Elizabeth Sullivan v. Landon Cole Sapp

LAST CASE ON THE COURT'S DOCKET IS SULLIVAN VERSUS SAPP.

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GOOD MORNING.

YOU MAY PROCEED.

MAY IT PLEASE THE COURT, MY NAME IS GEORGE T REEVES AND I REPRESENT THE GRANDMOTHER, MRS. ELIZABETH SULLIVAN IN THIS CASE. IN THIS CASE, YOUR HONORS, THE FIRST DISTRICT COURT OF APPEAL DECLARED A STATUTE UNCONSTITUTIONAL. THAT STATUTE ALLOWED A VERY LIMITED REMEDY. IT ALLOWED A GRANDPARENT TO PETITION AND INTERVENE INTO EXISTING PROCEEDINGS TO SEEK VISITATION ONLY. NOT CUSTODY BUT VISITATION. IN EXISTING PATERNITY AND DISSOLUTION PROCEEDINGS. WE FEEL THAT THAT DECISION SHOULD BE OVERTURNED BY THIS COURT BECAUSE WE FEEL THAT THE, THAT THAT STATUTE IS CONSTITUTIONAL.

NOW THE TRIAL COURT DENIED INTERVENTION ON SEVERAL GROUNDS, CORRECT?

YES, YOUR HONOR.

AND ONE OF THE GROUNDS WAS, IT IS JUST ESSENTIALLY IT'S TOO LATE. WE ARE NOT LITIGATING THOSE ISSUES ANY MORE, WE HAVE ALREADY DONE THAT. THERE IS A FINAL JUDGMENT. WE ARE NOW REALLY ONLY ARGUING ABOUT THE ECONOMIC ISSUES, CORRECT?

CORRECT.

THEN WHY DID THE DCA HAVE TO REACH THE CONSTITUTIONAL QUESTION IF IT COULD SIMPLY HAVE AFFIRMED ON THAT GROUND?

IT MAY HAVE BEEN POSSIBLE TO AFFIRM ON THAT GROUND. IN THEIR MINDS AT LEAST. I DISAGREE THAT IT IS. I THINK THE DISTINCTION AND WHERE THE TRIAL COURT WENT WRONG WAS THAT IT HAD THIS BEEN A DISINCLUSION -- DISSOLUTION ACTION, PARENTAL RIGHTS ESTABLISHED AND RECOGNIZED AND WE WERE DISSOLVING A MARRIAGE AND DECIDING WHO HAD CUSTODY AND VISITATION OF CHILDREN, THAT ANALYSIS MIGHT BE CORRECT. BECAUSE AS SOON AS ONE PARENT SDIS, AUTOMATICALLY ALL THE RIGHTS ARE VESTED IN THE OTHER. IN THE SPECIFIC FACTS OF THIS CASE THOUGH YOUR HONOR, THE FATHER HAD NEVER HAD ANY PARENTAL RIGHTS RECOGNIZED AT ALL. UNTIL THE RENDITION, THE RENDITION OF THIS ORDER, THE FATHER HAD NO PARENTAL RIGHTS BECAUSE HELP NOT RECOGNIZED, HAD NOT CHOSEN TO RECOGNIZE THOSE PARENTAL RIGHTS.

DO YOU AGREE AT LEAST GIVEN OUR CASES AND OTHER CASES THAT SAY A COURT SHOULD NOT REACH A CONSTITUTIONAL ISSUE WHEN THERE ARE ADEQUATE NON-CONSTITUTIONAL GROUNDS ON WHICH TO BASE A DECISION, THAT AT LEAST WE NEED TO UNDERTAKE THE ANALYSIS FIRST OF WHETHER INTERVENTION WAS APPROPRIATE UNDER THE RULE AND THEN IF WE AGREE WITH YOU THAT INTERVENTION WAS APPROPRIATE, THEN REACH THE CONSTITUTIONAL ISSUE, BUT IF WE DISAGREE WITH YOU, THEN WE DON'T REACH THE CONSTITUTIONAL ISSUE? DO YOU AGREE

THAT'S THE ANALYSIS WE NEED TO UNDERTAKE?

AGREE -- I AGREE WITH THE PRINCIPLE COURTS SHOULD NOT REACH CONSTITUTIONAL ISSUES UNLESS THEY HAVE TO. IF THE COURT SHOULD DETERMINE INTERVENTION WAS IMPROPER, YOU WOULD HAVE TO SAY NO WE DON'T REACH THE CONSTITUTIONAL ISSUE. I THINK THOUGH YOUR HONOR THE FIRST ARGUMENTS IN MY CASE AND MY BRIEF WHERE I DEAL WITH EXPENSE VERSUS STEWART, THAT WOULD BE A PROPER ANALYSIS TO SAY WE HAVE TO REACH THESE INTERVENTION ISSUES FIRST. HOWEVER THE FINAL ARGUMENTS DEALING WITH THE 14TH AMENDMENT CLAIMS AS ESPOUSED IN JUSTICE STEVENS DISSENT UNDER TROXEL, THOSE WOULD NOT BE LIMITED TO INTERVENTION SETTING. I THINK THOSE WOULD SURVIVE EVEN IF YOUR HONOR SAID WELL, THE CASE WAS DECIDED.

