

>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.

YOU MAY PROCEED.

>> THE CASE OF SMITH VERSUS SOUTHLAND SUITES.

>> MAY IT PLEASE THE COURT, I ON BEHALF OF THE PETITION OF MS. SMITH.

THIS CASE, I THINK, THE MOST INSTRUCTIVE CASE IN RESOLVING TODAY'S CASE IS SANTIAGO VERSUS BAKER CASE AND CONCURRING OPINION THE JUDGE WROTE EARLIER THIS YEAR BE AT YOU KNOW IT'S GOING TO BE A GOOD OPINION WHEN IT STARTS JULY 4, 1776.

WHAT HE GOES THROUGH IS PRECISELY WHY IN THE DECLARATION OF INDEPENDENCE THERE IS THE PROTECTION OF A TRIAL BY JURY. AND THEN HE GOES THROUGH THE U.S. CONSTITUTION AND FLORIDA CONSTITUTION ON THE TRIAL BY JURY.

WHAT HE SAYS IS TO THE PERSON CAN WAY THE CONSTITUTIONAL RIGHT ONLY BY KNOWING AND INTELLIGENT DECISION, BUT SOMEHOW IN DEFERENCE TO THE EFFICIENCY OF ARBITRATION, OUR SOCIETY SEEMS TO BE MORE AT MORE WILLING TO ALLOW FORM CONTRACTS NOT SUBJECT TO NEGOTIATION THAT FOUR AND ONE OTHER CATEGORY HE TALKS ABOUT IS THE ELDERLY.

TWO-WAY THE CONSTITUTIONAL RIGHT--

>> I DIDN'T THINK YOU WERE HERE TO TALK WHAT IF THE CONTRACT ITSELF WAS UNCONSTITUTIONAL.

>> WE ARE NOT.

>> WHEN THE DAUGHTER SIGNED THE POWER OF ATTORNEY, IT WAS PART OF THE CONTRACT FOR ADMISSION. CORRECT?

SHE HAD THE POWER OF ATTORNEY,

THE ARBITRATION AGREEMENT.

>> THAT'S RIGHT.

>> IS IT YOUR POSITION THAT THE DAUGHTER DID NOT UNDER THE POWER OF ATTORNEY HAVE AUTHORITY TO SIGN A CONTRACT OF ADMISSION?

>> THAT'S RIGHT.

>> SO THERE IS NO MONEY OWED--

>> THESE ARE TWO DIFFERENT QUESTIONS.

>> YOUR ROLE WOULD BE, AND I WANT TO SANDWICH THE CASE DIFFERENTLY, AND THE STATUTE NOW APPEARS TO SAY IT, YOU CANNOT HAVE A GENERAL POWER OF ATTORNEY, YOU CANNOT GIVE YOUR MOTHER CANNOT GIVE YOUR DAUGHTER THE AUTHORITY TO DO ANYTHING THEY COULD DO INCLUDING ENTERING INTO ALL CONTRACTS.

THE LAW IN THE STATE OF FLORIDA IS NOW UNDER THE LEGISLATURE THAT EVERY SINGLE ACTION HAS TO BE SPECIALLY SET FORTH.

IS THAT WHAT THE STATE OF THE LAW IS NOW?

>> UNDER THE 2011 AMENDMENTS TO THE STATUTE, YES.

>> SO YOUR ISSUE IS WHEN THERE IS A SPECIFIC GRANT, NONE OF THOSE EVERYBODY WOULD AGREE INCLUDE THE ABILITY TO ENTER INTO THESE KIND OF CONTRACTS THAT THE AND LANGUAGE HAS TO RELATE BACK TO THE NINE SPECIFIC RIGHTS.

>> PARTIALLY THAT IS THE ISSUE BUT THE BROADER ISSUE IS THE FACT THERE ARE 14 DECISIONS THE STATE OF FLORIDA THAT HAVE DEALT SPECIFICALLY WITH NURSING HOME AND A POWER OF ATTORNEY, AND THE QUESTION IS WHETHER OR NOT THE POWER OF ATTORNEY GAVE WHOEVER THE ATTORNEY-IN-FACT WAS THE AUTHORITY DECIDED THE

ARBITRATION AGREEMENT.
THE DCA ARE HOPELESSLY
CONFLICTED.

>> CAN I ASK YOU QUESTION?
IS IT YOUR VIEW THAT THIS
CONTRACT WITH REGARD TO PROPERTY
IS THAT A GENERAL OR SPECIFIC IN
THIS POWER OF ATTORNEY?

>> AND WE ARE TALKING ABOUT THIS
SPECIFIC POWER OF ATTORNEY AT
TAB 14 IT HAD NINE POWERS.
IF YOU LOOK AT THE NINE POWERS
AS IF WE BOTH STATUTORY
ANALYSIS.

>> I ASKED A VERY SIMPLE
QUESTION, AND IT IS SIMPLE
ANSWER AND THEN YOU CAN EXPLAIN.
IS THIS PROPERTY UNDER POWER OF
ATTORNEY ABILITY TO DEAL WITH
PROPERTY?

SPECIFIC OR GENERAL.

>> THE WORD PROPERTY APPEARS IN
THE GENERAL GRANT OF THIS
SPECIFIC POWER OF ATTORNEY.

>> ONLY?

>> IT DEALS WITH WHAT WE CAN
MENTALLY THINK OF AS PROPERTY
RIGHTS DID THE CONVEYANCE OF
LAND, THE EXECUTION OF TRANSFER
OF BONDS AND SECURITY, SELLING
OF STOCKS.

AS FAR AS SWEEPING LANGUAGE OF
ALL PROPERTY RIGHTS, NO, YOUR
HONOR.

>> WEATHER IN LAND OR PROPERTY
MAY BE TWO DIFFERENT THINGS.

>> THAT'S RIGHT.

>> I'M JUST TRYING TO FIND OUT
FROM THAT PERSPECTIVE SO EVEN IF
PROPERTY IS BROAD ENOUGH TO
COVER OR DOES COVER THE CAUSE OF
ACTION IN THAT THEORY, IT IS
STILL DEFECTIVE IN YOUR VIEW
BECAUSE THE PROPERTY IS NOT A
SPECIFIC GRANT.

>> THAT IS EXACTLY RIGHT.

>> THERE ARE ALL THESE APPELLATE COURTS AND THEY ARE ALL OVER THE PLACE.

WHAT CASE SAYS WHAT YOU WANT US TO HOLD, WHICH IS THAT WHEN YOU HAVE SPECIFIC GRANTS THAT DON'T INCLUDE A SPECIFIC GRANT ENTER INTO CONTRACTS, BUT IT SAYS BUT GENERALLY DO ALL MATTERS AND EXECUTE ALL CONTRACTS.

WHICH CASE SAYS THAT AND GENERALLY, NOT PERTAINING TO SPECIFIC ISN'T GOOD ENOUGH TO GIVE THE POWER OF ATTORNEY AUTHORITY TO ENTER INTO CONTRACTS?

