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Michelle Hausmann v. L.M. & J.M.

CHIEF JUSTICE: ALL RIGHT. IT IS STILL GOOD MORNING. HOUSE MAN. IF COUNSEL IS -- HAUSMANN. IF COUNSEL IS READY, YOU MAY PROCEED.

MAY IT PLEASE THE COURT. I AM LYNN WAXMAN, REPRESENTING THE INTERMEDIARY IN A PETITION BEFORE THE FOURTH DISTRICT COURT OF APPEAL WHICH DENIED A PETITION FOR CERTIORARI, TO QUASH ALLOW LOWER COURT RULING WHICH ALLOWED INTERVENTION IN A PENDING ADOPTION PROCEEDING BY MATERNAL GRANDPARENTS, BECAUSE THEY WERE MERELY GRANDPARENTS. ACCORDING TO THE OPINION OF THE FOURTH DISTRICT --

BEFORE YOU GET INTO THAT, COULD YOU JUST LET ME KNOW OR LET US KNOW, IF THEIR PENDING PETITION FOR ADOPTION, WHICH WAS PENDING, APPARENTLY, IN ANOTHER DIVISION OF THE COURT, IS, WAS THAT, IS THAT A PROPER PETITION FOR ADOPTION?

ARE YOU TALKING ABOUT THE GRANDPARENTS?

CORRECT.

IS IT A PROPER, PROPERLY-FILED PETITION ON THE BASIS OF ABANDONMENT. IS THAT BECAUSE ARE SAYING?

IS IT LEGALLY KAING ZANDT AS A PETITION FOR ADOPTION?

IF -- IS IT LEGALLY COGNIZANT AS A PETITION FOR ADOPTION? THE REASON I AM ASKING THIS IS I AM HAVING A HARD TIME UNDERSTANDING WHY IF YOU HAVE TWO PENDING PETITIONS FOR ADOPTION, IF YOU HAVE THEM IN FRONT OF THE SAME JUDGE OR YOU HAVE THEM, BECAUSE OF PETITIONS IN PALM BEACH COUNTY THEY END UP BEFORE TWO DIFFERENT JUDGES. IT IS THE SAME CHILD. DON'T WE WANT TO HAVE ONE JUDGE DETERMINING THE ISSUES AT ONE TIME, AS TO WHO GETS THE CHILD?

THE CASE HAS NOT BEEN CONSOLIDATED. HOWEVER, IT IS MY UNDERSTANDING THAT BOTH PETITIONS HAVE BEEN TRANSFERRED TO ONE JUDGE. IS THAT YOUR QUESTION?

WELL, THEN, AT THAT POINT, THEN, WHAT DOES IT MATTER, I MEAN, IF YOU CALL IT INTERVENTION OR THE BOTH ISSUES ARE IN FRONT OF THE SAME JUDGE, WON'T ALL OF THE QUESTION AS TO WHICH, WHO IS THE PROPER ADOPTIVE PARENT BE RESOLVED ALL AT THE SAME TIME, AND ISN'T THAT SHOULD BE OUR PRIMARY CONCERN SOME.

YES. IF THERE IS THE RIGHT TO FILE THE PETITION. YES.

THAT IS WHY I ASKED YOU THE QUESTION.

YES. YES. IF THEY HAVE A RIGHT TO FILE THE PETITION, BUT THE QUESTION IS DO THEY HAVE STANDING TO EVEN FILE THE PETITION, WHICH IS, I THINK, WHAT IS AT ISSUE. THERE IS NO QUESTION THEY FILED IT.

YOU SEEM TO BE SAYING THAT EVERYONE ELSE IN THE WORLD THAT QUALIFIES UNDER A STATUTE CAN FILE A PETITION FOR ADOPTION OF THIS CHILD, BUT THE GRANDPARENTS CANNOT.

THAT SEEMS TO BE THE BOTTOM LINE OF YOUR ARGUMENT, EVEN THOUGH THEY WOULD COMPLY WITH EVERY OTHER ELEMENT TO BE ADOPT I HAVE PARENT HERE -- ADOPT I HAVE PARENT HERE, AND -- AN ADOPT I HAVE PAERNT HERE AND THEY ARE JUST -- AN ADOPTIVE PARENT HERE AND THEY ARE JUST EXCLUDED.

THEY ARE NOT EXCLUDED IF THAT CLARIFIES. WHETHER THEY CAN INTERVENE OR WHETHER IT CAN EVEN BEEN ATTAINED IS REALLY THE BASIS OF THE PETITION BEFORE THE COURT.

WHY SHOULDN'T IT GET DOWN TO AN INTERVENTION, IF YOU WILL AGREE, IN ANSWER TO JUSTICE PARIENTE'S QUESTION, THAT THEY CAN FILE A PETITION FOR ADOPTION, AND THAT THEY, BOTH, SHOULD BE HEARD IN THE SAME DIVISION, YOU KNOW, BY THE SAME JUDGE, WHAT DIFFERENCE DOES IT MAKE WHETHER IT IS THROUGH INTERVENTION OR JUST HOW THE PROCEDURE GETS ESTABLISHED, IF TRULY, THE BOTTOM LINE IS THAT ANYBODY CAN COMPETE IN THE SENSE OF SEEKING ADOPTION OF THE SAME CHILD, THEN I AM HAVING DIFFICULTY SEEING WHY INTERVENTION, YOU KNOW, THE USEFUL THE WORD INTERVENTION, SO LONG AS THE GOALS ARE THE SAME, AND THAT IS THAT SOMEBODY ELSE IS COMPETING FOR THE ADOPTION OF THE SAME CHILD, AND WHAT, TELL ME, BOTTOM LINE, WHAT THE PROBLEM HERE IS IN THIS PROCEEDING, BASED ON THE WAY THAT IT WENT.