BUT LET'S GO BACK, YOU SAID THAT THIS ONLY INVOLVES VISITATION, IT DOESN'T INVOLVE CUSTODY. WHY ISN'T THE, IF WE REACH THE CONSTITUTIONAL ISSUE AND YOU MENTIONED THE 14TH AMENDMENT. BUT WE ALSO HAVE THE FLORIDA'S CONSTITUTIONAL RIGHT OF PRIVACY. AND YOU HAVE ONLY ALLEGED BEST INTEREST, NOT HARM TO THE CHILD. WHY ISN'T THE BINIS CASE WHICH INVOLVES VISITATION WHERE ONE OR BOTH PARENTS OF THE CHILD ARE DECEASED REALLY DIRECT ON BOTH.

IT DIDN'T INVOLVE INTERVENTION. IT IS MY UNDERSTANDING. THE SPENCE VERSUS STEWART OUT OF THE FOURTH DCA DID AND WE FEEL WAS VERY MUCH ON POINT.

IF THERE IS NO RIGHT 0 TO HAVE VISITATION, THEN THERE IS NO RIGHT TO INTERVENE. I MEAN YOU DON'T EVEN GET TO THAT. IF YOU HAVE, IF IT IS THE, INSTEAD OF THE GRANDPARENT, IF IT WAS AN UNCLE, IF IT WAS A BROTHER, WOULD YOU AGREE THAT THERE, WHATEVER THE STAGE OF THE LITIGATION, THERE WOULD BE NO RIGHT TO INTERVENE?

CORRECT? IS THAT RIGHT?

I THINK I AGREE WITH THAT. IF I CAN BACK UP A SECOND. THE REASON BONE HE HAVEY, THEY DETERMINED VISITATION WAS NOT ALLOWABLE WAS BECAUSE OF FLORIDA'S RIGHT TO PRIVACY.

SPENCE VERSUS STEWART, FOURTH DISTRICT COURT DETERMINED THAT FLORIDA'S RIGHT TO PRIVACY DOES NOT APPLY WHERE YOU ARE INTERVENING IN EXISTING PROCEEDINGS. IN SPENCE VERSUS STEWART THE FOURTH DCA DETERMINED -- I'M SORRY.

BECAUSE SPENCE PROCEEDED ALL THOSE SERIES OF CASENESS THIS COURT WHICH EACH AND EVERY TIME HAVE SAID THAT ANY ABILITY OF A GRANDPARENT TO SEEK VISITATION OR CUSTODY BASED ON SOLELY AN ALLEGATION OF THE BEST INTEREST OF THE CHILD WAS INTERFERENCE WITH THE PARENTAL RIGHT OF PRIVACY. CORRECT?

I DON'T THINK SPENCE -- WELL LET ME BACK UP A SECOND. SPENCE DID PRECEDE MANY OF THESE CASES. FOURTH DCA REAFFIRMED SPENCE IN KOOLIDGE, THAT WAS DECIDED AFTER ALL THE CASES EXCEPT I THINK RICHARDSON.

IS THIS CASE NOW ALSO IN CONFLICT WITH, DID YOU ALLEGE A CONFLICT BASIS FOR JURISDICTION IN THIS CASE?

WE WERE NOT REQUIRED TO YOUR HONOR BECAUSE THE FIRST DCA RULED THAT THE STATUTE WAS INVALID. SO WE HAD APPEAL JURISDICTION TO THIS COURT.

UNDER, THERE IS NOT EVEN A COMPARABLE STATUTE FOR INTERVENTION UNDER THE PATERNITY STATUTE ANYWAY. SO I'M TRYING TO SEE WHAT YOUR BASIS WOULD BE, ASSUMING SOMETHING IS CONSTITUTIONAL TO SEEK IT UNDER THE DISSOLUTION STATUTE.

IN SPENCE VERSUS STEWART ALSO ADDRESSED THAT YOUR HONOR AND THEY DETERMINED THIS STATUTE WOULD BE AUTHORITY IN A PATERNITY ACTION, SPENCE WAS A PATERNITY ACTION. THEY DETERMINED THIS STATUTE WOULD ALLOW INTERVENTION IN A DISSOLUTION PROCEEDING. IF I CAN FOLLOW-UP ON THAT POINT, CASE LAW UP TO NOW HAS SAID WHEN YOU PLACE GRANDPARENTS IN THE SAME STANDING AS PARENTS, WHEN YOU SAY GRANDPARENTS, YOU MAY INTERVENE IN A PROCEEDING UNDER THE BEST ISSUE OF THE CHILD STNT, THAT MAY BE IMPROPER. THIS COURTEM FAT KICK -- EMPHATICLY SAID THAT. USES THE TERM CHILD'S BEST INTEREST. WE FEEL THAT IS MORE THAN A SIM MAT TICK DIFFERENCE. UNDER THE 6113 THREE, THEY DEFINE OR AT LEAST GIVE A WORKING DEFINITION OF BEST INTEREST OF THE CHILD. AND THAT STATUTE SPECIFICALLY LIMITS ITS APPLICATION TO SHARED PARENTAL RESPONSIBILITY AND PRIMARY RESIDENTS. THEREFORE, THE LEGISLATURE EXCLUDED GRANDPARENT VISITATION FROM THAT DEFINITION WORKING DEFINITION ALBEIT OF BEST INTEREST OF THE CHILD. WE THINK CHILD'S BEST INTEREST, SINCE THAT HAS NOT BEEN DEFINED BY THE LEGISLATURE, IS LEFT TO THE COURTS. SPECIFICALLY THIS COURT.