>> AND IF I COULD, I NEED TO ANALYZE WITH THE STATE OF THE VARIOUS CONTRACTS--

>> GIVE ME ONE CASE FROM ANOTHER APPELLATE COURT THAT IS IN CONFLICT WITH THE HOLDING OF THE FIFTH DISTRICT.

>> SURE.

WHAT IS IN CONFLICT OF THE HOLDING OF THE FIFTH DISTRICT IS THE MY LOCATION THE MILO CASE IS A SECOND DISTRICT OF APPEALS BUT IN DIRECT CONFLICT WITH THE SMITH DECISION.

THEY DO CITE THE MCKIBBIN CASE, BUT BECAUSE IT LACKS A SPECIFIC LANGUAGE OF THE MCKIBBIN CASE, THEY DO A FOOTNOTE IN THE SMITH DECISION.

>> PERTAINING THERETO.

GOING BACK TO THE GENERAL RELATING TO BE SPECIFIC, SO WHAT CASE, IS THERE ANOTHER CASE OUT OF THE SECOND THAT SAYS YOU CAN'T DO THIS?

THIS POWER OF ATTORNEY THAT IS REPORTING TO GIVE TO SOMEBODY MY BELOVED DAUGHTER THE POWER TO DO EVERYTHING THAT SHE COULD DO.

>> AGAIN, AS JUSTICE LEWIS

POINTED OUT, OUR POSITION IS THAT IS NOT REALLY WHAT THIS PARTICULAR GENERAL GRANT OF AUTHORITY IS, BUT INSTEAD OVER PROPERTY.

AS A GENERAL GRANT OF AUTHORITY OVER PROPERTY, THE MILO CASE IN THE SECOND DISTRICT IS IN CONFLICT WITH THAT PARTICULAR VIEW BECAUSE IN MILO, IT IS INTERESTING BECAUSE ANOTHER CASE THAT STANDS FOR THE SAME PROPOSITION AS SMITH, THE LOWER COURT CASE HERE IS THE HICKS CASE PRESIDED OUT OF THE SECOND DISTRICT.

THE SENIOR THE SECOND DISTRICT DECIDED IN ONE CASE A GRANT OF AUTHORITY BELT WITH PROPERTY RIGHTS WAS SUFFICIENT TO CONFER AUTHORITY, AND IN THE SINEW THEY FOUND IN THE MILO CASE IT WAS NOT ENOUGH, IT WAS LIMITED TO PROPERTY.

WHAT WAS DRIVING THE SECOND DCA DECISION IN HICKS IS A USED SOME CHEEKY LANGUAGE WITH RESPONSE TO PROPERTY RIGHTS AND SAID I FUNDAMENTALLY MISUNDERSTOOD PROPERTY RIGHTS OF FLORIDA BECAUSE THEY FOUND A CHOSE IN ACTION, AND NURSING HOME CHOSE IN ACTION IS A PROPERTY RIGHT AND BECAUSE IT IS PROPERTY, IF A BROAD ENOUGH TO PROPOSE PROPERTY IT WOULD BE COVERED, BUT IN THE SAME YEAR THEY FOUND A POWER OF ATTORNEY DEALING ONLY WITH PROPERTY DOESN'T CONFER THE AUTHORITY TO SIGN AN ARBITRATION AGREEMENT.

>> THIS ONE SAYS ALL BUSINESS MAKE, EXECUTE AND ALL CONTRACTS WHETHER INVOLVING REAL PROPERTY OR NOT.

WHAT ABOUT IT SAYS ONLY AS TO

THE GRANTS OF BANK ACCOUNTS,
BONDS, IT LOOKS LIKE IT WAS ONLY
FOR HER TO BE ABLE TO DEAL WITH
FINANCIAL TRANSACTIONS THAT WERE
ALREADY EXISTING.

>> NOTHING ABOUT IT DOES THAT.
I COMPLETELY AGREE WITH THAT
VIEW, BUT THIS IS WHY I WAS
STARTING OFF WITH THAT KNOWING,
INTELLIGENT AND VOLUNTARY.

ALL OF THESE CASES, WE HAVE
CONFLICTS IN THE HEALTH CARE
ISSUE, IF IT SAYS FINANCE, IS
THAT ENOUGH, IF IT SAYS HEALTH
CARE IS THAT ENOUGH?

IS IT EACH OF THESE CASES BEING
SO NARROWLY VIEWED ON PRECISELY
WHAT THAT POWER OF ATTORNEY IS
THAT THERE IS NO CLEAR RULE OF
LAW FOR TRIAL COURTS TO FOLLOW
ON THIS ISSUE.

>> AND STILL STRUGGLING TO
UNDERSTAND EXACTLY WHERE THE
CONFLICT IS.

THE EXPRESS AND DIRECT CONFLICT,
WE DON'T HAVE CONFUSION OF LAW
JURISDICTION.

>> ABSOLUTELY NOT.

>> THAT HAS BEEN EXPRESSED AND
DIRECT CONFLICT.

YOU REFER TO MILO, THAT SEEMS TO
THE CASE YOU HANG YOUR HAT ON.

>> YES.

>> DOES MILO CONTAIN THE TEXT OF
THE POWER OF ATTORNEY?

>> WELL, INTERESTINGLY, YOUR
HONOR, NEITHER DOES THE LOWER
COURT'S DECISION IN THIS CASE.

NO, MILO DOES NOT CONTAIN THE
TEXT -- THAT IS ANOTHER PROBLEM
ACROSS THE BOARD, THEY DON'T ALL
CONTAIN THE LANGUAGE.

BUT MILO DESCRIBES THAT THIS
PARTICULAR POWER OF ATTORNEY WAS
SOLELY RELATED TO MILO'S
PROPERTY INTEREST.

IT DOESN'T TIE IT TO REAL
PROPERTY INTERESTED THAT IS NOT
A DISTINCTION WE ARE DRAWN
BETWEEN REAL PROPERTY AND
CHOICES IN ACTION.

THE ISSUE IS PROPERTY RIGHTS END
OF A GRANT OVER PROPERTY RIGHTS
IS SUFFICIENT.

IN THE SECOND DISTRICT IN TWO
DIFFERENT CASES--

>> IN HEADNOTE TWO IT SAYS
FACILITY TO MILO'S PROPERTY
INTEREST.

THAT IS JUST A CONCLUSION ABOUT
WHAT IT DID.