YOUR HONOR, I HAVE TO DISTINGUISH. I SAID THE GRANDPARENTS HAD THE RIGHT TO FILE THE PETITION. I DID NOT SAY THAT THEY HAD STANDING, THAT THE COURT EVEN HAS STANDING TO ENTERTAIN THEIR PETITION, BECAUSE OF THE PENDING ADOPTION. THAT IS THE DISTINGUISHING FACTOR HERE.

WELL, LET ME SEE IF I CAN FOLLOW-UP ON THAT, THEN. OKAY. IF THERE IS A PENDING PETITION FOR ADOPTION, IT IS YOUR VIEW THAT NOBODY ELSE CAN FILE A PETITION FOR ADOPTION AND HAVE IT HEARD AT THE SAME TIME SOME.

UNLESS THEY HAVE STANDING TO INTERVENE, AND STANDING TO INTERVENE IS VERY CLEARLY DEFINED IN THE LAW.

AREN'T WE GOING IN A CIRCLE, THOUGH, HERE, THAT LET'S ASSUME JUST FOR THE PURPOSES OF A HYPOTHETICAL, THAT WE HAVE GOT COMPETING PEOPLE OVER HERE, ALL RIGHT, AND THAT, BOY, IF WE LOOKED OBJECTIVELY, WE WOULD SAY, THESE ARE THE PEOPLE THAT OUGHT TO ADOPT THIS PARTICULAR CHILD. OKAY. AND THEN WE HAVE GOT, BASED ON A HYPOTHETICAL, PEOPLE OVER HERE THAT ARE SEEKING TO ACTUALLY ADOPT THE CHILD, OKAY, BUT THEY ARE STRANGERS TO THE CHILD. THEY REALLY, YOU KNOW, HAVE A THIN CASE, LET'S SAY, YOU KNOW, FOR ADOPTION. BUT THEY FILE FOR ADOPTION, AND THESE OTHER PEOPLE FILE FOR ADOPTION IN A DIFFERENT DIVISION OF THE COURT.

YES.

WHAT SHOULD HAPPEN?

THAT, BOTH CASES SHOULD BE BROUGHT BEFORE THE SAME JUDGE, AND THE JUDGE HAS TO DETERMINE WHETHER BOTH PETITIONS HAVE STANDING TO PROCEED.

ALL RIGHT. SO WHY IS THERE A PROBLEM, IF THAT IS DONE BY INTERVENTION?

THERE IS A PROBLEM, BECAUSE THE GRAND PARENTS HAVE NO STANDING TO PROCEED.

WHAT DO THEY LACK, IN TERMS OF QUALIFICATIONS TO SEEK ADOPTION?

UNDER THE STATUTE, UNDER 630425, THE GRANDPARENTS ADMITTEDLY DO NOT HAVE PRIORITY TO FILE A PETITION TO INTERVENE IN A PENDING ADOPTION, BECAUSE THE CHILD --

YOU USING THE WORD PRIORITY NOW. I DON'T HAVE THAT INVOLVED IN ANY OF MY QUESTIONS TO YOU, SO THAT IS THE INTERJECTION OF ANOTHER ISSUE.

EXACTLY.

AND SO LET'S TAKE THAT OUT FOR JUST A MINUTE, AND WHAT IS THE LEGAL OBSTACLE, NOW, TO THE GRAND PARENTS COMPETING FOR THE ADOPTION OF THE CHILD?

OKAY. THE GRANDPARENTS HAVE NO LEGAL ENT REST IN THE CHILD, WHICH WOULD CONFER STANDING UPON THEM. NOW --

PERFECT STRANGERS CAN SEEK TO ADOPT A CHILD, IS THAT NOT CORRECT?

THEY CAN SEEK TO ADOPT A CHILD, BUT THEY CANNOT INTERVENE IN A PENDING ADOPTION.

WELL, ISN'T THIS ONE OF THOSE SITUATIONS, THEN, WHERE IT APPEARS THAT, IF THE LAW IS THAT WAY, THEN THE LAW IS AWFULLY FOULED UP? THAT IS THAT, IF YOU CAN HAVE PERFECT STRANGERS THAT HAVE STANDING TO SEEK AN ADOPTION AND, IN FACT, AND OBVIOUSLY IN LOTS AND LOTS OF CASES THAT, IS THE CASE, IT IS A PERFECT STRANGER, YOU KNOW, THAT SEEKS, AND YET WE SAY THAT PEOPLE THAT ARE RELATED TO THE CHILD AND HAVE A MORE DIRECT INTEREST IN THE CHILD OR KNOWLEDGE OR WHATEVER, DEPENDING ON HOW THE FACTS COME OUT, ARE YOU SAYING THAT THOSE PEOPLE ARE BARRED BY THE LAW FROM SEEKING TO ADOPT THAT CHILD? WHILE STRANGERS ARE NOT BARRED?

YES, YOUR HONOR. BASED UPON THE PETITION, LET ME START BY SAYING THERE IS A STATUTE THAT GOVERNS IN THIS CASE, AND IN EVERY CASE, WHAT ARE THE REQUIREMENTS FOR FILING A PETITION FOR ADOPTION.

YOU SAY A SIX-MONTH RESIDENCY IS EXCLUSIVE. IS THAT WHAT YOU ARE SAYING?

EXCLUSIVE?

THIS SIX-MONTH RESIDENCY STAYING WITH THE GRANDPARENTS, THAT IS WHAT IS STOPPING THEM. IS THAT -- IS THAT WHAT YOU ARE SAY SOMETHING.

