

>> ALL RISE.  
>> SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.  
PLEASE BE SEATED.  
>> OUR NEXT CASE IS J.R. VERSUS  
PALMER.  
YOU MAY BEGIN.  
>> MAY IT PLEASE THE COURT.  
MY NAME IS PETER SLEASMAN.  
I'M AN ATTORNEY WITH FLORIDA  
INSTITUTIONAL LEGAL SERVICES AND  
I'M HERE ON BEHALF OF THE  
APPELLANT, J.R.  
WE'RE HERE BEFORE THE COURT  
TODAY ON THREE CERTIFIED  
QUESTIONS FROM THE 11th  
CIRCUIT COURT OF APPEAL.  
THE QUESTIONS FROM THE 11th  
CIRCUIT RECORD PROCEDURAL DUE  
PROCESS REQUIREMENTS CONTAINED  
IN THE FLORIDA STATUTORY SCHEME  
FOR CIVIL COMMITMENT OF  
INVOLUNTARY CIVIL COMMITMENT OF  
INDIVIDUALS WITH DEVELOPMENTAL  
DISABILITIES.  
>> LET ME ASK YOU A QUESTION  
ABOUT THE THREE QUESTIONS.  
THE FIRST TWO OF THOSE RELATE TO  
AN INTERPRETATION OF FLORIDA  
LAW, CORRECT.  
>> YES, SIR, YOUR HONOR.  
>> THE THIRD ONE, CALLS FOR AN  
INTERPRETATION OF FEDERAL CASE  
LAW, CORRECT?  
>> I DID THINK THE THIRD  
QUESTION WAS A LITTLE UNUSUAL.  
>> I DID TOO.  
WE'RE ON THE SAME PAGE.  
>> IT SEEMED NOT TO BE A  
QUESTION FOR THE 11th  
CIRCUIT BUT MY INTERPRETATION OF  
THAT QUESTION, ESSENTIALLY AS  
FLORIDA LAW INTERPRETED UNDER  
QUESTIONS ONE AND TWO MEET THE  
REQUIREMENTS OF FEDERAL, FEDERAL  
DUE PROCESS REQUIREMENTS THEY  
SET OUT.  
>> I UNDERSTAND.  
I UNDERSTAND THAT BUT SEEMS  
LIKE, FLORIDA LAW IS ADDRESSED

IN THE FIRST TWO QUESTIONS.  
THE THIRD QUESTION THEN IS A  
QUESTION OF FEDERAL LAW AND I,  
I'M, DO YOU THINK THAT THERE'S  
ANY SPECIAL REASON THIS COURT  
SHOULD ANSWER THAT.

>> ISN'T THAT -- WHEN WE ANSWER  
THE QUESTIONS ON STATE LAW WE  
CAN EXPECT THAT, WHEN WE'VE  
ANSWERED A QUESTION IN A CASE  
LIKE THIS, THAT THE ABOUT STATE  
LAW THE FEDERAL COURTS WILL  
FOLLOW THAT BECAUSE WE'RE THE  
ULTIMATE INTERPRETER OF STATE  
LAW BUT ON THE THIRD QUESTION,  
WE'RE NOT THE ULTIMATE  
INTERPRETER OF THAT.

I MEAN, ANYTHING WE SAY ABOUT  
THAT IS NOTHING MORE THAN AN  
ADVISORY OPINION, ISN'T IT?

>> WELL, YOUR HONOR, I THINK  
THERE'S A COUPLE OF DIFFERENT  
WAYS TO LOOK AT IT.

CERTAINLY, AS YOU HAVE EXPRESSED  
IT IS POSSIBLE IT IS JUST AN  
ADVISORY OPINION BACK TO THE  
11th CIRCUIT AS TO WHETHER  
OR NOT FEDERAL DUE PROCESS  
REQUIREMENTS ARE BEING MET.  
YOU COULD LOOK AT THE QUESTION,  
THE COURT HAS THE ABILITY TO  
REPHRASE SOME OF THE QUESTIONS  
SOMEWHAT FROM THE 11th  
CIRCUIT.

THAT THIRD QUESTION IS  
ESSENTIALLY ASKING, DOES, HOW IS  
FLORIDA LAW INTERPRETED BASED ON  
THE PRINCIPLES IN  
PARHAM v. WILLIAMS.

THEY'RE LOOKING AT WHETHER OR  
NOT FOR EXAMPLE, UNDER FLORIDA  
STATUTORY SCHEME, THAT  
WHETHER OR NOT THE SCHEME  
ADDRESSES OR REQUIRES THE REVIEW  
TO BE DONE IN FRONT OF A  
DECISION-MAKER WITH AUTHORITY TO  
RELEASE AND WHETHER OR NOT THAT  
IS ENCOMPASSED IN THE FLORIDA  
STATUTORY SCHEME.  
SEEMS I HAVE THAT.

>> SEEMS I HAVE A QUESTION THAN ON IN THE THIRD QUESTION. YOU BRING CONSTITUTIONALITY AFTER FLORIDA STATUTE IN FEDERAL COURT.

>> YES, YOUR HONOR.

>> NOW IT IS COMING BACK TO US, THE WAY WE ANSWER THIS ESSENTIALLY WE'RE NOT BEING ASKED AND IS THE STATUTE CONSTITUTIONAL, ESSENTIALLY THAT IS WHAT WE'RE BEING ASKED AND IT IS SORT OF A, NOT THAT I, I MEAN, IN OTHER WORDS, IF THERE THERE ISN'T, DEPENDING HOW SUPPORT PLAN IS INTERPRETED AND THE OTHER ISSUES IN THE SECOND QUESTION DETERMINES WHETHER IT IS CONSTITUTIONAL OR NOT.

>> I WOULD AGREE, YOUR HONOR. ESSENTIALLY I THINK THAT'S CORRECT.

>> IT IS A VERY AWKWARD POSITION.

AGAIN, YOU HAVE HAD YOUR, YOU DECIDE YOU'RE GOING TO BRING IT IN FEDERAL COURT AND BUT IT COMES BACK TO US AS WE'RE SEEING, SORT OF HAVING, WE'RE GOING TO NOT MERELY RULE WHETHER THIS FLORIDA STATUTE IS CONSTITUTIONAL BUT WE ARE. AND AGAIN, THAT IS NOT YOUR FAULT.

>> YES.

AND I WOULD LIKE TO POINT IT THAT NEITHER PARTY ASKED THE 11th CIRCUIT TO CERTIFY THE QUESTIONS.

WHAT IS KIND OF INTERESTING IN THIS CASE IS THE PARTIES INTERPRETATION OF WHAT FLORIDA LAW ACTUALLY SAYS IN CHAPTER 393 WAS ACTUALLY PRETTY CONSISTENT ON BOTH SIDES.

WE BOTH KIND OF AGREED WHAT IT MEANT AND WHAT IT REQUIRED ALL THROUGH THE DISTRICT COURT PROCEEDINGS AND EVEN THROUGH THE BRIEFING IN THE 11th

CIRCUIT.

THE AGENCY IN, INTERPRETING THE STATUTE IN THEIR PLEADINGS IN FRONT OF THE DISTRICT COURT AND IN THEIR BRIEFS IN FRONT OF THE 11th CIRCUIT SAYS THAT THE, THAT ALL 393 REQUIRES IS THE SUPPORT PLAN REVIEW PROCESS WHICH MAY ENCOMPASS A REVIEW OF WHETHER OR NOT THE PERSON CONTINUES TO MEET THE INVOLUNTARY CRITERIA.

>> WHAT IS REQUIRED IN THE SUPPORT PLAN REVIEW?

>> ALL THAT'S REQUIRED IN THE SUPPORT PLAN REVIEW IS THAT THE SUPPORT PLAN TEAM MAKE A DECISION ABOUT THE SERVICES THAT ARE BEING PROVIDED TO THE CLIENT AND THAT TO MAKE SURE THAT THOSE SERVICES ARE PROVIDED IN THE MOST APPROPRIATE, LEAST RESTRICTIVE AND MOST COST BENEFICIAL ANALYSIS.