WE DON'T REALLY KNOW THE BASIS
FOR THAT CONCLUSION IN THE TEXT.
IT SEEMS TO ME WE ARE KIND OF,
WE DON'T HAVE ANY BASIS FOR
COMPARING THE CONCLUSION THAT
WAS REACHED IN MILO WITH THE
CONCLUSION THAT WAS REACHED IN
THE CASE THAT IS ON REVIEW HERE.
THAT'S WHY I'M STRUGGLING TO
SEE, I MIGHT AGREE WITH YOU
THERE IS CONFUSION IN THE LAW
AND IT IS HARD TO KNOW WHAT IS
GOING ON AND WHAT THE RULE OF
LAW IS, AND THAT MIGHT BE A GOOD
CASE FOR COURTS TO CERTIFY A
QUESTION OF GREAT PUBLIC
IMPORTANCE IF THEY PASS ON,
BECAUSE OF THE CONFUSION THAT
REIGNS IN THAT AREA GENERALLY,
BUT I'M STRUGGLING TO SEE WHAT
PROPOSITION THAT IS CLEARLY
ESTABLISHED IN MILO IS
INCONSISTENT WITH THE
PROPOSITION THAT IS CLEARLY
ESTABLISHED IN THE CASE ON
REVIEW THAT WE CAN ACTUALLY SAY
THIS -- THEY HAD SIMILAR POWERS
OF ATTORNEY, BUT THEY REACHED
DIFFERENT CONCLUSIONS.

I DON'T THINK WE'VE GOT ENOUGH
INFORMATION TO CONCLUDE THAT.

>> OF COURSE I DISAGREE BECAUSE I THINK THE MILO CASE--
>> YOU WOULD HAVE TO.
>> WHEN THE MILO CASE SAYS IT SOON INDICATES IT IS SPECIFICALLY GRANTED AUTHORITY TO RELATED TO MILO'S PROPERTY INTERESTED WE HAVE ACCORDING TO THE SECOND DISTRICT FOR A SPECIFIC GRANT OF AUTHORITY LIMITED TO PROPERTY RIGHTS. THAT EVEN TAKES IT OUT OF THE GENERAL--
>> THAT COULD VERY WELL BE SOMETHING THAT HAPPENED IN MCKIBBIN, RIGHT?
IN MCKIBBIN WHERE IT SAYS IN THE PREMISES.
>> MCKIBBIN DOES SAY IN THE PREMISES.
>> I UNDERSTAND THAT, THERE IS NO WAY WE CAN TELL THAT IS NOT EXACTLY WHAT IS GOING ON IN MILO.
>> WE KNOW FROM THE MCKIBBIN CASE THE REASON WHY MCKIBBIN IS OF NO PRESIDENTIAL VALUE TO THESE OTHER COURTS THAT ARE EXAMINING IT IS BECAUSE IT DOESN'T EVEN CONTAIN NOT. IT DOESN'T SAY WE'VE DECIDED THIS CASE BECAUSE IT WAS LIMITED TO PROPERTY RIGHTS, IT JUST SAYS WE DON'T THINK THERE IS AUTHORITY.
>> IT SAYS THE LANGUAGE DOES NOT UNAMBIGUOUS TO MAKE A BROAD, GENERAL GRANT OF AUTHORITY. AGAIN, I AM SYMPATHETIC TO YOUR SITUATION, I AM TRYING TO LOOK AT THIS POWER OF ATTORNEY, AND IT SAYS AND GENERALLY TO ENTER INTO AND ACKNOWLEDGE ALL CONTRACTS WHETHER INVOLVING REAL PROPERTY OR NOT.
HOW THAT IS AMBIGUOUS, I DON'T

SEE HOW THAT RELATES BACK TO THE SPECIFIC GRANTS.

I'M SURPRISED THE SECTION AT DOES THESE KIND OF THINGS, I SUSPECT THERE ARE LOTS OF THESE THAT ARE OUT THERE WERE CHILDREN OF ELDERLY PARENTS THINK THEY WERE HAVING THE AUTHORITY BASICALLY TO DO WHAT THEIR PARENTS.

TO HAVE DONE, AND SO TELL ME, ARE YOU SAYING THIS IS AMBIGUOUS?

ARE YOU SAYING THIS POWER OF ATTORNEY IS AMBIGUOUS AS TO WHAT THE PERSON THAT IS NOW DECEASED INTENDED TO DO?

>> I AM SAYING WHAT YOU JUST READ IS A GENERAL TO AUTHORITY, NOT FIRST INSTANCE THAT IN AND OF ITSELF THAT PROPOSITION OF GIVING SOMEONE THE POWER OVER PROPERTY IS NOT ENOUGH I THINK IN OUR VIEW.

I HAVEN'T GOTTEN TO EXPLAIN THAT YET.

>> SAYS TECHNOLOGY ALL CONTRACTS.

IS THIS NOT A CONTRACT SHE ENTERED INTO?

>> ABSOLUTELY IT IS A CONTRACT SHE ENTERED INTO, BUT THAT IS NEVERTHELESS GENERAL POWER, IT WAS A GENERAL PROVISION.

>> IT SAYS THE LANGUAGE UNAMBIGUOUSLY MAKE A GENERAL GRANT OF AUTHORITY. THIS DOES.

>> BECAUSE THEY ARE FINDING IT IS LIMITED TO PROPERTY. MY VIEW IS THIS IS LIMITED TO PROPERTY AND BECAUSE EVERYTHING YOU HAVE TO READ THAT GENERAL PROVISION OTHERWISE YOUR RENDERING IT MEANINGLESS.

>> THIS IS A VERY, VERY LIMITED

POWER OF ATTORNEY ONLY TO
FINANCIAL.

>> NO, IT IS A BROAD POWER OF
ATTORNEY WITH RESPECT TO
PROPERTY RIGHTS.

>> WHAT IS THE SPECIFIC THOUGH?
WHAT IS THE SPECIFIC GRANT IN
THIS ATTORNEY?

>> THE NINE SPECIFIC POWERS
GIVEN.

ABSOLUTELY.

>> THAT IS WHAT I AM TRYING TO
GET AT.

>> WHEN YOU LOOK AT THE
STATUTORY CHANGE, A GENERAL
GRANT OF AUTHORITY IS NOT
SUFFICIENT AND WOULD KNOW IT HAS
RETROACTIVE APPLICATION.

>> I DON'T KNOW HOW IT CAN HAVE,
I AM NOT SURE HOW IT CAN HAVE,
THIS WAS ENTERED INTO IN 2005
AND NURSING HOME CONTRACT PEOPLE
RELIED ON THIS.

THERE IS NO RECORD OF RELIANCE.
THIS ISN'T THE BENEFICIARY
COMPLAINING ABOUT THE RIGHTS
BEING TAKEN AWAY.

I'M NOT SURE HOW TO HAVE
STANDING--

>> THERE CAN BE NO RELIANCE.
THEY ENTERED A CONTRACT.

>> THE PART OF THE CONTRACT THAT
WE'RE LOOKING AT IS THE
ARBITRATION CONTRACT, NOT THE
CONTRACT AS A WHOLE.

LOOK AT THE ARBITRATION CONTRACT
AND THE WAIVERS CONTAINED WITHIN
THE ARBITRATION CONTRACT, THAT
IS WHAT WE ARE LOOKING AT.

>> THAT IS STILL AN AGREEMENT
ENTERED INTO IN THE YEAR 2005
AND YOU ARE SAYING WHAT THE
STATE OF THE LAW THEN COULD HAVE
MADE THAT VALID FOR THE
LEGISLATURE IN 2011 COULD COME
ALONG AND PASS A LAW THAT WOULD

MAKE THAT INVALID, I DON'T UNDERSTAND WHY THEY CAN DO THAT. I DON'T THINK LEGISLATORS THAT IS WAS GOING TO DO THAT. IT ALREADY COME INTO EXISTENCE.