NOT SOLELY, YOUR HONOR. THERE IS THE SIX-MONTH RESIDENCY, WHICH WOULD ALLOW A GRANDPARENT TO INTERVENE IN A PENDING ADOPTION, AND THERE ARE, ALSO, COMMON LAW EXCEPTIONS THAT HAVE SUBSEQUENTLY BEEN CODIFIED, SOME OF THE -- AS A MATTER OF FACT, IN THE NEW ADOPTION STATUTE. THE COMMON LAW EXCEPTIONS ARE IF A CHILD HAS NOT RESIDED WITH A GRANDPARENT FOR SIX MONTHS, IF A GRANDPARENT HAS LEGAL CUSTODY TO A CHILD THAT WAS CONFERRED BY A DIVORCE OR A PATERNITY PROCEEDING, SUCH THAT THOSE RIGHTS WOULD BE TERMINATED BYED BY AN ORD OF ADOPTION -- BY AN ADOPTION, THOSE ARE COMMON LAW GROUNDS FOR PROCEEDING IN AN ADOPTION PROCEEDING.

CHIEF JUSTICE: JUSTICE QUINCE HAS QUESTION.

LET'S START WITH THE BASIC ADOPTION STATUTE.

YES.

IS THERE ANYTHING, AND IF THERE IS, WHAT IS IT, THAT WOULD PREVENT A GRANDPARENT OR THE GRAND PARENTS FOR FILING A PETITION FOR ADOPTION?

FIRST OF ALL, THERE IS A VALID CONSENT.

WELL, WAIT A MINUTE.

THAT --

AS A PRELIMINARY MATTER BEING QUALIFIED TO FILE THE PETITION, DOESN'T IT SAY, BASICALLY, THAT ANY COUPLE --

EXACTLY.

-- ANY SINGLE PERSON, EVEN A MARRIED PERSON BY THEMSELVES, AS LONG AS IT IS NOT THE SPOUSE THAT IS BEING ATTEMPTED TO BE ADOPTED, SO DO THE GRANDPARENTS FALL UNDER THAT PARTICULAR STATUTE?

THEY DO. THAT IS ELIGIBILITY.

THAT IS ELIGIBILITY TO FILE A PETITION. OKAY.

THEN WE COME TO 63.112, WHICH IS THE REQUIREMENTS OF THE PETITION. WHICH THE FOURTH DISTRICT CITED IN THEIR OPINION THAT THE GRANDPARENTS SATISFIED. OKAY. THIS IS WHERE --

ARE YOU SAYING, NOW, THAT THIS IS THE SECTION WHERE THE FOURTH DISTRICT ERRED, BECAUSE THEY DON'T SATISFY THAT SECTION?

EXACTLY.

WHAT SECTION, WHAT PARTICULAR PORTION OF THAT?

OKAY. UNDER 63.112, THE PETITIONER, FIRST OF ALL, MUST HAVE CUSTODY OF THE MINOR TO FILE THE PETITION, WHICH THE GRANDPARENTS DID NOT. ADDITIONALLY, THERE MUST BE... THAT IS ONE --

WITH WHAT THESE PETITIONS MUST CONTAIN, THEY, IN FACT, FILED A PETITION, CORRECT, AND THEY FILED ONE PRIOR TO YOUR CLIENTS HAVING FILED A PETITION, CORRECT?

NOT ACTUALLY.

WELL, THEY DIDN'T FILE IT ON FEBRUARY 9, I BELIEVE, AND YOURS WAS ON THE 16th?

YEAH. THEIRS WAS FILED ON THE 7th, BUT ON THE 6th, THE INTERMEDIARY INVOKED THE JURISDICTION OF THE CIRCUIT COURT FOR THE ADOPTION PROCEEDING, BY WHAT THEY NORMALLY DO IN AN INTERMEDIARY ADOPTION, BY FILING A PREPETITION FOR EXPENSES, IN ANTICIPATION OF THE ADOPTION. THAT WAS THE DAY THAT THE DEPENDENCY COURT RULED THAT THE MOTHER HAD THE RIGHT TO PLACE THE CHILD FOR ADOPTION. THE INTERMEDIARY WENT RIGHT TO THE COURT AND DID WHAT SHE NORMALLY DOES, BEFORE YOU FILE A PETITION FOR ADOPTION.

SO DOES THAT CUT OFF ANYONE ELSE'S RIGHTS TO FILE A PETITION?

NO, YOUR HONOR, I DON'T THINK THIS HAS TO DO WITH A RACE TO THE COURTHOUSE OR AN ISSUE OF TIME AT ALL. IT IS WHETHER, THE REQUIREMENTS OF 63.112 ARE SATISFIED, WHICH ONE OF THEM IS IS THE REQUIRED CONSENTS, UNLESS THE CONCEPT WAS EXCUSED BY THE COURT. NOW, THAT IS A REQUIREMENT TO FILE A PETITION FOR ADOPTION, WHICH IS WHAT I AM TRYING TO ESTABLISH HERE.

AND SO WHY ISN'T IT MORE PRUDENT TO HAVE ALL OF THIS DETERMINED, AS OTHERS HAVE ASKED YOU, IN ONE PROCEEDING, WHERE BOTH OF THESE PETITIONS ARE BROUGHT BEFORE THE

COURT. THE COURT CAN MAKE A DETERMINATION AS TO WHETHER OR NOT THE PETITION FILED BY THE GRANDPARENTS OR LAYING ASIDE THE FACT THAT THESE WERE GRANDPARENTS, ANY OTHER COUPLE WHO HAD FILED THIS PETITION, ALLEGING THE SAME REASONS FOR THE ADOPTION, (kXa"T) V SHOULDN'T ONE COURT LISTEN TO ALL OF THAT, LOOK AT BOTH OF THESE PETITIONS, AND MAKE A DETERMINATION?

BECAUSE THERE IS THE ISSUE OF STANDING, WHICH HAS TO BE DECIDED FIRST. AND UNDER THE STATUTE, THE --

ARE WE TALKING ABOUT STANDING TRULY? BECAUSE STANDING IS, REALLY, JUST WHETHER OR NOT YOU CAN ACTUALLY BRING AN ACTION IN COURT, ISN'T IT? OR ARE YOU TALKING ABOUT THE JURISDICTION OF THE COURT TO HEAR IT?

