF THIS CHILD, MAY VERY WELL HAVE A LARGE FILE THAT DETAILS THE PAPER TRAIL ABOUT THE MEDICAL HISTORY OF THE CHILD, BUT WHAT IF IT'S A NEW JUDGE TO THE CIRCUIT, OR TO THE JUVENILE DIVISION, WHO IS NOT FAMILIAR WITH THE CHILD, HAS NOT HAD THE LUXURY OF READING THIS COMPREHENSIVE RECORD. IN THOSE INSTANCES, THE JUDGE IS HAMPERED, BECAUSE THE JUDGE REALLY DOESN'T HAVE --

THE JUDGE WOULD HAVE DISCRETION ON YOUR VIEW, THE JUDGE WOULD HAVE NO DISCRETION? I SAY THE JUDGE SHOULD NOT HAVE DISCRETION. I THINK THAT EVERY CHILD FOR WHOM THE DEPARTMENT IS FILING A MOTION, TO ADMINISTER PSYCHOTROPIC MEDICATIONS AUTOMATICALLY SHOULD HAVE A GUARDIAN AD LITEM? WHY? BECAUSE THE GUARDIAN AD LITEM IS CHARGE IN THESE INSTANCES. THEY HAVE NOT REPORTED ACCURATELY THE NUMBER OF CHILDREN WHO ARE RECEIVING PSYCHOTROPIC MEDICATIONS, WHICH RAISES THE CORE CONCERN THAT WE HAVE WITH THE RULE THAT IS -- AS IT IS CURRENTLY DRAFTED. THE RULE AS IT'S CURRENTLY DRAFTED, ESSENTIALLY MAKES THIS PROCEEDING AN EX PARTE PROCEEDING, BECAUSE A PHYSICIAN WILL RELY UPON INFORMATION PROVIDED TO HER BY THE DEPARTMENT, THE -- THAT IS SUBMITTED TO THE COURT AS PART OF THE MOTION, AND THEN THE CHILD IS -- ONLY IN 25% OF US, BECAUSE DON'T YOU -- WOULDN'T YOU HAVE TO SERVE THOSE GUARDIAN AD LITEMS IN CASES WHERE THERE IS ALREADY A GUARDIAN AD LITEM?

ABSOLUTELY. OUR CONCERN IS WITH THAT SMALL UNIVERSE OF CHILDREN. THE 25% WHO ARE NOT CURRENTLY REPRESENTED BY THE GUARDIAN AD LITEM PROGRAM OF THAT WE DON'T KNOW PRECISELY THE NUMBER, BUT WE DO KNOW APPROXIMATELY ONE IN FOUR CHILDREN LIVING IN FOSTER CARE HOMES IN THIS STATE ARE BEING ADMINISTERED PSYCHOTROPIC MEDICATION.

ARE YOU SAYING THE PHYSICIANS ARE DOING THAT WITHOUT EXAMINING THE CHILD? THEY'RE ABSOLUTELY EXAMINING THE CHILD.

SO THEY'RE NOT RELYING SIMPLY UPON RECORDS PROVIDED BY THE DEPARTMENT?

WELL, THE STATUTE SAYS THAT THEY WILL LOOK AT THE INFORMATION PROVIDED TO THEM BY THE DEPARTMENT.

AS PART OF THEIR -- WE KNOW FROM THE RED ITEM REPORT ISSUED BY THE FLORIDA STATEWIDE ADVOCACY PROGRAM, THE MEDICAL RECORDS IN THE CARE AND CUSTODY OF THE DEPARTMENT ARE VERY DEFICIENT, VERY INCOMPLETE, VERY INACCURATE AND NOT UP-TO-DATE.

THIS IS NORMAL WITH THE SUBSET, IT SEEMS TO ME IT'S SOMEWHAT SOPHISTICATED, THAT IS FOR SOMEBODY TO COME ON AND KNOW ENOUGH TO BE ABLE TO FILE A MEANINGFUL OBJECTION IN 48 HOURS, I KNOW IN PARTS OF THE STATE ON THESE COUNTIES, THERE'S WONDERFULLY WELL MEANING GUARDIAN AD LITEM, TO HAVE IT BE MEANINGFUL, DON'T YOU NEED TO HAVE AN ATTORNEY, EVEN IF THEY SERVE AS A GUARDIAN AD LITEM?