REALLY, YOU ARE ARGUING TO THIS COURT THAT THERE IS A DIFFERENCE BETWEEN CHILD APARTMENTS BEST INTEREST AND BEST INTEREST OF THE CHILD?

I AM ARGUING UNDER 6113 THE FLORIDA LEGISLATURE DEFINED ONE, DID NOT DEFINE THE OTHER. AND SPECIFICALLY, SPECIFICALLY YOUR HONOR LIMITED ITS DEFINITION TO SHARED PARENTAL RESPONSIBILITY AND PRIMARY RESIDENCE.

SO WE ARE NOT HERE ON A STAT TEAR CONSTRUCTION QUESTION. WE ARE -- THERE IS, YOU HAVE NOT ALLEGED HARM TO THE CHILD. HAVE YOU?

WE HAVE NOT.

OKAY. SO WE ARE REALLY JUST SAYING IT WOULD BE A GOOD THING FOR THIS CHILD AND I WOULD AGREE IT WOULD BE A GOOD THING FOR THE CHILD TO BE ABLE TO HAVE CONTACT WITH HIS OR HER MATERNAL GRANDMOTHER. IT'S A TRAGIC SITUATION THAT OCCURRED IN THIS CASE WITH THE UNTIMELY DEATH OF THE MOTHER. I WOULD HOPE THAT THE FATHER WOULD SEE FIT TO ALLOW THE GRANDMOTHER TO HAVE VISITATION. TISSUE IS, IS ABSENT ANY HARM TO THE CHILD, DOES THE COURT INTERVENE IN A PARENT-CHILD RELATIONSHIP WITH REGARD TO REQUIRING VISITATION FROM A GRANDPARENT OR TO ME ANY OTHER CLOSE RELATIVE?

THE ONLY REASON THAT THIS COURT IMPOSED THAT STANDARD, THE ONLY REASON THAT THIS COURT HAS THE AUTHORITY TO OVERTURN AN ACTION OF THE LEGISLATURE IS BECAUSE OF THE RIGHT TO PRIVACY. WHAT THE FOURTH DISTRICT COURT DECIDED WAS THAT THAT RIGHT TO PRIVACY DID NOT EXIST IN EXISTING PROCEEDINGS. AND THE REASON IS, THAT NO PARENT HAS THE RIGHT TO ABSOLUTELY CONTROL THE DECISIONS OF THEIR CHILD ABSENT THE AGREEMENT OF THE OTHER PARENT. IF THEY'RE GOING -- IN ORDER TO MAKE THOSE ABSOLUTE DECISIONS, THEY HAVE TO INVOKE, INVOKE THE POWERS OF THE STATE AND REQUEST THE STATE TO INTERVENE IN THAT. AND THE FOURTH DCA SAID ONCE YOU DO THAT, YOU CANNOT BOTH INVITE THE STATE IN AND THEN PROHIBIT THE STATE FROM TAKING ACTION IN YOUR CIRCUMSTANCES. AND SO THEREFORE WE THINK THAT THAT CASE IS PERHAPS EVEN TOO BROAD OF A STATEMENT. BUT IN THIS CASE, THE FATHER --.

COULD YOU AGREE THAT THAT WOULD REALLY SAY THAT ANY DIVORCE CASE, THAT THAT WOULD COME UP, ANY CASE, ALL THE OTHER CASES WE HAVE DECIDED THERE WAS AN INITIAL COURT -- I DON'T KNOW ALL OF THEM, BUT SOME OF THEM INVOLVED, SO IF THERE IS A DIVORCE CASE, IF THERE WAS A TERNT CASE, ANYTHING, THEN UNDER THE FOURTH DISTRICT'S RATIONAL, THEN THEY'D BE GIVING UP THEIR RIGHT OF PRIVACY. AND I RECALL THAT ISSUE, I THOUGHT WAS ALREADY SETTLED BY THIS COURT.

I'M NOT ARGUING ALL THOSE CASES. I REALLY DON'T HAVE THAT BROAD OF A SCOPE HERE. I

THINK THOUGH IN THIS CASE, IN THIS CASE, THE FATHER WOULD HAVE NO RIGHTS WITHOUT THIS ACTION. IF HE HAS NO RIGHTS WITHOUT THIS ACTION, HOW CAN HE COMPLAIN IF THE COURT TAKES ACTION THAT HE HAS TO HAVE TO HAVE HIS PARENTAL RIGHTS? SO, BUT AS ONE FINAL POINT, WE HAVE ALSO ALLEGED AND WE ALLEGED BELOW A 14TH AMENDMENT CLAIM. THAT CLAIM WAS FLESHED OUT BY JUSTICE STEVENS IN THE TROXEL CASE, AND THE UNITED STATES SUPREME COURT CASE. WE THINK THE LOGIC OF THAT CASE IS REALLY INESCAPEABLE BECAUSE WHAT IT SAYS IS, WHAT THAT SAYS IF THE PARENT HAS A RIGHT TO A RELATIONSHIP WITH THE CHILD, SURELY THE CHILD HAS A RIGHT TO A RELATIONSHIP WITH MEMBERS OF ITS FAMILIES. WE DON'T SAY THOSE RIGHTS ARE THE SAME. WE DON'T SAY THAT THE PARENT AND THE CHILD HAVE EQUAL RIGHTS BY ANY MEANS. BUT THAT RIGHT SHOULD BE THERE. AND WE FEEL --.