OKAY. I AM TALKING MORE ABOUT THE GROUNDS FOR INTERVENTION. THE FOURTH DISTRICT HELD THAT GRAND PARENTS HAD STANDING TO INTERVENE, SEPARATE FROM THEIR PETITION, ACTUALLY BASED UPON THEIR PETITION.

ISN'T THAT AN IMPORTANT DISTINCTION, FOR WHAT THIS CASE WILL STAND FOR? IS A PENDING PETITION, BECAUSE OF THAT PETITION, THAT WASN'T IN THE SAME DIVISION OF THE COURT, THE GRANDPARENTS, TO PROTECT THEIR RIGHTS FOR THAT OTHER PETITION, FILED THIS INTERVENTION. ONCE IT IS BEFORE THE SAME JUDGE, IT, REALLY, DOESN'T, THIS ISSUE OF WHETHER IT IS INTERVENTION OR THEY ARE BOTH BEING LOOKED AT, AND THEN THE JUDGE DETERMINES THIS ISSUE ABOUT WHETHER IT MEETS THE REQUIREMENTS OF 112 OR NOT. THAT IS NOT WHAT WE ARE, THAT IS NOT WHAT WE WERE BEING ASKED OR WHY THIS CASE IS BEFORE US, TO DECIDE, YOU KNOW, WHETHER 112 IS SATISFIED. IF SOMEONE HAS A PENDING PETITION FOR ADOPTION, WHY SHOULDN'T THEY BE ABLE TO EITHER HAVE IT CONSOLIDATED OR, FOR SOME REASON IF THAT DIDN'T HAPPEN, HAVE THE ISSUE DECIDED BEFORE ONE JUDGE AT THE SAME TIME? I JUST THINK I AM HAVING TROUBLE YOU, KNOW, AND YOU MAY BE BE RIGHT THAT -- YOU MAY BE RIGHT THAT YOUR CLIENT IS GOING TO HAVE, AND I HOPE THESE PROCEEDINGS HASN'T CAUSED THIS ADOPTION TO BE DELAYED. THAT WOULD BE THE MOST UNFORTUNATE SITUATION PIE THIS PROCEDURAL QUAGMIRE, BUT SOMEONE NEEDS TO PROMPTLY MAKE THE LEGAL DECISION AS TO WHETHER THE GRANDPARENTS' PETITION FOR ADOPTION, YOU KNOW, IS A VALID ADOPTION PETITION, BUT THAT IS NOT BEFORE THIS COURT.

YOUR HONOR, TO ANSWER YOUR QUESTION, ONCE THERE WAS THE INTERVENTION DECISION, OKAY, THEN, UNDER THE STATUTE, THE COURT GOES TO A BEST-INTEREST HEARING, WHICH IS NOT WHAT IS CONTEMPLATED. THERE HAS TO AND STEP AS TO WHETHER THE GRANDPARENTS HAVE THE RIGHT TO, THEIR PETITION HAD THE RIGHT TO BE CONSIDERED UNDER THE ADOPTION STATUTE, ON THE BASIS OF THEIR PETITION. IN OTHER WORDS, IT IS CIRCULAR REASONING, IF YOU SAY IN THIS PROCEEDING, MERELY BECAUSE THEY FILED IT, THEY ARE ALLOWED IN. BUT IF THEY HAVE NO STANDING TO FILE IT, THAT IS NOT A GOOD REASON TO LET THEM IN.

YES, BUT I THINK THE PROBLEM WE ARE HAVING TODAY IS THAT SOMEHOW WE ARE SEEING YOU TREATING GRANDPARENTS AT A LOWER RUNG THAN IF A STRANGER HAD FILED THE PETITION, AND THAT IS WHAT, BECAUSE OF THIS SIX-MONTH REQUIREMENT, AND THAT IS, I THINK, WHERE THIS --

OKAY. WELL, THEN, MAY I RESPOND TO THAT.

CHIEF JUSTICE: YOU CAN RESPOND. I JUST WANT TO REMIND YOU YOU ARE IN YOUR REBUTTAL TIME, SO YOU CAN MAKE A DECISION ABOUT SAVING TIME.

OKAY. I WILL RESERVE THE REST OF THE TIME, YOUR HONOR.

CHIEF JUSTICE: OKAY. FINE.

GOOD MORNING, MR. CHIEF JUSTICE ANSTEAD, JUSTICES, JEANNIE AND FRANK BRADY ON BEHALF OF THE MATERNAL GRANDPARENTS, RENE HARRIS AND STEVE PASTOW. THE FOURTH DISTRICT COURT OF APPEAL TOOK AN APPROACH TO THIS CASE ON A THREE-PRONG BASIS. THEY LOOKED AT THE PRIOR PETITION, WHICH WAS THE 7th OF FEBRUARY. THEY LOOKED AT THE FACT THAT ABANDONMENT WAS ALLEGED TO WAIVE PARENTAL CONSENTS, AND THEY, ALSO, LOOKED AT THE FACT THAT THESE GRANDPARENTS, INDEED, HAD CUSTODY FOR A PERIOD OF TIME, UNDER ORDER OF THE JUVENILE COURT.

YOU ARE NOT ARGUING THAT THAT GIVES THE GRAND PARENTS ANY PRIORITY IN THESE PROCEEDINGS, ARE YOU?

WELL, ACTUALLY THAT IS A COLLATERAL ISSUE THAT IS NOT PART OF THIS PARTICULAR APPEAL THAT NEEDS TO BE FERRETED OUT IN THE ADOPTION PROCEEDINGS, THEMSELVES, BUT I DID CITE A CASE IN MY BRIEF, ONE CASE, AND IT IS A CASE THAT HAS NEVER BEEN DECIDED BY THIS COURT, DIXON VERSUS DAVIS, THAT WHEN A CHILD IS UNDER THE AGE OF SIX MONTHS, THAT STATUTE HAS BEEN INTERPRETED BY AT LEAST ONE COURT. THE FIRST SENTENCE GOING TO NOTICE AND THE SECOND SENTENCE GOING TO PRIORITY. SO IT IS AN OPEN ISSUE, AS FAR AS I AM CONCERNED.