>> DON'T OF THE STATE OF LAW EVER FOUND THIS POWER OF ATTORNEY IS VALID WHEN YOU READ THE COMPLETE -- THAT IS WHAT I'M TRYING TO GET AT.

>> THAT IS A DIFFERENT ARGUMENT.

>> EXACTLY.

TO FIND THIS IS A PROPERTY RIGHT THIS HAS TO BE A VOLUNTARY WAIVER.

YOU'RE GIVING UP A PROTECTED RIGHT.

>> ONE QUESTION, IF YOU ARE GOING TO SEGREGATE OUT ALL OF THE PROVISIONS OF A CONTRACT, ARBITRATION, PAYMENT OF WHATEVER OVER HERE, THEN A RIGHT TO EXECUTE CONTRACTS WILL NEVER BE A SPECIFIC RIGHT, YOU WOULD HAVE TO HAVE THE SPECIFICS OF EACH TERM AND PROVISION OF A CONTRACT.

>> THIS IS OUR POINT, THIS SHOULD BE TREATED NO DIFFERENT OF A HOMESTEAD EXEMPTION, AND HE INTO A CONTINGENCY CONTRACT AND THAT HAS TO BE FUNDAMENTALLY KNOWING AND ABSENT.

OVER THE ATTORNEY IS CONSUMMATE OR CONTACT IT IS NURSING HOME RESIDENTS INCLUDING WHAT INCLUDES A FUNDAMENTAL WAIVER OTHER CONSTITUTIONAL RIGHTS, AND THAT'S WHY THERE'S ALL THESE CONTINUOUS APPEALS ON THIS ISSUE AND ASKED WHAT HE SCORES QUITE FRANKLY ARE STRUGGLING WITH IT. SOME COURTS ARE SYMPATHETIC TO NURSING HOME RESIDENT AS THEY FOLLOW THE LINE OF PRESIDENT LIKE MCKIBBIN AND MILO AND FIND

THIS IS LIMITED TO PROPERTY RIGHTS.

OTHERS FIND IT APPLIES TO EVERYTHING.

THAT IS WHY WE FEEL THERE IS A NEED FOR CLARITY IN THIS LAW AND WE ASKED THE COURT RELY ON EXISTING CUSTODY SHOW JURISDICTION TO CLARIFY THIS LAW.

THANK YOU.

>> MAY IT PLEASE THE COURT, MY NAME IS THOMAS VALADEZ, AND I'M HERE IN BEHALF OF THE RESPONDING SOUTHLAND SUITES.

YOUR HONOR, RESPECTFULLY THERE IS NO EXPRESSED AND DIRECT CONFLICT BETWEEN THE FIFTH DISTRICT'S DECISION IN THIS CASE AND ANY OF THE CASES THAT OPPOSING COUNSEL CITED IN HIS BRIEF OR WERE DISCUSSED IN ANY OF THE BRIEFS.

THERE IS ABSOLUTELY NO EXPRESSED AND DIRECT CONFLICT WITH THE MILO CASE, WHICH IS THE ONE OPPOSING COUNSEL SEEMS TO RELY ON MOST HEAVILY.

IN THE MILO CASE THE COURT FOUND THE AUTHORITY THAT WAS GRANTED TO THE ATTORNEY-IN-FACT BY THAT POWER OF ATTORNEY WAS RELATED SOLELY TO PROPERTY RIGHTS, HE DIDN'T SAY EXACTLY WHAT THE PROPERTY RIGHTS, BUT IT WENT ON TO SAY THAT THE LANGUAGE DOES NOT INCLUDE A BROAD GRANT OF AUTHORITY, IT WAS HARKENING BACK TO THE MCKIBBIN CASE WHICH DID NOT INCLUDE THE LANGUAGE TO TALK ABOUT PROPERTY RIGHTS, BUT THERE'S NO MENTION OF EXACTLY WHAT THOSE PROPERTY RIGHTS WERE IN THE OPINION, AND THERE WAS NO BROAD GRANT OF AUTHORITY.

NOW THE MOOTS CASE IS A CASE

WHERE THEY LOOKED AT THE MCKIBBIN DECISION AND SAID WELL THIS IS NOT LIKE MCKIBBIN BECAUSE WE HAVE A SPECIFIC GRANTS OF AUTHORITY COMBINE WITH UNAMBIGUOUS BROAD GRANT OF AUTHORITY, SO WE'RE GOING TO HOLD MCKIBBIN DOESN'T APPLY, LIMITED PRESIDENTIAL VALUE, WILL ONLY APPLY IN CASES LIKE MCKIBBIN OR CASES LIKE MILO WHERE THERE ARE UNCERTAIN PROPERTY RIGHTS AND NO BROAD GENERAL GRANT OF AUTHORITY RELATING TO THOSE THAT WOULD ALLOW THE COURT TO INFER A RIGHT TO ENTER INTO AN ARBITRATION AGREEMENT.

IN TERMS OF WHETHER THIS POWER OF ATTORNEY DOES GRANT THE RIGHT TO MAKE, EXECUTE AND ACKNOWLEDGE ALL CONTRACTS JUST AS HE IS ALL CORRECT, THAT RIGHT THERE IS ENOUGH TO AFFIRM THE FIFTH DISTRICT A DECISION.

THAT IS ENOUGH AUTHORITY IN THE DURABLE POWER OF ATTORNEY.

>> EVEN THOUGH THE USE OF THE WORD "GENERALLY"?

>> YES, YOUR HONOR.

THOUGH THEY WERE GENERALLY IS USED THERE, THIS GRANT IS THE TYPE OF HYBRID GRANT THAT THE LEGISLATURE HAD IN MIND WHEN IT PASSED 709.220 SUB ONE.

EVEN THEY ARE IN THE NEW STATUTE THEY DID NOT LIMIT THE POWERS OF ATTORNEY ONLY TWO POWERS EXPRESSLY GRANTED.

THEY SAID THEY WOULD BE LIMITED TO POWERS SPECIFICALLY AND EXPRESSLY GRANTED AND ANY AUTHORITY REASONABLY NECESSARY TO GIVE EFFECT TO THOSE POWERS. I THINK THAT REALLY IS IN CONCERT WITH THE CASE LAW, THE

CASE LAW SET UP TO THIS POINT.
THERE HAS BEEN SOME CONFUSION IN
SOME OF THE CASES, BUT BY AND
LARGE THIS SEEMS TO BE WHAT THE
CASE LAW SAYS AT THIS POINT.
WHERE THERE ARE SPECIFIC GRANTS
AND BROAD GENERAL GRANTS THAT
RELATE BACK TO THEM AND MODIFY
THOSE, WE'RE GOING TO READ THIS
BROADLY IN: THE COURT'S
ATTENTION AGAIN TO 709.220 SUB
ONE--

>> IS THAT THE NEW STATUTE?
YOU ARE SAYING THIS POWER OF
ATTORNEY WOULD BE APPROPRIATE
UNDER THE NEW STATUTE AS WELL?

