Henry H. Blanton v. City of Pinellas Park

CHIEF JUSTICE: GOOD MORNING AGAIN AND WE APPRECIATE COUNSEL BEING READY IN THE CASE OF BLANTON VERSUS CITY O F PINELLAS PARK. IF COUNSEL IS READY , YOU MAYPROCEED.

GOOD MORNING , YOUR HONORS. MAY IT PLEASE THE COURT. I AM STEVEN BRANNOCK ON BEHALF OF HOLLAND & KNIGHT , HERE TO PARTICIPATE IN THIS ACTION . WE ARE DEALING WITH STATUTORY NECESSITY.

ARE WE DEALING WITH A STATUTORY CONSTRUCTION ISSUE? IS THAT WHAT WE ARE DEALINGWITH IN THIS CASE?

YES. WE THINK IT IS A STATUTORY CONSTRUCTION ISSUE. WE THINK THAT MARTA DOES NOT EXTINGUISH STATUTORY WAIVES OF NECESSITY. IT HAS NOTHING TO DO WITH THE CHAIN OF TITLE. INSTEAD IT IS A LEGISLATIVE SAFETY VALVE, A REMEDY THAT ALWAYS EXISTS , WHENEVER THE PROPER CIRCUMSTANCES

HOW , BY READING THE ACTUAL STATUTE , DO YOU GET TO THAT? I MEAN, YOU ARE TALKINGABOUT THE PURPOSE OF THE STATUTE, WHICH I S TO EXTINGUISH STALE TITLECLAIMS, BUT ACTUALLY LOOKINGAT THE LANGUAGE OF THE STATUTE , HOW DO YOU GETTHERE?

IN LOOKING AT 704.012 , WHICH IS THE STATUTE WAYS OF NECESSITY , I THINK THE VERY IMPORTANT IS THE VERY FIRSTLANGUAGE OF THE STATUTE, WHICH STATES THAT THE STATUTORY NECESSITY , EXCLUSIVE OF ANY COMMON LAW RIGHT, EXISTS , AND ESSENTIALLY ENUMERATES FROM THERE.

YOU GET AWAY FROM ANY STATUTE GOVERNING THE STATUTORY WAY OF NECESSITY. I WAS ASKING, WHEN YOU GO TO THE MARKETABLE TITLE ACT , HOW DO YOU DETERMINE THAT THOSE STATUTORY RIGHTS OF NECESSITY ARE EXCLUDED, THERE IS NOT , IN OTHER WORDSTHERE , IS NO EXPLICIT STATEMENT.I GUESS THAT IS I N EITHER STATUTE , IS THERE, A S T O STATUTORY WAYS OF NECESSITY ARE EXCLUDE FROM THE MARKETABLE TITLE , FROM THESCOPE OF IT , OR THAT THE STATUTE THAT TALKS ABOUT STATUTORY WAYS OF NECESSITY DOES NOT APPLY. WE DON'T HAVE THOSE KINDS OF STATEMENTS.

THAT'S TRUE.THERE IS NO SPECIFIC REFERENCE TO A STATUTORY WAY OF NECESSITY. I THINK THE CLOSEST PROVISION IN THE MARKETABLE TITLE ACT I S 712.04, WHICHSAYS THAT AIN'T REST IS EXTINGUISHED , WHEN IT PRECEDES, WHEN IT ARISES OUT OF THE TITLE AND THE DATE THAT PRECEDES THE ROOT OF THE TITLE , AND THAT IS WHY A STATUTORY WAY OF NECESSITY IS VERY DIFFERENT FROM A COMMON LAW WAY OF NECESSITY. A A STATUTORY WAY OF

WE WOULD REALLY HAVE TO RECEDE FROM HNF LAND COMPANY, CORRECT? NOT ONLY BECAUSE WE SAID WE WERE DEALING WITH A STATUTORY , I MEAN , THAT WE DEALT WITH THAT , IN THE OPENING SENTENCE, WHEN WE ANSWERED THE CERTIFIED QUESTION, HOLD THAT STATUTORY OR COMMON LAW WAYS OF NECESSITY ARE SUBJECT TO MARTA. WE, ALSO , SAID WE FIND THAT THE MARKETABLE TITLE ACT ENCOMPASSES ALL CLAIMS TO AN INTEREST IN PROPERTY , INCLUDING WAYS OF NECESSITY . PERIOD. AND THAT IS WHAT WE SAID .