I AM CONCERNED BECAUSE THERE IS A CHILD THAT IS AFFECTED BY THIS CASE. AM I TO UNDERSTAND THAT THESE PROCEEDINGS, THAT IS THE QUESTION WHETHER INTERVENTION WAS PROPER OR THAT THE TWO PETITIONS, NOW, ARE ABOVE BEFORE THE SAME JUDGE, AND IT IS --

YES.

-- PROCEEDING THAT NOTHING IS HAPPENING IN THIS COURT IS PREVENTING THOSE ADOPTION ISSUES?

THAT IS NOT ACTUALLY CORRECT, JUSTICE PARIENTE. THE INTERMEDIARY MOVED FOR A STAY OF ALL PROCEEDINGS, AND IT WAS GRANTED, AFTER THE ABANDONMENT WAS GRANTED IN FAVOR OF THE GRANDPARENTS. THAT ISSUE WAS REVERSED BY THE FOURTH DCA, AND IT IS NOW PENDING AT THIS COURT, PENDING A JURISDICTIONAL RULING, PENDING THE OUTCOME OF THIS PARTICULAR CASE.

HOW LONG HAVE THESE PROCEEDINGS, FROM THE FIRST ONES THAT HAVE BEEN INITIATED FOR ADOPTION, BEEN --

WELL, OBVIOUSLY THE FIRST PETITION WAS OUR PETITION FILED THE 7th OF FEBRUARY, '01. THE ABANDONMENT HEARING TRIAL WAS CONDUCTED IN BOTH CASES, CONTEMPORANEOUSLY ON THE 23th OF JULY.

SO IT WOULD BE COMING UP TO TWO YEARS.

YES. YES, THE BABY WAS TWO YEARS OLD LAST WEEK.

IN WHOSE CUSTODY IS THE CHILD?

THE CHILD IS IN THE INTERMEDIARY'S CUSTODY, WHO PLAYSED THE CHILD WITH THE PROSPECTIVE PARENTS IN THE OTHER CASE. OF COURSE THE CHILD WAS PLACED WITH NO NOISE THE GRANDPARENTS AND RECEIVED WITHOUT NOTICE OF DISMISSAL OF THEIR CASE, WE LEARNED OF THEIR CASE AND IMMEDIATELY MOVED TO INTERVENE.

I DIDN'T REALLY MEAN TO GO TOO FAR ASTRAY. LET'S FOCUS SHARPLY, NOW, ON THE ISSUES THAT ARE RAISED HERE, WITH REFERENCE TO THE INTERVENTION OF THE RULING BY THE COURT

DISTRICT, AND TELL US, GIVE US YOUR POSITION ON IT.

MY POSITION IS THAT THE RULE ON INTERVENTION IS CRYSTAL CLEAR, AS BROAD AS THE ALL OUTDOORS. IT SAYS ANY PERSON AT ANY TIME. THAT LANGUAGE IS PRETTY BROAD. IT IS NOT LIMITED TO GRAND PARENTS. IT IS NOT LIMITED TO ADOPTIVE PARENTS. IT IS APPLICABLE THROUGH THE RULES OF FAMILY LAW PROCEDURE. THAT IS THE RULE THAT WAS INTERPRETED.

WHAT ABOUT THE SECTION OF THE STATUTE THAT IS CITED HERE BEFORE US AND THAT YOUR OPPONENT READ FROM DURING THE COURSE OF THE ARGUMENT?

I DO NOT THINK THAT THAT IS LEGALLY OR PROCEDURALLY CORRECT. THE LEGISLATURE DID NOT INTEND TO LIMIT GRANDPARENTS' RIGHTS, WHEN THEY ENACTED THE PRIORITY OF NOTICE STATUTE. WHAT THEY DID WAS TO GIVE GRANDPARENTS MORE PROTECTION. THE ALLOWS FOR WHO MAY ADOPT, 042, EXPRESSLY EXCLUDES A CLASS OF PEOPLE, HOMOSEXUALS. IT DOES NOT EXPRESSLY EXCLUDE ANYONE ELSE, SO UNDER THE SIMPLE DOCTRINE OF EXPRESS ONUS AS EXCLUSIO ADOPTION IS NOT EXCLUSIVE TO ME. IT IS --

COUNSEL, I THINK IN REGARD TO THE ISSUE IN THIS COURT OF APPEAL IS ABUSE OF DISCRETION AND TRIAL COURTS HAVE ABUNDANT DISCRETION IN DETERMINING WHETHER TO ALLOW A PARTY TO INTERVENE. DO YOU AGREE WITH ALL OF THAT?

I AGREE. SOUND DISCRETION.

WHY DO WE NEED TO ANSWER THE CERTIFIED QUESTION, IF IT IS JUST A QUESTION OF INTERVENTION?

WELL, I DON'T THINK IT IS NECESSARY TO ANSWER THE CERTIFIED QUESTION. AS I UNDERSTAND THE ORDER, YOU HAVEN'T DETERMINED WHETHER YOU ARE GOING TO TAKE JURISDICTION OF THE CASE OR NOT, UNTIL YOU HEAR THE ARGUMENTS. THE DECISION OF THE FOURTH DISTRICT IS SOUND IN EVERY WAY.

ISN'T ONE OF THE STATUTES THAT WAS INVOLVED IN THIS CASE, HASN'T THAT BEEN ACTUALLY SUPERSEDED BY ANOTHER STATUTE?