>> YES, YOUR HONOR.

LOOKING AT THAT STATUTE BECAUSE
THAT IS INSTRUCTIVE IT SAYS THE
SECOND THING IT SAYS IN ADDITION
TO POWER OF ATTORNEY BE
EXPRESSED GRANTS AND ANY
AUTHORITY NECESSARY TO GIVE
EFFECT TO THOSE GRANTS ARE GOING
TO BE DEEMED TO BE IN THE POWER
OF ATTORNEY.

IT TALKS ABOUT GENERAL
PROVISIONS THAT DO NOT IDENTIFY
SPECIFIC AUTHORITY GRANTED AS
BEING PROVISIONS THAT THEY ARE
NOT GOING TO TOLERATE.

THE CASE LAW ALREADY SAID THAT
BEFORE THE LEGISLATURE REVISED
THE STATUTE.

>> GIVE ME AN EXAMPLE OF WHAT
WOULD BE WHERE THE GENERAL HAD
-- WAS ONLY RELATING TO THE
SPECIFIC.

WHAT WOULD THE LANGUAGE BE THAT
WOULD RESTRICT THIS POWER OF
ATTORNEY?

>> I'M NOT SURE WHAT LANGUAGE
WOULD RESTRICT IT.

IF IT HAD BEEN LESS BROAD TERMS.
THE POINT I'M MAKING AND I'M NOT
SURE I'M BEING CLEAR, BUT THE

POINT I'M MAKING IS THAT THIS IS NOT A TYPE OF GENERAL PROVISION THAT DOES NOT IDENTIFY SPECIFIC AUTHORITY LIKE DURABLE POWER OF ATTORNEY THAT JUST SAYS I GIVE MY ATTORNEY THE AUTHORITY TO DO ANYTHING I CAN DO, PERIOD. CASE LAW SAYS THAT IS NOT GOOD ENOUGH.

>> YOU THINK THAT IS WHAT THE LEGISLATURE WAS AIMING AT, SOMETHING THAT JUST HAD A NONSPECIFIC, BROAD, NOTHING--

>> AT THE STATUTE SPECIFICALLY SAYS THOSE TYPES OF GENERAL PROVISIONS THAT ARE NOT TIED TO A SPECIFIC PROVISION ARE NOT GOING TO BE GIVEN EFFECT.

IT HAS THE RIGHT TO PROSPECT UNTIL WITH PROPERTY.

>> THE RIGHT TO CONTRACT IS THE GENERAL PROVISION THAT IS ATTACHED TO SOMETHING ELSE, NOT THE OTHER WAY AROUND.

IT IS NOT THE SPECIFIC RIGHT TO CONTRACT, GENERALLY SOMETHING ELSE.

YOU SEE WHAT I AM SAYING? THERE ARE TWO WAYS TO VIEW THIS, THE CONTRACT AND THE RIGHT TO CONTRACT IS GENERALLY TO CARRY OUT A SPECIFIC INTENT OR IS IT CONTRACT THE SPECIFIC INTENT, THIS SEEMS TO BE CONTAINED IN CONTRACTS IN THE GENERAL PROVISION RATHER THAN THE SPECIFIC.

>> YOUR HONOR, IF THERE WAS JUST A GENERAL GRANT WITHOUT IT BEING TIED TO CONTRACT, IT WOULDN'T BE A LEGITIMATE GRANT, BUT WHEN YOU LOOK AT HIS POWERS OF ATTORNEY WE CAN'T LOOK AT THEM IN A WAY THAT SAYS THIS ONE SAYS SPECIFIC AND YET THIS OTHER ONE WHICH SPECIFICALLY SAYS WE'RE GIVING

YOU THE RIGHT TO CONTRACT AND
MAKE ANY KIND OF CONTRACT.

>> PROBABLY BROADER THAN THE
RIGHT TO CONTRACT.

>> THIS POWER OF ATTORNEY IS
BROADER AND GIVES BROADER THAN
THE RIGHT TO CONTRACT.

>> WHAT DIDN'T IT GIVE?

IF WE ARE SAYING YOU CAN'T SAY
MY DAUGHTER CAN DO EVERYTHING I
CAN DO, ISN'T UNDER THIS WHAT
WOULD BE THAT SHE COULDN'T DO?

>> YOUR HONOR, THERE ARE MANY
THINGS I THINK SHE COULDN'T DO
UNDER THAT PARTICULAR LANGUAGE
JUST BECAUSE YOU GRANT GENERAL
AUTHORITY.

>> LIKE WHAT?

>> FOR EXAMPLE UNLESS THE POWER
OF ATTORNEY SAID DIFFERENTLY SHE
COULDN'T MAKE GIFTS TO HERSELF
IN EXCESS OF THE POWER GRANTED.
I POINTED OUT BECAUSE THAT IS
THE OPPOSING COUNSEL REPRIEVE IN
THIS CASE.

>> WHAT ABOUT THIS CASE AND ALL
CASE, OLD CASE, FIRST NATIONAL
FROM 1901.

ARE YOU FAMILIAR WITH THAT CASE?
IT SAYS IF THERE ARE SEVERAL
AGENTS HAVE THE AUTHORITY TO
EXECUTE MORTGAGES ON PRINCIPLES
BEHALF, AND TALKED ABOUT -- GAVE
THEM BROAD TERMS, THE RIGHTS TO
CONDUCT BUSINESS, BUT THERE WAS
A BROADER GRANT, AND IT SAID
ALTHOUGH THE LANGUAGE USED IN
PARAGRAPHS ONE AND 11 IS BROAD,
THE BROAD LANGUAGE MUST BE
CONSTRUED AS SPECIAL POWERS IN
CONNECTION WITH THE GENERAL
AUTHORITY THAT WAS GIVEN.

IN OTHER WORDS THE AUTHORITY FOR
THIS IDEA WHEN YOU HAVE SPECIFIC
GRANTS, THE GENERAL RELATES TO
BE SPECIFIC GRANTS AND NOT TO

EVERYTHING ELSE.

>> YOUR HONOR, THIS LANGUAGE I THINK IN AND ABOUT THE PREMISES LANGUAGE IS THE KIND OF LANGUAGE YOU ARE TALKING ABOUT.

THE LANGUAGE IN THIS CASE THAT SAYS -- THIS LANGUAGE WHEN YOU READ IT DOESN'T SAY WE'RE QUALIFYING, WE ARE ONLY QUALIFYING CONTRACT, WE ONLY WANT YOU TO MAKE CONTRACTS WITH RELATION TO THESE SPECIFIC POWERS HERE.

IT'S SAYING ALL CONTRACTS. EVEN AS A MODIFIER.

>> AGAIN, SINCE THERE ARE BUSINESS TRANSACTIONS LIKE TO SAY I AM GIVING SOMEBODY A POWER OF ATTORNEY TO SIGN FOR MY BANK ACCOUNTS AND ALL OF THAT.