AS THE 11th CIRCUIT POINTED OUT THAT IS ONLY HALF OF THE QUESTIONS WHETHER SOMEONE CONTINUES TO MEET CRITERIA FOR INVOLUNTARY ADMISSION.

>> LET ME ASK YOU THIS. ARE SERVICES RECEIVED BY A CLIENT ON A VOLUNTARY BASIS RECEIVED IN A LESS RESTRICTIVE ENVIRONMENT THAN SERVICES THAT ARE RECEIVED IN AN INVOLUNTARY COMMITMENT?

>> NOT NECESSARILY.

>> WELL HOW IS THAT?

>> WELL --

>> EXPLAIN THAT TO ME.

>> IT DEPENDS ON WHAT THE INDIVIDUAL NEEDS.

FOR EXAMPLE, J.R. NOW, THE RECORD INDICATES THAT J.R. IS IN A GROUP HOME.

>> LET ME, AND MAYBE I HAVEN'T MADE THE QUESTION CLEAR. WHAT CIRCUMSTANCES WOULD EVER MAKE A, A VOLUNTARY PROVISION OF SERVICES NOT LESS RESTRICTIVE

THAN INVOLUNTARY?

ISN'T THERE SOMETHING  
INVOLUNTARY, INHERENT IN AN  
INVOLUNTARY COMMITMENT THAT  
MAKES IT MORE RESTRICTIVE?

>> YES, YOUR HONOR.

AND THE DIFFERENCE BASICALLY IS  
THAT IF YOU'RE INVOLUNTARILY  
COMMITTED YOU DON'T  
HAVE THE RIGHT TO SAY NO TO A  
PLACEMENT.

IF THEY SAY, YOU'RE GOING TO A  
GROUP HOME IN GAINESVILLE, YOU  
CAN'T SAY NO.

>> THAT IS RESTRICTIVE.

>> MORE RESTRICTIVE BECAUSE IT'S  
A RESTRICTION ON THE PLACEMENT  
WHERE YOU CAN GO, WHERE YOU CAN  
LIVE, WHAT YOU CAN DO.

A VOLUNTARY PATIENT OR A  
VOLUNTARY CLIENT ALWAYS HAS THE  
RIGHT TO SAY NO.

IF THEY WANT TO MOVE YOU FROM A  
GROUP HOME IN MIAMI WHERE YOU'RE  
CLOSE TO YOUR FAMILY TO A GROUP  
HOME IN MOUNT DORA, YOU CAN SAY  
NO, I'M NOT GOING TO DO THAT.

FOR J.R. IT IS INVOLUNTARY  
COMMITMENT. HE CAN'T DO THAT.

>> IF THAT IS THE CASE THEN, WHY  
ISN'T THE CONSIDERATION OF THAT,  
OF WHETHER THAT IS, WHETHER THE  
INVOLUNTARY COMMITMENT CONTINUES  
INHERENT IN THE PLAN WHICH MUST  
INCLUDE THE MOST APPROPRIATE,  
LEAST RESTRICTIVE ENVIRONMENT?

>> WHY IS IT INHERENT?

BECAUSE THERE'S, YOU CAN  
RECEIVE SERVICES ON  
INVOLUNTARY BASIS AS LONG AS  
YOU MEET CRITERIA THAT YOU WOULD  
NOT PHYSICALLY HARM OTHERS.

J.R. IS IN GROUP HOME, NOT  
BEHAVIOR FOCUSED GROUP HOME.  
HE IS IN A REGULAR GROUP HOME.  
HE IS RECEIVING THE SAME KIND OF  
SERVICES, THOUSANDS OF OTHER  
VOLUNTARY RESIDENTS ARE  
RECEIVING.

>> LET ME ASK YOU THIS, AND I

REALIZE WE'RE NOT, WE'RE HERE TO LOOK AT A LEGAL ISSUE BUT I'M SOMEWHAT, THE FACTS ARE, SOME OF THE FACTS ARE IN FRONT OF US. J.R. IS, WAS ARRESTED FOR SEXUAL BATTERY.

>> THAT'S CORRECT, YOUR HONOR.

>> HUH?

>> CORRECT, YES.

>> DO WE KNOW ANY OF THE CIRCUMSTANCES WHO HE ALLEGEDLY SEXUALLY BATTERED?

>> WE DO NOT.

I THINK THE RECORD SUGGESTED IT MAY BE ANOTHER DEVELOPMENTALLY DISABLED WOMAN.

THERE IS NO EVIDENCE IN THE RECORD HOW MUCH PROOF THERE WAS OR ANYTHING ELSE.

>> SO AGAIN, DOES THE CIRCUMSTANCES, AND ARE YOU ULTIMATELY SEEKING HIS RELEASE FROM ANY KIND OF GROUP HOME OR RESTRICTIVE ENVIRONMENT?

>> WELL, THERE'S A DIFFERENCE -- THAT'S WHERE I -- DISTINCTION BECOMES THE ENDGAME IS SIMPLY TO LIFT, WHEN APPROPRIATE, TO LIFT THE INVOLUNTARY ADMISSION ORDER. J.R., EVEN AFTER THAT ORDER IS LIFTED, J.R. MAY CONTINUE TO RECEIVE SERVICES AS A WAIVER CLIENT AND AS A CLIENT OF APD THAT ARE APPROPRIATE AND NECESSARY UNRELATED TO THAT.

>> I KNOW UNDER THE FEDERAL CASE LAW THAT THE FACT THAT YOU CAN, THAT, AS OF NOW A LAWYER, THAT YOU CAN PETITION THE TRIAL COURT THAT HAS TO ULTIMATELY MAKE, ENTER THE ORDER, RIGHT?

THAT WOULD --

>> WOULD RELEASE HIM FROM INVOLUNTARY COMMITMENT, YES, YOUR HONOR.

>> SO SINCE THAT'S, YOU WOULDN'T EXPECT AND TO BRING THAT IN THIS CIRCUMSTANCE?

WHY ISN'T IT, WHY ISN'T YOUR REMEDY THAT THE PETITION TO THE

TRIAL COURT THAT COMMITTED HIM TO SAY, HE NO LONGER NEEDS THIS TYPE OF, THIS TREATMENT? AND MAYBE THERE'S A TECHNICAL REASON BUT I JUST DON'T UNDERSTAND WHY, IF SOMEONE HAS TO REACH THE CONSTITUTIONALITY OF THE STATUTE AS MAY BE APPLIED TO SOMEBODY WHO IS INCOMPETENT, WHO HASN'T ALSO COMMITTED A CRIME, WHO ALSO, ALL CIRCUMSTANCES, AM I MISSING SOMETHING?

>> OUR ARGUMENT REGARDING 393.11 DOES APPLY TO OTHER CLIENTS OF APD WHO HAVE NOT BEEN ACCUSED OF CRIMES.

WE'RE ARGUING THIS AS A STRAIGHT 393 INVOLUNTARY CIVIL COMMITMENT ARGUMENT.

>> A FACIAL ACROSS THE BOARD?

>> ACROSS THE BOARD, REGARDLESS OF HOW YOU ENDED UP IN THE INVOLUNTARY CIVIL COMMITMENT IN THE FIRST PLACE BUT AS TO THE ISSUE OF REMEDY, WE ARE NOT J.R.'S APPOINTED ATTORNEY FOREVER.

AND YOU KNOW, IF J.R. IS NOW IN FORT MYERS, WE'RE LOCATED IN GAINESVILLE, AT SOME POINT WE WILL NO LONGER REPRESENT HIM. AND AT SOME POINT IN THE FUTURE WHEN HE REACHES THE STATE, AND I HAVE NO DOUBT THAT HE WILL, OF BEING ENTITLED TO DISCHARGE, HE SHOULD NOT BE REQUIRED TO GO OUT AND TRY TO FIND AN ATTORNEY OF HIS OWN AND THEN TO FILE A PETITION.