WELL, AS A MATTER OF FACT YES. IT HAS JUST BEEN MOVED. SECTION 63.032 IS STILL VERY MUCH ON THE BOOKS. IT HAS BEEN MOVED FROM SUBSECTION 14 TO SUBSECTION 1 AND THERE IS A NEW SUBSECTION 63.089, WHICH ALLOWS FOR TERMINATION OF PARENTAL RIGHTS PENDING ADOPTION. THE PROCEDURES ARE BASICALLY THE SAME. THERE ARE SOME MORE SAFEGUARDS DUE TO NOTICE, ET CETERA, ET CETERA, BUT IT IS VERY MUCH ALIVE, SO THIS IS CERTAINLY NOT A MOOT QUESTION. THE ANSWER TO THE QUESTION WOULD PROBABLY BE HELPFUL, NOT ONLY TO US BUT FOR FUTURE LITIGANTS. THERE IS NO QUESTION ABOUT EMPLOYING THE PROCEDURE.

HOW BROAD ARE YOU, ASSUMING WE TOOK THIS, TAKE THIS CASE, HOW BROAD ARE YOU SEEKING, BECAUSE JUSTICE CANTERO SAID WHAT HAPPENED IN THIS CASE WAS DISCREET, LIMITED TO THIS CASE.

RIGHT.

YOU ARE NOT ARGUING FOR A GENERAL RULE THAT ANYBODY THAT MIGHT BE CONCERNED ABOUT A CHILD, WHETHER THEY BE A GRANDPARENT OR A RELATIVE JUST HAS A RIGHT TO INTERVENE IN AN ADOPTION PROCEEDING. YOU ARE NOT ARGUING FOR KIND OF RULE, ARE YOU?

NO. I AM NOT ARGUING FOR THAT KIND OF RULE. I BELIEVE THE FOURTH DISTRICT'S OPINION WAS QUITE WRONG WHERE THESE PRONGS WERE MET. GRANTED TO LEGAL CUSTODIAN AS A MATTER OF CHAPTER 39. THEY TOOK THE CHILD FROM THE FAMILY. IT IS ALSO VERY IMPORTANT TO

UNDERSTAND --

I THOUGHT THEIR MAJOR REASON WAS THAT THEY HAD WHAT APPEARS TO BE A VALID PENDING ADOPTION PENNED PEAT.

MOST DEFINITELY THEY HAD A VALID PENDING ADOPTION PETITION.

DO YOU AGREE, WHETHER IT IS CALLED INTERVENTION OR CONSOLIDATION OF THE TWO PETITIONS, THAT YOU GET TO THE SAME RESULT?

YES, THE SAME, BEST INTEREST OF THE CHILD.

NO. YOU GET IT BEFORE ONE JUDGE WHO MAKES A DECISION AS TO WHETHER THE GRANDPARENTS' PETITION CAN BE GRANTED OR NOT.

CORRECT. I AGREE WITH THAT, YES. SO THE OTHER THING THAT I WOULD LIKE TO POINT OUT IS THE SHELTER ORDER. THAT SHELTER ORDER ACTUALLY EXPRESSLY GAVE THE GRAND PAERNTS CUSTODY. IT GAVE THE DCF CUSTODY BUT IT ALSO EXPRESSLY NAMED THE GRANDPARENTS AS CUSTODIAN OF THAT CHILD, AND WHEN THEY WENT TO COURT, THEY BE THE INTERMEDIARY AND THE BIRTH MOTHER, FOR PERMISSION TO CHANGE PLACEMENT, WHEN YOU READ THAT ORDER, IT IS MERELY A PERMISSIVE ORDER. OF COURSE THE DCF HAS DISCRETION TO CHANGE PLACEMENT. THEY ALWAYS HAVE THE DISCRETION IN AN ADOPTION, BUT THIS CASE DID NOT PROCEED TO TERMINATION OF PARENTAL RIGHTS THROUGH COMMITMENT TO THE DEPARTMENT. IT WAS DISMISSED. THE GRANDPARENTS STILL HAD CUSTODY OF THAT CHILD TO THE 16th. PHYSICAL ACTUAL CUSTODY IN THEIR HOME, WHERE THEY CARED, CHANGED, CLOTHED, FED, LOVED THAT BABY, AND THEY HAD THAT CUSTODY WHEN THEY FILED FOR ADOPTION. SO THIS IS A CASE OF COMPETING PETITIONS, YES! BUT THE COMPETING PETITION IN THIS CASE IS THE PETITION OF THE INTERMEDIARY. AND THAT IS OUR --

DOES THIS CASE REALLY BREAKDOWN, THOUGH, CONCERNING THAT COMPETING PETITIONS IS, ISN'T THE REAL QUESTION IN THIS CASE WHETHER OR NOT IF, WHEN YOU HAVE THAT KIND OF SITUATION, COMPETING PETITIONS, THE TRIAL COURT HAS THE AUTHORITY TO, IN FACT, ALLOW ONE OF THEM TO INTERVENE IN THE ACTION OF THE OTHER.

CERTAINLY. AND I DON'T AGREE WITH THE PREMISE THAT IT WOULD BE AN INVALID PETITION, BECAUSE THERE IS LOTS OF CASES ON 072 AND ABANDONMENT OF CHILDREN. IN FACT, IN RE T TO. IT IS THE CASE WHERE THE ENTER -- T TO T, IS THE CASE WHERE THE INTERMEDIARY SOUGHT TO ADOPT THE CHILD, AND THE COURTS SATISFIED THAT THE PARENTS HAD FOR GONE THEIR RESPONSIBILITY.

IF WE HAD A MORE LIMITING QUESTION, SIMPLY ABOUT COMPETING ADOPTIONS, YOU WOULD BE HAPPY WITH THAT, WITHOUT DEALING WITH WHETHER OR NOT THEY ARE GRANDPARENTS.

CERTAINLY.

RELATIVES.