RIGHT. WHAT WE'RE ACTUALLY RECOMMENDING IS SORT OF A TWO PART CHANGE TO THE RULE. THE FIRST CHANGE WE WOULD RECOMMEND TO THE EXISTING RULE IS THAT AUTOMATICALLY, IF THE CHILD DOES NOT HAVE A GUARDIAN AD LITEM, THE GUARDIAN AD LITEM PROGRAM AND A G.A.L. ARE ASSIGNED TO REPRESENT THE CHILD AND DO THE PROPER INVESTIGATION, THEN

EXERCISE IF IT'S NECESSARY, THE RIGHT OF THE CHILD AS A PARTY TO OBJECT. SECONDLY IF THE CHILD ON HIS OWN OR THROUGH AN ATTORNEY, THEN A GAL WOULD BE NECESSARY ON THE SUITABILITY OF MEDICATING THE CHILD. IT WOULD NOT CONSUME RESOURCES, WOULD NOT TAX THE GUARDIAN AD LITEM PROGRAM. THERE ARE AMPLE --

THIS WOULD BE REQUIRED WHETHER PSYCHOTROPIC MEDICATIONS HAVE BEEN GIVEN TO THIS CHILD FOR THE PAST FIVE YEARS OR NOT, IS THAT CORRECT?

WHAT OFTENTIMES HAPPENS IN THESE CASES IS THAT A NEW MEDICATION IS PRESCRIBED AND WHEN THAT NEW MEDICATION IS PRESCRIBED, THEN A HEARING MUST BE -- MEN A MOTION MUST BE FILED, A CHILD MUST BE GIVEN AN OPPORTUNITY TO OBJECT. THERE ARE POLYPHARMACY KINDS OF ISSUES, CHILDREN ARE ON DRUG COCKTAILS AND SOMETIMES NEW MEDICATIONS ARE PRESCRIBED AND THAT RESULTS IN THE NEEDS FOR CAREFUL REVIEW, CAREFUL SCRUTINY OF THE BENEFITS, RISKS, EFFICACY AND SAFETY CONCERNS THAT ARE RAISED.

DO YOU AGREE WITH THE DEPARTMENT WITH REGARD TO I GUESS IT'S PROBABLY IN SUBSECTION THREE THAT TALKS IN TERMS OF GIVING THE INFORMATION ABOUT THE LONG-TERM CARE, THAT WE HAVE SUFFICIENT PROCEDURES IN PLACE SO THAT THE PSYCHOTROPIC MEDICATIONS ARE PART OF THE OVERALL PLAN AND SOME WAY THAT'S DESCRIBED SUFFICIENT FOR THE ADJUDICATOR TO MAKE THE DECISION?

I'M NOT COMFORTABLE WITH THAT STATEMENT. IT'S SOMEWHAT RELATED TO A RECOMMENDING BY THE G.A.L. PROGRAM THAT MEDICAL RECORDS BE STAPLED TO THE CASE PLAN, WHEN IT'S BEING TENDERED TO THE COURT FOR ACCEPTANCE, BUT THAT REALLY DOESN'T HELP US WITH THESE ISSUES. THE CASE PLAN HEARING WOULD BE HELD ON SEPTEMBER 1, THE DOCTORS SO RECOMMENDING TREATMENT ON SEPTEMBER 15. THE CASE PLAN REMEDY WHICH IS WHAT THE REPRESENTATIVE IS ALSO ALLUDING TO, DOESN'T REALLY REMEDY THE ISSUE OF THE LACK OF PROPER REPRESENTATION FOR THE BEST INTERESTS AND THE LEGAL INTERESTS OF THE CHILD. IN THESE VERY SENSITIVE AND IMPORTANT AND MONUMENTAL KINDS OF DECISIONS THAT MUST BE MADE BY THE COURT WHICH IN EFFECT IS A FUNCTIONAL EQUIVALENT OF THE CHILD'S PARENT. THANK YOU.