>> LET ME ASK YOU A QUESTION OF THIS.

YOU SAID IN THE SUPPORT PLAN REVIEW YOU REVIEWED THE SERVICES THAT ARE BEING GIVEN TO HIM AND WHETHER IT'S STILL THE LEAST RESTRICTIVE MEANS OF DOING THAT. SO ASSUMING THAT IN THIS REVIEW PROCESS IT SAID, THAT THIS IS NOT THE LEAST RESTRICTIVE MEANS,

WHAT HAPPENS?

IT SEEMS TO ME THAT THEN, THEN  
YOU HAVE, YOU'RE IN A POSTURE  
WHERE, EVIDENTLY, HE NO LONGER  
NEEDS TO BE INVOLUNTARY  
LITTLELY, ASSUMING IT GOES, EVEN  
SO FAR AS TO, HE NO LONGER NEEDS  
TO BE INVOLUNTARY LITTLELY  
COMMITTED, YOU MEAN NOTHING  
WOULD HAPPEN?

>> THAT IS EXACTLY, YOUR HONOR,  
WHAT WE MEAN.

THAT IS WHY WE BROUGHT THE  
CHALLENGE TO THE STATUTE.  
THERE IS NOTHING IN THE SUPPORT  
PLAN PROCESS --

>> WHERE, WHO IS DOING THIS  
SUPPORT PLAN REVIEW?

>> THE SUPPORT PLAN REVIEW IN  
MOST CASES, IN J.R.'S CASE  
CURRENTLY IS DONE BY PRIVATE  
CONTRACTORS THAT ARE RETAINED  
THROUGH THE MEDICAID WAIVER  
PROGRAM.

>> AND THEN ONCE THEY DO THIS  
REVIEW AND ASSUMING IT SAYS THAT  
HE NO LONGER NEEDS IT, WHO DOES  
IT GO TO THEN?

>> IT DOESN'T NECESSARILY GO TO  
ANYONE WHICH IS THE PROBLEM.  
393.0165 DOES NOT REQUIRE, FIRST  
OF ALL IT DOESN'T MAKE ANY  
MENTION OF INVOLUNTARY  
COMMITMENT WHATSOEVER OR THE  
CRITERIA BUT IT DOESN'T REQUIRE  
THE TREATMENT TEAM, THE SUPPORT  
PLAN TEAM, TO CONTACT APD AND  
TELL THEM WHAT'S GOING ON OR  
NECESSARILY TO, OR TO CONTACT  
THE COURT OR TO DO ANYTHING  
ELSE.

THEY HAVE AN OBLIGATION TO  
CONFER WITH THE CLIENT AND HIS  
FAMILY IF APPROPRIATE BUT THERE  
IS NO AFFIRMATIVE OBLIGATION  
TO --

>> THERE IS NO OBLIGATION TO  
MAKE ANY CHANGES?  
EVEN IF THIS REVIEW SAYS, LET'S  
FORGET ABOUT SAYING YOU NO



LONGER NEED TO BE INVOLUNTARILY COMMITTED, BUT ASSUME IT SAID WHATEVER IS TO BE DONE IS NO LONGER APPROPRIATE AND SOMETHING ELSE NEEDS TO BE DONE.

THAT IS NOT GIVEN TO ANYONE?

>> THAT, AT THAT POINT, THERE MAY BE A CHANGE IN HIS PLACEMENT THAT GOES THROUGH THE WAIVER SYSTEM AND THERE WILL BE A CHANGE IN HIS PLACEMENT AND AS J.R. WAS, HE MAY BE MOVED FROM A BEHAVIORAL FOCUS GROUP HOME TO LESS RESTRICTIVE GROUP HOME.

>> WHO MADE THAT DECISION?

>> THAT WOULD BE PROBABLY BE DONE BETWEEN THE SUPPORT PLAN COORDINATOR AND POSSIBLY DONE WITH APD.

>> SO APD DOES GET SOMETHING -- APD DOES GET RESULTS OF THESE REVIEWS?

>> THEY DO BUT IT'S NOT CLEAR AND WHAT IS ABUNDANTLY CLEAR THERE IS CERTAINLY NO REQUIREMENT.

AND THE 11th CIRCUIT QUESTIONS SPEAKS IN TERMS OF REQUIREMENTS NOT WHAT MAY OR MIGHT HAPPEN.

IT SPEAKS IN TERMS OF WHAT'S REQUIRED TO HAPPEN AS A PART OF DUE PROCESS OF LAW AND --

>> LET ME ASK YOU ABOUT, LET ME ASK YOU ABOUT 393.0651.

>> YES, YOUR HONOR.

>> SUBSECTION FIVE.

>> THAT IS THE SUPPORT PLAN PROCESS.

>> OKAY, I UNDERSTAND THAT BUT SUBSECTION FIVE IN PARTICULAR WHERE IT SAYS THE AGENCY SHALL PLACE THE CLIENT IN THE MOST APPROPRIATE AND LEAST RESTRICT TOUGHER PLACEMENT ACCORDING TO HIS ACCORDING TO HIS INDIVIDUAL SUPPORT PLAN.

WHY ISN'T THAT A REQUIREMENT?

IT SAYS THE AGENCY SHALL?

>> WELL IT'S A REQUIREMENT FOR

THE AGENCY TO PARTICIPATE IN THE PLACEMENT.

BUT THE PLACEMENT DOESN'T NECESSARILY SPEAK TO WHETHER OR NOT THE INVOLUNTARY COMMITMENT ORDER NEEDS TO BE CONTINUED.

YOU COULD HAVE AN INDIVIDUAL AT A, AT A, UNSUPERVISED, RELATIVELY UNSUPERVISED GROUP HOME WHO POSES ABSOLUTELY NO DANGER TO HIMSELF OR OTHERS, THAT NEEDS TO BE THERE FOR VOCATIONAL SERVICES, FOR SOME SUPERVISION OF HIS MEDICATIONS, YOU KNOW, TO MAKE SURE THAT HE GETS UP.

THAT HE GETS DRESSED.

DOES ALL THOSE THINGS.

THE SAIL KIND OF THINGS THAT -- SAME KIND OF THINGS THAT A LOT OF VOLUNTARY CLIENTS GET, WITHOUT THAT PERSON NECESSARILY BEING A RISK TO HIMSELF OR OTHERS.

AND THAT SUPPORT PLAN CAN BE CONTINUED INDEFINITELY WITHOUT EVER HAVING TO ADDRESS THAT CRITERIA.

>> LET ME JUST --

>> I'M SORRY.

>> THE PETITION WAS FILED AND AN ORDER WAS ENTERED INTO 2005 BY THE COURT.

>> THAT'S CORRECT.

>> IS THERE AN OPEN COURT CASE?

>> WELL, WHETHER IT IS OPEN OR NOT, TECHNICALLY I BELIEVE IT REMAINS OPEN.

>> I GUESS WHAT I WONDER, AND AGAIN THIS IS WHY I'M COMING THROUGH THIS WAY, IF THERE WAS A RULE THAT REQUIRED THE COURT ON A YEARLY BASIS TO CONDUCT A STATUS UPDATE, WOULDN'T THAT BE THE BEST WAY ON CASES OF INVOLUNTARY COMMITMENT WHERE YOU GOT SOMEONE'S LIBERTY AT STAKE, TO HANDLE IT AS, BECAUSE OTHERWISE, AND SO COULDN'T THE COURT, THROUGH I GUESS ITS RULE

MAKING SOLVE A DEFICIENCY THAT  
MAY EXIST IN STATUTE?