AGAIN, THEY WILL NOT BE ABLE TO GIVE THEMSELVES FIDUCIARY RELATIONSHIP, THE GIVING GIFTS OUT OF THEIR PARENTS ACCOUNT OR WHATEVER IS A WHOLE OTHER ISSUE. IF YOU'RE GOING TO THE OTHER BIG ISSUE FOR ELDERLY PEOPLE OR NOT SO ELDERLY IS THE ABILITY TO --

>> WHY ISN'T IT FROM EVERYTHING ELSE UNDER THE SPECIFIC, WHY SHOULDN'T THAT HAVE TO BE THE LANGUAGE THAT IS USED TO GIVE THE KIND OF AUTHORITY THAT, YOU KNOW, THAT WOULD BE AT ISSUE HERE.

>> YOUR HONOR--

>> I MEAN, IT'S JUST DIFFERENT IN KIND.

WOULD YOU AGREE WITH WHAT WE'RE TALKING ABOUT HERE IS DIFFERENT IN KIND FROM ALL THE OTHER SPECIFIC GRANTS?

DO YOU AGREE WITH THAT?

>> YES, YOUR HONOR.

AND I THINK THAT WHAT I SAID

ABOUT THIS GRANT IS I DON'T THINK IT'S, I DON'T THINK IT'S A NONSPECIFIC GRANT.

I THINK IT IS A SPECIFIC GRANT COUCHED IN GENERAL TERMS.

THAT'S THE POINT I WAS TRYING TO GET ACROSS.

IT'S EXACTLY THE KIND OF GRANT THAT EVEN UNDER THE NEW STATUTE WOULD BE EFFECTIVE BECAUSE THE LEGISLATURE SAID THEY WERE ONLY GOING TO GIVE GENERAL PROVISIONS THAT DIDN'T IDENTIFY SPECIFIC AUTHORITY GRANTED.

THIS ONE HAS A GENERAL AUTHORITY, THEN SPECIFICALLY TALKS ABOUT ALL PROPERTY RIGHTS, SO NOT JUST--

>> SO YOU THINK IF THIS ONE STARTED WITH GENERALLY, IT SAID GENERALLY DO ALL THESE THINGS AND THEN SPECIFICALLY DO THESE THINGS, IT WOULD BE DIFFERENT? IT'S THE GENERAL STARTS FIRST AND THEN THE SPECIFIC?

>> IT WOULD DEPEND ON THE WORDING OF THE POWER OF ATTORNEY AT ISSUE, YOUR HONOR.

I THINK THAT WHEN YOU READ THIS ONE, THERE WAS A LOT OF TALK ABOUT STRICT INTERPRETATION. BUT WHEN YOU READ THIS ONE, IT SEEMS VERY CLEAR THAT THE INTENT OF THE PRINCIPAL HERE WAS TO GRANT HER DAUGHTER AUTHORITY OVER ANY PROPERTY THAT SHE HAD, ANY PROPERTY RIGHTS TO MAKE ANY CONTRACTS--

>> WELL, YOU KNOW, THAT'S REALLY, I MEAN, THIS IS THE FUNNY KIND OF THING, I MEAN, AS OUR ELDERLY DEAL WITH THESE KINDS OF CONTRACTS, YOU NEVER KNOW WHAT'S GOING TO ARISE. AND THE TENDENCY WOULD BE TO MAKE IT AS BROAD AS YOU CAN TO

COVER ANY CONTINGENCY BECAUSE YOU DON'T KNOW WHAT THE FUTURE'S GOING TO HOLD.

AND SO THIS IS JUST AS A SOCIETAL MATTER CREATES A LOT OF ISSUES AND A LOT OF PROBLEMS BECAUSE IT DOESN'T MAKE SENSE TO ME THAT THE WORD "CONTRACTS," THAT YOU'D HAVE TO HAVE A SPECIFIC GRANT RELATING TO EVERY PROVISION OF ANY CONTRACT THAT YOU'D EVER SIGNED.

THAT'S, I MEAN, THIS WHOLE AREA DEALING WITH DURABLE POWERS JUST SEEMS INCONSISTENT HERE WITH THIS ARGUMENT OF SPECIFICITY AND GENERALITIES AND THAT TYPE OF THING WHEN THE WHOLE PURPOSE IS YOU CAN GLEAN FROM THE FACE OF THIS IS TO LET THEM TAKE CARE OF EVERYTHING.

WE HAVE LAW, AND OUR JURISPRUDENCE SAYS, NO, YOU CAN'T TAKE CARE OF EVERYTHING BECAUSE YOU'VE BEEN TOLD TO TAKE CARE OF EVERYTHING IS WHY YOU CAN'T DO IT.

>> YOUR HONOR, I CAN SEE THE POINT THAT YOU'RE MAKING ABOUT THE LAW, BUT RESPECTFULLY, THE POWER OF ATTORNEY IN THIS CASE--

>> YEAH.

>> GRANTED MS. SMITH'S DAUGHTER SPECIFIC AND GENERAL TYPES OF AUTHORITY TO HANDLE HER BUSINESS AND PROPERTY, TO MAKE CONTRACTS AND TO DO THAT IN AN APPROPRIATE WAY, AND SHE DID. THERE'S NOTHING INAPPROPRIATE ABOUT AGREEING TO A VALID ARBITRATION AGREEMENT THAT CONTAINS NO REMEDIAL LIMITATIONS AT ALL, NOT EVEN AT ISSUE HERE. THERE'S NOTHING IMPROPER ABOUT THAT.

AND IN OPPOSING COME'S BRIEF,
THEY SEEM TO TRY TO EQUATE
SELF-DEALING AND GIFTING OF
PROPERTY OR MONEY OR REAL ESTATE
TO AGREEING TO ARBITRATION.

>> HOW--

>> ISN'T THAT THE REASON THIS IS
A DURABLE POWER OF ATTORNEY AS
OPPOSED TO A REGULAR, GENERAL
POWER OF ATTORNEY?

WHERE EVEN IF SHE CANNOT LOSE
THE CAPACITY TO CONSENT, IT
WOULD STILL SURVIVE?

THIS POWER WOULD STILL SURVIVE
NOT SAYING HER ABILITY TO I
WITHDRAW IT OR NOT.

>> YES, SIR.

>> SO, I MEAN, DOESN'T THAT MAKE
A DIFFERENCE IN THE ANALYSIS
WITH THE GENERAL POWER, REGULAR
POWER OF ATTORNEY OR A DURABLE
POWER OF ATTORNEY?

>> I THINK IT CAN MAKE A
DIFFERENCE IN THE ANALYSIS
BECAUSE IF THERE'S, IF THERE'S A
LOSS OF CAPACITY, THEN THE
REGULAR POWER OF ATTORNEY'S, YOU
KNOW, NOT EFFECTIVE, THE NOT
EFFECTIVE ANYMORE.