YES, BECAUSE THERE IS LOTS OF CASES, THE CS CASE, WHICH JUSTICE PARIENTE WROTE AT THE FOURTH DISTRICT, WAS A CASE WHERE THERE WAS FOSTER PARENTS AND COMPETING BIOLOGICAL RELATIVES. AGAIN, TWO COMPETING PETITIONS. BOTH PARTIES HAD STANDING, BECAUSE BOTH HAD AN INTEREST IN THE CHILD. THE FUNDAMENTAL LIBERTY INTEREST BEING APPROVED BY THE HRS, THIS IS OVER IN 39, NOT 63, AND, OF COURSE, THE BIOLOGICAL RELATIVES, SO, AGAIN, THERE ARE LOADS OF CASES WHERE THERE ARE COMPETING PETITIONS. COMING IN A VARIETY OF SCENARIOS. SO THIS IS ONE OF THOSE CASES, AND IT IS A UNIQUE CASE, BECAUSE OF THE FACT THAT IT BOUNCED FROM 39 BACK TO PRIVATE AND 63 ACHBLT I BELIEVE

THAT, IF THE LEGISLATURE DID NOT -- AND I BELIEVE THAT, IF THE LEGISLATURE DID NOT INTEND FOR ANY PEOPLE, LET ALONE THE GRANDPARENTS TO CHALLENGE THE VALIDITY OF CONSENT BASED ON ABANDONMENT, THEY WOULDN'T HAVE ACTED ON THAT STATUTE. THERE IS NO TEMPORAL SEQUENCE IN THAT STATUTE, SO THAT IS PRECISELY WHAT THE GRANDPARENTS DID, AND THE OTHER THING THAT IS VERY STRANGE ABOUT THIS CASE IS THAT OUR PETITION COMING FIRST, THE INTERMEDIARY HAS EFFECTIVELY INTERVENED IN OUR CASE, BY SEEKING TO DISMISS IT. FILING ANSWERS. THEY ARE ACTIVELY LITIGATING IN THAT CASE, SO IT IS VERY INCONSISTENT LEGAL POSITION THAT THEY ARE UP HERE TAKING TODAY.

I THOUGHT YOU SAID THAT IT HAD BEEN CONSOLIDATED.

NO CONSOLIDATION ORDER, JUST TRANSFER OVER TO JUDGE CARLISLE'S DIVISION. NOW, SINCE THAT TIME EFFECTIVELY ALL MOTIONS HAVE BEEN HEARD TOGETHER. I HAVE TAKEN THE EXTRAORDINARY STEP OF FILING DUPLICATES OF EVERYTHING IN EACH THING THAT IS DONE.

I THOUGHT YOU SAID THE PROCEEDINGS WEREN'T ONGOING.

THIS WAS PRIOR TO THIS STAY.

WHEN WAS THAT STAY?

THAT STAY WAS RIGHT AFTER THE ABANDONMENT TRIAL, WHICH WAS, JULY 23.

OF THIS YEAR.

YES.

SO IT WAS ONGOING UNTIL THREE MONTHS AGO?

IT IS ONGOING NOW. THE STAY.

NO. I MEAN THE STAY JUST STARTED THREE MONTHS AGO.

THE STAY --

PRIOR TO THAT TIME, THE PROCEEDINGS IN THE TRIAL COURT WERE GOING ON.

THE STAY WENT INTO EFFECT ON THE REQUEST OF THE INTERMEDIATEIARIES, WHEN THE KBRAND PARENTS WON THE ABANDONMENT -- WHEN THE GRANDPARENTS WON THE ABANDONMENT TRIAL IN BOTH CASES, BECAUSE OBVIOUSLY THEY COULD HAVE PROCEEDED WITH THE PETITION AT THAT TIME AND ADOPTED THEIR GRANDSON BECAUSE NO CONSENT WAS NECESSARY, SO THERE WAS A STAY ENTERED.

BUT THE STAY HAS NOTHING TO DO WITH THESE, WITH THIS CASE.

NO. NO. NO.

IT HAS TO DO WITH THE FACT THAT SOME OTHER PROCEEDINGS OCCURRED REGARDING ABANDONMENT.

EACH CASE.

WE ARE NOT HEARING THE ISSUE ABOUT ABANDONMENT TODAY.

NO. JUST LIMITED QUESTION OF WHETHER THE GRANDPARENTS HAD A RIGHT TO INTERVENE TO PROTECT THEIR INTEREST, THE DIRECT AND LEGAL INTEREST IN ADOPTION OF THEIR GRANDSON,

AND CERTAINLY THEY WOULD STAND TO GAIN OR LOSE, BY OPERATION OF LAW, IF THE OTHER FOLKS WERE ALLOWED TO GO FORWARD WITH THEIR PETITION AND NOT THE GRAND PARENTS.

BUT YOU ARE CLAIMING THAT RIGHT AS ANY OTHER PETITIONERS FOR ADOPTION WOULD CLAIM IT, CORRECT?

CORRECT.

ANYTHING SNURT.

NOTHING FURTHER, UNLESS THERE IS MORE QUESTIONS.

ALL RIGHT. THANK YOU VERY MUCH. MS. WAXMAN.

I WOULD LIKE TO REFER THIS COURT TO ITS PRIOR DECISION IN STEFAN OWES VERSUS BARRIOS, IN WHICH JUSTICE HARDING SAID IN HIS CONCURRENCE, WHILE MOST INDIVIDUALS ARE ELIGIBLE TO ADOPT A CHILD TO WHOM THEY ARE A LEGAL STRANGER. THEY HAVE NO RIGHT TO INTERVENE IN SOMEONE ELSE'S ADOPTION PROCEEDING WITH THAT CHILD, AND I THINK THE COURT IS CREATING A NEW CAUSE OF ACTION BY SAYING THAT IF ANYBODY IN THE WORLD FILES A PETITION THAT, NOW WE CAN HAVE COMPETING PETITIONS TO GO TO THE BEST INTEREST OF THE CHILD, WHEN YOU HAVE A VALID CONSENT IN AN INTERMEDIARY ADOPTION, WHICH IS WHAT WE HAVE HERE. THERE IS NO PROVISION IN THE STATUTE, AND I WOULD, ALSO, REFER THE COURT

--

SO YOU ARE SAYING THAT THERE IS NO PROVISION FOR CONTESTING THE FACT THAT THE NATURAL PARENTS ABANDONED THE CHILD?