>> I BELIEVE THAT, THAT IF THERE  
WAS A RULE THAT REQUIRED THE  
COMMITTING CIRCUIT COURT TO  
REVIEW ON AN ANNUAL BASIS AND TO  
OBTAIN A REPORT FROM APD OR THE  
SUPPORT TEAM, TO REPORT ON  
WHETHER OR NOT THE PERSON  
CONTINUES TO MEET INVOLUNTARY  
CRITERIA THAT THAT MIGHT SUGGEST  
THAT, THAT WOULD PROBABLY MEET  
THE REQUIREMENTS OF DUE PROCESS.  
THE PROBLEM IS THERE IS NO SUCH  
RULE AND THE STATUTE DOESN'T  
REQUIRE ANYTHING ALONG THOSE  
LINES RIGHT NOW.

>> I'M CONFUSED WITH THE  
QUESTIONING.  
SEEMS TO ME THE QUESTIONS  
PROPOUNDED BY THE 11th  
CIRCUIT ARE FAR MORE RESTRICTIVE  
THAN WE'RE DISCUSSING RIGHT NOW.

>> I BELIEVE THEY ARE, YOUR  
HONOR.

>> I MEAN, IT SEEMS TO ME  
THEY'RE SAYING THAT THEY CAN  
READ THE STATUTE AS WELL AS  
ANYONE ELSE AND THERE'S NO  
MANDATORY PROVISIONS.

>> THAT'S CORRECT.

>> ARE THEY ASKING US WHETHER  
WE'RE GOING TO READ IN, OR  
JUDICIARY REWRITE AND CREATE  
IMPLIED PROVISIONS?

ISN'T THAT WHAT THIS IS ABOUT?

>> I BELIEVE THAT IS EXACTLY  
WHAT THEY'RE ASKING YOU TO DO,  
IF YOU DEEM THAT APPROPRIATE.  
AND THIS ALL CAME UP BECAUSE THE  
DISTRICT COURT JUDGE ON HIS OWN  
AND WITHOUT ANY ARGUMENT FROM  
THE AGENCY ON THIS POINT DECIDED  
AS PART OF THE RULE OF  
CONSTITUTIONAL AVOIDANCE TO READ  
A PROCESS INTO THIS STATUTE THAT  
DOESN'T EXIST.

HE CITED NO PORTION OF CHAPTER  
393.

HE DIDN'T RELY ON ANY ARGUMENTS

FROM APD.

HE JUST KIND OF PULLED THIS ARGUMENT OUT OF THIN AIR. OUR ARGUMENT TO THE 11th CIRCUIT IS THAT THE DISTRICT COURT JUDGE IN DOING THAT WENT FAR BEYOND THE CANNON OF AVOIDANCE AND ESSENTIALLY REWROTE THE STATUTE AND INSERTED PROCESS THAT DIDN'T EXIST IN THE STATUTE AT ALL.

WE MAINTAIN THAT IS STILL THE PROBLEM.

THE 11th CIRCUIT WASN'T COMFORTABLE RESOLVING THAT WITHOUT REFERRING IT TO THE FLORIDA SUPREME COURT.

IT IS OUR POSITION IN FRONT OF THIS COURT TODAY TO READ THOSE PROCESSES AND PROCEDURES INTO THIS STATUTE GOES WELL BEYOND YOUR OWN RULES OF STATUTORY CONSTRUCTION, STATUTORY INTERPRETATION, THE RULES OF CANNON AND THE RULES REGARDING THE CANNON OF AVOIDANCE AND ESSENTIALLY ASKS THIS COURT TO REWRITE AND REWORK THE STATUTE. AND IT IS OUR POSITION THAT SIMPLY CAN'T BE DONE.

THAT THAT INFRINGES ON THE POWER OF THE LEGISLATURE.

>> YOU'RE IN REBUTTAL.

>> I'M SORRY.

AT THIS POINT I WOULD LIKE TO SAVE MY REMAINING TIME FOR REBUTTAL.

>> BUT THIS COURT COULD, IF IT WOULD INTERPRET, NOT TO CREATE SOME NEW PROCESS AND RULES AND ALL THAT, BUT THIS COURT COULD INTERPRET THE PROVISIONS OF THE STATUTE AS HAVING THAT IMPLIED REQUIREMENT AND THAT WOULD SATISFY THE QUESTION THAT IS PRESENTED TO US, OR WOULD ANSWER THE QUESTION.

>> WELL I BELIEVE THE COURT WOULD HAVE TO IMPLY MORE THAN JUST WHAT THE DISTRICT COURT

JUDGE DID.

>> AGAIN, WHATEVER IT IS BUT THAT'S, IF WE DO THAT INTERPRETATION, WE ARE THEN RESPONSIVE TO THE QUESTIONS?

>> IF THE COURT INTERPRETS THE STATUTE TO INCLUDE THOSE PROVISIONS, IT WOULD BE RESPONSIVE.

>> OKAY.

>> AND THAT COULD HAVE POSSIBLY MEET DUE PROCESS.

OF COURSE IT IS OUR PROVISION OR OUR POSITION THAT THAT IS SIMPLY GOES TOO FAR FOR THIS COURT TO DO.

>> BUT SAY THEY COULD READ IT JUST AS WELL AS I.

>> YES.

>> BUT WHAT WE'RE HERE TO DO IS DO STATUTORY CONSTRUCTION.

>> CORRECT, YOUR HONOR, YES. THANK YOU.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

I'M DIANE DEWOLFE FOR THE APPELLEE.

BEGINNING WITH YOUR QUESTION, JUSTICE LEWIS, WHETHER YOU CAN INTERPRET THE STATUTE TO IMPLY AN OBLIGATION ON THE PART OF APD TO REVIEW A PERSON'S COMMITMENT STATUS, TO READ DUE PROCESS INTO THE PROCESS, YES YOU CAN AND THIS COURT HAS DONE IT BEFORE. I THINK THE CASE MOST PERTINENT AND IT WAS MENTIONED IN OUR BRIEF IS SANDUSKY.

THAT IS OUR BRIEF AT PAGE 8 AND 9.

THAT CASE INVOLVED CHILD SUPPORT PAYMENTS. IF CHILD SUPPORT PAYMENTS ARE MAY HAVE HAD INTO LOCAL DEPOSITORY AND THOSE PAYMENTS BECAME DELINQUENT THE CLERK OF THE LOCAL DEPOSITORY, WOULD ISSUE NOTICE OF DELINQUENCY, WOULD BECOME A FINAL JUDGMENT WITHIN 30 DAYS. NOW THE STATUTE ALSO PROVIDED

THAT THE PERSON ALLEGEDLY  
DELINQUENT TO FILE A RESPONSE  
BUT IT DIDN'T SAY ANYTHING IN  
THE STATUTE ABOUT A RIGHT TO  
HEARING OR ANY JUDICIAL REVIEW.  
SO HOW THE CLERKS WERE  
INTERPRETING THAT IS THAT, OKAY  
YOU CAN FILE A RESPONSE BUT IF  
YOU DON'T PAY US WITHIN 30 DAYS  
WE'LL STILL ENTER A FINAL  
JUDGMENT AGAINST YOU.  
THE LOWER COURT SAYS THAT  
VIOLATES DUE PROCESS.  
WE'RE STRIKING DOWN THE STATUTE  
BECAUSE IT DOESN'T HAVE A RIGHT  
TO A HEARING.  
BY THE TIME IT GOT TO THIS  
COURT, THIS COURT SAID NO.  
WE SEE THIS MUST NECESSARILY  
INCLUDE A RIGHT TO A HEARING  
BECAUSE WITHOUT IT WE DON'T HAVE  
DUE PROCESS.  
SO THIS COURT INTERPRETED THAT  
INTO THE STATUTE AND ONE OF THE  
REASONS IT DID SO WAS THAT THE  
STATUTE CERTAINLY DIDN'T SAY  
THAT THERE WAS NO RIGHT TO A  
HEARING.  
SO IT HAD TWO CHOICES.  
IT HAD THE CHOICE TO LOOK THE A  
THE STATUTE AND SAY, IT DOESN'T  
SAY YOU CAN'T HAVE A HEARING.  
SO WE'RE GOING TO SAY YOU CAN  
AND THAT IS CONSTITUTIONAL.  
OR IT DOESN'T SAY, THAT YOU HAVE  
TO HAVE A HEARING SO THAT'S  
UNCONSTITUTIONAL.  
AND IT CHOSE THE ONE THAT IT  
OBLIGATED TO DO WHICH  
UPHELD THE STATUTE WAS  
CONSTITUTIONAL.  
THAT IS THE SAME SITUATION WE  
HAVE HERE.  
WE HAVE DON'T HAVE A STATUTE  
THAT SAYS THERE IS NO RIGHT TO  
PERIODIC REVIEW OF A PERSON'S  
COMMITMENT STATUS.  
>> THAT UNDER THIS, AND YOU'RE  
RELYING ON, WAS, WHETHER THE  
SUPPORT PLAN REQUIRES THEM TO

CONSIDER THE PROPRIETY OF THE CONTINUED INVOLUNTARY COMMITMENT?

>> YES.

JUSTICE PARIENTE AND ALSO THAT APD IS REQUIRED TO ACT.

>> YEAH THAT ONE IS, ISSUE TWO, IS THE AGE AGENCY, REQUIRED TO PETITION THE CIRCUIT COURT FOR RELEASE WHERE THE APD DETERMINES THAT THE CIRCUMSTANCES THAT LED TO THE INITIAL ADMISSION HAVE CHANGED?

>> YES, YES, YOUR HONOR.

>> AND WHAT GUIDES THAT?

THAT'S WHERE I GUESS, THAT THIS ISSUE OF 2005 THE COURT VOLUNTARY COMMITS AND NOTHING ELSE HAPPENS AND SO WHAT IS THE MECHANISM IN THE STATUTE THAT REQUIRES THE COURT, THAT THE APD, TO MAKE THAT DETERMINATION AND TO THEN APPROPRIATELY PETITION THE CIRCUIT COURT?

>> RIGHT. WELL, FIRST I WOULD LIKE TO SAY IT IS NOT IN JUST ONE PROVISION OF THE STATUTE.

OBVIOUSLY IF IT WAS EXPLICITLY STATED IN THE STATUTE WE WOULDN'T BE HERE BUT THERE ARE PLENTY OF PROVISIONS THROUGHOUT CHAPTER 393 THAT IMPLY THIS OBLIGATION AND JUDGE STAFFORD QUITE REASONABLY FOUND THAT AS WELL.

NOT ONLY WOULD A PERSON IS COMMITTED INVOLUNTARILY FOR SERVICES TO APD, IT IS NOT JUST THE PERSON WHO IS INVOLUNTARILY COMMITTED AND REQUIRED TO RECEIVE THESE SERVICES AND ALSO APD IS REQUIRED TO PROVIDE THESE SERVICES.

APD IS NOW COMMITTED TO GIVING A PERSON CUSTODIAL CARE AND SERVICES AND AS JUDGE STAFFORD SAID, IT OUGHT TO BE INTERPRETED THAT APD IS NOW IN CONTROL OF THIS PERSON AND SHOULD BE

INTERPRETED TO BE ACTING IN THE PERSON'S BEST INTERESTS WHICH WOULD NATURALLY INCLUDE PETITIONING THE COURT WHEN SERVICES, WHEN THE CONDITIONS FOR THE INVOLUNTARY COMMITMENT NO LONGER EXIST.

>> WELL YOU SAID IT IS IN VARIOUS SECTIONS.

WHICH ONE WOULD YOU DRAW OUR ATTENTION TO WHERE WE WOULD READ THAT SPECIFICALLY.

>>> THAT SPECIFICALLY WOULD BE IN 393.11 WHERE THE COURT --

>> RETAINING JURISDICTION?

>> WHERE THE COURT KEEPS CONTINUING JURISDICTION.

WHERE THE COURT COMMITS THE PERSON TO THE CUSTODY OF APD AND, AND ALSO BY THESE, BY THESE DUAL COMMITMENTS BECAUSE NOT ONLY DOES THIS PERSON HAVE TO DO ALL OF THE PROCEDURES THAT ARE INCUMBENT IN HIS INVOLUNTARY COMMITMENT, AS LONG AS HE IS INVOLUNTARILY COMMITTED APD HAS TO PROVIDE THESE SERVICES.

SO APD HAS ABSOLUTELY NO INCENTIVES, AS WE SAID IN OUR BRIEFS, THEY HAVE A WAITING LIST OF 20,000 PEOPLE VOLUNTEERING TO GET IN.

APD HAS NO MORE INCENTIVE TO KEEP SOMEONE INVOLUNTARILY COMMITTED RECEIVING SERVICE HE NO LONGER NEEDS AND NO LONGER IS ELIGIBLE BEFORE.

>> BUT ISN'T IT THE CASE SOMEONE COULD RECEIVE ESSENTIALLY THE SAME SERVICES WHETHER THEY'RE VOLUNTARILY OR INVOLUNTARILY COMMITTED?

>> YES. THAT'S TRUE.

>> ONCE YOU GO THROUGH, YOU'RE REQUIRED TO HAVE THIS SUPPORT REVIEW, SUPPORT PLAN REVIEW PROCESS, IS THAT ANNUALLY?

>> YES.

>> OKAY.

SO ONCE YOU HAVE THAT PROCESS,



WHAT IS DONE WITH WHATEVER, I ASSUME SOME KIND OF A REPORT IS GENERATED AND WHAT'S DONE WITH THAT REPORT?

>> THAT'S, THAT'S UNCLEAR, JUSTICE QUINCE, WHAT EXACTLY IS DONE WITH THE REPORT.

>> WHO IS AT THE PROCESS THEN? WHO IS ACTUALLY DOING THIS REVIEW?

>> WELL THE SUPPORT COORDINATOR BY THE WAY IS EITHER AN EMPLOYEE OF APD OR AN EMPLOYEE CONTRACTED THROUGH APD.

>> OKAY.

AND IF IT IS A PERSON WHO IS CONTRACTED WITH APD --

>> RIGHT.

>> -- ARE THEY REQUIRED TO GIVE ANY FINAL DECISION OR ANALYSIS TO APD?

>> WELL, A REPORT IS GENERATED ON AN ANNUAL BASIS AND THERE DOESN'T APPEAR TO BE ANYTHING IN THE RULE MAKING THAT SAYS, WHERE THIS GOES INTO THE COMPUTER FILE AND IS, YOU KNOW --

>> IF THAT'S THE CASE, JUST SEEMS TO ME, HOW IS APD GOING TO DO ANYTHING IF THERE'S NO REQUIREMENT THAT THIS ANNUAL REVIEW IS GIVEN TO THEM?

I MEAN, YOU SAY THEY HAVE NO INCENTIVE TO TRY TO KEEP PEOPLE INVOLUNTARILY COMMITTED BECAUSE THERE ARE LOTS OF PEOPLE WHO NEED THIS KIND OF SERVICE BUT THERE SEEMS TO BE TO ME SOME KIND OF GLITCH BETWEEN THIS ANNUAL REVIEW, WHICH I THINK COULD SERVE AS A MEANS FOR GETTING PEOPLE OUT OF INVOLUNTARY COMMITMENT IF THEY NO LONGER NEED IT BUT HOW CAN YOU DO THAT IF THERE IS NO WAY, NOTHING THAT THAT SAYS THIS REVIEW IS DONE AND THIS REVIEW IS GIVEN TO APD, OR WHATEVER IT IS, APD AND THEN THEY HAVE TO DO SOME KIND OF ACTIONS PURSUANT TO

IT?

HELP ME WITH THAT.

>> AS I SAID THERE'S NOT A SPECIFIC RULE, BUT --

>> COULDN'T APD JUST PROMULGATE SOME RULES THROUGH THEIR REGULATORY, RULE-MAKING AUTHORITY TO CURE THESE APPARENT DEFECTS.

>> CERTAINLY.

THERE IS A PROCESS.

>> BUT AT THIS POINT WHAT IS THERE, BUT NOT WHAT THEY COULD DO BUT WHAT IS THERE?

>> BUT WHAT IS THERE THE SUPPORT COORDINATOR IS AN EMPLOYEE OR CONTRACTED BY APD.

SO THE SUPPORT COORDINATOR AND APD ARE BASICALLY ONE AND THE SAME BUT REMEMBER THESE SUPPORT PLANS ARE NOT GENERATED IN ISOLATION BY A SUPPORT COORDINATOR.

WE HAVE A SUPPORT COORDINATOR THAT GETS TOGETHER WITH A GROUP OF PEOPLE WHICH INCLUDES THE PERSON'S CERTIFIED BEHAVIORAL ANALYST, IT INCLUDES THE CLIENT'S ADVOCATE.

IT INCLUDES THE GUARDIAN ADVOCATE IF THERE IS ONE.

I BELIEVE HIS ATTORNEY PARTICIPATED IN THE LAST SUPPORT PLAN.

>> IN THE STATUTE?

>> YES IT IS, YOUR HONOR.

>> WHERE?

>> IT IS IN 106.51.

WHERE IT SAYS THAT THE SUPPORT COORDINATOR SHOULD COORDINATE WITH ANYONE WHO HAS AN INTEREST.

>> YOU KNOW THAT'S WHERE, IF WE TAKE ISSUE WITH THE FIRST QUESTION AND SAY THAT THE SUPPORT PLAN REQUIRES APD TO CONSIDER PROPERLY AT THIS WHICH IS WHAT JUDGE STAFFORD DID.

>> RIGHT.

>> WHY IS THAT NOT, THAT WOULD SAY THEY HAVE TO DO IT.

MY CONCERN IS, A LOT OF TIMES  
THE ATTORNEY GENERAL'S UP THERE  
SAYING DON'T REWRITE STATUTES.  
PEOPLE, WE'RE ACCUSED FROM TIME  
TO TIME FOR DOING IT.

WHAT, THIS IDEA OF IT'S GOT TO  
BE IMPLIED, WHY ISN'T THAT  
REALLY REWRITING THE STATUTE  
BECAUSE THERE IS NO PRESENT  
REQUIREMENT THAT THAT OCCUR?

>> JUSTICE PARIENTE, IF YOU TAKE  
THE OTHER SIDE, IF YOU IMPLY  
THAT BECAUSE IT'S NOT THERE,  
THAT THE LEGISLATURE INTENDED  
SOMETHING COMPLETELY DIFFERENT,  
THEN YOU'RE ALSO IMPLYING  
SOMETHING IN THE STATUTE.

YOU KNOW CHAPTER 393 IS ALL  
ABOUT HELPING AND REHABILITATING  
INDIVIDUALS WITH DEVELOPMENTAL  
DISABILITIES.

40 YEARS AGO THE LEGISLATURE  
REWROTE THIS ENTIRE CHAPTER  
BECAUSE THE EXISTING SYSTEM  
WASN'T WORKING.

>> NOBODY IN THIS PROCEEDING AS  
I INTERPRET IT, SAYING STATE OF  
FLORIDA, YOU'RE TERRIBLE.  
THIS IS A VERY NARROW QUESTION.  
AND I MEAN I DON'T SEE WHAT THAT  
HAS TO DO WITH WHAT WE'RE  
SUPPOSED TO DO.

NOBODY HERE IS IMPUGNING THE  
INTEGRITY OF THE STATE OR THE  
DEPARTMENT.

WE'RE LOOKING AT THE, THE  
STATUTE.

SO I MEAN THAT KIND OF SPEECH TO  
ME IS, YOU KNOW, JUST OFF THE  
MARK.

>> WELL, I THINK WHAT THEY'RE  
SAYING, YOUR HONOR, IS THAT THE  
LEGISLATIVE INTENT HERE IS TO  
GET PEOPLE OUT OF THESE  
FACILITIES AND GET THEM INTO  
THEIR OWN HOMES AND ENCOURAGE  
THEM INDEPENDENTLY.

IF THEY MEANT SOMETHING  
DIFFERENT HERE IN THIS SECTION,  
IF THEY MEANT TO SAY, OH, ONCE

YOU'RE INVOLUNTARILY COMMITTED  
THERE IS NO ANNUAL REVIEW OF  
YOUR COMMITMENT STATUS, BY  
ADMITTING THAT MANDATE IN THIS  
SECTION, THAT'S WHAT THEY MEANT  
TO DO THEN IT CALLS INTO  
QUESTION THE ENTIRE LEGISLATIVE  
INTENT OF CHAP PER 393.

>> IF WE HAVE TO PLAY MENTAL  
GYMNASTICS WITH EVERY STATUTE IN  
THE STATE OF FLORIDA, WE DON'T  
HAVE THE RULE OF LAW, WE HAVE  
THE RULE OF PEOPLE DOING WHAT  
THEY WANT TO DO.

THAT IS WHAT CONCERNS ME.  
SO THAT IS WHY I THINK WE REALLY  
NEED TO PAY ATTENTION TO WHAT  
THE WORDS OF THE STATUTE ARE  
AND, AGAIN, NOT CHARGING THE  
STATE WITH MAL INTENT OR  
ANYTHING.

LET'S SEE BUT TRY TO FIND, WHERE  
IS IT IN HERE?

THERE ARE KIDS WHO FALL THROUGH  
THE CRACKS ON THIS STUFF TOO.  
AND SO, YOU KNOW I LOOK AT THESE  
THINGS AND I'M GOING OVER THEM.  
IT SEEMS TO ME THE ONLY THING  
THAT'S THERE IS HABEAS PETITION  
TO GET OUT OF THIS.

IS THAT THERE?

IS THAT WHAT IS INTENDED?

THESE PEOPLE DON'T ALL HAVE  
LAWYERS, DO THEY?

>> YOUR HONOR, THE COURT KEEPS  
CONTINUING JURISDICTION AND IF  
THERE IS JUDICIAL PROCESS THE  
INVOLUNTARY COMMITTED PERSON IS  
ENTITLED --

>> DO YOU THINK THESE FOLKS KNOW  
TO RUN TO THE CIRCUIT COURT IN  
ALACHUA COUNTY OR SOMETHING  
THEMSELVES?

WHO IS THERE FOR THEM?

>> THE SUPPORT COORDINATOR IS  
ALSO AN ADVOCATE FOR THAT  
PERSON.

>> OKAY.

>> AND ANOTHER ONE WHO  
PARTICIPATES IN THAT PLAN IS

ALSO AN ADVOCATE FOR THAT PERSON.

>> THE BOTTOM LINE TO ME ON ISSUE TWO, THE COURT MAKES A DETERMINATION, IN THIS CASE SEVEN, ALMOST NINE YEARS AGO AND IN THIS CASE SITS THERE BECAUSE THE COURT DOESN'T HAVE, THEY DON'T GET THE ANNUAL REVIEW. NOW I ASKED, IF THIS HAD BEEN, IF THIS WAS COMING IN FRONT OF US AS A ACTUAL CASE, SEEMS TO ME, AS I'M LOOKING AT THIS, THAT THERE IS A DEFECT IN OUR RULES, BECAUSE OF A PROCEDURE FOR A ANNUAL REVIEW BY THE COURT, WOULD HELP THE SITUATION. WHETHER OR NOT IT SAVES THE STATUTE OR NOT.

MAYBE YOU'VE TOLD ME BUT I'M STILL TRYING TO UNDERSTAND, WHERE IS IT THAT THE APD UNDER THE STATUTE IS REQUIRED TO PETITION THE CIRCUIT COURT FOR RELEASE WHEN THE CIRCUMSTANCES THAT LED TO THE INVOLUNTARY ADMISSION IS NO LONGER MET? AGAIN TO ME, ALTHOUGH WE'RE TALKING ABOUT DEVELOPMENTALLY DISABLED INDIVIDUALS WE'RE STILL TALKING ABOUT AN INDIVIDUAL THAT, AT LEAST, ALLEGEDLY SEXUALLY BATTERED ANOTHER PERSON.

SO THERE FROM THE COURT'S POINT OF VIEW, THERE IS SOME ISSUES, DON'T LOOK AT 20,000 PEOPLE ON WAITING LISTS.

J.R. HASN'T BROUGHT ANY TYPE OF AS APPLIED CHALLENGE FOR HIS PARTICULAR SITUATION.

THE COURTS REMANDING THE INVOLUNTARILY COMMITTED PERSON, REMANDING THAT PERSON TO THE CUSTODY OF APD.

APD THEN HAS THE OBLIGATION TO ACT IN THAT PERSON'S BEST INTEREST AND IT OUGHT TO BE IMPLIED THAT THAT INCLUDES PETITIONING THE COURT.

NOW, DUE PROCESS RULES ARE ALSO SHAPED BY THE RISK OF ERROR. GENERALLY.

I HAVE TO SAY, JUSTICE LEWIS, WE HAVE THE STATUTE FOR 40 YEARS. 40 YEARS.

DO WE HAVE ONE CASE THAT HAS AT LEAST REACHED THE APPELLATE LEVEL?

>> MAYBE THEY'VE BEEN WITHOUT REPRESENTATION OR LOST IN THE SYSTEM.

I DON'T KNOW.

IF WE HAVE ESTABLISHED OUR LAW BY WHAT'S HAPPENED 40 YEARS AND WE DON'T HAVE A CASE WHERE IT'S DONE, DOESN'T SUPPORT THE CONSTITUTIONALITY OF THE STATUTE OR CREATE AN IMPLIED CONDITION.

>> WELL, I THINK THAT IN THIS CASE WE DON'T HAVE ANYONE WHO IS COMING FORWARD AND SAYING MY DUE PROCESS HAS BEEN VIOLATED.

WE DON'T HAVE A SINGLE PERSON WHO HAS COME FORTH AND SAID MY DUE PROCESS HAS BEEN VIOLATED.

WE HAVE A VERY -- WE HAVE--

>> IN THIS CASE -- THIS IS -- THIS IS REALLY PURELY A LEGAL QUESTION WE'RE LOOKING AT.

AND IT'S NOT ABOUT -- EVEN ABOUT HOW AS A PRACTICAL MATTER THINGS ARE OPERATED NOW.

IT'S ABOUT WHAT -- THE LAW, THE STATUTE ON THE BOOKS AS PROPERLY INTERPRETED REQUIRES.

ISN'T THAT REALLY WHAT WE'RE DOING HERE?

>> RIGHT.

YES.

>> SO WHETHER IT'S BEEN WORKING AS IT SHOULD OR HASN'T IS NOT THE QUESTION FOR US.

BUT IT'S A PURE QUESTION OF STATUTORY INTERPRETATION.

>> YES, YOUR HONOR.

YES, YOUR HONOR.

I AGREE.

AND I THINK THAT THE IMPLIED OBLIGATION TO LOOK AT A PERSON'S

COMMITMENT STATUS PERIODICALLY AND MEANINGFULLY IS IN THE STATUTE.

WE HAVE AN ANNUAL REVIEW WRITTEN INTO THE STATUTE.

WE HAVE A DUAL OBLIGATION BETWEEN APD AND A PERSON WHO'S INVOLUNTARILY COMMITTED.

APD HAS AN OBLIGATION TO CARE FOR THIS PERSON AS LONG AS THIS PERSON IS COMMITTED AND HAS NO INTEREST IN KEEPING THEM THERE ANY LONGER THAN NECESSARY.

>> BUT THAT, AGAIN, I THINK THAT THE GOOD FAITH OF AN AGENCY OR WHATEVER IS -- YOU KNOW, DCF ACTS IN GOOD FAITH.

THAT DOESN'T MEAN KIDS DON'T FALL THROUGH THE CRACKS.

AND THE QUESTION IS WHAT'S THE PROTECTION.

USUALLY IT'S THAT THE COURT HAS PERIODIC REVIEW.

AS I READ THIS STATUTE, IT IS SO SPECIFIC AS WHAT HAPPENS AT THE STAGE OF THE PETITION FOR INVOLUNTARY ADMISSION.

IT GIVES -- IT COULD BE SAID IT HAS ALL -- THE PROCEDURE IS DETAILED.

THE AGENCY PARTICIPATION.

BUT THEN, AS HAS BEEN SAID, WHEN YOU GET TO -- AND THERE'S CONTINUING JURISDICTION OF THE COURT, APPEAL, AND THEN THE LAST SECTION IS HABEAS CORPUS.

SO AS I READ THAT, TO SAY THAT IN THERE SOMEWHERE UNDER 413 THERE IS -- AND THE AGENCY SHALL PETITION THE COURT WHEN THIS HAPPENS WOULD BE ABSOLUTELY JUST READING SOMETHING THAT NOT ONLY DOESN'T EXIST, BUT BECAUSE IT'S SO SPECIFIC ON EVERYTHING ELSE, IT SEEMS LIKE IT WOULD BE REWRITING THE STATUTE.

THAT'S -- I MEAN, AND TELL ME WHY THAT'S NOT THE CASE.

>> WELL, AND AS I SPOKE BEFORE ABOUT STANGESKI VERY CLEARLY

SAID YOU HAVE A RIGHT TO RESPOND, AND 30 DAYS LATER IF YOU HAVEN'T PAID THIS, THEN WE'RE GOING TO ENTER A FINAL JUDGMENT.

IT DIDN'T SAY ANYTHING ABOUT A HEARING.

>> I GUESS WHAT I WAS POINTING OUT -- AND AS WE ALL CAN READ THE STATUTE -- IT'S SO SPECIFIC ABOUT EVERYTHING ELSE. THAT'S DIFFERENT THAN IF IT SAID THERE SHALL BE, YOU KNOW, PROCEDURES THAT THE COURT SHOULD PUT IN PLACE FOR HOW THE PETITION TAKES PLACE AND THE -- WHICH THEY DO OFTEN. MAYBE NOT 40 YEARS AGO, BUT THEY DO, TO SAY SINCE THIS IS A COURT ISSUE, YOU COME UP WITH THE RULES TO ENSURE THAT THE INITIAL PETITION'S RIGHT.

BUT THEY DIDN'T DO THAT.

>> WELL, I MEAN, YES.

THE INITIAL -- THE INITIAL COMMITMENT IS, OF COURSE, ALL SET FORTH IN THE STATUTE. BUT THE LEGISLATURE CHOSE TO DO SOMETHING DIFFERENT HERE. THESE ARE DEVELOPMENTALLY DISABLED INDIVIDUALS THAT'S REASONABLY EXPECTED THAT THIS DEVELOPMENTAL DISABILITY IS GOING TO CONTINUE FOR AN EXTENDED PERIOD OF TIME. AND AT SOME POINT AN EXTRA LAYER OF REVIEW ISN'T HELPFUL. THE LEGISLATURE DECIDED THAT HERE THIS WAS THE RIGHT PROCEDURE.

SO, OKAY, WE MAKE SURE THAT THE CIRCUMSTANCES FOR INVOLUNTARY COMMITMENT ARE HERE AND IT'S A LOT THAT HAS TO BE PROVEN. AND THEY -- ONCE THAT'S DONE, THEY HAVE TO REPORT BACK TO THE COURT WITH A SUPPORT PLAN. THE COURT LOOKS AT THE INITIAL SUPPORT PLAN AND THEN FROM THERE THE SUPPORT COORDINATOR--



>> IF IT'S SUBMITTED TO THE COURT.  
AND THERE'S NO REQUIREMENT THAT IT BE SUBMITTED.  
YOU'RE MAKING THE ARGUMENT TO THE 11TH CIRCUIT THAT THIS IS GOING TO MEET -- SHOULD MEET DUE PROCESS REQUIREMENTS AND THAT'S NOT WHAT WE ARE SUPPOSED TO BE 41 DECIDING.  
>> I SAID THE INITIAL SUPPORT PLAN.  
>> THIS IS NOT ABOUT THE INITIAL.  
>> RIGHT.  
>> THIS IS THE ANNUAL WE'RE TALKING ABOUT.  
>> RIGHT.  
BUT I'D LIKE TO POINT OUT, YOUR HONORS, TOO, THAT J.R. ALREADY WON THIS CASE.  
J.R. WON THIS CASE WHEN JUDGE STAFFORD READ THIS IMPLICATION INTO THE STATUTE.  
ALL J.R. WANTED WAS TO HAVE THIS MEANINGFUL REVIEW AND JUDGE STAFFORD GAVE IT TO HIM.  
HE DOESN'T GET ANY BETTER BY THIS COURT ANSWERING THE QUESTIONS NEGATIVELY AND HAVING A FEDERAL COURT STRIKE DOWN OUR STATE STATUTE.  
APD DOESN'T DISAGREE THAT IT HAS THIS OBLIGATION.  
>> ALL APD HAS TO DO IS GO ACROSS THE STREET, GET IT RESOLVED QUICKLY--  
>> BUT THIS COURT CAN SOLVE IT.  
>> BUT THAT'S THE WHOLE -- WE COULD SOLVE IT BY POTENTIALLY REWRITING THE STATUTE.  
>> WELL, YOU HAVE TWO CHOICES. YOU HAVE A READING THAT'S CONSTITUTIONAL AND A READING THAT'S NOT.  
AND THIS COURT'S OBLIGATION--  
>> THEY'RE NOT ASKING US WHETHER THE STATUTE IS CONSTITUTIONAL. YOU'RE ASKING US A QUESTION OF STATUTORY CONSTRUCTION, RIGHT?

>> YES, YOUR HONOR, THEY ARE.  
AND FOR THOSE REASONS WE ASK  
THAT YOU ANSWER THE THREE  
CERTIFIED QUESTIONS  
AFFIRMATIVELY.

>> THANK YOU.  
REBUTTAL?

>> THANK YOU.

>> YES, YOUR HONOR, BRIEFLY.  
MAY IT PLEASE THE COURT, THE  
STANGESKI CASE IS VERY DIFFERENT  
THAN THIS ONE.

IN THAT CASE, THIS COURT IN  
FINDING THAT THERE WAS AN  
OBLIGATION TO PROVIDE A HEARING  
RELIED ON OTHER SPECIFIC  
STATUTORY REQUIREMENTS, AND IN  
THAT CASE THERE WAS A SPECIFIC  
STATUTORY REQUIREMENT TO ALLOW  
PEOPLE TO FILE A RESPONSE.

AND ALL'S THIS COURT SAID IS,  
WELL, IF YOU'RE FILING A  
RESPONSE, YOU'RE ALSO ENTITLED  
TO A HEARING ON THAT RESPONSE  
BEFORE JUDGMENT IS ENTERED.

SO THEN WE'RE LOOKING AT ACTUAL  
STATUTORY PROVISIONS WITHIN THE  
STATUTORY SECTION AND, YOU KNOW,  
HAD SOMETHING TO HANG THEIR HAT  
ON, SO TO SPEAK, IN COMING UP  
WITH THE OBLIGATION TO GRANT A  
HEARING.

THIS STATUTE'S VERY DIFFERENT.  
OFTEN APD REPLIED TO WHAT --  
REFERRED TO WHAT JUDGE STAFFORD  
DID.

IN FINDING THE IMPLIED  
OBLIGATION, JUDGE STAFFORD  
DIDN'T CITE ANY PORTION OF  
CHAPTER 393.

HE WENT TO GREAT LENGTH TO POINT  
OUT WHAT A CAREFULLY-CRAFTED  
STATUTE 393 WAS, BUT THEN KIND  
OF INCONSISTENTLY, YET YOU HAVE  
TO IMPLY AN OBLIGATION ALMOST  
OUT OF THIN AIR IN ORDER TO FIND  
THE STATUTE CONSTITUTIONAL?  
THAT JUST DOESN'T MAKE SENSE.

>> BUT AS A PRACTICAL MATTER, IF  
JUDGE STAFFORD FOUND SOMETHING

THAT WOULD MAKE THE STATUTE CONSTITUTIONAL, WHY DOESN'T THAT SATISFY THE CONCERNS OF THE INDIVIDUALS THAT YOU WOULD POTENTIALLY REPRESENT?

>> BECAUSE JUDGE STAFFORD DIDN'T ADDRESS ALL THE ISSUES THAT NEEDED TO BE ADDRESSED. 43 HE FOUND THAT THERE WAS AN IMPLIED OBLIGATION OF APD TO FILE A PETITION WHEN INVOLUNTARY COMMITMENT WAS NO LONGER NECESSARY.

THE PROBLEM IS IS HE DIDN'T ADDRESS ALL THE OTHER DEFICIENCIES IN THE STATUTE, LIKE WHEN IS ANYONE IN THIS -- YOU KNOW, IN -- DURING THE CONTINUING INVOLUNTARY ADMISSION GOING TO ACTUALLY LOOK AT WHETHER SOMEONE ACTUALLY NEEDS TO BE CONTINUED IN THE COMMITMENT?

WHO'S TAKING THE TIME TO SAY, WELL, DOES J.R. REALLY POSE A LIKELIHOOD OF PHYSICALLY HARMING SOMEONE ELSE?

SO NONE OF THE THINGS THAT LEAD UP TO APD FILING A PETITION ARE PRESENT IN THE STATUTE.

SO JUDGE STAFFORD'S ORDER COULD STILL LEAVE J.R. IN A POSITION WHERE HE'S SITTING AND NO ONE'S EVER ACTUALLY LOOKING AT WHETHER OR NOT HE STILL NEEDS TO BE INVOLUNTARILY COMMITTED.

AND IF THAT'S NOT TRANSMITTED TO APD AND IF APD DOESN'T HAVE A REQUIREMENT TO ACT, THEN IT NEVER GETS BACK TO THE COURT AND IT DOES J.R. NO GOOD AND THAT'S A PROBLEM.

>> IF YOU COULD JUST SUM UP.

>> YES, YOUR HONOR.

I'LL SUM UP VERY BRIEFLY.

WE THINK THAT THE STATUTE ON ITS FACE AS WRITTEN IS UNAMBIGUOUS AND DOESN'T MEET THE REQUIREMENTS AS SET OUT BY THE 11TH CIRCUIT.

EVEN IF YOU DO STATUTORY INTERPRETATION, WE THINK THAT IF YOU LOOK AT THE OTHER ISSUES IN THE STATUTE, PARTICULARLY, FOR EXAMPLE, THE ISSUE REGARDING DISCHARGE, WHICH SPECIFICALLY ALLOWS DISCHARGE OF SOME PARTIES, BUT NOT PEOPLE IN J.R.'S POSITION, OR IF YOU LOOK AT THE ISSUES REGARDING RETENTION OF JURISDICTION, IF YOU LOOK AT THE ISSUE REGARDING THAT THE ONLY WAY OUT UNDER THIS STATUTE IS HABEAS CORPUS, IT'S CLEAR THAT EVEN IF YOU DO STATUTORY INTERPRETATION, IT'S CLEAR THAT THE LEGISLATURE DID NOT INTEND IN THIS CASE TO CREATE A PERIODIC REVIEW PROCESS AND A TERMINATION OF THE ORDER OTHER THAN HABEAS CORPUS. THAT FAILS THE REQUIREMENTS OF DUE PROCESS.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.  
COURT IS ADJOURNED.

>> ALL RISE.