BUT DURABLE POWER OF ATTORNEY
HAS LONG BEEN RECOGNIZED AS A
TIME AND COST EFFICIENT
ALTERNATIVE TO FORMAL
GUARDIANSHIP PROCEEDINGS WHICH
ARE LENGTHY, ARE COSTLY, SORT OF
A DRACONIAN PROCESS.

AND--

>> COULD THE, THE SPECIFIC GRANT
THAT YOU REFERRED TO AS A
CONTRACT, COULD-- DOES THIS
POWER OF ATTORNEY GRANT THE
RIGHT TO MS. SMITH TO WAIVE THE
PROTECTIONS OF THE NURSING HOME
BILL OF RIGHTS?

>> NO, YOUR HONOR, I DON'T THINK
THAT IT WOULD ALLOW HER TO DO

ANYTHING THAT'S ILLEGAL.

I THINK THAT'S, I MEAN, I THINK THAT'S A GIVEN WITHIN THE POWER OF ATTORNEY, AND WAIVING HER RIGHTS, THIS COURT HAS FOUND YOU CAN'T WAIVE THE PROTECTIONS THAT ARE AFFORDED BY THE NURSING HOME OR, BY EXTENSION, THE AISTED LIVING FACILITY-- ASSISTED LIVING FACILITY STATUTES. YOU HAVE TO, THE REMEDIES THAT THE LEGISLATURE'S CREATED HAVE TO REMAIN INTACT.

>> WELL, WOULDN'T YOU THINK CONSTITUTIONAL PROTECTIONS SHOULD BE AFFORDED A HIGHER, HIGHER RESPECT THAN STATUTORY RIGHTS, WOULDN'T YOU?

>> YOUR HONOR, YES, I UNDERSTAND, I UNDERSTAND--

>> [INAUDIBLE]

GO AHEAD, I'M SORRY.

I DIDN'T MEAN TO INTERRUPT.

>> AND I THINK THAT THEY ARE ESPECIALLY IN CRIMINAL CASES WHERE THERE ARE LIBERTY INTERESTS AT STAKE THE. SOMETIMES THE INTEREST--

>> WELL, I MEAN, SO YOU'RE SAYING THAT THE RIGHT TO ACCESS TO THE COURTS OR THE RIGHT TO A TRIAL BY JURY IS, DOES NOT HAVE THE SAME DIGNITY AS I THINK YOU SAID RIGHT TO COUNSEL?

>> I'M NOT SAYING IT DOESN'T HAVE THE SAME DIGNITY, YOUR HONOR.

I AM SAYING THE CASE LAW RECOGNIZES, THAT'S SOMETHING THAT CAN BE WAIVED BY CONTRACT. AND WHERE YOU GIVE THE RIGHT TO CONTRACT, YOU GIVE THE RIGHT TO HAVE AN ATTORNEY, IN FACT, STAND IN THE SHOES--

>> WELL, YOU JUST SAID YOU CANNOT WAIVE THE NURSING HOME

BILL OF RIGHTS.

>> THE REMEDIAL LIMITATIONS.

THIS COURT HAS FOUND--

>> NO, I UNDERSTAND.

I'M JUST WONDERING OUT LOUD
WHETHER WE DON'T JUST HAVE AN
ENTIRE CONFLICTING BODY OF LAW
WITH WHAT AND CAN'T BE DONE.

>> WELL, YOUR HONOR, ACROSS THE
BOARD TAKING IT OUT OF THE
ASSISTED FACILITY AND NURSING
HOME CASES, THERE'S-- PEOPLE
ROUTINELY ON A DAILY BASIS ARE
ASKED IN CONTACTS TO WAIVE THE
RIGHT TO JURY TRIAL IN FAVOR OF
ARBITRATION--

>> I'M AWARE OF THAT.

ON THAT ISSUE IN THE SUPREME
COURT.

>> SO THAT'S SOMETHING THAT
PEOPLE AS CITIZENS WERE ALL
ASKED TO DO ON AN INCREASING
BASIS.

AND, CERTAINLY, THE REASON THAT
AN ELDERLY PERSON IS GOING TO
APPOINT A TRUSTED ATTORNEY, IN
FACT, TO HANDLE THEIR DURABLE
POWER OF ATTORNEY IS BECAUSE
THEY WANT SOMEBODY THAT'LL ACT
IN THEIR BEST INTERESTS, WILL DO
WHAT THEY THINK IS RIGHT.

THE ATTORNEY, IN FACT, IS
STANDING IN HER SHOES.

AND STANDING IN HER SHOES, SHE
CAN WAIVE THE RIGHT TO JURY
TRIAL BY CONTRACT BECAUSE THAT'S
WHAT THE ENTIRE BODY OF CONTACT
LAW SAYS.

THE ARGUMENT THAT OPPOSING
COUNSEL'S MAKING WAS ADDRESSED
IN GREAT DETAIL BY THE 11TH
FEDERAL CIRCUIT IN KALEY V.
GULFSTREAM, AND THEY COMPLETELY
REJECTED THAT STANDARD THAT'S AN
EXCELLENT OPINION.

I MEAN, IT BASICALLY COVERS

EVERY CONTINGENCY.

ON THAT POINT.

SO I DON'T THINK THAT-- SOME OTHER THINGS I WOULD POINT OUT ABOUT THE NEW STATUTE, THE NEW STATUTE DOESN'T CONTROL HERE.

I THINK OUR INSTRUCTIVE JUST FOR UNDERSTANDING THE KIND OF UNIVERSE THAT WE'RE IN HERE IS THAT 709.2402 SAYS THE RIGHT OF QUIET UNDER PRIOR LAW WILL CONTINUE TO APPLY AND THAT THE ACT OF AN AGENT THAT OCCURS BEFORE THE EFFECTIVE DATE OF THE NEW STATUTE WON'T BE AFFECTED BY THE STATUTE.

BUT EVEN MORE IMPORTANTLY THAN THAT, 709.2201 SUB 5 SAYS THAT THE AUTHORITY GRANTED IN A POWER OF ATTORNEY IS EXERCISEABLE WITH RESPECT TO PROPERTY THAT THE PRINCIPAL HAS ACQUIRED OR ACQUIRES AFTER THAT POINT. PROPERTY AS DEFINED IN 709.2102. WHEN YOU LOOK AT 709.2102-- I'M SORRY, YES, 709 EITHER 2102 OR 2202, I APOLOGIZE.

THE DEFINITIONS SECTION OF THE STATUTE DEFINES PROPERTY AS ALL TYPES OF PROPERTY INCLUDING TANGIBLE AND INTANGIBLE PROPERTY.

SO UNDER THE EXISTING JURISPRUDENCE AND UNDER THE NEW STATUTE, IT'S RECOGNIZED THAT DURABLE POWERS OF ATTORNEY CAN, YOU KNOW, IF THEY EXPRESSLY SAY SO BY THEIR SPECIFIC AND EXPRESS GRANTS, WHEN YOU TAKE THOSE TOGETHER, THEY CAN GRANT AUTHORITY OVER ALL FORMS OF PROPERTY.