PROBLEM WITH THAT OPINION IS IT WAS A DISSENT, RIGHT, SO IT IS CONTRADICTING WHAT THE MA JOFERNT U.S. SUPREME COURT SAID WOULD BE A VIOLATION OF THE 14TH AMENDMENT. WE AGREED WITH JUSTICE STEVENS, WE'D BE CONTRADICTING THE UNITED STATES SUPREME COURT.

I AGREE IT WAS A DISSENT. I DO NOT AGREE THAT IT WOULD CONTRADICT THE MAJORITY OPINION. THE MAJORITY OPINION WAS DEALING WITH A STATUTE OUT OF I BELIEVE WASHINGTON OR OREGON, THAT HAD ALLOWED FOR GRANDPARENT VISITATION. AND THAT CASE, NO ONE HAD RAISED THE RIGHTS OF THE CHILD. JUSTICE STEVENS SAID WELL, YOU KNOW WE ARE DEALING WITH THIS ISSUE BUT I THINK AN ISSUE THAT WILL PROBABLY COME UP IS THE FACT THAT THE CHILD HAS RIGHTS AS WELL.

HOW WOULD YOU LIMIT THAT? BECAUSE IF YOU TAKE YOUR ARGUMENT TO ITS LOGICAL CONCLUSION, THEN ALL THESE OTHER CASES ABOUT GRANDPARENTS VISITATION WOULD BE WRONG BECAUSE A CHILD COULD INTERVENE AND CHANGE, NOT INTERVENE BUT HAVE A GUARDIAN AND THEN CHANGE ALL OF THAT. SO HOW DO YOU DRAW THE LINE BETWEEN ALL OF THESE OTHER CASES WHERE WE HAVE SAID THAT YOU CANNOT, THE GRANDPARENT HAS NO RIGHTS IN THIS CASE?

WELL FIRST OFF IN THOSE OTHER CASES I DON'T BELIEVE, I HAVE REVIEWED THE BRIEFS THAT ANYONE EVER RAISED THE ISSUE OF THE CHILD'S RIGHTS.

IT MAY NOT HAVE BEEN AN ISSUE RAISED BUT I'M SAYING WE HAVE TURNED THIS ON ITS HEAD. AND IF WE FOLLOW THAT ARGUMENT, ANY OF THESE CASES, THE CHILD COULD COME IN AND SAY WELL I WANT TO HAVE THIS.

CERTAINLY THAT'S A CONCERN. WE THINK THE GOOD MIDDLE GROUND THAT THIS COURT COULD DRAW WOULD BE THE SAME MIDDLE GROUND REACHED BY THE MISSOURI SUPREME COURT IN THE BLAKELY CASE. IN THAT CASE THAT COURT APPROVED AND ADMIT LD MISSOURI DOES NOT HAVE A SIMILAR STATE RIGHT TO PRIVACY. BUT WHAT THAT COURT FOUND WAS A SCHEME THAT ALLOWED GRANDPARENT A LIMITED VISITATION ONCE EVERY 30 DAYS, SET UP A PROCEDURAL SAFE GUARDS, THAT THAT WAS ACCEPTABLE BECAUSE THAT.

ISN'T THE RIGHT TO PRIVACY REALLY IMPORTANT DISTINCTION HERE? THE STATE CONSTITUTIONAL RIGHT TO PRIVACY REALLY IS QUITE A DISTINCTION FROM THIS, WHAT GOES ON IN THIS STATE AND WHAT GOES ON IN MISSOURI?

RESPECTFULLY YOUR HONOR, IF THE 14TH AMENDMENT GRANTS THE CHILD A RIGHT, THEN THE RIGHT TO PRIVACY THOUGH IMPORTANT COULD NOT OVERRULE THAT.

YOU HAVE ALREADY AGREED THAT THE U.S. SUPREME COURT, IT IS NOT A PRONOUNCEMENT FROM THE U.S. SUPREME COURT.

CORRECT.

THANK YOU VERY MUCH.

COUNSEL?

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MAY IT PLEASE THE COURT, YOUR HONOR, HARVEY BAXTER FROM GAINESVILLE REPRESENTING MR. SAPP THE FATHER OF THE CHILD. I'D START WITH THE QUESTION, IS THE STATUTE PROVIDING FOR GRANDPARENT VISITATION CONSTITUTIONAL? I BELIEVE THE FIRST DISTRICT COURT WAS EMINENTLY CORRECT IN FOLLOWING RICHARDSON.

DOES SPENCE V STEWART HAVE TO BE DISPROVED IN THE SUBSEQUENT CASE?

I THINK SPENCE CASE YOUR HONOR IS IF YOU'RE TALKING ABOUT SHOULD -- JUST A SECOND. THE SPENCE CASE IS IN CONFLICT WITH THE FIRST DISTRICT COURT. BUT IT WAS NOT A CONSTITUTIONAL ISSUE AT THAT LEVEL. AND THE FOURTH DCA. WHAT I WOULD ARGUE, I BELIEVE THE SPENCE CASE CAN BE DISTINGUISHED THROUGH JUSTICE KLINE'S DISSENT IN THE SAUL BETTER NETY AT THE LOWER LEVEL, FOURTH DCA IN SAUL BERTH ANY -- BETTER NETTY. I THINK THE QUESTION JUDGE KLINE, IF I COULD QUOTE AND SOMEWHAT PAR FREIGHT, IT IS CONCURRING OPINION HE QUESTIONS THE CORRECTNESS OF THE LOGIC IN SPENCE AND THAT WAS ALSO FOLLOWED BY THE FIRST DCA AS WELL AS THE SECOND DCA IN CASES SAYING THAT THERE IS SOMETHING ESSENTIALLY UNFAIR AND HOLDING A FATHER WHO HAS SUMMONS TO APPEAR BEFORE AND PARTICIPATE IN THE COURT TO ADDRESS PATERNITY AND SUPPORT ISSUES GIVES UP HIS CONSTITUTIONAL RIGHT AGAINST PRIVACY FOR FORSD VISIT, GRANDPARENT VISITATION WHEN THE FATHER WHO HAS NOT GONE TO COURT, DOES NOT GIVE UP THIS RIGHT TO PRIVACY. SO I THINK, I WOULD ARGUE AGAINST SPENCE BEING VALID ESPECIALLY IN LIGHT OF RICHARDSON BECAUSE I SEE THE SEQUENCE OF CASES ON GRANDPARENT VISITATION HAVE RUN FROM DEALING WITH JUST 752, THE GRANDPARENT VISITATION STATUTE, GRANTED THIS IS AN INTERVENTION STATUTE, WHICH IS SEPARATE. THE LOGIC OF EACH OF THOSE CASES IS THE RIGHT TO PRIVACY THAT A PARENT HAS. THEY DON'T GIVE UP THAT RIGHT TO PRIVACY JUST BECAUSE THEY COME IN AND ARE INTO COURT, BE IT A DISSOLUTION OR PATERNITY ACTION. THEY'RE IN COURT BECAUSE THEY'RE SUMMONED.

ISN'T THE RIGHT TO PRIVACY THAT WE ARE TALKING ABOUT MORE THAN A RIGHT TO HAVE THINGS OUT IN THE PUBLIC OPEN, BUT THE RIGHT TO PRIVACY WHEN WE'RE TALKING ABOUT PARENTS AND CHILDREN, IS THE RIGHT OF THE PARENT TO RAISE AND MAKE DECISIONS TO RAISE THEIR CHILDREN AND MAKE DECISIONS ABOUT THEIR CHILDREN'S WELFARE AND WELL BEING THIS? THAT'S THE RIGHT OF PRIVACY THAT WE ARE REALLY TALKING ABOUT.

THAT'S THE RIGHT OF PRIVACY I BELIEVE THAT MY CLIENT HAS HERE. THERE HAS BEEN NO DEMONSTRABLE HARM PLED OR ARGUED AT ANY POINT ALONG HERE. SO THAT RIGHT TO PRIVACY, THE RIGHT TO HAVE AND RAISE YOUR CHILD WITHOUT COURT INTERFERENCE, WITHOUT DEMONSTRABLE HARM IS THE BASIS I BELIEVE HIS RIGHT TO PRIVACY PREVAILED IN THE FIRST DCA FOUND THE STATUTE WAS UNCOUNSELS -- UNCONSTITUTIONAL. THAT'S WHAT --.

CAN YOU ADDRESS WHETHER REGARDLESS OF THE CONSTITUTIONALITY OF THE STATUTE, INTERVENTION WAS APPROPRIATE IN THIS CASE AND IF IT WAS NOT APPROPRIATE, WHY SHOULDN'T WE JUST REST OUR DECISION ON THAT GROUND?

YOUR HONOR, THE INTERVENTION WAS ALLOWED ONLY NARROWLY BECAUSE OF 6113. WHICH WAS RELIED ON. IF YOU RELY ON 6113 FOR INTERVENTION, YOU'D ALSO HAVE TO AGREE UNDER 6113 THE GRANDPARENT VISITATION PORTION OF THAT SECTION 2 B 2 C, YOU HAVE NOTHING TO INTERVENE FOR BECAUSE YOU'RE ASKING FOR SOMETHING THAT'S NOT CONSTITUTIONALLY PERMISSIBLE.

WELL MY UNDERSTANDING OF THE LOWER COURT'S ORDER IS PARAGRAPH 8 IS THE ONLY ISSUES LEFT REMAINING FOR THE COURT TO DECIDE WERE ECONOMIC IN NATURE, NOT THE RELATIONSHIP BETWEEN THE INTERVENOR AND THE CHILD. THERE THUS WAS NO VISITATION MATTER AT ISSUE IN WHICH SHE COULD INTERVENE. SO THE FIRST GROUND ON WHICH THE TRIAL COURT DENIED INTERVENTION IT APPEARS TO ME IS THE FACT THAT SHE WAS TOO LATE. THAT AN INTERVENOR TAKES THE CASE AS THE INTERVENOR FINDS IT AND AT THIS POINT IT WAS POST JUDGMENT. THERE WERE NO CUSTODY ISSUES LEFT, TISSUES WERE ONLY ECONOMIC IN NATURE AND THEREFORE THE RELIEF SHE WAS SEEKING WAS BEYOND THE SCOPE OF INTERVENTION.

THAT'S CORRECT.

AND DO YOU AGREE WITH THAT?

I AGREE, YES, I AGREE WITH THAT LOGIC.

WHY SHOULDN'T WE ADOPT THAT LOGIC AS WELL AND THEREFORE AVOID THE CONSTITUTIONAL QUESTION?

YOUR HONOR, THE CONSTITUTIONAL ISSUE'S BEEN RAISED BY THE FIRST DCA AND I WOULD SUGGEST IN IN ALTHOUGH BELOW YOU DO HAVE A CONFLICT BETWEEN SPENCE AND THIS CASE BELOW.

AND WHY DID THE FIRST DCA REACH THE CONTUSIONAL ISSUE IF THERE WAS AN ADEQUATE NON-CONSTITUTIONAL GROUND ON WHICH TO BASE AN AFFIRMMANS?

YOUR HONOR, I CAN'T SPEAK FOR THEM. I'M NOT SURE WHY THEY DID THAT. THEY HAD OTHER OPTIONS AND THIS STAGE PLEASED WITH THEIR RULING AND HOPE YOU WILL BE AS WELL.

TELL US THE TIMING OF THIS NOW.

SEQUENCE OF EVENTS?

RIGHT.

YOUR HONOR, THIS CHILD WAS BORN IN SEPTEMBER OF 2000. THERE WAS AN ACTION BROUGHT I BELIEVE IN THE FALL OF TUNE.

SO UP AND THROUGH THE FALL OF 2001, YOUR CLIENT HAD NOT ACKNOWLEDGED PATERNITY?

HE HAD NOT IN A LEGAL SENSE.

HE WAS NOT PROVIDING ANY SUPPORT FOR THE CHILD?

WELL YOUR HONOR, I WOULD SUGGEST THAT HE HAD PROVIDED SOME SUPPORT POSSIBLY. NOT WHAT WOULD BE PROVIDED UNDER 6130. BUT HE HAD PROVIDED SOME ASSISTANCE TO THE CHIRBLTIOND HAD ACKNOWLEDGED THE CHILD. THE CHILD IN FACT HAD BEEN WITH HIS FAMILY.

WHEN THIS ACTION WAS FILED PRIOR TO THE MOTHER'S DEATH, DID HE CONTEST PATERNITY?

HE CONTESTED ONLY AS TO TISSUE TO HAVE A DNA TEST. AND THAT WAS, YOUR HONOR, THAT WAS ON ADVICE OF COUNSEL.

WELL DID HE ADMIT TO PATERNITY?

HE ADMITTED TO PATERNAL UPON RESOLUTION OF THE TEST RESULTS. WE PROCEEDED TO A HEARING WHERE WE TRIED TO FLESH OUT WHAT WE HAD IN AN AGREEMENT ON MARCH 1ST OF

2001. AND WE LAID OUT WHAT WE BELIEVED BY ACKNOWLEDGING PATERNITY ANNOUNCING THAT ON THE RECORD TO THE TRIAL JUDGE EVERYTHING THAT WE HAD AGREED TO AT THAT POINT. THE TRIAL JUDGE HAD RULED ON THE GRANDPARENT INTERVENTION WAS NOT THE SAME JUDGE WHO RULED ON THE, ACCEPTED THE EVIDENCE AND.

WHAT MY QUESTIONS REALLY GO TO IS THIS BACK TO THE, YOUR COMMENTS WERE ABOUT THE JUDGE KLINE'S OPINION IN THE FOURTH DISTRICT CASE. IN FACT IN THIS TYPE OF SITUATION, THE FATHER HAS RESISTED THE ACKNOWLEDGMENT THAT THIS WAS HIS CHILD UP UNTIL SUCH TIME AS THE STATE HAD TO COME IN, BECOME INVOLVED. IS THAT NOT CORRECT?

YOUR HONOR, I DON'T THINK LEGALLY HE HAD NOT BEEN DETERMINED TO BE THE FATHER. PRACTICALLY HE HAD PREVIOUSLY ACKNOWLEDGED THE CHILD. DID HE HAVE ANY LEGAL VITS VIS-A-VIS THE CHILD THAT HE COULD ENFORCE? NO BECAUSE HE HAD NOT GONE TO THE COURT AS A PROACTIVE FATHER TO HAVE THAT RESOLVED.

WAS THIS ACTION NECESSITATED BY THE MOTHER BEING A RECIPIENT OF PUBLIC BENEFITS?

NO IT WAS NOT YOUR HONOR. IT WAS BROUGHT BY PRIVATE COUNSEL.

AS FAR AS THE TIMING, I'M SORT, ANOTHER ASPECT OF IT, IN TERMS OF WHEN THE GRANDPARENT COULD HAVE INTERVENED -- THIS IS THE MOTHER OF THE.

OF THE DECEASED MOTHER.

THE MOTHER DIDN'T DIE UNTIL THE FINAL JUDGMENT HAD BEEN ENTERED?

CORRECT. THE FINAL JUDGMENT WAS ENTERED IN I BELIEVE IT WAS MARCH 14, TWO WEEKS AFTER THE TRIAL ITSELF. THERE WAS AN INTERVENING MOTION REGARDING VISITATION THAT WAS DEALT WITH PARTIALLY. IT WAS SET FOR AUGUST SECOND.

DID THE GRANDMOTHER INTERVENE?

SHE DID NOT IN ANY VISITATION ISSUES. SHE HAD NOT INTERVENED AT ANY TIME PRIOR TO HER DAUGHTER'S DEATH.

WHAT REASON WOULD SHE HAVE HAD IF HER DAUGHTER WAS STILL ALIVE. PRESUMABLY SHE WAS ABLE.

PRACTICALLY SPEAKING, NONE YOUR HONOR.

SO IN TERMS OF THIS ISSUE ABOUT WHETHER INTERVENTION SHOULD'VE HAPPENED POST JUDGMENT, IT IS NOT LIKE THE GRANDMOTHER SAT ON HER RIGHTS UNTIL IT WAS TOO LATE. REALLY THIS WAS THE FIRST PRACTICAL TIME SHE WOULD HAVE HAD REASON TO BE HARMED BY NOT HAVING VISITATION.

THAT'S CORRECT.

I MEAN I ASSUME THE FATHER I DON'T KNOW IF THE RECORD, SOMEHOW I REMEMBER READING THAT THERE WAS SOME ATTEMPT TO WORK OUT OR THE JUDGE SAID CAN'T YOU WORK THIS OUT?

OH, YES, YOUR HONOR.

AND I GUESS I'M ASKING YOU HERE, SINCE I HATE THIS THOUGHT THAT WE HAVE GOT THESE HARD AND FAST RULES AND THE COURTS GET INVOLVED IN THIS INTIMATE FAMILY MATTERS, WHY THIS CAN'T BE WORKED OUT WITHOUT THIS COURT HAVING TO ORDER VISITATION. I MEAN WHY WOULDN'T YOUR CLIENT BE VERY HAPPY TO HAVE THE MATERNAL GRANDMOTHER VERY

ACTIVELY INVOLVED IN THIS CHILD'S LIFE AS A MATTER OF, PRIVATE MATTERS, NOT AS A MATTER OF A COURT.

IT IS A PRIVATE MATTER SURELY YOUR HONOR, THAT'S THE WAY THIS MATTER SHOULD GO. THE DIFFICULTY IN THIS CASE IS, THE ACCIDENT WAS JULY 25TH, I BELIEVE. OUR HEARING WAS SET FOR THE SECOND AS IT TURNED OUT OF AUGUST, A WEEK LATER. ON THE THIRD OF AUGUST SHE FILED HER INTERVENTION MOTION. BASED ON THAT AND OTHER FACTORS, THEY'RE NOT IN THE RECORD BUT THEY'RE PRACTICAL, IS THAT THERE HAD BEEN SOME DISAGREEMENTS AMONG THE TWO FAMILIES PRIOR TO THAT. I THINK THERE BECAME HARDENING OF POSITIONS BECAUSE A LAWSUIT WAS BROUGHT. THAT'S THE PRACTICAL ANSWER TO THE QUESTION ASKED. ALTHOUGH IT IS NOT PLED. IT IS A PRIVATE ISSUE THAT I BELIEVE, AND I WOULD PRAY THAT NOT ONLY THIS FAMILY BUT ALL FAMILIES WOULD BE ABLE TO WORK THAT OUT BECAUSE IT'S A VERY DIFFICULT THING AS A GRANDPARENT, TO THINK OR SUGGEST THAT ONE WOULD NOT HAVE TO BE ABLE TO SEE THEIR GRANDCHILD. I THINK THEN WE'RE BACK TO THE OTHER SIDE. AT WHAT POINT IS THE STATE GOING TO COME IN WITHOUT A SHOWING OF HARM, CHAPTER 39, IF THERE IS A HARM, LET'S SEE THE HARM. CHAPTER 39 WOULD OPEN THAT AVENUE. THAT'S NOT BEEN RAISED AT ANY TIME IN THIS. I THINK WE ARE IN A POSITION TODAY, OTHER ARGUMENT BY COUNSEL JUST VERY BRIEFLY, MISSOURI STATUTE IS INTERESTING. IT HAS NO HARM. I THINK THE LEGISLATURE HAS TRIED HARD TO FIND THE MIDDLE GROUND FOR THIS AND I'M NOT SURE THAT THERE IS ONE AND I WOULD HOPE THEY WOULD TRY AGAIN AND FIND SOMETHING THAT MIGHT WORK. BUT I DON'T BELIEVE IF YOU ALLOW 6113 TO SEEK, TO STAY, IT JUST DOESN'T FOLLOW LOGICALLY THAT CONSTITUTIONALLY IT CAN BE VALID IF EVERYTHING ABOVE IT THROUGH BERN NETY, VON EVE, SAUL, NOT RICHARDSON, HOW CAN THIS STATUTE STAND?

THANK YOU VERY MUCH.

MR. MARSHAL, HOW MUCH TIME?

YOUR HONOR, BRIEF REBUTTAL, SPENCE VERSUS STEWART DID SPECIFICALLY DEAL WITH THE RIGHT TO PRIVACY. AND SPECIFICALLY SET OUT RIGHT TO PRIVACY. SO IT DID REACH THE KOBS TUTIONAL ISSUE. THIS CASE, AT THE FOURTH DISTRICT AT LEAST WAS REAFFIRMED IN A CASE CALLED SMITH VERSUS KOOLIDGE.

SO IT IS IN CONFLICT?

NESS THE CONFLICT. FIRST DCA DID NOT CERTIFY BUT IT IS IN CONFLICT. SPECIFICALLY ON THE CONSTITUTIONAL ISSUE. THAT SHOULD BE A PRACTICAL REASON THIS COURT SHOULD DETERMINE THE CONFLICT. UNDER THE SPENCE VERSUS STEWART REASONING THOUGH, I THINK THE BROAD STATEMENT THAT THEY MADE CAN BE COMPRESSED BY THE FACTS OF THIS CASE, THE BROAD STATEMENT IS ANY TIME YOU COME TO COURT YOU WAIVE THE RIGHT TO PRIVACY. THAT IS NOT WHAT WE ARE HERE ABOUT. IN THIS CASE, AS JUSTICE WELLS ALLUDED TO, THE FATHER HAD NO LEGAL RIGHTS BEFORE THIS CASE. HE CANNOT COMPLAIN THAT THE STATE IS IS INVOLVED IN HIS AFFAIRS WITH HIS CHILD BECAUSE WERE THE STATE NOT INVOLVED, HE WOULD HAVE NO RIGHTS. THOSE RIGHTS SIMPLY WOULD NOT EXIST. DEALING WITH THE INTERVENTION THOUGH I WOULD LIKE TO CORRECT ONE THING I SAID PREVIOUSLY JUSTICE CAN TERRA. WITH THE ENTER -- CANTERO. THE REASON THIS COURT COULD NOT DECIDE THIS JUST ON INTERVENTION, THE INTERVENTION IS REQUIRED UNDER MY ANALYSIS, UNDER 6113, THE STATUTE AT ISSUE HERE. THE OTHER STATUTES HAVE BEEN STRICKEN BY THIS COURT SO THERE HAS TO BE INTERVENTION. IF THERE IS NO INTERVENTION -- IF INTERVENTION IS NOT PROPER YOU CAN'T TRAVEL UNDER THAT STATUTE.

BUT THE GROUND FOR DENYING INTERVENTION WAS DIFFERENT. POINT IN TIME WHEN INTERVENTION WAS REQUESTED, THE RELIEF REQUESTED WAS NO LONGER AVAILABLE BECAUSE THE INTERVENOR FINDS THE CASE AS IT IS AT THE TIME CAN'T GO BACK IN TIME TO ISSUES THAT

WERE PREVIOUSLY DETERMINED. AND THESE ISSUES OF CUSTODY AND VISITATION HAD ALREADY BEEN DETERMINED. THE ONLY ISSUES LEFT WERE ECONOMIC AND THE GRANDMOTHER WAS NOT MAKING AN ECONOMIC ARGUMENT. ON THAT BASIS THAT'S WHAT, WHY THE TRIAL COURT DENIED INTERVENTION.

AND I AGREE WITH THE STATEMENT THAT THE INTERVENOR FINDS, OR TAKES THE CASE AS SHE FINDS IT. BUT THIS CASE, WHAT HAD HAPPENED, THE FINAL JUDGMENT HAD BEEN ENTERED. A TIMELY MOTION FOR REHEARING, A TIMELY MOTION FOR REHEARING HAD BEEN FILED. THAT MEANT THAT THE TRIAL COURT CONTINUED TO HAVE JURISDICTION OVER THAT FINAL JUDGMENT.

THE REHEARING IS ONLY ON ECONOMIC ISSUES. THAT IS THE REASON FOR HIS QUESTION.

CORRECT.

THE WHOLE THING IS OPEN IF THE ENTIRE ISSUE IS OPEN, THEN THE CASE IS MOOTED BECAUSE THE, YOU DON'T BY FUR INDICATE IT AND THE OLD LAW IS IT DIES, THE WHOLE CASE DIES.

THE OLD LAW WAS THAT, THAT WAS DISSOLUTION LAWRENCE. IF THIS CASE, IF WE COULD ANATURAL GIST TO A DISSOLUTION CASE, WERE THESE A DISSOLUTION CASE, YOU'RE RIGHTS, THE RIGHTS OF ONE PARENT TAKES, HAS ALL RIGHTS TO THE CHILD. THIS IS A PATERNITY CASE.

DID THE TRIAL COURT IN FACT, BECAUSE WHEN THE TRIAL COURT ACTED IN AUGUST, THE MOTHER WAS DECEASED, CORRECT?

CORRECT.

DID THE TRIAL COURT MAKE ANY CHANGES TO THE FERMS OF THE FINAL JUDGMENT BECAUSE OF THE DEATH OF THE MOTHER?

NO YOUR HONOR, THE TRIAL COURT DID NOT BECAUSE IT DIED OUR MOTION TO INTERVENE. THERE IS NO ONE TO REQUEST A CHANGE TO THE FINAL JUDGMENT.

THANK YOU.

THANK YOU BOTH. VERY MUCH. COURT WILL NOW STAND IN RECESS UNTIL 9:00 TOMORROW MORNING.

PLEASE RISE.