Luis John Cruz v. Broward County School Bd.

CRUZ VERSUS BROWARD COUNTY. MS. PAYNE.

GOOD MORNING. GALE PAYNE, ON BEHALF OF CRUZ AND BROWARD COUNTY. THE SPECIAL ED TEACHERS AT THE SCHOOL OF LUIS JOHN CRUZ, WROTE A MEMO, IN WHICH THEY POINTED OUT THAT THE TEACHERS IN THE SPECIAL ED STUDENTS HAD BEEN HARMED. THEY EXPRESSED THEIR FEAR ABOUT THE SAFETY OF THE SCHOOL AND THEIR OWN PHYSICAL SAFETY AND THE SAFETY OF THEIR STUDENTS, AND THEY ASKED THE PRINCIPAL OF THE SCHOOL TO, PLEASE, ADDRESS THESE PROBLEMS AND IMPLEMENT SOLUTION IT IS IMMEDIATELY. NOTHING WAS -- SOLUTIONS IMMEDIATELY. NOTHING WAS DONE, AND APPROXIMATELY A MONTH LATER, THE VERY DANGER THAT THEY HAD WARNED ABOUT HAPPENED. 15-YEAR-OLD LUIS JOHN CRUZ WAS SLAMMED TO THE GROUND AT SCHOOL BY A TENTH GRADER AT MIRAMAR HIGH, A WRESTLING TEAM MEMBER, A MAINSTREAM STUDENT, WHO IS TAKING ONE OR TWO SPECIAL ED CLASSES, IN THE ES C-SECTION OF THE SCHOOL. THIS -- IN THE ESC SECTION OF THE SCHOOL. THIS CAUSED PERMANENT BRAIN DAMAGE TO LUIS CRUZ. FROM THE DAY THAT THIS HAPPENED, HE HAS BEEN ON ANTI-PSYCHOTIC MEDICATIONS AND THE DOSAGE OF THE ANTI-PSYCHOTIC MEDICINE IS MAXIMUM AND IT IS NOT CONTROLLING RAGES. THE SIDE EFFECT OF THIS CONDITION IS DEATH.

THIS IS A PRETTY STRAIGHTFORWARD LEGAL ISSUE IN THE CERTIFIED QUESTION, IS THAT NOT CORRECT?

CORRECT. THE CERTIFIED QUESTION, IN THIS CASE, APPLIES ONLY TO THE DAMAGE VERDICT. THE CERTIFIED QUESTION APPLIES ONLY TO THE PERMANENT LOSS OF FILLIAL CONSORTIUM SHOULD EXTEND BEYOND THE AGE OF MAJORITY. BOTH THE LOWER COURT AND THE COURT REVERSED ON, MAINLY THE DENIAL OF THE MEDICAL EXPERT, ONLY DEAL WITH THE DAMAGE IN HIS THIS CASE. NONE OF THOSE ISSUES AFFECT WHETHER OR NOT THE SCHOOL BREACHED ITS DUTY OF CARE, IN NEGLIGENTLY PROVIDING AN UNSAFE ENVIRONMENT, SO --

I THINK WHAT WE ARE INTERESTED IN IS THE CERTIFIED QUESTION. YOU WANT TO ARGUE THE FOURTH DISTRICT WAS WRONG IN ITS OTHER RULINGS, AND THAT IS IN YOUR BRIEF, BUT COULD YOU ADDRESS THE CERTIFIED QUESTION WHY THIS CLAIM SHOULDN'T BE LIMITED, UNTIL THE CHILD REACHES MAJORITY AND WHETHER KEVINY IS HAS -- AND WHETHER DENPSEY HAS, ALREADY, EXTENDED IT TO CHILDREN.

YES, JUSTICE PARIENTE. IT IS OUR POSITION AND WE ADMIT THAT THE QUESTION NEEDS TO BE ANSWERED IN THE AFFIRMATIVE, THAT IT HAS TO, OR ELSE THE RECOVERY THAT YOU PROVIDED UNDER DENPSEY IS NOT FOR PERMANENT LOSS OF FILLIAL CONSORTIUM. WE ARE NOT RELATING TO AN ADULT CHILD. THE DERIVATIVE INJURY FALSE WITHIN THE AMBITIVI DEMPSEY -- -- WITHIN THE AMBIT OF DEMPSEY, AND APPLIES TO A 15-YEAR-OLD BOY.

WOULD YOU AGREE TAKE DEMPSEY CHANGES THE COMMON LAW OF THE STATE.

YES.

AND IT DOES IT ON THE BASIS OF WHAT I WOULD SAY IS KIND OF AN EQUAL PROTECTION-TYPE OF ANALYSIS, THAT, WELL, IF YOU ARE GOING TO DO IT FOR DEPENDENCE -- DEPENDENTS -- DEPENDENCE THAT WOULD BE COVERED IN DEMPSEY, THEN YOU OUGHT TO DO IT, AS FAR AS MINORS ARE CONCERNED, CORRECT?

WELL, I THINK THAT WAS ONE OF THE BASIS. THE COURT, ALSO, DETERMINED THAT THIS WAS A FUNDAMENTAL RIGHT, THE PARENT-CHILD RELATIONSHIP, THAT THEY NEEDED TO TAYLOR THE COMMON LAW TO, AS WELL. IT WASN'T JUST SIMPLY TO ON AN EQUAL PROTECTION.

BUT THE WHOLE CONCEPT, HERE, IS THAT, AND THE CONCEPT OF THE STATUTE, UPON WHICH DEMPSEY WAS FASHIONED THIS MEASURE OF DAMAGE, WAS THAT YOU WERE DEALING WITH A DEPENDENT OR YOU WERE DEALING WITH A CHILD. AND ONCE THE CHILD REACHEST AGE OF MAJORITY -- REACHES THE AGE OF MAJORITY, THEN THERE IS NO LONGER A CHILD, RIGHT?

NO, YOUR HONOR. THERE ARE TWO RESTRICTIONS HERE. THE RESTRICTION THAT THE COURT HAS PLACED IS ON THE DERIVATIVE INJURY, THE TYPE OF DERIVATIVE INJURY THAT IS NECESSARY TO QUALIFY FOR THIS ELEMENT OF PERMANENT FILLIAL CONSORTIUM DAMAGES, AND THEY HAVE LIMITED TO A VERY SMALL AREA OF WHAT THE DERIVATIVE INJURY IS. THE DERIVATIVE INJURY MUST BE UNDER THE STATUTE, IF THIS WAS DONE UNDER AN EQUAL PROTECTION BASIS. THE JURY MUST AND PERMANENT INJURY OF -- THE INJURY MUST BE A PERMANENT INJURY AND IT MUST BE TO THE CHILD, THE DEPENDENT, AND THAT IS WHAT OCCURRED IN THIS CASE, BUT IN DEMPSEY IT SEPARATED AND DID A CLEAR LINE OF DEMARCATION AND SET UP TWO SEPARATE BUT EQUAL CAMPS OF COMPONENTS OF FILLIAL DAMAGES, SO WE HAVE THE LOSS OF ECONOMIC SERVICES OR EARNINGS THAT THE CHILD CAN EARN. THOSE DAMAGES, THE DERIVATIVE INJURY NEED NEITHER BE PERMANENT. IT CAN BE TEMPORARY. IT CAN BE SLIGHT. IN THE TRADITIONAL CONCEPT, THOSE DAMAGE, THE PARENT WOULDN'T HAVE ANY RIGHT TO HAVE ANY OF THE ECONOMIC DAMAGES OF THEIR CHILD, PAST THE AGE OF MAJORITY, BUT IN THE NONPECUNIARY ASPECT OF THE FILLIAL CONSORTIUM DAMAGES, WHICH IS EXACTLY WHAT THE COURT, IN DEMPSEY, DID. IT SEGREGATED THESE TWO CAMPS. IN THE NONPECUNIARY LOSS OF LOVE AND SOCIETY, WITH RESPECT TO THOSE DAMAGES, IT IS A DIFFERENT STANDARD OF PROOF. THE JURY NEEDS TO BE PERMANENT. IT NEEDS TO BE LASTING. WELL, ON THE ONE HAND, IT DOESN'T MAKE SENSE TO FASHION A REMEDY FOR DAMAGES THAT WILL EXPIRE, WHEN A CHILD REACHES THE AGE OF MAJORITY, UPON A JURY THAT -- UPON AN INJURY THAT MUST LAST A LIFETIME.

DO YOU AGREE, AND I THINK YOU HAVE ACCEPTED THIS IN YOUR BRIEF, THAT, IF THE CHILD WAS 19 YEARS OLD, AND AN EMANCIPATEED CHILD, THAT THE PARENT WOULD HAVE NO ENTITLEMENT TO THESE CONSORTIUM DAMAGE. IS THAT CORRECT?

YOUR HONOR, THAT IS A DETERMINATION FOR ANOTHER CASE.

WELL, I AM NOT ASKING WHETHER IT IS A DETERMINATION FOR ANOTHER CASE. WHAT IS YOUR POSITION ABOUT THAT? IN OTHER WORDS WE HAVE A CHILD, THE SAME CIRCUMSTANCES HERE, EXCEPT IT HAPPENS ON A COLLEGE CAMPUS, AND THE CHILD IS EMANCIPATED, 19 YEARS OLD, DOES A PARENT HAVE A RIGHT TO CONSORTIUM DAMAGES, IN THE INSTANCE OF THE INJURY TO THE CHILD, 19 YEARS OLD, EMANCIPATED?

WELL, YOUR HONOR, YOU KNOW, IF YOU ARE ASKING WHAT I PERSONALLY BELIEVE, YES, I BELIEVE THAT THEY SHOULD BE.

I AM NOT SURE, WHEN YOU ARE SAYING WHAT YOU PERSONALLY BELIEVE. I AM TALKING ABOUT WHAT THE LAW PROVIDES, WHETHER THE LAW PROVIDES FOR CONSORTIUM DAMAGES, IN AN INSTANCE LIKE THAT? DOES THE LAW PROVIDE THAT OR NOT?

NOT SO FAR. NOT IN FLORIDA. THAT IS SO FAR.

THE STATE OF THE LAW, RIGHT NOW, WOULD NOT ALLOW RECOVERY, IN THE HYPOTHETICAL THAT I HAVE DESCRIBED. IS THAT CORRECT?

I DON'T BELIEVE IT DOES. I THINK THAT --

TELL ME WHAT THE RATIONALE WOULD BE FOR ALLOWING CONSORTIUM DAMAGES, THEN, IF THE INJURY OCCURS WHEN THE CHILD IS 1, AND, NOW, YOU ALLOW FOR THE REST OF THE CHILD'S LIFE, CONSORTIUM DAMAGES TO THE PARENT, BUT, YET, IF THE CHILD WAS 19, AND I AM SAYING THIS, KNOWING THAT ALL PARENTS OUT THERE HAVE THAT SAME LOSS, IN THE SENSE OF CONSORTIUM, THAT IS THE RELATIONSHIP, THE EMOTIONAL ATTACHMENT, AND THE LOSS OF COMPANIONSHIP OF THAT CHILD, IN THE WAY THAT IT IS AFFECTED BY THAT INJURY. WHAT WOULD BE THE RATIONALE, IN ALLOWING IT, WHEN IT HAPPENS TO A 1-YEAR-OLD BUT NOT ALLOWING IT, WHEN IT HAPPENS TO THE 19-YEAR-OLD?

YOUR HONOR, THE RATIONALE IS THAT YOU ARE PROTECTING THE NUCLEAR FAMILY. THE NUCLEAR FAMILY HAS, TRADITIONALLY BEEN DEFINED AS THE PARENTS AND THEIR UNEMANCIPATEED, DEPENDENT CHILDREN. THAT IS THE NUCLEAR FAMILY. THAT IS THE RELATIONSHIP THAT DEMPSEY WANTS TO PROTECT. I THINK WHAT WE ARE CONFUSING, HERE, IS THE LIMITATIONS ON THE TYPE OF DERIVATIVE INJURY THAT NEEDS TO OCCUR, IN ORDER TO QUALIFY FOR THIS NONPECUNIARY, FILLIAL CONSORTIUM OF DAMAGES, WITH THE LEVEL OF RECOVERY FOR THE CONSORTIUM DAMAGES, ONCE YOU MEET THE QUALIFIERS OF THE DERIVATIVE INJURY. IN THIS CASE, THE -- IT WAS CLEARLY A MEMBER OF THE NUCLEAR FAMILY. THE BOY WAS 15-YEAR-OLD, UNMARRIED DEPENDENT, WHEN HE WAS INJURED. HE SUFFERED A SIGNIFICANT AND PERMANENT INJURY. AS A RESULT, THE LAW, IN DEMPSEY, WITH THIS CLEAR LINE OF DEMARCATION, BETWEEN THE TRADITIONAL PECUNIARY DAMAGES AND THE MORE CONTEMPORARY, NONPECUNIARY DAMAGES, THE LAW IN DEMPSEY IS THAT YOU GET DAMAGES FOR THAT PERMANENT LOSS OF FILLIAL CONSORTIUM THAT ARISES FROM THAT RELATIONSHIP.

WOULD THIS BE SOMETHING FOR THE LEGISLATURE, TO DRAW LINES LIKE THIS THAT MAY, REALLY, BE DIFFICULT TO JUSTIFY, IN TERMS OF RATIONALE OR WHATEVER, BUT A DIFFERENT THING FOR THE COURT, NOW, TO CONSTRUCT LINES LIKE THIS? IN TERMS OF BEING JUSTIFIED IN DOING IT.

RESPECTFULLY, YOUR HONOR, IT IS EXACTLY JOB OF THIS COURT TO DRAW LINES. THAT IS WHAT WE ALREADY IN THE BUSINESS OF DOING, BUT THE LEGISLATURE HAS, ALREADY, DRAFTED THE LINES, AND THE LINES THAT THE LEGISLATURE HAS DRAFTED, WITH RESPECT TO A PATIENT, WITH RESPECT TO A CHILD GETTING THE PARENTAL CONSORTIUM, IS, IF THE DERIVATIVE INJURY HAPPENS, IF THE DERIVATIVE INJURY HAPPENS TO THE PARENT, WHILE THE CHILD IS AN UNMARRIED DEPENDENT, AND THE DERIVATIVE INJURY IS A SIGNIFICANT INJURY --

THAT IS WHAT THE LEGISLATURE HAS DONE IN THAT INSTANCE, BUT YOU ARE RELYING ON DEMPSEY AND WHAT THIS COURT HAS DONE.

WELL, WHAT DEMPSEY HAS DONE IS EXACTLY WHAT THE LEGISLATURE HAS DONE. AGAIN, THE -- WHAT NEEDS TO QUALIFY TO BE THE DERIVATIVE INJURY? WHAT CLASS OF PEOPLE FALL WITHIN THIS QUALIFICATION, WHICH IS THE INJURY TO UNEMANCIPATED MINE ON, OKAY, IS ONEISH UNIFORMITY THE SECOND ISSUE IS, ONCE YOU QUALIFY, NOW, FOR THIS LOSS OF PECUNIARY, FILLIAL CONSORTIUM DAMAGES, DO WE JUST ARBITRARILY CUTOFF THE DAMAGES AT THE AGE OF MAJORITY? WHAT I AM SUGGESTING IS YOU CAN'T LOGICALLY DO THAT, WHEN BOTH THE LEGISLATURE AND THE DEMPSEY OPINION HAS DETERMINED THAT, ONCE YOU QUALIFY FOR THIS NONPECUNIARY, FILLIAL CONSORTIUM, THE DAMAGES, THE RECOVERY, IS FOR THE PERMANENT LOSS OF CONSORTIUM.

BEFORE -- BUT FOR THE STATUTE, LET'S JUST GO BACK TO WHAT THE LAW WAS, WITHOUT THE STATUTE. A PARENT, WHO HAS A CHILD THAT IS INJURED, EITHER PERMANENTLY OR TEMPORARILY, CAN -- COULD SUE FOR BOTH LOSS OF SERVICES, WAS THERE -- ARE YOU SAYING THERE WAS NO CLAIM BEFORE DEMPSEY, FOR WHAT WE ARE CALLING FILLIAL CONSORTIUM, LOSS OF LOVE AND SUPPORT, UNTIL THE CHILD REACHED MAJORITY? I WAS TRYING TO THINK OF THE JURY INSTRUCTION.

I AM SORRY. ARE YOU TALKING ABOUT IN OUR CASE?

NO. IN ANY CASE, THE CASE BEFORE THE 768.0415 CAME INTO EFFECT AND BEFORE DEMPSEY, WHEN A PARENT WAS SUING FOR THE CHILD, THERE WOULD BE TWO CHRALS. YOU WOULD BRING THE CLAIM FOR -- TWO CLAIMS. YOU WOULD BRING THE CLAIM FOR THE CHILD, FOR THEIR INJURY, AND THEN THE CLAIM THAT THE PARENT WOULD BRING FOR THEIR OWN LOSS, WAS IT LIMITED TO LOSE OF SERVICES?

TRADITIONALLY IT WAS -- THIS IS THE PECUNIARY CAMP VERSUS THE NONPECUNIARY CAMP.

ARE YOU SAYING, BEFORE DEMPSEY, THERE WAS NO CLAIM FOR --

BEFORE DEMPSEY AND BEFORE SECTION 768.0415. THERE WAS NO CLAIM. THE LOSS OF FILLIAL OR PARENTAL CONSORTIUM ONLY INCLUDED THE ECONOMIC COMPONENT OF THE DAMAGE. IT DID NOT INCLUDE THE NONECONOMIC COMPONENT OF THE DAMAGE,, WHICH NOW, COMES TO THE COURT, CLOTHED WITH A MOMENTUM OF RESPECT, BECAUSE IT IS EXACTLY THIS LATTER ELEMENT OF FILLIAL CONSORTIUM DAMAGES THAT THIS COURT RECOGNIZED IN DEMPSEY AND IN MODERN SOCIETY IS, NOW, THE ONE OF FAR GREATER VALUE DOLL YOU ARE -- VALUE TO OUR SOCIETY.

YOU THINK THAT, REGARDLESS OF 768.0415, EVENTUALLY YOU THINK THE COURT WOULD HAVE SAID, LISTEN, THE COMMON LAW NOTION THAT A CHILD WHO IS INJURED, THE ONLY LOSS THAT A PARENT HAS IS FOR THEIR SERVICES, IN MODERN-DAY REALITY, THAT WOULD BE THE VERY SMALL COMPONENT OF THE LOSS, AND IT WOULD BE THE LOSS OF THE LOVE AND COMPANIONSHIP THAT WOULD BE THE REAL LOSS THAT YOU WOULD BE COMPENSATING A PARENT FOR.

EXACTLY, YOUR HONOR.

AND NOW THE QUESTION IS, THOUGH, YOUR HONOR, IS WHY WOULD WE EXTEND IT PAST THE AGE OF MAJORITY, FROM ANY KIND OF PUBLIC POLICY POINT OF VIEW, OR IS THERE AN EQUAL PROTECTION, FUNDAMENTAL RIGHT COMPONENT TO YOUR ARGUMENT?

FIRST OF ALL I DON'T THINK YOU ARE EXTENDING IT. I THINK THE DEMPSEY OPINION MADE IT VERY CLEAR, AS DOES THE STATUTE, THAT DAMAGES, THE RECOVERY IS FOR THE PERMANENT LOSS OF FILL YAM -- FILLIAL CONSORTIUM. IF THE RECOVERY IS FOR THE PERMANENT LOSS OF FILLIAL CONSORTIUM, THEN RECOVERY GOES PAST MAJORITY. I THINK ONE THING THAT WE CAN ALL AGREE IN THIS CASE IS THAT A CHILD'S LOVE AND APPRECIATION FOR THEIR PARENTS MATURES, ALONG WITH A CHILD PAST MAJORITY AGE.

WHAT IS THE STATUS, POST DEMPSEY, OF THE PARENTS' RECOVERY FOR LOSS OF SERVICES AND EARNINGS?

THE ECONOMIC SERVICES AND EARNINGS?

RIGHT.

WELL, DEMPSEY, AGAIN, JUST SORT OF HIGHLIGHTED THIS RIFT BETWEEN THE NONECONOMIC AND THE ECONOMIC. IT DID TWO --

POST DEMPSEY, IT ONLY GOES UP TO 18.

FOR THE ECONOMIC DAMAGES. DEMPSEY APPLIES DIFFERENT STANDARDS OF PROOF TO THE ECONOMIC VERSUS THE NONECONOMIC, AND IT, ALSO, APPLIES DIFFERENT LEVELS OF COMPENSATION.

BUT IT IS ACCEPTED THAT, UNDER DEMPSEY, WILKE IS STILL THE LAW.

OF COURSE, YOUR HONOR. BECAUSE --

AND THAT IT -- AND THAT YOU CAN ONLY RECOVER LOSS OF SERVICES, UP THROUGH AGE 18.

ECONOMIC SERVICES. THAT'S CORRECT. THE PARENT HAS NO RIGHT TO THE CHILD'S ECONOMIC EARNINGS OR SERVICES PAST THE AGE OF MAJORITY, AND DEMPSEY, IN FACT, ADDRESSED TWO SEPARATE CERTIFIED ISSUES, WHICH JUST SORT OF HIGHLIGHTED THE RIFT BETWEEN THE NONECONOMIC DAMAGES THAT, NOW, AGAIN, COME CLOTHED WITH THE MOMENTUM OF RESPECT, VERSUS THE ECONOMIC DAMAGES. THE ECONOMIC DAMAGES END AT MAJORITY, BUT THE NONECONOMIC DAMAGES, I THINK THAT WE, ALL, CAN AGREE THAT MATURITY IS WHEN THE SEEDS OF RECIPROCAL LOVE THAT ARE PLANTED IN THE SOIL OF THE NUCLEAR FAMILY, TAKE ROOT IN THE CHILD'S HEART. THAT HAPPENS IN POST MAJORITY.

YOU ARE IN YOUR REBUTTAL TIME.

IF I COULD JUST VERY, VERY BRIEFLY, I WOULD LIKING TO JUST TAKE ONE MINUTE, AND I WOULD LIKE TO PASS TO THE DISALLOWED MEDICAL EXAM. I BELIEVE THAT THAT ISSUE WOULD CREATE A SPLIT AMONGST DISTRICT COURTS OF APPEAL. IN THIS CASE, THE DECISION BELOW REVERSED AND REQUIRED A NEW TRIAL, ON THE SOLE BASIS THAT AN IME EXAM NEEDED TO BE ALLOWED, BUT THE UNCONTROVERTED RECORD BEFORE THE COURT, AT THE HEARING, BY DR. PELT, WOULD BE THAT A NEUROLOGICAL EXAM WOULD NOT BE HE VALUETIVE OF THE PLAINTIFF -- -- HE HAVE VALUATIVE OF THE PLAINTIFF IN THIS CASE. THERE WAS NOTHING OFFERED TO REBUT THAT OR NOTHING OFFERED TO EXPLAIN WHY THE MEDICAL EXAM NEEDED TO BE INPUT IN PLACE, SO IN THE ALTERNATIVE OF ABUSE OF DISCRETION THE COURT IMPOSEED A PER SE RULE, NOW, REQUIRING MEDICAL EXAMS, WHEN THE PLEADINGS PUT IT AT ISSUE, NOTWITHSTANDING THE FACT THAT THE SOLE EVIDENCE PRESENTED AT THE TRIAL NEGATES THE GOOD CAUSE. I THINK THAT THAT CREATES A SPLIT AMONGST DISTRICT COURTS OF APPEAL, AND I THINK, AT THE VERY LEAST, THIS COURT NEEDS TO DISPEL ANY CONFUSION REGARDING THE PRESERVATION OF THE GOOD CAUSE REQUIREMENT IN THIS CASE.

THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS AIM D RONNER, AND I AM HERE WITH BRUCE WINICK, AND TOGETHER WE ASK THE COURT TO LIMIT THE FILLIAL CONSORTIUM TO THE MINORITY YEARS AND SPECIFICALLY TO ANSWER THE CERTIFIED QUESTION IN THE NEGATIVE.

WELL, THE DCA HAS GOT THE LAW WRONG, HAVE THEY NOT?

NO.

THEY, REALLY, HAVEN'T INTERPRETED DEMPSEY, AT LEAST THE WAY THAT IT APPEARS TO, LITERALLY, READ, HAVE THEY?

YES, THEY HAVES -- HAVE, AND I DISAGREE, RESPECTFULLY, WITH OPPOSING COUNSEL'S INTERPRETATION OF DEMPSEY. DEMPSEY, IT WAS A QUESTION ASKED BY THE FEDERAL APPELLANT -- APPELLATE COURT, WHETHER FLORIDA RECOGNIZES NONPECUNIARY DAMAGES, IN THE AREA OF FILLIAL CONSORTIUM. WHAT THIS COURT DID, IN DEMPSEY, WAS LOOK BACK AT PRECEDENT, WILKE AND YOURDIN AND BASICALLY CLARIFIED THE EXISTING LAW. IT LOOKED AT WILKE, AND IT LOOKED AT YOURDIN, AND IT SAID, YES, WE DO, IN THOSE CASES, RECOGNIZE LOSS OF SOCIETY AND COMPANIONSHIP AS COMPONENTS OF DAMAGES. THAT IS ALL DEMPSEY D.

AREN'T YOU IGNORING, THOUGH, THE PART OF THE DEMPSEY OPINION THAT DISCUSSES THE STATUTE AND, ALSO, IGNORING JUSTICE GRIMES' SEPARATE CONCURRENCE, WHICH, AGAIN,

REPEATS THIS ANALYSIS OF THE STATUTE, AND AS THE BASIS FOR THE COURT'S DECISION.

THE STATUTE IS AN IMPORTANT PART OF DEMPSEY, AND THE STATUTE ABSOLUTELY IS UPORS OUR -- SUPPORTS OUR POSITION. WHAT THE COURT DID IS SAID THAT, IN THE AREA OF FILLIAL CONSORTIUM, YOU WANT TO LOOK TO GUIDANCE, TO THE PARENTAL CONSORTIUM STATUTE, 768.0415. THAT IS WHERE YOU LOOK. AND WHAT THAT STATUTE SAYS IS THAT AN UNMARRIED DEPENDENT CAN RECOVER FOR A TOTALLY AND PERMANENTLY INJURED PARENT.

DOES IT REQUIRE THAT THE DEPENDENT BE UNDER THE AGE OF MAJORITY, WHEN THE PARENT IS INJURED?

THAT IS A DEPENDENT. A DEPENDENT IS UNDER THE AGE OF 18, AND I KNOW WHERE THAT LANGUAGE COMES FROM. THAT LANGUAGE IS, IN ESSENCE, THE SYNONYM OF THE LANGUAGE IN WILKE AND YOURDIN, IN THE FILLIAL CONSORTIUM AREA.

ONCE THERE IS A PERMANENT LOSS, OF THE CHILD, FOR THE PARENT, DOES THAT LOSS STOP WHEN THE CHILD REACHES MAJORITY?

ABSOLUTELY.

UNDER THE STATUTE IN DEMPSEY?

UNDER DEMPSEY AND, ALSO, I THINK, IT IS THE SAME CONCEPT, EMBRACED IN THE PARENTAL CONSORTIUM STATUTE, THAT IS PERMANENT. IT IS JUST A THRESHOLD CONDITION FOR ANY EMOTIONAL CONSORTIUM DAMAGES.

WHY SHOULD IT HAVE TO BE PERMANENT, IF YOU ARE TALKING ABOUT, FOR INSTANCE, A 15-YEAR-OLD CHILD WHO, IN THREE YEARS, WILL REACH MAJORITY? WHY SHOULD IT HAVE TO BE PERFECTLYNENT IN THAT THIS INSTANCE? WHY SHOULDN'T IT JUST BE, IF HE THEY ARE GOING TO HAVE THAT LOSS OF CONSORTIUM FOR THOSE THREE YEARS, OR IF THEY HAVE HAD IT FOR THE PAST YEAR OR WHATEVER? LIT ME -- LET ME READ YOU THE HOLDING OF DEMPSEY AND ASK YOU TO PLEASE EXPLAIN THAT TO ME. IT SAYS, ACCORDING WE HOLD THAT A PARENT OF A NEGLIGENTLY-INJURED CHILD HAS A RIGHT TO RECOVER FOR THE PERMANENT LOSS OF FILLIAL CONSORTIUM SUFFERED, AS A RESULT OF THE SIGNIFICANT INJURY RESULTING IN THE CHILD'S PERMANENT, TOTAL DISABILITY. HELP ME WITH THAT HOLDING AND HOW THAT DOESN'T REFER TO THE PERFECTLYNENT, AND PERMANENT HAS SOME MEANING, DOES IT NOT?

IT CERTAINLY DOES, AND IT MEANS, BASICALLY THAT,, IF THE CHILD IS NOT PERMANENTLY AND TOTALLY INJURED, THERE IS NO RECOVERY. AND IF A CHILD IS PERFECTLYNENTLY AND TOTALLY RECOVERED, THEN THE PARENT IS ENTITLED TO RECOVER, BUT ONLY UP UNTIL OUT POINT AT WHICH THE CHILD AT ANS THE AGE OF MAJORITY.

SO YOU CAN'T RECOVER FOR THE PERMANENT LOSS OF FILLIAL CONSORTIUM.

YOU RECOVER FOR A PERMANENT AND TOTAL INJURY.

I AM TALKING ABOUT THE LANGUAGE THAT SAYS THE RIGHT TO RECOVER FOR THE PERMANENT LOSS OF FILLIAL CONSORTIUM. WHAT DOES THAT WORD, PERMANENT, MEAN, THERE, IN TERMS OF THE ENTITLEMENT TO RECOVER FOR THAT LOSS?

PERFECTLYNENT MEANS, AND IT MODIFIES INJURY -- PERMANENT MEANS, AND IT MODIFIES INJURY.

IT MODIFIES LOSS, DOES IT NOT? THAT IS THE WORD THAT IT APPEARS BEFORE.

THAT IS THAT YOU HAVE TO EXPERIENCE A PERMANENT LOSS, BUT THE PERMANENT LOSS IS THE RECOVERY, ITSELF, IS JUST LIMITED TO THE MINORITY YEARS. AND WHAT THIS IS ABOUT, JUSTICE ANSTEAD, IS PRECISELY WHAT YOU POINTED OUT. LINE DRAWING. AND WHAT THE LAW DOES, IN THE AREA OF SECONDARY PLAINTIFFS, IS DRAW LINES, AND IT SAYS CERTAINLY THERE ARE INJURIES TO WHICH PEOPLE ARE GOING TO FEEL PAIN AND FEEL PAIN FOR THE REST OF THEIR LIVES, BUT WHAT WE DO IS AFFECT WAIT A BALANCE -- AFF OWE CTUATE A BALANCE BETWEEN THE ECONOMIC REALITIES OF THE TORTFEASOR AND FAIRNESS TO THE PLAINTIFF. FOR INSTANCE A 19-YEAR-OLD IS PERMANENTLY AND TOTALLY INJURED, IN A COMA. IS THE PARENT GOING TO FEEL BAD ABOUT THAT FOR THE REST OF THEIR LIVES? DOES THE LAW LET THE PARENT RECOVER? NO.

WHAT ABOUT, UNDER THAT LANGUAGE, IN SECTION 768.041, IT USES UNMARRIED DEPENDENT. HOW DOES THAT P APPLY, IF YOU HAVE A CHILD -- HOW DOES THAT APPLY, IF YOU HAVE A CHILD THAT IS BEYOND 1 BUT IS A COLLEGE STUDENT, AND IT IS STILL A DEPENDENT, PAW THEY ARE A COLLEGE STUDENT. AS I UNDERSTOOD THE ANSWER BEFORE, THE STATUTE WOULD NOT COVER THAT PERSON OR WOULD IT?

THAT LANGUAGE REFERS TO SOMEBODY UNDER THE AGE OF 18. THAT IS SOMEONE OVER --

BUT IT, REALLY, DOESN'T SAY THAT, DOES IT?

NO. BUT WHAT YOU DO IS, IN LOOKING AT THAT STATUTE, YOU LOOK AT THE MEANING OF DEPENDENT AND INDEPENDENT, AND AN INDDEPENDENT IS SOMEONE LEGALLY INDEPENDENT, AND THE LAW SAYS THAT A CHILD, AFTER THE AGE OF 18, IS INDEPENDENT.

BUT IS THAT -- IS THERE A CASE ON THAT, PAW A DEPENDENT CAN BE A SEVERELY -- BECAUSE A DEPENDENT CAN BE A SEVERELY-DISABLED CHILD THAT IS OVER THE AGE OF 18. YOU CAN STILL DECLARE THAT PERSON AS A DEPENDENT. WHO HOW -- WHERE DO YOU GET -- WHERE DO YOU GET THE NOTION THAT 0415 IS LIMITED TO ONLY UNTIL THE -- SOMEONE REACHES THE AGE OF MAJORITY, AS FAR AS RECOVERING FOR THE LOSS OF THEIR PARENT? IF IT IS AN UNMARRIED DEPENDENT, OVER THE AGE OF 18, WHO, HIMSELF OR HERSELF IS DISABLED, WHY WOULDN'T THAT BE SOMETHING THAT THAT STATUTE ANTICIPATED BEING A RECOVERY AFTER THE AGE OF 18? AND BECAUSE THAT IS IMPORTANT, IN TERMS OF THIS IDEA THAT WE ARE GOING TO KIND OF GIVE THESE EQUAL RIGHTS TO BOTH THE PARENT AND THE CHILD.

RIGHT. IT IS IMPORTANT, AND I HAVE TWO ANSWERS TO IT, AND FORTUNATELY IT HAS SOMETHING TO DO WITH THE HISTORY OF THAT STATUTE, IS THAT BEFORE THIS COURT'S CASE IN THE ZORZOS V ROSEN DECISION, IS ESSENTIALLY IT WASN'T THERE, IS WE HAVE THE POWER TO ACT, BUT IN AREAS LIKE THIS, WHERE YOU ARE DEALING WERE SECONDARY LIABILITY, WE ARE GOING TO, IN ESSENCE, DEFER TO THE LEGISLATURE, AND THE LEGISLATURE HAS BEEN SILENT. SUBSEQUENTLY, THE LEGISLATURE CAME UP WITH 768.0415. WHEN IT CAME UP WITH THAT LANGUAGE, UNMARRIED DEPENDENT, IN THE AREA OF FILLIAL CONSORTIUM AWARDS, WILKE WAS THE LAW. WILKE AND YOURD I KNOW, AND THE LANGUAGE -- AND YOURDIN, AND THE LANGUAGE IN FILLIAL CONSORTIUM, WAS UNEMANCIPATEED MINOR. THE LEGISLATURE MADE THE PARENTAL CONSORTIUM PARALLEL WITH THAT.

THEY DIDN'T SAY UNEMANCIPATED.

NO, THEY DIDN'T.

AND ONE OF THE ISSUES IS SERVICES. WHAT IF YOU HAVE A CHILD THAT IS DEPENDENT ON THEIR PARENT FOR THE VERY SERVICES, CARETAKING SERVICES. ARE YOU SAYING THAT THIS STATUTE WOULD LIMIT THAT UNMARRIED DEPENDENT, AFTER THEY GOT PAST 18? TO RECOVER FOR THEIR LOSS OF THEIR PARENT'S SERVICES?

SEE, I THINK, YES. I THINK WHAT WE ARE DOING, HERE, IS LOOKING AT THAT LANGUAGE, AS BROADENING. I THINK THAT LANGUAGE CONTEMPLATES SOMEBODY WHO IS A MINOR, 16, WHO IS MARRIED AND INDEPENDENT, AND THUS HAS NO CAUSE OF ACTION FOR A TOTALLY AND PERMANENTLY INJURED PARENT. I THINK IT IS IN SYNC WITH THE FILLIAL CONSORTIUM, UNEMANCIPATEED MINOR LANGUAGE. WHAT WILKE AND YOURDIN SAY IS, EVEN IF THE TOTALLY AND PERMANENTLY-INJURED CHILD IS A MINOR, IF THAT CHILD IS EMANCIPATEED, THE PARENT IS NOT GOING TO BE GETTING FILLIAL CONSORTIUM DAMAGES, AND THE LANGUAGE IN THE AREA OF PARENTAL CONSORTIUM IS PARALLEL. IT SAYS, BASICALLY, IF THAT CHILD IS MARRIED AND INDEPENDENT, EVEN IF THAT CHILD IS OF THE AGE OF 17, THAT CHILD NO LONGER HAS THE PARENTAL CONSORTIUM CLAIM, BUT AS FAR AS WHY I AM LOOKING AT THE AGE OF 18, IT IS BECAUSE, WHEN THE LEGISLATURE WISHES TO DEFINE MINOR DIFFERENTLY, IT DOES SO, AND IT DOES SO EXPLICITLY.

IT DOESN'T USE THE TERM MINOR IN THE STATUTE. THAT SEEMS TO BE THAT WE CAN'T GET TO THAT RESOLUTION. IT USES THE TERM "DEPENDENT", AND CERTAINLY THE LEGISLATURE KNOWS WHAT A MINOR IS AND WHERE IT IS DEFINED IN THE STATUTE. WHERE, IN THE STATUTES, MAY WE GO TO FIND THE DEFINITION FOR THE WORD "DEPENDENT"?

I THINK THE MOST ANALOGOUS ONE IS THE DEFINITION OF AN INDEPENDENT IS SOMEONE THAT IS UNDER THE AGE OF 18 AND, I THINK, ALSO, THE WRONGFUL-DEATH ACT MAKES IT CLEAR THAT, IF, IN THAT CASE, ANYONE UNDER THE AGE OF 25, IS CONSIDERED A MINOR.

BUT THEY SAY, SEE, THAT IS WHERE I WAS JUST GOING TO THAT. THAT IS WHERE YOUR ARGUMENT FAILS, BECAUSE RIGHT IN THAT SAME 768, WHEN THE WRONGFUL-DEATH STATUTE SPEAKS ABOUT WHO IS GOING TO RECOVER AND WHO IS NOT, THEY DON'T TALK ABOUT DEPENDENTS. THEY TALK ABOUT MINOR CHILDREN, AND THEY DO, UNDER THOSE LIMITED CIRCUMSTANCES, LIMIT IT TO 25 AND UNDER, SO IF WE ARE GOING TO DO ANY KIND OF STATUTORY CONSTRUCTION, WHERE, GOING BACK, YOU CAN'T LOOK TO THE WRONGFUL-DEATH STATUTE, BECAUSE WHEN THEY REFER TO THE KIND OF CHILDREN THAT ARE GOING TO RECOVER, THEY SAY MINOR CHILDREN, AND THEY DEFINE IT AS UNDER 25.

WELL, I THINK THE RELEVANCE OF THE WRONGFUL DEBT STATUTE IS THAT IT SAYS THAT, WHEN THE LEGISLATURE WISHES TO CHANGE THE DEFINITION BEYOND THE NORM, AND THAT IS BEYOND THE AGE OF 18, IT IS NOT SHY. IT SAYS SO. AND --

BUT DOES THE STATUTE THAT SPEAKS OF 18 BEING THE MAGIC AGE, USE THE PHRASE DEPENDENT? OR DOES IT USE SOME OTHER PHRASE? THAT IS WHERE WE ARE GETTING INTO THE PROBLEM HERE. IT DOESN'T USE THE PHRASE "DEPENDENT", DOES IT?

THE STATUTES USE ALL DIFFERENT LANGUAGE. FOR INSTANCE, IN TERMS OF LINE-DRAWING, WHICH IS ONE OF JUSTICE ANSTEAD'S CONCERNS AND ONE OF THE REASONS WE FEEL THIS, REALLY, IS A LEGISLATIVE FUNCTION, TO EITHER RAISE THE CAP, BUT IN THE WRONGFUL DEBT ACT, WHAT YOU HAVE IS ADULT CHILDREN CAN RECOVER FOR THE WRONGFUL-DEATH OF A PARENT, IF THERE IS NO SURVIVING SPOUSE. PARENTS CAN RECOVER FOR THE WRONGFUL-DEATH OF AN ADULT CHILD, IF THERE ARE NO SURVIVORS.

CAN WE GO BACK TO THE QUESTION, THOUGH.

WHY YEAH.

WHERE IS THE STATUTE? IT IS NOT IN THE WRONGFUL-DEATH STATUTE. NOW YOU ARE TALKING ABOUT WRONGFUL-DEATH RECOVERY. IS THERE A STATUTE THAT WE CAN GO TO, THAT TALKS IN TERMS OF 18 AND USES THE PHRASE "DEPENDENT"? IS THERE SUCH A THING?

I HAVE NOT FOUND A STATUTE THAT TALKS OF DEPENDENCY AND DEFINES IT PRECISELY. ONE OF

THE COMMON, THOUGH, ASSUMPTIONS, AND THE ASUMPTION IS BORNE OUT IN DEMPSEY, IN THE OVERWHELMING JURISDICTIONS THAT HAVE CONSIDERED THIS ISSUE, HAVE SAID THAT INDEPENDENT MEANS ATTAINMENT OF THE AGE OF MAJORITY.

IS A PARENT, IN FLORIDA, LIABLE, LEGALLY, FOR THE SUPPORT OF A CHILD THAT IS TOTALLY AND PERMANENTLY DISABLED AS A CHILD AND REMAINS THAT WAY, AFTER THEY PASS THE AGE OF THE MAJORITY, AND THEREFORE ARE, FACTUALLY, STILL DEPENDENT ON THE PARENT?

NO.

NO.

THEY ARE NOT LEGALLY -- IN OTHER WORDS A CHILD THAT TURNS 18 BUT HAS BEEN PERMANENTLY, TOTALLY DISABLED AND IS STILL DEPENDENT IN THAT SENSE, THE PARENT HAS NO LEGAL OBLIGATION?

NO. BUT WHAT TORT LAW DOES IS PROVIDE FOR A DIRECT RECOVERY TO THE VICTIM, AND --

I AM NOT TALKING ABOUT TORT LAW. I AM TALKING ABOUT FAMILY LAW.

THERE IS NO LEGAL OBLIGATION THERE. IT MAY AND MORAL OBLIGATION, BUT NO LEGAL OBLIGATION. AND WHAT YOU HAVE, IN THIS CASE, AND I THINK IT IS IMPORTANT TO LOOK A LITTLE BIT AT THE NUMBERS, HERE, IS YOU HAVE A CHILD THAT THE JURY AWARDED APPROXIMATELY $2.7 MILLION, AND THAT AMOUNT IS TO COVER THE MEDICAL EXPENSES AND THE SERVICES AND THE EARNINGS FOR THAT CHILD FOR THE REST OF HIS LIFE, FOR THE REST OF HIS LIFE. IN THIS CASE, THE SECONDARY AWARD TO THE MOTHER, FOR A SECONDARY PLAINTIFF, WAS $3.5 MILLION. NOW, IF THE CAP WERE LIFTED AND THE JURY WERE INSTRUCTED, YOU CAN CONSIDER ANOTHER 50 YEARS, IN MAKING THAT SECONDARY AWARD, WE COULD BE LOOKING AT ANOTHER $50 MILLION. $50 MILLION.

TO FOLLOW UP ON JUSTICE ANSTEAD'S QUESTION, YOU ANSWERED THAT THERE IS NO LEGAL OBLIGATION FOR A PATIENT TO TAKE CARE OF A PERMANENTLY, TOTALLY DISABLED PERSON WHO IS BEYOND THEIR MAJORITY.

YEAH.

HOW ABOUT, DO YOU KNOW WHETHER OR NOT, UNDER THE TAX CODE, A PARENT WHO DOES, IN FACT, TAKE ON THE OBLIGATION OF TAKING CARE OF A PERMANENTLY, TOTALLY-DISABLED CHILD WHO IS BEYOND THE AGE OF 18, CAN CLAIM THAT PERSON AS A DEPENDENT ON THEIR TAX RETURN?

I IMAGINE THERE IS AN ABILTY TO CLAIM A PERSON AS A DEPENDENT. WHETHER I THINK WHAT YOU DO --

UNDER THE TAX CODE, ISN'T THAT A GOOD SORT OF DEFINITION OF WHAT A DEPENDENT IS? BECAUSE WE GET TO THE SITUATION WE ASKED YOU ABOUT EARLIER, WHICH IS, YOU KNOW, THE COLLEGE STUDENT WHO IS, IN FACT, STILL A DEPENDENT, FOR PURPOSES OF THE MONIES AND TAX.

I THINK THAT IS A VERY SEPARATE ISSUE, IS WHO IS A DEPENDENT FOR THE TAX CODE, WHAT SITUATION EXISTS WITH RESPECT TO STUDENTS CLAIMING FINANCIAL AID. I THINK THAT THEIR DEPENDENCY COMES UP IN VARIOUS AREAS, BUT IN TORT LAW, WHAT HAS HAPPENED IS DEPENDENCY HAS USUALLY BEEN A LINE DRAWN AT THE POINT AT WHICH A CHILD AT ANS THE LEGAL AGE -- AN OBTAINS THE LEGAL AGE OF MAJORITY.

SO YOU ARE SAYING, THEN, IN ESSENCE, IN THAT STATUTE, 768.0415 --

YES.

-- THAT THE LEGISLATURE IS USING DEPENDENT, HERE, INTERCHANGEABLY, WITH MINOR.

YES. AND I THINK IT COMPORTS WITH THE LANGUAGE IN WILKE, THAT IS THEY LOOKED BACK AT THE FILLIAL CONSORTIUM AWARD, AND WHILE THEY DIDN'T TRACK THE EXACT LANGUAGE IN WILKE, AND I DON'T KNOW WHY THEY DIDN'T DO THAT, BUT I THINK WHAT THEY WERE TRYING TO DO IS TO EFFECTUATE A BALANCE BETWEEN UNEMANCIPATEED MINOR AND UNMARRIED DEPENDENT, AND THAT IS TO CONTEMPLATE THE SITUATION WHERE A 17-YEAR-OLD IS MARRIED, HAS A FAMILY OF THEIR OWN, AND IS INDEPENDENT, AND TO SAY, UNFORTUNATELY WE ARE DRAWING A LINE, AND THAT INDIVIDUAL NO LONGER --

WOULD IT, THEN, BE UNREASONABLE FOR US TO INTERPRET, EVEN IF WE SUBSTITUTE MINOR THERE, THAT THE MINOR WOULD TAKE ON THE DEFINITION FROM THE WRONGFUL-DEATH STATUTE AND BE UP TO AGE 25?

WELL, THIS COURT COULD, OF COURSE, TRY TO CREATE A PARALLEL WITH THE WRONGFUL-DEATH STATUTE, AND IN SO DOING, COULD DECIDE THAT A TOTAL, PERMANENT INJURY IS LIKE DEATH, AND DO THAT. THAT IS A PRETTY CONTROVERSIAL ISSUE. I MEAN IT IS ONE WHERE YOU SAY TO A PERMANENTLY -- A PARENT OF A PERMANENTLY INJURED CHILD, YOUR CHILD IS BETTER OFF DEAD. I MEAN, THERE IS A LOT OF CHARGED CONTROVERSIAL ISSUES, WITH CREATING AN EQUATION BETWEEN TOTALLY AND TOTAL PERMANENT INJURY AND WRONGFUL-DEATH, AND IF YOU LOOK AT THAT STATUTE, IT IS FULL OF LEGISLATIVE LINES, WHEN ADULT CHILDREN IN MALPRACTICE CANNOT RECOVER FOR THE DEATH OF A PARENT, BUT THEY CAN --

COULD YOUR POSITION PREVAIL, IF WE DO NOT EQUATE A MINOR WITH DEPENDENT?

YES. IT COULD.

YOU HAVE A FALL BACK POSITION FROM THAT?

OUR POSITION IS THAT DEMPSEY, WHICH IS THE LAW, AFFIRMED WILKE AND YOURDIN IN ALL RESPECTS, EXCEPT THAT IT CONSTRUED THOSE CASES ASSIST ALLOWING THE NONPECUNIARY AWARD, AND THAT ALL DEMPSEY DID IS SAID THE LAW IS EXACTLY THE WAY IT IS. FILLIAL CONSORTIUM HAS, ALWAYS, BEEN LIMITED TO THE MINOR YEARS. WE ARE KEEPING IT THIS WAY, AND IT MAKES SENSE. THE OVERWHELMING --' AND WE WOULD NOT HAVE TO EQUATE DEPENDENT TO MINOR?

NO. THIS COURT COULD SIMPLY BASE ITS DETERMINATION ON WHAT IT SEES AS A FAIR READING OF DEMPSEY AND, BASICALLY, SAY THAT THE LEGISLATURE ACQUIESCED, THROUGH SILENCE, BASICALLY WHAT IT DID IN ZORZOS, IN WHAT IS THE EXI GENT COMMON LAW -- AND HAS NEVER SEEN FIT TO LEGISLATE AND RAISE THE CAP FOR ADULT CHILDREN AND RAISE THE KINDS OF LINE-DRAWING THAT YOU SEE IN THE WRONGFUL-DEATH ACT AND THUS WILL DEFER TO LEGISLATIVE SILENCE HERE, AND LET DEMPSEY REMAIN THE LAW IN FLORIDA.

WAS THE JURY INSTRUCTION IN THIS CASE TO AWARD DAMAGES UP -- WITHOUT LIMIT? BECAUSE THERE WAS -- I THOUGHT THAT THERE WAS A $3.5 MILLION AND THE JUDGE REDUCED IT TO ONE MILLION.

THE JUDGE'S INSTRUCTIONS WERE TO LIMIT THE AWARD TO THE DAMAGES THE CHILD SUSTAINED FROM THE DATE OF THE INJURY UP TO THE DATE OF TRIAL. UP TO THE DATE OF TRIAL. SO BASICALLY WHAT IT ENCOMPASSED WAS FOUR YEARS. AND I WANT TO EMPHASIZE, AGAIN, THAT, IF THE INJURY HAD BEEN INSTRUCTED, YOU CAN NOW CONSIDER 50 YEARS, THAT $.5 MILLION

COULD VERY EASILY BEEN -- THAT $3.5 MILLION COULD HAVE VERY LIST BEEN 50 MILLION.

THE JUDGE AWARDED $3.5 MILLION.

YES, IT DID, AND THE -- THE JURY AWARDED SGLAR 3.5 MILLION.

-- $3.5 MILLION.

YES, IT, DID AND IMPROPERLY SO.

YOUR TIME IS UP.

I QUOTE, THIS IS WHAT THE JURY INSTRUCTION SAID, YOU CANNOT AWARD ANYTHING IN THE FUTURE FOR THAT KIND OF LOSS, COMFORT, SOCIETY AND ATTENTIONS, PAST HIS MAJORITY. OKAY. THAT IS THE LAW. SO THE JURY WAS INSTRUCTED, UP TO THE TIME OF MAJORITY, NOT UP TO THE TIME OF THE TRIAL, AND THAT IS AT THE TRIAL TRANSCRIPT, AT PAGES 4701 AND 4702.

DID YOU OBJECT TO THAT INSTRUCTION?

YES, WE DID.

COUNSEL, WITH REGARD TO THIS PHRASE DEPENDENT, I SEEM TO RECALL THAT WILL THIS PHRASE WAS ENGAGED IN A GREAT DEAL OF CONTROVERSY AND LITIGATION, UNDER THE NO-FAULT STATUTE. AT ONE TIME, WITH REGARD TO BENEFITS AND COVERAGES, AND THERE WERE ISSUES WITH REGARD TO WHAT DOES A DEPENDENT MEAN UNDER THAT STATUTE? SOME COURTS WERE SAYING IT MEANS WHAT IS UNDER THE INTERNAL REVENUE CODE. OTHERS WERE SAYING DEPENDENCY IN FACT. HOW WOULD THAT WORK OUT, IN THIS APPLICATION OF TRYING TO LOOK AT THIS WORD DEPENDENT?

WELL, BECAUSE OF ALL OF THOSE VARIOUS CONTROVERSIES, THE LEGISLATURE AND THIS COURT, IN DEMPSEY, SPECIFICALLY DECIDED TO USE THE TERMS "UNMARRIED DEPENDENT", AS OPPOSED TO THE TERM MAJORITY, AS OPPOSED TO THE LEGAL AGE OF DRINKING, AS OPPOSED TO THE LEGAL AGE OF VOTING, AS OPPOSED TO THE LEGAL AGE UNDER THE WRONGFUL-DEATH STATUTE. THAT WAS THE LANGUAGE THEY USED. IN THIS CASE --

DO YOU RECALL WHAT THE JUDICIAL RESOLUTION, THOUGH, OF THAT CONCEPT WAS, WHAT DOES DEPENDENT MEAN, UNDER THAT STATUTE?

WHICH STATUTE?

THE NO-FAULT STATUTE. THERE IS A GREAT DEAL OF --

I HIM SORRY, JUSTICE LEWIS. I CAN'T ANSWER THAT QUESTION. I WOULD LIKE TO POINT OUT THAT, IN THIS CASE, THE INJURY IS, BOTH, TO AN UNMARRIED DEPENDENT WHO, ALSO, HAPTONES BE A MINOR CHILD. THAT IS THE DERIVATIVE INJURY THAT WE HAVE IN THIS CASE AND THAT IS WHAT FALLS UNDER THE AMBIT OF DEMPSEY, AND UNDER DEMPSEY, ONCE YOU QUALIFY FOR NONPECUNIARY CONSORTIUM, THE ISSUE IS FOR PERMANENT LOSS.

LET'S DEAL WITH THE FLIP SIDE OF THE STATUTE, WHICH IS AN UNMARRIED DEPENDENT WHO, IS SUING FOR THE LOSS OF HIS OR HER PARENTAL CONSORTIUM. DOES THAT -- ARE THERE ANY CASES? ARE YOU AWARE OF WHETHER TO QUALIFY THE UNMARRIED DEPENDENT HAS TO BE UNDER THE AGE OF 18 AT THE TIME?

THERE ARE NO CASES, JUSTICE PARIENTE. ALL OF THE CASES THAT FALL UNDER THAT STATUTE, THE CHILDREN HAPPEN TO BE MINORS, SO THEREFORE THE COURT DIDN'T MAKE THE

DETERMINATION.

BUT ARE THE JURORS INSTRUCTING THAT IT STOPS AT AGE -- THAT THEIR LOSS, UNDER 768.0415, STOPS AT THE AGE OF MAJORITY?

WELL, WHEN YOU SAY WHAT ARE THE JUDGES INSTRUCTING, WE QUOTED, IN OUR BRIEF, THE FLORIDA STANDARD JURY INSTRUCTION THAT JUST CAME OUT. NOW, IT DOESN'T HAVE THE IMPRIMITER OF THIS COURT, BUT THE COURT HAS THE OPTION OF TAKING THE DEMPSEY INSTRUCTION AND SAYING EXACTLY WHAT IT MEANS, AND THE LOSS OF NONPECUNIARY FILLIAL CONSORTIUM EXTENDS BEYOND THE AGE OF MAJORITY, AND THAT IS IN THE PAST, AND I THINK THAT IS QUOTED IN OUR BRIEF.

THANK YOU VERY MUCH. I THINK YOUR TIME IS UP. WE APPRECIATE COUNSEL'S ASSISTANCE AND YOUR BRIEFS. THIS COURT WILL BE IN RECESS FOR 15 MINUTES. THE MARSHAL: PLEASE RISE.