AND WHERE YOU HAVE AUTHORITY OVER ALL FORMS OF PROPERTY OR SPECIFIC AUTHORITY AND THEN GENERAL AUTHORITY, YOU CAN

BASICALLY DO ANYTHING LEGAL NOT PREVENTED BY THE STATUTE, THEN YOU HAVE A VALID POWER OF ATTORNEY WHETHER YOU'RE UNDER THE OLD JURISPRUDENCE OR THE NEW.

AND THERE IS NOTHING IN THE OLD JURISPRUDENCE THAT CONFLICTS WITH THE DECISION OF THE FIFTH IN THIS PARTICULAR CASE.

THE ONLY ISSUE I WOULD TAKE AT ALL WITH ANYTHING IN THE FIFTH DISTRICT'S OPINION IS THAT WHEN THEY'RE RECITING IN THEIR FOOTNOTE-- AND THIS IS REALLY DICTA-- BUT IN THEIR FOOTNOTE, THEY TALK ABOUT McKIBBEN, AND THEY TALKED A LITTLE BIT MORE ABOUT THE FACT THAT IT COVERED PERSONAL PROPERTY AND INTANGIBLE PROPERTY RIGHTS.

THAT'S SOMETHING THAT'S NOT EVEN IN THE McKIBBEN CASE.

AND THEY SAY BASED ON THAT ANALYSIS IN McKIBBEN THAT EVEN THOUGH THERE'S A BROAD GENERAL GRANT OF AUTHORITY, THEY WOULDN'T BE ABLE TO EXERCISE AUTHORITY.

THAT'S WHAT THEY'RE INTERPRETING McKIBBEN TO SAY.

I THINK THAT ONE SENTENCE IN THE FOOTNOTE IS INACCURATE.

I THINK THAT IF McKIBBEN CAME BEFORE THIS COURT TODAY AND YOU HAD EXPRESS GRANTS OF AUTHORITY RELATING TO THE ALL TYPES OF PROPERTY-- REAL, PERSONAL, TANGIBLE, INTANGIBLE-- AND THEN A BROAD GRANT OF AUTHORITY ALLOWING THE POWER OVER THOSE TO BE AFFECTED, THAT IF THIS COURT WERE DEALING WITH THAT KIND OF A POWER OF ATTORNEY IN THE McKIBBEN CASE TODAY, THAT McKIBBEN WOULD BE REVERSED.

BUT, OF COURSE, TODAY WHAT WE ARE DEALING WITH IS THE SMITH CASE, THE FIFTH DISTRICT'S OPINION IN THAT CASE, THE HOLDING AND THE REASONING OF THAT CASE ARE SOLID, THEY'RE NOT IN EXPRESS OR DIRECT CONFLICT WITH THE OTHER DISTRICT COURTS, AND WITH THAT, I WOULD LIKE TO THANK THE COURT AND RESPECTFULLY REQUEST THAT THE FIFTH DISTRICT'S DECISION IN THIS CASE BE AFFIRMED.

>> THANK YOU.

COUNSEL, REBUTTAL?

>> JUSTICE LEWIS, I AGREE WITH THE FACT THAT THERE'S A CONFLICTING BODY OF LAW HERE. AND MY COUNSEL HERE, OPPOSING COUNSEL, CONCEDED THE POINT THAT THIS POWER OF ATTORNEY DOES NOT GIVE THE RIGHT TO WAIVE THE RESIDENT'S RIGHTS IN THE NURSING HOME RESIDENT CANS' RIGHT STATUTE.

AND THE VERY FIRST STATUTE IS THE RIGHT THE CIVIL LIBERTIES AND THE RIGHT TO ENCOURAGEMENT AND ASSISTANCE FROM THE STAFF TO THE FULLEST POSSIBLE EXERCISE OF THOSE RIGHTS.

>> BUT THE LAW IS THAT THE RESIDENT CAN'T WAIVE THOSE RIGHTS TOO, RIGHT?

>> WHAT'S THAT?

>> ISN'T THE LAW THAT THE RESIDENT-- FORGET ABOUT POWER OF ATTORNEY, BUT THE RESIDENT HERSELF WOULD NOT BE ABLE TO WAIVE THOSE RIGHTS.

>> WE'RE TALKING ABOUT-- THAT'S CORRECT WITH RESPECT TO--

>> OKAY. --

>> YOUR HONOR--

>> BUT STRUCTURALLY HERE WE'VE GOT IN THE LAW THE DISTINCTION

HAS BEEN MADE BETWEEN THESE OTHER CONTRACTS WHERE CONSTITUTIONAL RIGHTS CAN BE WAIVED BY THE RESIDENT, AND THOSE PARTICULAR STATUTORY RIGHTS WHERE IT'S BEEN HELD THAT THE RESIDENT CAN'T WAIVE THEM. ISN'T THAT THE CASE?

>> RESPECTFULLY, THIS PARTICULAR ISSUE ABOUT ACCESS TO COURTS BEING ONE OF THE CIVIL LIBERTIES THAT'S IN 400.022 SUB 1 IS NOT AN ISSUE THAT'S BEEN DECIDED BY THE DISTRICT COURTS OF APPEAL OR THIS COURT.

WHEN I ARGUED CASES BEFORE THIS COURT, IT WAS THAT PUBLIC POLICY, WHEN PUBLIC POLICY CHALLENGES WHEN THERE WERE LIMITATIONS ON DAMAGES EMBEDDED IN AN ARBITRATION CONTRACT, THAT VIOLATED THE PUBLIC POLICY OF THIS STATE.

THIS COURT HAS NOT LOOKED AT WHETHER OR NOT THE RESIDENTS KEY RIGHT STATUTE WHEN IT SPECIFICALLY REFERENCES CIVIL LIBERTIES, WHETHER THAT INCLUDES THE FLORIDA CONSTITUTIONAL RIGHT TO ACCESS TO COURTS.

AND THAT'S WHY I THINK THERE'S BEEN THIS CONFLICTING BODY OF LAW THAT'S DEVELOPED, BECAUSE THERE HASN'T BEEN A CLEAR ANSWER THERE.

THAT'S WHAT I THINK IS AT THE HEART OF THE JUDGE'S FRUSTRATION IN THIS, THAT WE HAVE CONFLICTING POLICIES.

THE POLICY FOR ARBITRATION BECAUSE, YES, IT CAN BE MORE EFFICIENT IN CERTAIN CIRCUMSTANCES.

THIS IS A 2010 CASE AND HERE WE ARE IN 2014 STILL ARGUING ABOUT THE ARBITRATION AGREEMENT.

BUT WHAT WE HAVE IS THAT POLICY
OF ECONOMIC EFFICIENCY AND THEN
CONSTITUTIONAL RIGHTS AND THE
PROTECTION OF ACCESS TO COURTS
FOR THE ELDERLY IN THIS TYPE OF
A CONTEXT.

>> YOUR TIME IS UP, SIR.

>> THANK YOU.

WE WOULD ASK THAT THE COURT,
RESPECTFULLY, REVERSE.

THANK YOU.