EXACTLY, YOUR HONOR. THE FOURTH DISTRICT HAS CREATED A NEW CAUSE OF ACTION, FINDING A CONSENT INVALID, AND THERE IS NOTHING IN THE STATUTE. THE STATUTE ALLOWS FOR A CONSENT TO BE WITHDRAWN BY A BIRTH PARENT. THE STATUTE ALLOWS A CONSENT TO BE INVALID, IF UNDER 63.082, THE PROCEDURAL REQUIREMENTS OF THE STATUTE ARE NOT MET, AND UNDER 63.212, IF THERE IS A CRIMINAL CHARGE THAT RELATES FROM THE ADOPTION, A CONSENT, IS INVALID. THOSE ARE THE ONLY REQUIREMENTS OR THE ONLY SITUATIONS IN WHICH A CONSENT CAN BE DECLARED INVALID.

SO THAT IF, THEREFORE, THIS WAS AN AUNT DOING THIS PETITION, AGAIN WHAT YOU ARE URGING US TO DO IS LOOK BACK AT WHETHER, WHICH IS SOMETHING THAT I GUESS WE HAVE BEEN NOT WANTING TO DO, WHICH IS LOOK BACK AND SEE WHETHER THE ELEMENTS OF THE PETITION FOR ADOPTION WERE MET IN THIS CASE.

EXACTLY, YOUR HONOR, BECAUSE IF IT IS, NO, IF IT IS NOT DONE, AS I STATED, WE ARE GOING TO GO TO A BEST INTEREST HEARING, AND A BEST INTEREST HEARING IS NOT ALLOWED, WHEN THERE ARE VALID CONSENTS.

COULDN'T, HE LET ME JUST ASK -- COULDN'T, LET ME JUST ASK THIS WAY, WOULD YOU HAVE STANDING TO HAVE INTERVENED IN THE GRANDPARENTS' ADOPTION PROCEEDING?

WITH VALID CONSENTS.

YOU HAD FILED ONE. SO YOU COULD, THEN --

YES.

-- ARGUE IN THAT PROCEEDING, THAT THEY, THEIR PETITION OUGHT TO BE DISMISSED.

EXACTLY, AND IT IS INVALID BECAUSE THEY DON'T HAVE CONSENT.

WHY DON'T YOU STILL DO THAT?

WE HAVE DONE THAT. THAT IS WHAT I AM SAYING. WE ARE ENDING UP IN A BEST INTEREST HEARING HERE, AND THE COURT DENIED THAT.

THIS ISN'T AN APPEAL FROM THE GRANDPARENTS' PETITION, THOUGH, RIGHT? THIS IS AN APPEAL FROM YOUR PETITION, IN WHICH THE PARENTS HAVE SOUGHT TO INTERVENE.

EXACTLY.

THE COURT HAS GRANTED THAT MOTION TO INTERVENE, AND YOU SOUGHT CERTIORARI IN THE DISTRICT COURT.

YES.

AND NOW SEEKING REVIEW HERE, SO THE NARROW ISSUE FOR US, IS IT NOT, IS WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING THE MOTION TO INTERVENE.

EXACTLY, YOUR HONOR, BUT I THINK --

THERE IS NO ISSUE HERE ABOUT WHO SHOULD GET THE CHILD AND WHO SHOULD HAVE CUSTODY OR ANYTHING LIKE THAT. IT IS SIMPLY WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING THE GRANDPARENTS A MOTION TO INTERVENE.

EXACTLY. I THINK IT IS INTERESTING, AND IT IS INSTRUCTIVE TO LOOK AT THE NEW LAW. 63.087 --

LET ME JUST GO BACK TO THE EXACTLY PART, BEFORE YOU KNOW WHAT YOU ARE EXACTLY AGREEING TO. IT IS EXACTLY TRUE THAT WE ARE LOOKING AT WHETHER THERE IS AN ABUSE OF DISCRETION BUT WHAT YOU SAY IS THAT WE CANNOT DETERMINE THAT, UNLESS WE LOOK AT WHETHER THE PETITION, ITSELF, WHETHER IT HAD BEEN FILED BY THE GRANDPARENTS OR SOME OTHER RELATIVE OR STRANGER, MET THE REQUIREMENTS OF THE THEN-EXISTING ADOPTION STATUTE, AND THE PROBLEM THAT I AM HAVING IS THAT IS REALLY NOT THE WAY THE FOURTH DISTRICT CERTIFIED THE QUESTION TO US, AND --

I AGREE.

AND I HAVEN'T HEARD ANYONE SAY WE NEED TO REPHRASE THE QUESTION AND CHANGE THE QUESTION TO WHETHER THEIR PETITION WAS A VALID PETITION.

YOU ARE STILL --

HELP ME WITH THAT.

-- DEALING WITH INTERVENTION AS OPPOSED TO STANDING AS TWO SEPARATE ISSUES, AND YOU ARE SAYING THAT THE FOURTH DISTRICT REALLY -- YOU ARE SAYING THAT THE FOURTH DISTRICT REALLY PHRASED IT IN TERMS OF INTERVENTION, WHICH IS TRUE, BUT WHAT I AM TRYING TO HAVE THE COURT UNDERSTAND IS THAT THE REASON FOR THE STANDING AND VERY INTENTION WAS A PETITION THAT -- AND INTERVENTION WAS A PETITION THAT IS PROBABLY INVALID.

CHIEF JUSTICE: OKAY. THANK YOU VERY MUCH. THE COURT APPRECIATES YOUR HELP ON THIS VERY DIFFICULT CASE. THE COURT WILL NOW STAND IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING.