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Esig Perlow v. Sharon H. Berg-Perlow

NEXT CASE ON THE COURT'S DOCKET THIS MORNING IS PERLOW VERSUS PERLOW.

GOOD MORNING.

GOOD MORNING MAY IT PLEASE THE COURT.

GIVE YOUR COLLEAGUE A MINUTE THERE TO GET COMFORTABLE.

MAY IT PLEASE THE COURT, I'M RICK KUPFER FROM WEST BALM BEACH REPRESENTING THE PETITIONER ESIG PERLOW. THIS IS A DIVORCE APPEAL IN WHICH THE WIFE WHO WAS FOUND BY THE LOWER COURTING TO A MULTI MILLIONAIRE. SPENT OVER EIGHT HUNDRED THOUSAND DOLLARS ON EXPERTS AND ON HER ATTORNEYS IN AN EFFORT TO TERMINATE THE FATHER'S CONTACT.

LET ME ASK YOU THIS AS JUST A PRELIMINARY MATTER. ARE YOU COURT APPOINTED OR FOR FEES SOME KIND OF FEES PROMISED? FOR THIS APPEAL?

THERE WAS A TEMPORARY APPELLATE ATTORNEYS FEE AWARD WHICH I AM NOT PART OF. ACTUALLY MY FEE IS BEING PAID BY THE MOTHER OF MY CLIENT.

THE ISSUE THAT WE HAVE.

WE ACTUALLY HAVE THREE. FIRST OF ALL, THIS IS A CASE WHERE.

WHAT'S THE ISSUE, WHICH JURISDICTION WAS GRANTED BY THE COURT? DO YOU KNOW?

I DON'T KNOW. WE HAVE RAISED THREE SEPARATE ISSUES ON APPEAL. ALL OF THREE, ALL THREE OF WHICH ARE EQUALLY APPEALING.

WE ARE TALKING ABOUT CONFLICT JURISDICTION?

WE ARE TALKING ABOUT CONFLICT JURISDICTION ON ALL THREE ISSUES.

WELL GO AHEAD, NAME THE ISSUES.

THE FIRST ISSUE HAS TO DO WITH THE FACT THAT THE HUSBAND WAS FORCED TO REPRESENT HIMSELF PRO SE DURING 17 DAYS OF TRIAL BECAUSE ON THREE OCCASION THAT IS THE TRIAL COURT DENIED HIS MOTION FOR TEMPORARY ATTORNEY'S FEES. AFTER THE TRIAL WAS FINISHED, THE COURT DID AWARD TEMPORARY APPELLATE ATTORNEY'S FEES BASED UPON NEED AND ABILITY TO PAY. BUT BEFORE TRIAL, THE COURT DECLINED THAT BECAUSE MY CLIENT DID NOT AT THAT TIME HAVE AN ATTORNEY STANDING NEXT TO HIM AT THE TEMPORARY FEE HEARING TELLING THE COURT THAT HE WAS WILLING TO STEP IN AND REPRESENT THE CLIENT.

I UNDERSTAND THE FACTS ON THAT ISSUE ARE THAT THE HUSBAND'S ATTORNEY WITHDREW THREE MONTHS BEFORE THE TRIAL?

THE HUSBAND'S FIRST ATTORNEY WITHDREW FOUR MONTHS BEFORE -- ASKED FOR TEMPORARY ATTORNEY'S FEES AND THEN WITHDREW FOR NON-PAYMENT OF HIS FEE. THAT WAS ABOUT FOUR

MONTHS BEFORE TRIAL.

AND IT WASN'T UNTIL THE MORNING OF THE TRIAL THAT THE HUSBAND CAME IN AND ASKED --.

NO, THERE WAS AN INTERVENING HEARING ABOUT TWO MONTHS BEFORE THE TRIAL, THE HUSBAND APPEARED, FILED HIS OWN SECOND MOTION FOR TEMPORARY APPELLATE ATTORNEY'S FEES. THERE WAS, BROUGHT HIS PRIOR ATTORNEY TO THAT HEARING. NOW BY THAT TIME THE ATTORNEY HAD BEEN WITHDRAWN FOR ABOUT A MONTH OR TWO. THE ATTORNEY TESTIFIED AS TO WHAT IT WOULD TAKE, I BELIEVE HE SAID IT WOULD COST, -- HE HAD ESTIMATED IT WOULD TAKE ABOUT ANOTHER 2 25,000 DOLLARS. AND HE DETAILED HOW MUCH OF THAT WAS FOR FEES, HOW MUCH OF THAT WAS FOR COSTS TO HIRE FORENSIC EXPERTS, PSYCHOLOGISTS IN ORDER TO TRY TO DEFEND AGAINST THE WIFE'S ARSENAL. THE HUSBAND WAS ALSO THERE TESTIFIED UNDER OATH, THAT HE HASN'T WORKED IN THREE YEARS. THAT HE HAS A DEBILITATING HEART CONDITION. THAT HE'S BEEN SURVIVING FOR THE LAST THREE YEARS ON LOANS FROM HIS MOTHER. THAT HIS BUSINESS BECAME INSOLVENT SEVERAL YEARS BEFORE. ALL OF THAT WAS -- THERE WAS TESTIMONY ON THAT. AND.

WELL DID THE WIFE'S ATTORNEY TRY TO COUNTER THAT WITH EVIDENCE ABOUT WHAT HIS AFFIDAVIT HAD INDICATED, THAT HE DID IN FACT HAVE AN AFFIDAVIT THAT HAD BEEN FILED IN THE CASE INDICATING THAT HE HAD MONEY AND THAT EVEN IN THAT BANKRUPTCY PROCEEDINGS, HE INDICATED THAT HE HAD LIKE A MILLION AND A HALF DOLLARS? WASN'T THAT ALWAYS A PART OF THE EVIDENCE THAT WAS PRESENTED TO THE TRIAL JUDGE?

I BELIEVE THAT THE EVIDENCE PRIMARILY FOCUSED ON WHAT HE HAD EARNED SEVERAL YEARS IN THE PAST WHEN HE WAS STILL IN BUSINESS. AND HIS AFFIDAVIT AT THAT TIME INDICATED A FAIRLY SUBSTANTIAL ANNUAL INCOME. BUT THE HUSBAND -- THE HUSBAND TESTIFIED WITHOUT CONTRADICTS, BECAUSE HE WASN'T CROSS EXAMINED AT ALL AT THE HEARING, THAT HE HASN'T WORKED AND HASN'T BEEN ABLE TO WORK. AND IN FACT, THE, THERE WAS NO -- THE FINAL JUDGMENT THAT WAS ENTERED AFTER THE 17 DAYS OF TRIAL BASICALLY FINDS THAT HE HAS \$20,000 WORTH OF ASSETS PLUS THERE WAS SOME DISPUTE OVER WHETHER OR NOT HE HAD STOLEN HIS WIFE'S JEWELRY.

WELL WHAT IS THE CONFLICT -- I REALIZE WHEN WE PLAN JURISDICTION, WE DON'T LET YOU KNOW WHAT THE ISSUE THAT WE DEEM TO BE IN CONFLICT. BUT WHAT.

ON THAT POINT, FIRST POINT, THE CONFLICT I THINK THE BEST CONFLICT COMES DIRECTLY FROM THIS COURT'S DECISION IN A CASE WE FILED AS SUPPLEMENTAL AUTHORITY CALLED NICHOLS VERSUS NICHOLS. BECAUSE THIS COURT HAS NOTED IN THAT CASE THAT A PARTY'S ENTITLEMENT TO TEMPORARY ATTORNEY'S FEES DOES NOT DEPEND UPON SLOWING UP AT THE FEE HEARING AND HAVING A LAWYER STANDING NEXT TO YOU TESTIFYING THAT THEY'RE WILLING TO STEP INTO THE CASE. THIS COURT SAID IN FACT THAT IT IS IRRELEVANT WHETHER THE SPOUSE REQUESTING A TEMPORARY FEE APPEARS WITH OR WITHOUT A LAWYER. HIS NEED AND ABILITY TO PARX STRICTLY AFTER A TRIRBLTION NEED AND ABILITY TO PAY.

IF WE FOUND FOR YOU ON THAT ISSUE, THAT YOU WOULD GET A NEW TRIAL, ASSUME THAT WOULD BE THE REMEDY YOU'RE ASKING FOR.

ON ALL ISSUES I THINK.

ON THE ISSUE THOUGH OF THE QUESTION OF THE FINAL JUDGMENT BEING SUBMITTED, WHICH SEEMS TO BE IN CONFLICT WITH THE RYE QUELL DECISION OUT OF THE FIFTH DISTRICT, ARE YOU ADVOCATING FOR A RULE LIKE RYKIEL, EVEN IF THEY BOTH SUBMIT A FINAL JUDGMENTS, THE COURT CAN ADOPT A JUDGMENT VERBATIM WITHOUT MAKING IN COURT FINDINGS? IS THAT THE RULE YOU WOULD SAY SHOULD APPLY AND WOULDN'T JUST APPLY IN DIVORCE CASES, THAT IS THAT THE COURT HAS NO AUTHORITY ASK BOTH PARTIES TO SUBMIT A FINAL JUDGMENT, AND IF

THE COURT ENTERS ONE OF THE FINAL JUDGMENTS WITHOUT MAKING ALTERATIONS, THAT THAT IS IMPROPER AS A MATTER OF LAW?

I AM NOT ADVOCATING THAT THIS COURT SHOULD NUMBER ONE PROHIBIT THE SUBMISSION OF PROPOSED ORDERS IN DOMESTIC CASES OR OTHER CASES. AND I AM ALSO NOT ADVOCATING THAT A TRIAL COURT CAN NEVER UNDER ANY CIRCUMSTANCES SIGN A PROPOSED JUDGMENT WITHOUT MAKING SUBSTANTIAL ALTERATIONS TO IT. IT SORT OF DEPENDS ON WHAT HAS BEEN SAID DURING THE TRIAL, WHAT GUIDANCE HAS BEEN GIVEN TO WHOEVER IS DRAFTING THE FINAL JUDGMENT. WHETHER BOTH SIDES HAVE BEEN ALLOWED TO SUBMIT A PROPOSED FINAL JUDGMENT, WHICH WE DIDN'T HAVE IN OUR CASE. AND I GUESS --.

MY CLIENT HAVE THE ABILITY TO REVIEW THE WIFE'S PROPOSED FINAL JUDGMENT?

NO, I THINK THE SHORT ANSWER TO THAT IS CLEARLY NO.

WELL WHAT HAPPENED? WAS IT GIVEN TO THE JUDGE AT THE END -- WAS THE WIFE'S FINAL JUDGMENT GIVEN TO THE JUDGE AT THE END OF THE HEARING?

IT WAS, AFTER 17 DAYS OF TRIAL ON THE FINAL DAY, ON THE MORNING OF THE FINAL DAY WHEN THEY WERE GOING TO HAVE CLOSING ARGUMENTS, THE PROPOSED FINAL JUDGMENT WAS SUBMITTED BY MR. WEISSMAN REPRESENTING THE WIFE.

AT THAT TIME, HAD THE JUDGE AT ANY POINT ORALLY ARTICULATED HIS FINDINGS OF FACTS AND CONCLUSIONS AS TO THE ISSUES PRESENTED TO HIM?

NOT A WORD. NOT EVEN A HINT.

SO HE GIVES IT TO -- THE ATTORNEY GIVES IT TO THE JUDGE AND SO YOUR CLIENT SEES THAT THAT'S HAPPENED? IT IS DONE IN OPEN COURT.

MY CLIENT REQUESTED THAT HE HAVE AT LEAST THE REMAINDER OF THAT DAY TO PREPARE A FINAL JUDGMENT.

DID HE -- WAS HE GIVEN A COPY OF THE WIFE'S FINAL JUDGMENT? PROPOSED FINAL JUDGMENT? YOU'RE NOT RAISING THAT AS AN ISSUE ON APPEAL?

I'M ASSUMING THAT A COPY WAS HANDED -- I DON'T KNOW IF THE RECORD ACTUALLY DISCLOSES WHETHER COUNSEL HANDED -- I'M GOING TO ASSUME THAT MR. WEISSMAN HANDED A COPY OF IT TO MY CLIENT AT THE SAME TIME.

AT THAT POINT HE SAID I, MAY I HAVE THE OPPORTUNITY TO ALSO SUBMIT A FINAL JUDGMENT?

HE DID SAY THAT AT THAT TIME.

AND THE JUDGE SAID DON'T WORRY, IF I RULE FOR YOU, WE HAVE.

IT IS NOT REALLY EXPECTED. IF YOU HAVE ONE, THAT'S FINE, SUBMIT IT. BUT THE JUDGE WOULD NOT GRANT A CONTINUANCE AT THAT POINT. MY CLIENT DIDN'T HAVE AN OPPORTUNITY TO RAISE ANY OBJECTIONS TO IT. BUT IN THE SAME BREATH THE JUDGE AT THAT TIME INDICATED THAT THE SIGNED FINAL JUDGMENT WILL BE READY TO BE PICKED UP IN TWO HOURS. THIS HAPPENED AT 1:00. AT THE BEGINNING OF LUNCH BREAK BECAUSE THEY HAD CLOSING ARGUMENTS THROUGHOUT THE ENTIRE MORNING. AT 3:00 THAT DAY, WITHIN TWO HOURS, THAT FINAL JUDGMENT WITHOUT ONE SINGLE CHANGE, A 25 PAGE VERY DETAILED FINAL -- I USE THE TERM FINAL JUDGMENT. IF YOU READ IT IT IS REALLY MORE OF A CLOSING ARGUMENT WITH THE JUDGE'S SIGNATURE APPENDED TO IT. BUT THAT WAS READY TO BE PICKED UP. AND THAT IS THE

BASIS FOR OUR SECOND POINT.

NOW IF YOU WENT ON THAT POINT -- WIN ON THAT POINT, WHAT WOULD BE THE REMEDY?

I THINK WE HAVE TO HAVE A NEW TRIAL ON ALL ISSUES.

WHY IS THAT? IN OTHER WORDS, SINCE THE FOURTH DISTRICT DETERMINED THAT EACH OF THE FINDINGS WAS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE IN THE RECORD, I REALIZE THAT YOU KNOW, THIS IS TO ME RATHER REMARKABLE THAT JUDGE WOULDN'T GIVE BOTH PARTIES THE OPPORTUNITY TO SUBMIT FINAL JUDGMENTS IN EXCHANGE AND GIVE A TIME. SO I THINK THIS IS NOT THE NORM THAT ANY OF US ARE USED TO. BUT ASSUMING THAT WE SAY THAT WAS IMPROPER, WHY WOULDN'T THE REMEDY BE JUST TO ALLOW BOTH SIDES TO SUBMIT FINAL PROPOSED FINAL JUDGMENTS?

WELL AT THIS POINT THE TRIAL WAS BACK IN THE YEAR TROU. I MEAN IT'S ALREADY SEVERAL YEARS PAST THAT. I DON'T EVEN KNOW IF THE RETIRED JUDGE THAT SAT ON THIS CASE IS HEARING CASES ANY MORE. I THINK THE ENTIRE CASE HAS GOT TO BE RETRIED AS A RESULT. I THINK IF THIS COURT QACHS THE FOURTH DISTRICT ON EITHER OF THE FIRST TWO POINTS THAT WE HAVE RAISED, IT REQUIRES A NEW TRIAL ON ALL ISSUES.

HOW WOULD YOU ENUNCIATE THE RULE OF LAW THEN THAT WOULD COME OUT OF THIS CASE REGARDING WHAT TRIAL JUDGES CAN ASK PARTIES TO DO? BECAUSE I KNOW TRIAL JUDGES AROUND THE STATE, WOULD BE VERY CONCERNED IF WE ARE SAYING THAT THEY CAN'T ADOPT ONE OR THE OTHER PARTY'S FINAL JUDGMENTS WITHOUT MAKING SUBSTANTIAL ALTERATIONS, WHAT DOES THAT MEAN?

JUSTICE PARIENTE, THAT IS EXACTLY THE QUESTION THAT THE DISTRICT COURTS FOR THE LAST 15 YEARS HAVE BEEN GRAPPLING WITH. BECAUSE IF YOU LOOK AT THE VARIOUS DIFFERENT OPINIONS, PROBABLY AT LEAST A DOZEN CASES WE HAVE CITED, THEY'RE STRUCK WILLING TO COME OUT WITH CRITERIA FOR APPELLATE REVIEW OVER THIS TYPE OF ISSUE. BECAUSE I DON'T BELIEVE THIS COURT HAS YET ENTERED THIS FRAY. AND CLARIFIED THIS. PERSONALLY, I THINK THAT THE BEST TEST THAT I THINK I HAVE READ IS THE ONE THAT COMES OUT OF THE FIRST DISTRICT COURT IN THE COAL TAYLOR CASE, I AM PARAPHRASING A LITTLE BIT. BASICALLY IF THE RECORD SUPPORTS A WELL FOUNDED SUSPICION THAT THE FINAL JUDGMENT IS NOT REALLY THE PRODUCT OF THE COURT'S INDEPENDENT DECISION-MAKING, THAT IS REALLY THE BOTTOM LINE. THEN A NEW TRIAL SHOULD BE ORDERED. YOU CAN LIST CERTAIN CRITERIA THAT THE COURT SHOULD TAKE INTO CONSIDERATION IN REACHING THAT DETERMINATION. BUT THAT'S REALLY THE BOTTOM LINE DETERMINATION AND THE REASON WHY I LIKE THAT TEST MYSELF IS BECAUSE IT'S A STANDARD THAT FOCUSES ON THE APPEARANCE OF JUDICIAL INDEPENDENCE THROUGH THE EYES OF THE LITIGANTS. BECAUSE THE ISSUE HERE IS THE PUBLIC LICK'S CONFIDENCE IN JUDICIAL INDEPENDENCE. IT IS NOT THAT MUCH DIFFERENT REALLY THAN A MOTION TO RECUSE. WHERE THE TEST IS WHETHER OR NOT A PARTY HAS A WELL FOUNDED FEAR THAT THEY CANNOT OBTAIN A FAIR TRIAL WITH AN IM PARTIAL JUDGE.

SO USING THAT STANDARD, THEN YOU WOULD ALSO HAVE US REQUIRE, SEEMS TO ME THAT, THE JUDGE HAVE TO PUT SOMETHING ON THE RECORD BEFORE THE PARTIES COULD SUBMIT THEIR PROPOSED FINAL JUDGMENT?

WELL, I THINK THAT CERTAINLY THAT AN EXCELLENT IDEA FOR THE JUDGE TO MAKE AT LEAST A BARE BONES SKELETAL HE NUNS YATION OF WHAT FINDINGS OF FACTS ARE GOING TO BE ENTERED, POSSIBLY THE JUDGE HASN'T MADE UP HIS OR HER OWN MIND BY THE TIME THE EVIDENCE IS CLOSED.

IF THE JUDGE DOESN'T, UNDER YOUR THEORY, YOU COULD ALWAYS ARGUE THAT THIS WASN'T THE JUDGE APARTMENTS INDEPENDENT REFLECK -- JUDGE'S INDEPENDENT REFLECTION BECAUSE

YOU HAVE BOTH PARTIES SENDING THESE PROPOSED FINAL JUDGMENTS. SO I'M WONDERING HOW YOU COULD GET AROUND.

I THINK THAT IF THE JUDGE DOESN'T SPECIFY FINDINGS, ANY FINDINGS OF FACT, BUT WHEN THE ORDERS COME IN YOU CAN SEE INTERLYNN YATION HAS BEEN MADE AND THOUGHT GENERATING PROCESS ON PAPER OR THE JUDGE DRAFTS HIS OR HER ORDER. WHEN YOU HAVE A COMBINATION OF WHAT WE HAVE IN THIS CASE, WHERE NUMBER ONE NOTHING IS ARTICULATED. OVER A LONG TRIAL, NOTHING IS ARTICULATED. NUMBER TWO, JUDGMENT SIGNED WITHIN TWO HOURS, ALMOST BEFORE THE INK IS DRY AND THERE IS NO OPPORTUNITY FOR OPPOSING PARTY TO SAY ANYTHING ABOUT IT. AND NUMBER -- THOSE TWO THINGS TOGETHER I THINK CREATE AT LEAST IN OUR CASE A WELL FOUNDED SUSPICION. I AM NOT --.

WELL YOU ALSO ARGUED THE FACT THERE WAS A 25 PAGE JUDGMENT, IT TOOK CLOSE TO TWO HOURS TO GET THROUGH IT AND MAKE SURE THAT YOU AGREED WITHIN THE FIRST PLACE.

I AM NOT A SPEED READER BUT IT TOOK ME ABOUT TWO HOURS TO CAREFULLY REVIEW THAT FINAL JUDGMENT.

THEN YOU HAVE -- SEE THIS CASE MAY BE THE EASY CASE IN TERMS OF THERE NOT BE ARTICULATED FINDINGS THE JUDGMENT IS ENTERED TWO HOURS AFTER. AND SIGNIFICANTLY, THE PARTY, ONE OF THE PARTIES ISN'T GIVEN THE OPPORTUNITY TO QUOTE HAVE A SUFFICIENT TIME TO REVIEW THE JUDGMENT AND SUBMIT HIS OR HER OWN JUDGMENT.

YES.

I'M JUST CONCERNED ABOUT THE OTHER PART, WHICH IS THAT WE ARE GOING TO START, IN DEATH CASES WE HAVE SOME VERY STRICT REQUIREMENTS ABOUT WHAT HAS TO HAPPEN, THERE HAS GOT TO BE, YOU KNOW, OF COURSE IN DEATH CASES BEING DIFFERENT, DEATH IS DIFFERENT. BUT THE IDEA THAT WE ARE GOING TO START HAVING APPELLATE COURTS, JUDGES FEEL WELL I BETTER START MAKING SOME EDITING CHANGES IN THIS FINAL JUDGMENT SO IF SOMEONE WILL THINK I REVIEWED IT. WHEN THE REAL ISSUE AS YOU SAY IS SORT OF THE APPEARANCE. SO WHY ISN'T IN A NORMAL SITUATION, WHERE THERE IS ADEQUATE, THAT BOTH PARTIES ARE GIVEN THE OPPORTUNITY TO SUBMIT FINAL JUDGMENTS, THE JUDGE INDICATES ON THE RECORD AT SOME POINT WHAT HIS OR HER FINDINGS ARE, AND THE PARTIES GIVEN THE OPPORTUNITY TO MAKE OBJECTION TOSS THE OTHER PROPOSED FINAL JUDGMENT, AND THE FINAL JUDGMENT IN FACT IS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE IN THE RECORD, THAT THAT ITSELF AM NORMALLY MEAN THAT THAT'S A PROPER METHOD FOR ENTERING A FINAL JUDGMENT.

AND I UNDERSTAND IT'S HARD TO COVER EVERY CONCEIVEABLE FACT SITUATION WHEN COMING OUT WITH A RULE LIKE THIS, WHICH IS AGAIN -- WHY I SORT OF FAVOR A LITTLE BIT LOOSER STANDARD LIKE THE COLE TAYLOR BANK STANDARD. BECAUSE YOU'RE NOT NECESSARILY TELLING THE COURTS IT CAN NEVER SIGN ANY ORDER THAT'S SUBMITTED WITHOUT MAKING CHANGES TO IT. I DON'T THINK THAT WOULD BE A REALISTIC TEST. I MEAN THAT WOULD BE -- THAT WOULD CERTAINLY ELIMINATE THE PROBLEM THAT WE HAVE IN THIS CASE. BUT I THINK THAT IT PRESENTS A QUAGMIRE FOR THE CIRCUIT COURT.

THE MARSHAL HAS REMINDED YOU YOU'RE IN YOUR REBUTTAL TIME.

WELL MAY IT PLEASE THE COURT, WE HAVEN'T, I HAVEN'T ADDRESSED THE THIRD POINT.

WOULD YOU QUICKLY ADDRESS HOW IT WAS PRESENTED WITH REGARD TO TAKING THE CHILD AWAY FROM THE FATHER, WHICH WAS SEPARATING THEM FOR WHATEVER NUMBER OF YEARS. WAS NOT A VISITATION, IT WAS A TOTAL SEPARATION THE PROBLEM YOU HAVE, THAT YOU DIDN'T RAISE THAT SOON ENOUGH? HOW WAS IT RAISED IN THE PLEAD SNTION HOW DID THIS

COME ABOUT?

THE ONLY THING THAT THE PLEADINGS RAISED IS, THERE WAS AN AMENDMENT TO THE WIFE'S PETITION, DIVORCE PETITION WHERE SHE REQUESTED RESTRICTED VISITATION.

BUT NEVER REQUESTED JUST TOTAL ELIMINATION OF CONTACT?

NEVER REQUESTED TOTAL ELIMINATION. NEVER SAID ANYTHING ABOUT THIS PARENTAL ALIENATION SYNDROME, SO WHEN MY CLIENT WAS DEFENDING HIMSELF AT TRIAL AND BECAME OBVIOUS THIS WAS WHAT THE WIFE WAS TRYING TO DO WITH AN ARRAY OF EXPERTS, SEVERAL DAYS, I FORGET EXACTLY WHAT DAY OF TRIAL IT WAS, BUT SEVERAL DAYS IN THE TRIAL MY CLIENT PRO SE ASKED THE COURT TO APPOINT A GUARDIAN AD LITEM.

YOUR OPPOSITION SEEMS TO SAY YOU KNEW ABOUT THIS THREE OR FOUR MONTHS BEFORE.

THERE WERE NO PLEADINGS INDICATING-.

WAS THERE ANYTHING YOU WERE ON NOTICE THEY WERE TRYING TO TAKE THE CHILD AWAY FROM THE FATHER TOTALLY? IN DISCOVERY OR ANYTHING ELSE?

I AM NOT AWARE OF ANYTHING THAT WOULD HAVE GIVEN THAT, THAT OBJECTIVE TO MY CLIENT. MY CLIENT UNDERSTOOD THAT.

IT SEEMS THAT YOUR OPPONENT IS ARGUE THANKING DURING AT LEAST THE DEPOSITION, ONCE THAT THE ALIENATION SYNDROME CAME UP AND THAT THE EXPERT WAS IN FACT QUESTIONED ABOUT THAT, IS THAT NOT TRUE?

YOU KNOW, YOUR HONOR, I CAN'T REALLY TELL YOU WHETHER THAT'S TRUE OR NOT BECAUSE I DIDN'T HAVE -- BY THE TIME I MADE MY APPEARANCE IN THIS CASE THE RECORD WAS ALREADY IN TALLAHASSEE AND I DIDN'T HAVE ACCESS TO THAT PART. I DIDN'T HAVE THE RECORD FROM THE PREVIOUS COUNSEL EITHER BECAUSE IT WAS A RETAINING LIEN BEING CLAIMED ON THE FILE. THIS WAS A DIFFICULT BRIEF FOR ME TO WRITE BECAUSE I DIDN'T HAVE ACCESS EXCEPT TRIAL TRANSCRIPT.

IF YOU WANT TO RETAIN SOME OF THAT TIME.

WE ARE JUST CLAIMING UNDER POINT THREE THAT THERE IS A EXPRESS CONFLICT WITH THE HARRIS CASE OUT OF THE FIFTH DCA WHICH SPECIFICALLY SAYS THAT NOT JUST A TERMINATION OF PARENTAL RIGHTS UNDER CHAPTER 39 REQUIRES A GUARD YAM AD LITEM.

HARRY A PATERNITY CASE?

NO, IT WAS A POST JUDGMENT PROCEEDING IN A DIVORCE CASE.

BUT THE QUESTION CAME UP IN THAT PROCEEDING AS TO WHETHER OR NOT THE FATHER WAS REALLY THE FATHER OF THE CHILD. SO REALLY WAS A PATERNITY ISSUE INVOLVED. WHETHER OR NOT THEY COULD TERMINATE.

I DIDN'T MEAN TO INTERRUPT YOU. I AM SORRY. THERE WAS SORT OF A PATERNITY ISSUE INVOLVED BUT IT WAS NOT A CHAPTER 39. IT WAS A DIVORCE PROCEEDING LIKE THIS ONE IS. I THINK HARRIS IS IN DIRECT CONFLICT WITH OUR CASE. I THINK THE HARRIS CASE WAS THE ONE PROPERLY DECIDED. SO WE RESPECTFULLY ASKING THIS COURT TO QAUCH THE FOURTH DISTRICT WITH QUESTIONS TO REVERSE THE FINAL JUDGMENT. REINSTATE THE CUSTODY ORDER IN EFFECT JUST BEFORE TRIAL. AND TO ORDER THE WIFE BACK TO THIS COUNTRY, WITH ADAM TO THE JURISDICTION OF THE COURT FOR A NEW TRIAL ON ALL ISSUES. THANK YOU.

MY NAME IS JOLLEY WEISSMAN I REPRESENT THE APPELLEE. BASED UPON SOME OF THE QUESTIONS, I THINK I WILL ADDRESS THE FIRST ISSUE THAT WAS ADDRESSED BY THE COURT. AND THAT IS THIS PROPOSED FINAL JUDGMENT AND HOW IT CAME ABOUT. I HAVE BROUGHT WITH ME PARTS OF THE RECORD AND SINCE I WAS THE LAWYER FROM INCEPTION IN FEBRUARY OF 98 UNTIL TODAY'S DATE, LET ME PLEASE GIVE YOU SOME BACKGROUND. AS YOU KNOW, ORIGINALLY THE PARTIES STARTED THE PROCEEDING WITH A SEPARATED AGREEMENT, MEANING A PETITION FOR SEPARATE MAINTENANCE AND THEY TRIED THIS JOINT ROTATING CUSTODY. AND THAT FAILED. MY CLIENTS THEN PETITIONED THE COURT TO AMEND AND IN APRIL OF 1999 SHE PETITIONED THE COURT FOR SOLELY CUSTODY AND TO RESTRICT VISITATION, JUSTICE LEWIS.

BUT THAT DOESN'T MEAN THAT YOU CANNOT HAVE CONTACT WITH THE CHILD, DOES IT?

IT MAY OR MAY NOT. DEPENDING ON WHAT ULTIMATELY THE LITIGANT --.

IN NORMAL LITIGATION, YOU DON'T SEPARATE TOTALLY PARENTS FROM THEIR CHILDREN, NORMALLY.

THAT IS CORRECT,.

NORMALLY YOU WOULDN'T EXPECT THAT FROM JUST THAT PLEADING?

YES, JUSTICE QUINCE, YOU MENTIONED THAT THERE WAS SOME DISCOVERY DONE, AND LET ME TELL YOU THAT THERE WAS DISCOVERY DONE AND MR. PERLOW WAS ON NOTICE FROM INCEPTION. FIRST LET ME TELL YOU THE HISTORY OF LAWYERS. HE HAD A LAWYER BY THE NAME OF DENISE ISAACS. RONALD SALES, MATT KNEW UNIT, KEN REN NICK. HELP APPELLATE LAWYERS. HE'S HAD COUNSEL LAWYERS, CONTINUES TO HAVE APPELLATE LAWYERS. BUT STRAIGHT ON, DEPOSITIONS OF DOCTORS, PSYCHIATRISTS.

BEFORE YOU GET INTO THAT, YOU HAVE GONE THROUGH THIS LAUNDRY LIST OF ATTORNEYS. WAS THEIR WITHDRAWAL DUE TO THEIR SAYING THEY WEREN'T HAVING ADEQUATE COOPERATION BY THEIR CLIENT? OR WAS IT BECAUSE THEY DIDN'T HAVE ADEQUATE FUNDING TO CONTINUE ON THE CASE GIVEN THE RESOURCES OF YOUR CLIENT?

RECOMMENDNICK CLAIMED HE WASN'T PAID BY HIS CLIENT, ALL OF THE OTHERS WITHDREW IRRECONCILABLE DIFFERENCES. MAY I SUGGEST THAT IRRECONCILABLE DIFFERENCES FROM MY KNOWLEDGE IS NOT BECAUSE THEY WEREN'T BEING PAID.

WELL ISN'T IT IRRECONCILABLE DIFFERENCES MAY OR MAY NOT BE BECAUSE THEY WERE OR WERE NOT PAID SOMETIMES THE ATTORNEY DOESN'T WANT TO EMBARRASS THE CLIENT BY SAYING HE IS NOT GETTING PAID. HE IS JUST BEING MORE DELICATE AND GENERALIZING THIS?

JUSTICE CANTERO, I CAN TELL YOU NOT ONE OF THOSE LAWYERS WAS, WITHDREW FOR NON-PAYMENT. EACH OF THOSE LAWYERS WITHDREW FOR IRRECONCILABLE DIFFERENCES. THEY HAD CONFLICTS ON THE WAY THE CASE WAS GOING TO BE PRESENTED. THEY WITHDREW BECAUSE THEY COULDN'T GET ALONG TO THEIR CLIENT.

HOW ARE YOU PRIVY TO THAT?

WHEN THEY WITHDREW FROM THE COURT THEY MENTIONED CERTAIN SPECIFY PHYSICAL ADVERTISE. WHEN WE TOOK THAT POSITION OF ONE OF THE COUNSEL. MR. ISAACS MENTIONED THE REASONS WHY SHE WITH DRAUCHLT.

NEW GENTLEMAN TOLD US WHERE WHERE -- INN UGENT. MR. REMNICK TOLD US HE WAS WITHDRAWING BECAUSE MR. PERLOW WOULDN'T PAY HIM THE LAST \$20,000. THE POINT IS IN THIS RECORD, IT IS INCORRECT THAT MR. PERLOW DID NOT HAVE THE OPPORTUNITY TO SUBMIT A

FINAL JUDGMENT. AND IT IS INCORRECT TO EVEN ASSUME --.

WELL WHEN DID HE HAVE THAT OPPORTUNITY? BECAUSE AS I UNDERSTAND IT, YOU GAVE ME FINAL JUDGMENT TO THE JUDGE ON THE DAY OF THE FINAL ORAL ARGUMENT AND THAT ONCE THOSE ARGUMENTS WERE OVER, A COUPLE OF HOURS LATER, THAT FINAL JUDGMENT WAS ENTERED.

THAT IS TRUE EXCEPT TO THE FOLLOWING ADDITIONAL FACTS. AT LEAST THE DAY BEFORE AND I CAN TELL YOU THAT THE RECORD WILL SHOW MORE THAN THAT, THE FOLLOWING COLLOQUY TOOK PLACE. I AM READING FROM TRANSCRIPT, PAGE 3406. I CAN'T TELL YOU SPECIFICALLY ITS RECORD ON APPEAL BECAUSE THE TRANSCRIPT IS A LITTLE DIFFERENT THAN THE RECORD. THIS IS THE COLLOQUY. BY MR. PERLOW ON LINE 12. MY LAST REQUEST YOUR HONOR IS I ASSUME BECAUSE I AM NOT CALLING ANY FURTHER WITNESSES THE NEXT STAGE IN THIS IS TO PROCEED TO FINAL ARGUMENT. AND THE COURT SAID YES, SIR. I WOULD ASK THE COURT TO GIVE ME A RECESS UNTIL 1:30 TOMORROW AFTERNOON TO DO FINAL ARGUMENT. COURT SAID HOW ABOUT 10 TOMORROW MORNING? I DON'T MIND DOING THAT BUT 1:30 TOMORROW AFTERNOON WASN'T GOING TO DO. MR. PERLOW. YOUR HONOR, CAN YOU TELL ME BESIDES ORAL ARGUMENT, DO I NEED TO HAVE A PREPARED ORDER AT THAT TIME? NOW THIS WAS MY RECOLLECTION.

WHAT WAS THE JUDGE'S ANSWER TO THAT?

I SORT OF DIDN'T EXPECT YOU TO HAVE ONE. SO WHAT WE DO HAVE ON STAFF IS LEGAL AIDS THAT ARE ASSIGNED TO THE FAMILY DIVISION AND THEY WOULD HAVE BASICALLY, IF I DECIDE IN YOUR FAVOR, AND AISLE BE WORKING WITH THEM TO COME UP WITH A FINAL JUDGMENT.

SO THE JUDGE IS ACTUALLY DISCOURAGING MR. PERLOW FROM ACTUALLY DOING A FINAL JUDGMENT.

IF YOU HAVE ONE TO PRESENT BY ALL MEANS PRESENT IT. THAT'S WHAT I AM SAYING. I DIDN'T SORT OF EXPECT YOU TO HAVE ONE. MR. PERLOW SAYS YOUR HONOR, I CAN HAVE ONE DONE. BUT I CAN'T GIVE YOU ONE BY 10 O'CLOCK TOMORROW MORNING. PROBLEM IS, I HAVE TONIGHT BECAUSE OF LAST NIGHT I HAVE TO BE SOMEPLACE. I HAVE NO OPTION. I JUST CAN'T NOT BE THERE AND IT IS FROM 5:15 TO 9:156789 IT IS WHAT MR. WEISSMAN CALLED TO MY ATTENTION. I DID KNOW ABOUT THIS FOUR HOUR PRESENTING CLASS AND THIS IS THE FIRST ONE I CAN GET. HE TOLD ME ABOUT THE FRIDAY AND IT IS THE ONLY ONE, ONLY ONE I CAN DO TONIGHT AND THAT IS MY ENTIRE EVENING. HOW MUCH TIME FOR FINAL ARGUMENT DO EACH OF YOU NEED?

LET ME ASK YOU A YES. IN YOUR PREPARATION OF THE ORDER, YOU PRESENTED TO THIS TRIAL JUDGE, WHAT IN THE RECORD, WHERE IN THE RECORD DOES IT SAY THE TERMS OF THE, CHILD 14, ETCETERA?

THAT THE TRIAL COURT ARTICULATED THAT HE WAS GOING TO HAVE THIS CHILD HAVE NO CONTACT WITH HIS FATHER UNTIL HE REACHED AGE 14.

ON PAGE 2941 OF THE RECORD, THE COURT HAD A COLLOQUY WITH MR. PERLOW CONCERNING A PREVIOUS ORDER THE COURT HAD ENTERED IN THIS CASE THAT NO CONTACT BETWEEN THE TRIAL AND THE FATHER CONCERNING THIS CASE WOULD HAPPEN WHATSOEVER. AND WE BROUGHT TO THE COURT'S ATTENTION THAT MR. PERLOW NOT ONLY IN FACT TOLD THIS CHILD ABOUT THE PROCEEDINGS THAT WERE HAPPENING AT TRIAL, BUT TOLD THIS CHILD --.

WELL I UNDERSTAND IT. BUT, REAL SIMPLE QUESTION. WHERE DID THE TRIAL COURT TELL YOU OR MR. PERLOW I AM FINDING THAT FOR THE BEST INTERESTS OF THIS CHILD, YOU SHALL HAVE NO CONTACT WITH THE CHILD UNTIL HE REACHES THE AGE OF 14? THAT THAT'S IN THE CHILD'S BEST INTEREST?

I CAN'T TELL YOU THAT THE COURT ARTICULATED THOSE PARTICULAR WORDS.

HOW DID THEY FIND THEIR WAY INTO A FINAL JUDGMENT IF THE COURT NEVER ARTICULATED THOSE AND THEY HAPPEN TO BE IN AN ORDER GIVEN TO THE JUDGE BY A TRIAL LAWYER?

BECAUSE THE COURT LISTENED TO THE EVIDENCE BEFORE IT AND FOUND FROM THE SIX EXPERTS FROM, DOCTOR GARDNER, DOCTOR ADEGREESSKI THAT THE ONLY WAY TO SAVE THIS CHILD WAS SUSPEND THE VISIONTATION FOR A PERIOD OF YEARS UNTIL SUCH TIME THIS CHILD COULD COME BACK TO THE REALM OF REALITY AND NOT BE A PSYCHOPATH LIKE HIS FARNTS.

AND THE FATHER IS A PSYCHOPATH BASES GOING TO PRANTING CLASSES.

NO, SIR, HE IS A PSYCHOPATH BECAUSE ALL THE OTHER FACTORS THAT THE COURT FOUND, MORE IN THE FINAL JUDGMENT SPECIFICALLY ON THIS RECORD.

WASN'T THERE TESTIMONY BY A CHILD PSYCHOLOGIST THAT THE CHILD NEEDED THE FATHER AND NEEDED CONTACT WITH THE FATHER?

THERE WAS EVIDENCE TO THAT. AND THE CHILD PSYCHOLOGIST, DOCTOR OENS SAID HOWEVER, BASED UPON EVERYTHING THAT I HAVE SEEN, I HAVE TO RECOMMEND TOTALLY SEPARATION. I HAVE TO RECOMMEND THAT I RELY UPON DOCTOR GARDNER, DOCTOR AGRESSKI AND HELLER, EVEN THOUGH MY HEART IS KEEP CHEST WITH -- CHILDREN WITH THEIR FATHER, THIS IS THE FIRST CASE IN MY ENTIRE LIFE, THEY MUST BE SEPARATED COMPLETELY. OTHERWISE YOU WILL TURN THIS CHILD IN WHAT THE HUSBAND IS.

WHAT WAS THE EVIDENCE OF WHAT THE HUSBAND IS? AND WHY IS HE A PSYCHOPATH? WHAT EVIDENCE SUPPORTS THAT?

IN THIS RECORD, THE FOLLOWING WAS FOUND.

YOU'RE READING FROM YOUR FINAL JUDGMENT?

I AM READING FROM FACTS OF THE FINAL JUDGMENT BECAUSE.

THE ONE YOU PREPARED?

THE ONE THAT I PREPARED FOR THE COURT, YES, SIR.

I APOLOGIZE FOR NOT HAVING IT SOONER. FAILURE TO CONFORM TO SOCIAL NORMS WITH RESPECT TO THE LAWFUL BEHAVIOR. THE COURT HISTORY THAT THE HUSBAND HAD, INCLUDING HIS ARREST RECORD. DECEITFULNESS AS INDICATED BY REPEATED LYING AND USE OF ALIASES. RABBI INCIDENT. THE MAID INCIDENT. THE IM PULSIVETY OR FAILURE TO PLAN AHEAD. THE AIRPORT INCIDENT.

CAN YOU EXPLAIN THOSE INCIDENCES INSTEAD OF SAYING? THE SPECIFICS OF, WHAT IS THE RABBI INCIDENCE,? THE AIRPORT.

THE RABBI INCIDENT IS A SITUATION IN WHICH MR. PERLOW IN ORDER TOYN GRACIOUS YENT HIMSELF TO THE TEMPLE, TOLD THE RABBI THAT HE WOULD DONATE MONEY TO THE SMALL TEMPLE NEEDING MONEY OF \$3500. AND TO DO THAT, THE RABBI WAS VERY GRATEFUL AND THE RABBI ANNOUNCED THEY WERE GOING TO HAVE TICKETS TO GO TO ISRAEL, WHOEVER WON THIS RALPH, BASED ON MR. PERLOW'S DONATION. THE CHECK BOUNCED.

I UNDERSTAND THERE WAS ALL THESE INCIDENTS. WAS THIS A MENTAL HEALTH EXPERT WHO SAID THAT YOU PUT ALL THESE INCIDENTS TOGETHER AND THIS MAN BECOMES A SOCIOPATH?

PSYCHOPATH?

THERE WAS A DOCTOR AGRES SKI, A PSYCHIATRIST WHO STEFD TO THAT SPECIFICALLY. AND DOCTOR GARDNER WHO WROTE THE BOOK ON PARENTAL ALIENATION WHO TESTIFIED SPECIFICALLY. MY RECOLLECTION IS WHEN MR. PERLOW CROSS EXAMINED DOCTOR GARDNER, AFTER ABOUT EIGHT HOURS OF DIRECT AND CROSS, DOCTOR GARDNER SAID TO MR. PERLOW, BASED UPON MY 30 PLUS YEARS OF MR. EXPERIENCE MR. PERLOW IF I HAD ANY QUESTION IN MY MIND YOU WERE A PSYCHOPATH AFTER WHAT I WAS HEARD FROM YOU TODAY CROSS-EXAMINING ME, I HAVE NO DOUBT IN MY MIND YOU MEET ALL THE CRITERIA.

LET ME CHANGE SUBJECTS AGAIN. DO YOU AGREE THE FINANCIAL AFFIDAVIT SHOWS THE WIFE HAS, EVEN IF THEY ARE NON-MARITAL, 3.4 SOMETHING MILLION DOLLARS IN ASSETS?

THE ANSWER TO THAT IS THE FINANCIAL AFFIDAVIT SHOW THAT, BUT SHE HAD NO ACCESS TO IT BASED UPON ALL THE EVIDENCE. IN OTHER WORDS, SHE, HER FATHER OWNED THOSE ASSETS. IT WAS IN HER NAME BUT SHE HAD NO ABILITY TO ACCESS THOSE DOLLARS. THEY WERE IN TRUST. ALTHOUGH IN HER NAME FOR TAX PURPOSES. WE WENT THROUGH THAT WITH THE TRIAL COURT CAREFULLY AS WELL THE HEARING FOR TEMPORARY RELIEF ON ATTORNEY'S FEES. I DON'T WANT TO LEAVE THAT ISSUE FOR JUST ONE MOMENT. IN THIS RECORD WHICH WE SUPPLEMENTED WITH THE ACTUAL TRANSCRIPT BEFORE JUDGE COALTON. HEARING ON DECEMBER 9, 1999 IN WHICH MR. PERLOW ASKS FOR TEMPORARY ATTORNEY'S FEES. THAT IS THE DAY M RENNICK WITHDREW. THERE WAS NO RECORD AS ANY LAWYER TESTIFYING TO SAY WE ARE GOING TO HAVING X AMOUNT OF HOURS FOR THESE AMOUNT OF DOLLARS, WHICH IS A PREREQUISITE TO HAVE ATTORNEY FEES AWARD IN THE FIRST PLACE. MR. PERLOW TESTIFIED THAT QUOTE HE HAD INABILITY TO PAY REALLY DIDN'T SAY ALL THOSE THINGS. OF COURSE HE HAS ALREADY STOLE THE WIFE RAPS JEWELRY FOR QUARTER OF A MILLION DOLLARS.

EVEN ON THIS ISSUE, THE JUDGE COULD MAKE A DETERMINATION OF WHETHER MR. PERLOW WAS ENTITLED TO TEMPORARY ATTORNEY'S FEES ASIDE FROM THE AMOUNT OF THE TEMPORARY ATTORNEY'S FEES, COULD HE NOT?

THE COURT COULD DO THAT. BUT IT DIDN'T GET TO THAT ISSUE BECAUSE THE EVIDENCE WASN'T EVEN THERE THAT MR. PERLOW, WHICH HE WAS ENTITLED, WAS GOING TO USE THE MONEY TO HIRE A LAWYER. REMEMBER, MR. PERLOW WAS --.

I DON'T UNDERSTAND THAT COMMENT. THAT HE ASKED FOR ATTORNEY'S FEES AND THERE WAS A PROVE THAT HE WAS GOING TO USE THOSE TO PAY THE LAWYER. TELL ME WHAT YOU MEAN.

MR. PERLOW DIDN'T BRING A LAWYER AND SAY LOOK YOUR HONOR, IF YOU FIND MR. PERLOW IS ENTITLED TO ANY ATTORNEY'S FEES I AM WILLING TO TAKE OVER THIS CASE AND I CAN DO IT FOR THESE MANY HOURS AND THESE MANY DOLLARS. MR. PERLOW SAID TO TO, BRING A LAWYER IN TO TESTIFY UNDER 6116, HE BROUGHT A LAWYER TO WITHDRAW AND TO OPINE WHAT THAT LAWYER WOULD HAVE, THINKS HE WOULD NEED, NOT THAT PARTICULAR LAWYER BUT SOME HYPOTHETICAL PERSON WITHOUT GIVING US THE NUMBER OF HOURS, WITHOUT GIVING US THE HOURLY RATE. THE NICHOLS CASE IS CITED BY MY OPPONENT IS PARTICULARLY IMPORTANT IN THIS CASE TOO. NICHOLS DOESN'T STAND FOR THE PROPOSITION THAT YOU COME INTO COURT AND TELL THE TRIAL JUDGE I NEED A LAWYER, I DON'T HAVE ANY MONEY, SO, GIVE ME \$10,000 TO START. NICHOLS --.

THE QUESTION IS NOT THE AMOUNT. THE QUESTION IS JUST THE AWARD, ENTITLEMENT. DO MOST PEOPLE COME IN THE FIRST HEARING AND THEY DON'T HAVE ANY MONEY TO HIRE A LAWYER, AND THEY DON'T HAVE ACCESS TO ANY LEGAL HELP, THEY COME INTO THE CIRCUIT COURT AND SAY JUDGE, I DON'T HAVE A LAWYER, AND I NEED A LAWYER. AND THE JUDGE WILL NOT GRANT -- AND GIVES THE JUDGE WHAT MY CLIENT ANSWERS ARE, THE JUDGE SAYS YOU HAVE TO GO GET A LAWYER BEFORE I WILL EVEN RULE ON ENTITLEMENT? IS THAT THE WAY WE OPERATE ON THIS

THING? THAT'S PREREQUISITE?

YES, THAT IS THE WAY THEY OPERATE.

EVERY CASE SAYS THAT'S PREREQUISITE?

STATUTE SAYS THAT'S A PREREQUISITE TO A ORDER OF ENTITLEMENT. NOT AMOUNT.

I MISUNDERSTOOD THE QUESTION. I DON'T HAVE A CASE THAT INDICATES THAT YOU NEED A LAWYER TO COME INTO ASK FOR ENTITLEMENT AS OPPOSED.

THAT IS WHAT WE ARE TALKING ABOUT THIS MORNING. ENTITLEMENT. THE LAWYER CAME IN AT THE TIME OF TRIAL PROCEEDINGS WERE ON AND JUDGE SAID I AM NOT GOING TO RULE ON ENTITLEMENT UNTIL AFTER IT IS OVER. THE LAWYER SAYS I CAN'T TAKE IT ON THE POSSIBILITY YOU WILL RULE ON ENTITLEMENT. ISN'T THAT WHAT HAPPENED?

NO, SIR.

DIDN'T LAP?

NOT FROM READING THIS RECORD. I MEAN NOT FROM JUDGE COALTON'S ORDER.

FROM THE TRANSCRIPT. HE NEVER BROUGHT A LAWYER WHO TESTIFIED, WHO WAS GOING TO TESTIFY I'LL TAKE THIS CASE IF WE GET FEES AND THE JUDGE SAID NO I AM NOT GOING TO RULE ON THAT NOW? THAT DID NOT HAPPEN?

IT DID NOT HAPPEN INTO THE FACTS AS YOU JUST ANNOUNCED THEM IN ALL DUE RESPECT. AT THE DAY OF TRIAL, MR. PERLOW CAME IN WITH A LAWYER BY THE NAME OF PEGGY ROWLAND, MR. ROLLAND SAID TO THE COURT I WAS TOLD TO COME HERE, WASN'T SWORN TESTIMONY AND I COULD TAKE OVER THIS CASE BUT I NEED TO KNOW YOU'RE GOING TO AWARD ME ATTORNEY'S FEES RIGHT NOW. THE JUDGE SAID THIS IS A TRIAL. I AM NOT GOING TO CONDUCT AN ATTORNEYS FEE HEARING RIGHT NOW MS. ROWLAND BUT FROM THE EVIDENCE I SEE, MOST LIKELY THAT THIS MOMENT IN TIME MR. PERLOW WOULD BE ENTITLED TO FEES. BUT I CAN'T TELL YOU I AM GOING TO CONDUCT A FEE HEARING ON A TEMPORARY BASIS.

WAS THAT NOT A REQUEST FOR ENTITLEMENT? YOU STAND HERE BEFORE THIS COURT AND ARGUE THAT THAT WAS NOT A REQUEST FOR, A HEARING IN DETERMINATION OF ENTITLEMENT TO TEMPORARY FEES? THAT'S YOUR POSITION, THAT THAT WAS NOT THAT REQUEST?

I'M NOT SUGGESTING THAT IT WASN'T A REQUEST.

THAT WAS REQUEST FOR ENTITLEMENT TO TEMPORARY FEERX WAS IT NOT SIR?

YES, SIR.

AND DIDN'T THE TRIAL JUDGE SAID I AM NOT GOING TO RULE ON THIS NOW, I AM GOING TO PUT IT OFF TILL LATER.

I AM NOT GOING TO RULE ON TEMPORARY BASIS ENTITLEMENT FEES TODAY. WHEN YOU HAD SINCE DECEMBER TO COME INTO COURT AND ASK FOR IT AND THE FIRST ORDER WAS DENIED WITHOUT PREJUDICE.

IN DECEMBER, WHAT WAS THE BASIS FOR DENIAL OF THE ATTORNEYS?

TWO REASONS REASONS. THE COURT DID NOT HAVE ABILITY TO DISPUTE THE FACT THAT HE DID OR DID NOT HAVE A LEGITIMATE ENTITLEMENT. AND THE SECOND WAS THAT THE COURT COULD

NOT FIND FROM THE EVIDENCE MR. PERLOW WAS EVEN GOING TO HIRE A LAWYER OR THERE WAS A LAWYER WILLING TO REPRESENT HIM. AND THAT MR. PERLOW SINCE HE HAD BEEN PRO SE PRETTY MUCH FROM DECEMBER FIRST ON WAS ACTING APPROPRIATELY.

WHEN YOU SAY ENTITLEMENT, DID THE TRIAL JUDGE DETERMINE THAT THE HUSBAND HAD NOT DEMONSTRATED NEED FINANCIAL NEED FOR ATTORNEY'S FEES?

I WANT TO ANSWER THAT SPECIFICALLY AND I BROUGHT THE ORDER WITH ME AND I HOPE TO FIND IT AND TELL YOU.

WELL TELL US -- ANSWERING THAT, TELL US WHAT THE RECORD SHOWS ABOUT THE FINANCIAL CIRCUMSTANCES.

THE RECORD SHOWS THAT THE WIFE, MY CLIENT DID NOT HAVE ANY ACCESS TO FUNDS AND THE RECORD FURTHER SHOWS THAT MR. PERLOW HAD A NUMBER OF ASSETS FROM THE ONLY FINANCIAL AFFIDAVIT THAT WAS FILED, WHICH SHOWED THAT HE HAD INCOME OF MORE THAN 180,000 DOLLARS AND ASSETS GREATER THAN HALF A MILLION DOLLARS.

IN OTHER WORDS, THE RECORD STANDS UNDISPUTED THAT HE HAS ASSETS, FINANCIAL ASSETS OF OVER A HALF MILLION DOLLARS? AND THAT HE HAS AN ANNUAL INCOME OF 180,000 DOLLARS A YEAR THAT WAS APPLICABLE AT THE TIME THAT YOU'RE ALLUDING TO?

FINANCIAL AFFIDAVIT WAS THE ONLY FINANCIAL AFFIDAVIT FILED, IN ALL DUE RESPECT TO HAVE TREER RELIEF, YOU HAVE TO HAVE FINANCIAL AFFIDAVIT FILED. THAT SHOWED HE HAD 17 \$7,000. AND THAT HE HAD --.

177 THOUSAND?

IN INCOME?

YES, SIR.

AND HIS FINANCIAL AFFIDAVIT FURTHER SHOWED THAT HE HAD AT LEAST ACCORDING TO HIMSELF, AN INTEREST IN A HOME, OTHER DOLLARS THAT PEOPLE OWED HIM. AND HE SHOWED--.

WHAT WAS THE DATE OF THAT AFFIDAVIT?

THE DATE OF THAT AFFIDAVIT WAS IN APRIL OF 1998.

AND WHEN HE WAS ASKING FOR LAWYER, DID HE GIVE ADDITIONAL TESTIMONY THAT HIS ASSETS WERE GONE? AND THAT HIS INCOME WAS GONE?

HE DID SAY THAT HIS, HE CLAIMED THAT HE HAD GONE THROUGH BANKRUPTCY AND THAT HIS INCOME THAT HE HAD IN THE YEAR 1998 -- EXCUSE ME, 1996, WAS NO LONGER VIABLE. THE EVIDENCE SHOWED BY WAY OF DISPUTED EVIDENCE SHOWED THAT WAS NOT CORRECT, THAT HE HAD ASSETS GREATER THAN THOSE, THE ACCOUNTANT TESTIFIED TO THAT AND OPINED TO THE COURT THAT MR. PERLOW HAD NO NEED FOR ANY FEES FROM OUR CLIENT AND OUR CLIENT HAD NO ABILITY TO ACCESS ANY DOLLARS.

THAT EVIDENCE WAS PRESENTED AT THE FINAL HEARING?

THE ANSWER IS YES, THAT EVIDENCE WAS PRESENTED AT THE FINAL HEARING.

COULD WE, I'D LIKE TO GET BACK TO THE QUESTION OF THE PROPOSED FINAL JUDGMENT. YOU STARTED TO SAY THAT HE HAD THIS OPPORTUNITY THE DAY BEFORE BUT THEN HE SAID HE HAD TO GO TO PRANTING CLASS AND HE WOULD NEED MORE TIME. YOU SUBMITTED THE FINAL

JUDGMENT THAT THE JUDGE SIGNED. AND DID YOU GIVE A COPY TO.

THAT MORNING WE CAME INTO COURT.

AND IS THIS SOMETHING THAT'S ON THE RECORD OR ARE YOU JUST TELLING US?

NO, NO, IT'S ON THE RECORD. I'M SURE IT IS ON THE RECORD THAT I HAND-DELIVERED A COPY TO MR. PERLOW AS I'M GIVING A COPY TO THE COURT.

AND AT THAT POINT, THEN DID MR. PERLOW AGAIN ASK FOR AN OPPORTUNITY TO SUBMIT HIS OWN FINAL JUDGMENT?

NO. HE DID NOT.

AND THE JUDGE AT THAT POINT SAID IN TWO HOURS I'M GOING TO HAVE A FINAL JUDGMENT?

HE SAID BY THIS AFTERNOON I'M GOING TO HAVE, ENTER A FINAL JUDGMENT.

FINAL ARGUMENT PRESENTED AFTER THE SUBMISSION OF THE FINAL JUDGMENTS OR WAS IT PRESENTED BEFORE?

AFTER.

THE DAY THAT THE FINAL -- I SEE I AM OUT OF TIME. THE DAY I SUBMITTED THE FINAL JUDGMENT AND HAND-DELIVERED A COPY TO MR. PERLOW AND TO THE COURT WAS THE MORNING OF THE FINAL JUDGMENT ARGUMENTS.

THE AURMGTS WERE MADE AFTER THE FINAL, PROPOSED FINAL JUDGMENT?

THE ARGUMENTS WERE MADE AFTER I SUBMITTED MY PROPOSED FINAL JUDGMENT TO THE COURT AND TO MR. PERLOW SIMULTANEOUSLY. AND THEN THE COURT RECESSED AND ENTERED THE PROPOSED FINAL JUDGMENT AS IS SOMETIME THAT AFTERNOON, ABOUT 3:00 IN THE AFTERNOON.

OKAY. AND YOU AGREE THAT THE, -- YOU DON'T CLAIM THAT AT ANY TIME DURING THE FINAL HEARING OR AFTER OR DURING ARGUMENTS OR WHATEVER, THAT THE JUDGE ORALLY OUTLINED ON THE RECORD WHAT HIS FINDINGS WOULD BE?

I DO NOT CLAIM THAT HE ORALLY OUTLINED ON THE RECORD WHAT HIS FINDINGS WOULD BE. I SUGGEST TO YOU IN OUR BRIEFS HE PARTICIPATED SPECIFICALLY AND AS THE FOURTH DISTRICT FOUND, THAT'S THE DIFFERENCE BETWEEN THE CASES THAT THE APPELLATE CITES. THANK YOU VERY MUCH YOUR HONOR.

THANK YOU. MR. MARSHAL HOW MUCH TIME IS LEFT? COUPLE OF MINUTES.

MAY IT PLEASE THE COURT, FIRST I WOULD ASK THE COURT, I HAVE SOME DIFFERENCE OF OPINION AS TO WHAT HAPPENED AT THAT HEARING TWO AND A HALF MONTHS BEFORE TRIAL IN DECEMBER OF 99. SO I JUST, I WOULD ASK THE COURT WILL HAVE TO APPARENTLY REVIEW THE TRANSCRIPT.

DO YOU AGREE THAT THE REVIEW BY THE DISTRICT COURT ON THE MATTER HAVING TO DO WITH THE ATTORNEY AND THE ATTORNEYS FEE WAS ON THE BASIS OF ABUSE OF DISCRETION? IS THAT THE STANDARD OF REVIEW?

IT'S ---THE COURT, THE FOURTH DCA ACTUALLY THE VERY LANGUAGE OF THE FOURTH DCA, ON WHAT YOU JUST ASKED ME, THIS, AND THIS IS WHAT I THINK CREATES THE CONFLICT. THE

FOURTH DCA WROTE AND I AM QUOTING RIGHT FROM ITS OPINION, THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REQUIRING THE HUSBAND TO PRESENT AN ATTORNEY TO TESTIFY AS TO THE ATTORNEY'S WILLINGNESS TO REPRESENT HIM. MY POSITION IS THOSE WORDS ARE IN DIRECT CONFLICT WITH NICHOLS.

THE DISTRICT COURT GOES ON TO SAY THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN NOT GRANTING A CONTINUANCE OF THE TRIAL AND DENYING THE APPELLATE'S MOTION FOR ATTORNEY'S FEES. IS THAT AN ABUSIVE DISCRETION?

THE CONTINUANCE ISSUE WOULD BE ABUSE OF DISCRETION. APPELLATE COURT HELD IT WAS NOT AN ABUSE OF DISCRETION TO DENY A CONTINUANCE ON THE FIRST DAY OF TRIAL FOR AN ATTORNEY TO REVIEW THE CASE AND STEP IN. I THINK THE COURT, THE TRIAL COURT WAS WILLING TO CONTINUE THE TRIAL TO STOP THE TRIAL FOR THE REMAINED DEAR OF THAT DAY AND TO START AGAIN THE NEXT MORNING. THAT IS AS MUCH OF A CONTINUANCE AS THE TRIAL JUDGE WAS WILLING TO GRANT.

AT THE DECEMBER 99 HEARING, WAS THERE EVIDENCE PRESENTED IN THE FORM OF AFFIDAVITS OR OTHER FINANCIAL STATEMENTS FROM WHICH THE TRIAL JUDGE COULD CONCLUDE THAT YOUR CLIENT HAD NOT DEMONSTRATED A NEED FOR ATTORNEY'S FEES FROM THE WIFE?

I BELIEVE THERE WAS NOT EVIDENCE TO THAT EFFECT. IN FACT THE ORDER THAT THE JUDGE ENTERED AFTER THAT HEARING IS A DENIAL OF TEMPORARY ATTORNEY'S FEES WITHOUT PREJUDICE TO REAPPLY ONCE A LAWYER HAS BEEN RETAINED.

WHAT ABOUT THE FINANCIAL AFFIDAVIT THAT HAS BEEN FILED? THAT EVIDENCE, WHETHER IT WAS DISPUTED IS ANOTHER ISSUE. BUT DOESN'T THAT FURNISH EVIDENCE THAT THE HUSBAND WAS ABLE TO PAY FOR ATTORNEYS FEES HIMSELF?

THE DATE THAT I THINK MR. WEISSMAN JUST GAVE FOR THAT WAS APRIL OF 1998. I HAVEN'T SEEN THAT AFFIDAVIT ALSO UNFORTUNATELY. BUT THIS HEARING HAPPENED IN DECEMBER OF 1999. MY CLIENT STOPPED WORKING IN 1997 BECAUSE OF HIS HEART CONDITION. SO, THE AFFIDAVIT -- THE AFFIDAVIT ITSELF SOUNDS LIKE IT WAS AT LEAST A YEAR AND A HALF PRIOR TO THE TIME THEY HAD THIS HEARING AND MAY HAVE BEEN BASED ON INFORMATION GOING BACK TO WHEN MY CLIENT WAS STILL WORKING. HE WAS MAKING A PRETTY GOOD LIVING BACK THEN.

WE ARE GOING TO HAVE TO CONCLUDE ON THAT NOTE. WE WILL TAKE IT ON THE WRITTEN BRIEFS TOO. THANK YOU VERY MUCH. COURT IS GOING TO TAKE ITS REGULAR MORNING RECESS. BE IN RECESS APPROXIMATELY 15 MINUTES BEFORE WE HEAR THE NEXT CASE.

PLEASE RISE.