GOOD MORNING YOUR HONOR. I'M HERE THIS MORNING ON BEHALF OF THE CHILDREN'S ADVOCACY FOUNDATION. AND I'LL DISCLOSE THAT I'M AN OFFICER WITH THE FLORIDA'S CHILDREN FIRST. TO SPEAK VERY BRIEFLY AND SOMEWHAT DISCONNECTEDLY IF I MAY, ADDRESS SOME OF THE QUESTIONS THAT YOUR HONORS HAVE RAISED, IN THE SENSE, I'M HERE TO, ON THE OUTSIDE REQUEST THAT WE SHARE OUR VIEW OF JUSTICE OR OUR VISION OF JUSTICE WITH YOU. FROM THE STANDPOINT OF A CHILD WHO IS PUT -- WHO COMES INTO THE SYSTEM ON PSYCHIATRIC MEDICATIONS, THAT'S BECAUSE A PARENT HAS ALREADY CONSENTED TO THAT. AND UNLESS THE PARENT WITHDRAWS THE CONSENT, IT'S BEEN THE PRACTICE UNDER THE PRIOR STATUTE, WHICH REQUIRED COURT APPROVAL BEFORE THE DEPARTMENT COULD CONSENT, THERE'S BEEN NO PROBLEM WITH THAT. IF THE PARENT CONSENT, THE PARENT CONSENT, THOSE CHILDREN ARE NOT THE ONES THAT BRING US HERE TODAY. IF CHILDREN ARE ALREADY IN A S.I.P. PROGRAM. A STATEWIDE INPATIENT PSYCHIATRIC FACILITY, THEY'RE ALREADY RECEIVING PSYCHIATRIC MEDICATIONS AS PART OF THE PROGRAM, BUT THEY ALREADY HAVE ONE OF THE MANDATORY GUARDIAN AD LITEMS AND AN ATTORNEY AD LITEM TO PROTECT THEM, SO THEY ARE NOT PART OF THIS GROUP. WE HAVE THIS OTHER GROUP AND NONE OF US CAN BE SPECIFIC, BECAUSE DESPITE BEING TOLD FOR YEARS INFORMALLY AND INFORMAL REPORTS, LIKE THE ADVOCACY COUNSEL'S ORANGE REPORT FROM 2002, THE RED REPORT FROM 2003, THE DEPARTMENT DOES NOT KNOW WHO THE CHILDREN ARE IN ITS CUSTODY, THAT IT'S MEDICATING WITH PSYCHIATRIC DRUGS. THEY KNOW THAT THE NUMBER RANGES BETWEEN 20% TO 25% OF THE YOUNGSTERS IN THEIR CARE, EVEN AFTER Y'ALL ADOPTED THE RULE ON EMERGENCY BASIS LAST NOVEMBER AND THE DEPARTMENT FOLKS WERE NOTIFIED IN DECEMBER OF THE IMPORTANCE OF TRACKING THIS INFORMATION AND GETTING IT TOGETHER BY JANUARY OF THIS YEAR, THE SEPTEMBER POLICY MEMORANDUM STILL SHOWED THAT THEY HAD ONLY IDENTIFIED IN THE DEPARTMENT RECORD SOMEWHERE AROUND 2% OF THE CHILDREN ON PSYCHIATRIC MEDICATIONS. THAT NUMBER BY THE DEPARTMENT'S ADMISSION AND THE POLICY MEMORANDUM IS WAY SHORT OF THE NUMBER THAT AHCA WHICH PAYS MEDICAID, SAY IT'S INCONSISTENT WITH THEIR NUMBER. THEIR NUMBER IS 25%. THE OTHER 23% OF CHILDREN WHO



ARE HAVING THE MIND ALTERING DRUGS. WE KNOW THE KEY TO ALL OF THIS IS A PROPER ASSESSMENT FROM THE VERY BEGINNING, WHERE A DOCTOR, BE IT PSYCHIATRIST, THE CHILD'S TREATING PEDIATRICIAN, OR SOME OTHER QUALIFIED DOCTOR, HAS TO COME UP WITH A PROPER MEDICAL DIAGNOSIS BEFORE THESE DANGEROUS DRUGS THAT CAN CAUSE THINGS LIKE DIABETES AND BRAIN TUMORS HAND ALL SORTS OF NEUROLOGIC PROBLEMS ARE ADMINISTERED. AND THAT'S THE KEY TO THE WHOLE THING. IT'S THE DEPARTMENT'S JOB UNDER THE FEDERAL STATUTES THAT DEAL WITH EARLY PERIODIC SCREENING, DIAGNOSIS AND TREATMENT -- SO ARE YOU MAKING ANY KIND OF STATEMENT TO THE EFFECT THAT THESE CHILDREN ARE BEING GIVEN THESE DRUGS WITHOUT HAVING HAD EITHER THEIR TREATING PHYSICIAN OR SOME PSYCHIATRIST SAY THAT THEY ARE IN NEED OF THESE DRUGS?

WHAT I'M SAYING IS THAT FOR THAT SMALL GROUP OF YOUNGSTERS, WHATEVER THAT NUMBER IS, THERE ARE YOUNGSTERS WHO ARE BEING GIVEN PSYCHIATRIC DRUGS BY THEIR DOCTORS, WITH THE IMPLICIT BLESSING OF THE DEPARTMENT WITH NO COURT ORDER, WITH NO PROPER MEDICAL DIAGNOSIS.

WELL, THIS STATUTE HAS BEEN IN EFFECT FOR OVER A YEAR. AND THE RULE HAS BEEN IN EFFECT, EVEN IF IT DOESN'T REQUIRE AT THIS POINT AN APPOINTMENT OF AN ATTORNEY AD LITEM ON A MANDATORY BASIS, WHAT'S HAPPENED IN THE LAST YEAR? I MEAN, DON'T THEY HAVE TO COME TO COURT? HOW MANY HEARINGS HAVE WE HAD? DO WE HAVE ANY OF THAT INFORMATION, AS TO HOW THE RULE IN -- AT LEAST IN ITS EMERGENCY BASIS HAS BEEN WORKING?

THAT'S THE INFORMATION THAT THE DEPARTMENT ADMITTED IN ITS SEPTEMBER MEMORANDUM IT DOESN'T HAVE.

THE MEMORANDUM FILED WITH THE COURT?

YOUR HONOR, IT'S IN THE NOTEBOOK THAT I'M NOT TO REFER TO.

OK. IT WOULD BE THE ONE DATED IN SEPTEMBER.

AS A TRIAL LAWYER, TO GET A 500 PAGE APPENDIX, THE FRIDAY BEFORE IS NOT VERY HELPFUL OR USEFUL TO THE COURT OR TO ANYBODY ELSE.

I APOLOGIZE FOR A LATE FILING. WE HAD SOME HEALTH ISSUES IN THE FAMILY HAND WOULD HAVE GOTTEN IT IN SOONER. IT'S IMPORTANT THAT CHILDREN HAVE NOT ONLY A GUARDIAN AD LITEM WHO IS USUALLY A LAY PERSON, BUT ALSO AN ATTORNEY AD LITEM.

SO THE ANSWER IS WE DON'T KNOW HOW THE RULE IN ITS CURRENT FORM HAS BEEN WORKING, HOW MANY HEARINGS WE'VE HAD?

WE DON'T KNOW HOW MANY HEARINGS, BUT I'VE SEEN NO CHANGE IN THE PRACTICE AROUND THE STATE WHERE MANY JUDGES ROUTINELY EXCLUDE CHILDREN FROM HEARINGS.

DOESN'T THE RULE REQUIRE THE CHILD BE THERE? ANOTHER RULE, NOT THIS RULE, BUT DOESN'T A RULE --

RULES REGARDING RESIDENTIAL PLACEMENTS PRIOR THAT. THE CONSTITUTION BASIC DUE PROCESS INTEREST FOR YOUNGSTERS WHO ARE OLD ENOUGH TO UNDERSTAND THAT THEY'RE BEING TALKED ABOUT, HAVE, I BELIEVE, A CONSTITUTIONAL RIGHT AS A NATURAL PERSON TO BE PRESENT.

CHILDREN SHOULD BE AT HEARINGS UNLESS THERE'S SOME --

THAT'S KIND OF MY PROBLEM, BECAUSE THE BIG DISCONNECT BETWEEN THE NICE STATUTE AND THE NICE RULE AND WHAT'S GOING ON OUT THERE TO OUR CHILDREN, THERE'S THIS HUGE CHASM.

BUT AREN'T THESE KINDS OF ISSUES, THINGS THAT NEED TO BE LITIGATED IN A PARTICULAR CASE, NOT THE SUBJECT OF RULE? THERE'S ALREADY A STATUTE, FOR EXAMPLE, THAT GIVES THE RIGHT TO A GUARDIAN AD LITEM, BUT GUARDIAN AD LITEM IS NOT BEING APPOINTED IN A PARTICULAR CASE, IT'S NOT FOR US TO WRITE A RULE ABOUT IT, IT'S FOR US TO DETERMINE IN A CASE THAT THERE SHOULD BE A GUARDIAN AD LITEM APPOINTED, BECAUSE THE STATUTE REQUIRES IT. SO A LOT OF THINGS WE'RE TALKING ABOUT IT SEEMS WE'RE TRYING TO REPAIR SOMETHING IN A RULE, WHEN THE ANSWER IS TO ENFORCE THAT, NOT TO WRITE A RULE.

BUT WHEN YOUR HONORS AS THE OVERSEERS OF OUR JUDICIAL BRANCH OF GOVERNMENT HAVE INFORMATION THAT EVEN THE FEW RIGHTS PUT INTO RULE OR STATUTE ARE BEING IGNORED, AS WE LOOK THE OTHER WAY FOR YEARS REGARDING THE MANDATORY APPOINTMENT OF A EVERY

CHILD IN FOSTER CARE OF A GUARDIAN AD LITEM.

WE HAVE CHILD ADVOCATES WHO ARE VERY GOOD AT ASSERTING RIGHTS OF CHILDREN WHEN THE STATUTE PROVIDES THE ONE AND THEY'RE NOT BEING ENFORCED.

IF THEY GET AN ATTORNEY, IF THEY HAVE A GUARDIAN AD LITEM, A YOUNGSTER I REPRESENT WAS ON PSYCHIATRIC MEDICATIONS FOR SEVERAL YEARS, BEFORE I WAS APPOINTED, HE HAD A WONDERFUL GUARDIAN AD LITEM, WHO HAD NOT BEEN THERE FROM THE BEGINNING, SHE WAS VERY CONCERNED ABOUT THE MIXTURE OF PSYCHIATRIC MEDICATIONS THAT HE WAS GIVEN. SHE WAS A NON-LAWYER, NON- EXPERT, TRIED TO GET THE DEPARTMENT TO STOP, TRIED TO GET THE DOCTORS THAT WERE GIVING THIS CHILD MEDICATIONS TO STOP OR LOOK AT WHAT THEY WERE DOING, SHE COULDN'T FIND ANY MEDICAL DIAGNOSES THAT JUSTIFIED ANY OF THE MEDICATION. FINALLY IN DESPERATION, SHE ASKED IF I WOULD BE THE CHILD'S PRO BONO ATTORNEY FOR MEDICATION ISSUES, I SAID OF COURSE. PRESENTED THAT TO THE COURT, THE COURT APPOINTED ME, AT THAT POINT THE MEDICAID LANES FOR MEDICATIONS AND THE VARIOUS TREATMENTS THEY HAD GIVEN THIS YOUNGSTER, WHO WAS ST. LOUIS UNDER THE AGE OF -- WAS STILL UNDER THE AGE OF 10, WAS CLOSE TO \$200,000. SO THE AMOUNT FOR ONE PHARMACY ALONE WAS \$20,000. FUNDING, GOODNESS, WE CAN HAVE ALL THE FUNDING YOU NEED IF YOU APPOINT ATTORNEYS FOR THESE CHILDREN.

WHAT JUSTICE PARIENTE WAS SAYING, THERE'S ALREADY A RIGHT IN THE STATUTE. HOW COME THERE HASN'T BEEN ANY LITIGATION TO ENFORCE THAT RIGHT?

BECAUSE THE CHILDREN WHO DON'T HAVE GUARDIANS AD LITEM DON'T HAVE ANYONE TO LITIGATE. THIS IS VERY DIFFICULT, VERY COMPLEX. YOU HAVE THE ENTIRE EXECUTIVE BRANCH OF THE GOVERNMENT. IT'S A WELL-INTENTION BUREAUCRACY, BUT IT'S A BUREAUCRACY, AND FOR A CHILD TO BE GIVEN SEVERAL YEARS OF HARMFUL MEDICATIONS, WHICH BY THE WAY, WHEN WE FINALLY GOT THE JUDGE TO ORDER THE MEDICATIONS STOPPED OVER A PERIODIC BASIS SO THERE WOULDN'T BE COLD TURKEY WITHDRAWAL PROBLEMS FOR THE LITTLE BOY, THEY FOUND OUT THAT WHAT HIS PROBLEM REALLY WAS AUTISM, AND NO ONE HAD EVER DIAGNOSED THAT. HE HAD NOT BEEN TREATED FOR HIS AUTISM ALL THOSE YEARS, HE LOST YEARS OF EDUCATION, THESE -- THESE ARE CHILDREN THEY DON'T UNDERSTAND ALL THIS. GOD KNOWS AT TIMES I DON'T UNDERSTAND IT AND I APOLOGIZE IF I GET A LITTLE OVEREMOTIONAL. LET ME ASK YOU THAT POINT. YOU AGREE THAT EVEN YOU DON'T UNDERSTAND IT. CERTAINLY THE REALITY IS, IF WE APPOINT A GUARDIAN AD LITEM MANDATORY, AN ATTORNEY AD LITEM MANDATORY IN EVERY CASE, IN ORDER FOR YOU TO CONTEST WHAT ANOTHER PHYSICIAN HAS ALREADY ORDERED, YOU'RE GOING OF TO HIRE YOUR OWN EXPERTS, SO THE NET RESULT IS, YOU ADD TO THAT ADDITIONAL MEDICAL EXPERTS TO WORK AT WHAT -- LOOK AT WHAT THE PHYSICIANS HAVE ALREADY ORDERED.

WELL, EVEN THE STATUTE AND RULE DON'T PROVIDE FOR FUNDING FOR THAT SECOND OPINION THAT THEY SAY THE COURT CAN ORDER, BUT IF YOU TALK TO THE PHYSICIAN, YOU CAN FIND OUT AS I DID THAT THE PHYSICIAN WAS NOT GIVEN THE CHILD'S RECORDS, THE FULL RECORDS, THE PHYSICIAN WAS NOT TOLD THE CHILD HAD BEEN SEXUALLY AND PHYSICALLY ABUSED AND THOSE THINGS WERE CONTRIBUTING TO HIS PROBLEMS. HE ADMITTED HE'D NEVER SEEN THE CHILD WITHOUT HIS BEING UNDER THE EFFECTS OF PSYCHIATRIC MEDICATION AND DIDN'T HAVE A CLUE WHAT THE CHILD'S UNDERLYING PROBLEM WAS AND WHEN I ASKED IF IT WOULDN'T BE A GOOD IDEA, HE SAID YOU'RE RIGHT. SO I DIDN'T NEED TO HIRE ANOTHER EXPERT THERE. I JUST NEEDED TO TALK TO THE CHILD'S OWN DOCTOR THAT WAS PRESCRIBING HALF OF HIS MEDS. THERE WAS ANOTHER DOCTOR PRESCRIBING OTHERS THAT THIS DOCTOR DIDN'T AGREE TO. DIDN'T THINK HE COULD HAVE BUT DIDN'T THINK HE COULD DISCONTINUE ON HIS ON AUTHORITY, AND HE DIDN'T CARE THAT HE HADN'T BEEN GIVEN A COURT ORDER TO TREAT THIS CHILD WITH MEDICATIONS. HIS ATTITUDE WAS THE DEPARTMENT BRINGS THIS CHILD TO MY OFFICE, I CAN DO WITH HIM WHAT I WANT AND THAT'S WRONG. OUR CHILDREN DESERVE BETTER FROM OUR COURTS, THEY HAVE A FUNDAMENTAL RIGHT NOT TO HAVE THE STATE FORCING POISONOUS SUBSTANCES INTO THEIR BODIES WHERE THERE HASN'T BEEN THE APPROPRIATE HOMEWORK DONE BY THE DEPARTMENT OF CHILDREN HAND FAMILIES AND SEEING THAT THE CHILDREN WHO ARE NEVER GIVEN NOTICE THEMSELVES HAVE TO LET SOMEBODY KNOW WITHIN 48 HOURS THAT THEY HAVE A PROBLEM, OR THEY'RE GOING TO HAVE FOREIGN SUBSTANCES

INJECTED IN TO THEIR BODY IS JUST MIND BOGGLING TO ME.  
YOU HAVE EXTENDED BEYOND AND I'M SURE THAT HALF OF US ON BOTH SIDES OF THIS  
QUESTION COULD SPEAK UPON AND ON ALL DAY. WE ARE WITH A LIMITED PERIOD OF TIME AND  
YOU'VE NOW PASSED THAT, SO WE THANK ALL OF YOU FOR YOUR PRESENTATIONS.  
THANK YOU ALL. AND GOD SAVE THE CHILDREN.