RIGHT.

SO WE WOULD HAVE TO RECEDE FROM THAT.

OF COURSE WE ARGUED IN THE BRIEF THAT THE WAY OF NECESSITY IN THE STATUTORY LAY WAS NOT DISCUSSED OR BRIEFED OR OTHERWISE DISCUSSED IN THE OPINION.

I UNDERSTAND, BUT WE WENT FURTHER THAN THAT , BECAUSE WHAT WE WERE DEALING WITH THERE , WAS WE WERE SAYING , IN RESPECT TO WAYS OF NECESSITY , THAT I F THEY WEREN'T SPECIFICALLY ACCEPTED , W E DIDN'T MAKE AND REALLY DIFFERENTIATE BETWEEN COMMON LAW WAYS OR STATUTORY WAYS, WE SAID THAT IF THEY ARE NOT SPECIFICALLY EXCEPTED BY MART, A THEN THEY ARE COVERED BY MARTA , RIGHT?

THAT'S CORRECT , BUT WHEN YOU SHOW HOW WAYS OF NECESSITY INTERACT WITH MART, A IT SHOWS THAT MARTACAN'T APPLY TO A WAY O F NECESSITY, BECAUSE FOR MARTATO APPLY , YOU HAVE TO BE TALKING ABOUT AN INTEREST IN TITLE THAT ARISES PRIOR TO THE ROOT O F THE DATE OF TITLE . OUR POSITION IS THAT THE WAY OF NECESSITY DOESN'T ARISE AT A PARTICULAR POINT IN TIME AND SPECIFICALLY DOESN'T APPLY TO A ROOT IN TIME. IT EXISTS IN PROPERTY, YOU CAN'T SEEK A STATUTORY WAY OF NECESSITY UNTIL YOU CAN PROVE ALL OF THE STATUTORY FACTS AND CIRCUMSTANCES, AND THAT MAKES IT MUCH LIKE PRIVATE CONDEMNATION CLAIM. IF YOU CAN PROVE THE STATUTORY CIRCUMSTANCES EXIST, THEN YOU CAN SEEK A STATUTORY WAY OF NECESSITY.

BUT IT SEEMS TO ME , AGAIN, IN TERMS OF THE STATUTORY CONSTRUCTION ARGUMENT , THAT YOU REALLY HAVE TO GET THERE BY GOING TO WHAT THE PURPOSE IS OF THE STATUTORY WAY O F NECESSITY AND THE PURPOSE OF MARTA , AS OPPOSED TO BEING ABLE TO, REALLY, GO TO , AND YOU KNOW , SAY THAT , AS JUSTICE WELLS SAID , THAT IT IS A STATUTORY WAY OF NECESSITY WAS EXPLICITLY EXEMPTED FROM MARTA OR THAT THE STATUTORY WAY OF NECESSITY , THE STATUTE GOVERNING IT SPECIFICALLY SAYS IT WON'T APPLY .

I THINK YOU CAN GET THERE BOTH WAYS. I THINK YOU CAN GET THERE BY EXPLORING THE PURPOSES OF THE STATUTORY WAY OF NECESSITY IN MARTA, BUT YOU CAN ALSO GET THERE BY NOTING THAT MARTA ONLY EXTINGUISH ES THOSE INTERESTS IN TITLETHAT ARISE PRIOR TO THE ROOT IN TOO LITTLE TITLE AND A STATUTORY WAY OF NECESSITY CAN'T APPLY IN ROOT OF TITLE , BECAUSE IT CAN ONLY ARISE WHEN YOU ARE ABLE TO PROVE THE FACTS AND CIRCUMSTANCES CALLED FOR EXIST. THERE IS A DISCUSSION OF THIS IN THE AMICUS BRIEFPRESENTED BY THE REAL PROPERTY SX , WHEN THEY POINT OUT THAT CIRCUMSTANCES CHANGE OVER TIME. YOU ARE ENTITLED T O A STATUTORY WAY OF NECESSITY OVER THE NEAREST PRACTICABLE ROUTE. AT ONE POINT IN TIME , THAT NEAREST PRACTICAL ROUTE MAYBE TO THE WEST. MAYBE THE NEAREST ROAD IS TWO MILES WEST , BUT THEN A NEW ROAD COMES IN TO THE EAST , AND THAT ROAD IS NOW ONE MILE AWAY FROM THE PROPERTY. SUDDENLY THE NEAREST PRACTICABLE ROUTE IS OVER A COMPLETELY DIFFERENT PARCEL OF PROPERTY , PERHAPS OWNED BY ANOTHER PERSON , OR TO GIVE YOU ANOTHER EXAMPLE , YOU ARE NOT ENTITLED TO A STATUTORY WAY OF NECESSITY, UNLESS YOU CAN PROVE THAT YOU ARE GOING TO B E USING THE PROPERTY FOR THE PURPOSES ENUMERATED IN THESTATUTE. IF YOU ARE NOT GOING PHONEUSING THE PROPERTY FOR DWELLINGS OR AGRICULTURAL O R TIMBER PURPOSES , YOU HAVE NO RIGHT TO GO INTO COURT AND EVEN ASSERT A STATUTORY WAY OF NECESSITY , SO THE STATUTORY WAY CAN'T ARISE , UNTIL THE PARTY WHO OWNS THE LANDLOCKED PIECE OF PROPERTY , ACTUALLY HAS AN INTENTION OF USING THE PROPERTY FOR THAT PURPOSE.

BUT IF , IN FACT , IN THIS CASE, AND I , YOU KNOW , AS FAR AS IF THE STATUTE, IF THEY COULD HAVE ASSERTED THEIR STATUTORY RIGHT OF NECESSITY , 30 YEARS PRIOR, YOU ARE SAYING THAT IT DOESN'T MATTER . ESSENTIALLY THERE IS NO STATUTE OF LIMITATIONS GOVERNING STATUTORY RIGHTS OF NECESSITY.

BECAUSE IT IS A FLUID SITUATION.IT DEPENDS ENTIRELY ON

IT MIGHT NOT BE FLUID. IN OTHER WORDS, WHAT IF THE EVIDENCE IS IT STAYED EXACTLY STATIC. IT WAS THE SAME USE AND YOU KNOW, IN FACT, THE LAND WAS SOLD FOR FAR LESS BECAUSE IT WAS LANDLOCKED , BUT IT WAS THAT USE , AND STILL, UNDER YOUR CIRCUMSTANCE , THEY CAN WAIT FOR HOWEVER LONG, TO ASSERT IT .

THAT WOULD BE OUR POSITION, YOUR HONOR , THAT THE LEGISLATURE HAD TO BALANCE THE INTEREST OF THEPARTY WHO HAS THE LANDLOCKED PIECE OF PROPERTY , AGAINST THE INTEREST OF THE PARTY NEXT DOOR , WHO HAS

WHAT STATUTORY CAUSE OF ACTION DO YOU KNOW OF , THAT HAS NO STATUTE OF LIMITATIONS.

A STATUTE OF LIMITATIONS , OF COURSE , DEPENDS UPON THECAUSE OF ACTION STARTING OR ACCRUING AT A PARTICULAR POINT IN TIME , AND OUR POINTIS THAT THIS IS NOT A CAUSE OF ACTION . IT ACCRUES AT A PARTICULAR POINT OF TIME , BECAUSE I T ALWAYS EXISTS. IT EXISTS WHEN YOU CAN PROVE THE CIRCUMSTANCES . IT IS MUCH LIKE A CONDEMNATION CLAIM. THE STATE ALWAYS HAS THE RIGHT TO CONDEMN PROPERTY, IF IT CAN PROVE THAT THEREIS A PUBLIC USE AND IT TOFERS PAY REASONABLE VALUE FOR THAT PROPERTY. THAT IS NOT A RIGHT THAT EXPIRES AT ANY TIME BECAUSE IT IS A RIGHT THAT ALWAYS EXISTS. WE THINK THAT A STATUTORYWAY OF NECESSITY I S EXACTLYTHE SAME I THINK SAME THING.IT IS IN ESSENCE A PRIVATERIGHT OF CONDEMNATION THAT ALLOWS YOU, IF THE CIRCUMSTANCES CAN BE PROVEN, TO GO INTO COURT AND ASK A COURT TO GIVE AWE EASEMENT OVER YOUR NEIGHBOR 'S PROPERTY BUT YOU HAVE TO PAY FOR THAT EASEMENT, JUST LIKEYOU HAVE TO PAY FOR , JUST LIKE THE STATE HAS TO PAY FOR THE RIGHT IN THE CONDEMNATION CLAIM.

ARE COMMON LAW AND STATUTORY WAYS OF NECESSITY INTENDED TO BE MUTUALLY EX-CLUSIVE?

THEY ARE, IN FACT , MUTUALLY EX-CLUSIVE. AS A NUMBER OF THE CASES HAVE SUGGESTED, THE HANCOCK CASE, THE GAIN I VERSUS BIRD CASE THAT WE HAVE CITED IN THE BRIEFS, THAT YOU CAN'T EVEN GET A STATUTORY WAY OF NECESSITY, IF THERE IS ANYOTHER WAY OF ACCESS TO THE PROPERTY , INCLUDING A COMMON LAW WAY OF NECESSITY.

AND WHAT IF A PROPERTY OWNER DECIDES NOT TO EXERCISE A COMMON LAW RIGHTOF NECESSITY THAT EXIST, DURING THE 30-YEAR PERIOD? THAT RIGHT, THEN, EXTINGUISH ES. NOW THAT PARTY HAS NO RIGHT OF COMMON LAW NECESSITY , SO HE DECIDES TO EXERCISE A STATUTORY WAY OF NECESSITY . THAT WOULD BE PERFECTLY PERMISSIBLE , UNDER YOUR SCENARIO?

IT WOULD BE PERFECTLY PERMISSIBLE. CERTAINLY.

SO THEN WHAT WE ARESAYING IS , EVEN COMMON LAW RIGHTS OF NECESSITY HAVE NO STATUTE OF LIMITATIONS.

BUT THERE IS A BIG DIFFERENCE, BECAUSE DURING THE PERIOD OF THE COMMON LAWWAY OF NECESSITY, YOU COULD GET THAT ACCESS FOR FREE BECAUSE IT IS IMPLIED IN THE GRANT.AS SOON AS IT EXPIRES ANDYOU ARE TALK ABOUT A STATUTORY WAY OF NECESSITY, IT IS A VERY DIFFERENT RIGHT.YOU HAVE TO PAY FOR IT. NO PROPERTY OWNER WHO WANTSTO GET ACCESS TO A PIECE OF PROPERTY IS CERTAINLY GOINGTO LET THAT COMMON LAW WAY OF NECESSITY EXPIRE, BECAUSEIF HE OR SHE DOES THAT , THEN AT THAT POINT I N TIME THEY HAVE TO PAY FAIR VALUE FOR THE EASEMENT AND THAT IS WHAT EXTINGUISHES.

THAT IS THE CONSEQUENCES THERE.IS STILL NO STATUTE O F LIMITATIONS FOR COMMON LAWWAY OF NECESSITY. THE ONLY THING THAT HAPPENS IS, WELL, NOW IT IS CONVERTED INTO A STATUTORYWAY OF NECESSITY.

THE STATUTE

WOULDN'T THAT CONTRADICT , AT LEAST , THE HOLDING , OUR PRIOR HOLDING , EVEN DISREGARDING THE DICTUM?

THERE IS NO STATUTORY, THERE IS NO STATUTE O F LIMITATIONS FOR A COMMON LAWWAY OF NECESSITY. IN THEORY , DEPENDING ON WHEN THE ROOT OF TITLE I S , THAT RIGHT TO A COMMON LAW WAY OF NECESSITY, COULD EXTEND MANY, MANY YEARS PAST THE 30 YEARS.IT IS ONLY WHEN THERE IS A SUBSEQUENT TITLE TRANSACTION, THAT IT BECOMES A ROOT OF TITLE , SUBSEQUENT TO THE PREVIOUS TRANSACTION, THAT THAT COMMON LAW WAY O F NECESSITY IS SUBJECT TO EXTINCTION .

SO YOUR ARGUMENT DOESN'T APPLY TO ANY WAY OF NECESSITY, WHETHER COMMON LAW OR STATUTORY.

NOT AT ALL. HEART A MARTA CLEARLY APPLIES TO A COMMON LAW WAY OF NECESSITY. IF YOU HAVE A ROUTE OF TITLE, THAT ACTION TRUMPS A COMMON LAW WAY OF NECESSITY, JUST AS I T CAN TRUMP ANY NECESSITY OF LAND. MARTA ATTEMPTS TO EXTINGUISH THE COMMON LAW WAY O F NECESSITY.

HAVE YOU ESTABLISHED ANY STATUTORY SCHEMES SIMILAR TO MARTA IN OTHER STATES AND FOUND THAT OTHER STATE LEGISLATURES HAVE USED DIFFERENT LANGUAGE, WITH REFERENCE TO WHETHER THEY PLACE THIS STATUTORY WAYUNDER ANY EXCEPTION OR THAT THE LANGUAGE OF SUCH A PROVISION IN OTHER STATUTORYSCHEMES , SAYS SOMETHING LIKE NOTWITHSTANDING THE ABOVE, OR HAVE QUALIFYING LANGUAGE LIKE THAT , HAVE YOU EXPLORED THAT?

WE DID EXPLORE WHETHER ANY CASES OUTSIDE OF FLORIDA DEALT WITH THE INTERACTION OF THE STATUTORY WAY O F NECESSITY OR SOMETHING LIKE THAT STATUTORY WAY OF NECESSITY , AND THEIR EQUIVALENT OF MART, A BUT WE DID NOT EXPLORE THE STATUTE OF MARTA , BUT WE DID NOT EXPLORE THE STATUTORY WAY O F NECESSITY.

THAT WAS THE DIFFICULTY WE ESTABLISHED WHEN WE EXPLORED THE COMMON LAW , BUT I AM TALKING ABOUT HAVE YOU LOOKED AT THE STATUTORY SCHEMES IN OTHER STATES, AS TO WHETHER OR NOT THE PROVISION LIKE THIS , IS THE SAME? ARE WE TALKING ABOUT MODEL MARTAS THAT EXIST ALL OVER THE COUNTRY , OR ARE THERE OTHER STATUTORY SCHEMES THAT HAVE DIFFERENT LANGUAGE?

WE HAVE NOT EXPLORED THAT. WHAT WE DID EXPLORE IS WHETHER THERE WERE ANY CASESDISCUSSING THE RELATIONSHIP BETWEEN THE TWOS , AND THEREWERE IN FACT, N O CASES THAT DISCUSS THAT RELATIONSHIP.

AND SO YOU ARE RELYING PRIMARILY, ON SORT OF THE DEFINITIONAL PART OF THE STATUTORY RIGHT-OF-WAY AND WHEN THAT WOULD ARISE ANDHOW IT WOULD ARISE , AS BEING INCONSISTENT WITH THE IDEA THAT IT WOULD BE EXTINGUISHED .

THAT'S CORRECT.

BUT IF YOU DON'T HAVE , ASSUMING YOU DON'T HAVE A STATUTORY WAY OF NECESSITY IN THIS CASE, YOU DO HAVE SOME OTHER REMEDY, DON'T YOU? I MEAN , IS THERE SOME OTHER WAY TO GET , THAT YOU HAVE , TO GET ACCESS TO EGRESS FROM YOUR PROPERTY?

IF THERE IS N O STATUTORYWAY OF NECESSITY , THE ONLY OTHER WAY , THE ONLY OTHER REMEDY IS TO NEGOTIATE WITH THE PROPERTY OWNER , AND THE PROBLEM IS THAT IS ALLEGED

IN THE COMPLAINT, IS THAT THE PROPERTY OWNER NEXT DOOR IS ASKING A PRICE THAT IS FAR IN EXCESS OF THE FAIR MARKET VALUE YOUTH. THAT IS THE ALLEGATION IN THE COMPLAINT. THAT IS THE WHOLE PURPOSE FOR PROVIDING A JUDICIAL REMEDY , WHERE A JUDGE LOOSEAT THE TWO PARCELS OF PROPERTY, DECIDES THE BEST ROUTE , DECIDES WHAT THE REASONABLE COMPENSATION IS. IT IS THE WAY THAT THE LEGISLATURE HAS CHOSEN TO BALANCE THE INTERESTS OF THE OWNER OF THE LANDLOCKED PARCEL OF PROPERTY AND THE VERY IMPORTANT PUBLIC POLICY THAT WAS RECOGNIZED IN THIS COURT IN THE DESIREE RANCHCASE, WHICH IN THE DECEMBER RECEIPT RANCH CASE IN THE DESERET RANCH CASE , AND THE PURPOSE OF THAT IS TO BALANCE THE INTEREST WITH THAT OF THE PERSON NEXT DOOR, WHO IS NOT THRILLED ABOUT HAVING AN EASEMENT OVER HIS OR HER PROPERTY, BUT THE BALANCE TO THAT IS A JUDGE FIRST INTERCEDES AND DETERMINED THAT YOU ARE LOOK ING AT THE NEAREST PRACTICALROUTE SO UPSETTING THE SMALLEST AMOUNT OF LAND AS POSSIBLE AND MOST IMPORTANTLY , THE JUDGE DECIDES WHAT THE FAIR MARKET VALUE OF THAT LAND OF THE EASEMENT IS, AND THAT IS HOW TO FAIRLY BALANCE THE IMPORTANT RIGHTS OF BOTH SIDES AND WE THINK THAT NEEDS TO BE BALANCED BY THE HONOR OF THIS COURT, AND CERTAINLY THE ARGUMENT THAT WE ARE MAKING IS FULLYCONSISTENT WITH THE PURPOSES OF MARTA AND FULLY CONSISTENT WITH THE PURPOSES OF THE STATUTORY WAY OF NECESSITY, WHEN YOU LOOK ATHOW THE STATUTORY WAY OF NECESSITY IS DIFFERENT FROM

ONE OF THE ARGUMENTS YOU ARE MAKING IS THAT WE CAN'T HAVE THE 30-YEAR PERIOD FOR STATUTORY WAYS OF NECESSITY, BECAUSE W E DON'T KNOW WHEN THEY BEGIN, BECAUSE A PROPERTY MAY NOT BE ZONEDFOR RESIDENTIAL OR AGRICULTURAL, UNTIL LATER. ISN'T THE ANSWER TO THAT SIMPLY THAT THE PERIOD BEGINS AT THE TIME WHEN THE PROPERTY IS ZONED AGRICULTURAL OR RESIDENTIAL?

DO YOU ALSO HAVE TO SHOW YOU ALSO HAVE TO SHOW THAT THERE IS AN INTENT T O USE THE PROPERTY FOR THAT PURPOSE.UNTIL YOU HAVE THAT INTENTION, YOU HAVEN'T BEEN ABLE, YOU CAN'T PROVE THAT PRONG OF THE TEST, AND BESIDES THAT , OF COURSE , AS I SAID BEFORE, THE ROUTE MAYWELL BE FLUID. IN ONE YEAR, THE ROUTE MAYBE TO THE NORTH. IN ANOTHER YEAR THE ROUTEMAY BE TO THE EAST AND ANOTHER YEAR , THE ROUTE MAY BE TO THE WEST. THAT IS WHY IT DOESN'T REALLY MATTER WHETHER YOU COULD PROVE A STATUTORY WAYOF NECESSITY IN 1910 , 19

WHY DOES THE PARTICULAR ROUTE , WHY IS THAT RELEVANT TO ESSENTIALLY WHETHER THERE SHOULD BE A 30-YEAR STATUTE OF LIMITATIONS . WHETHER THE ROUTE CHANGES OVER TIME, DIFFERENT FROM WHETHER A ROUTE SHOULD BE GIVEN IN THE FIRST PLACE. AND A JUDGE AT YEAR TWO MAY DETERMINE A DIFFERENT ROUTE THAN A JUDGE IN YEAR 28 , BUT THERE IS STILL A ROUTE THAT MUST BE GIVEN , UNDER THE STATUTORY WAY OF NECESSITY.

BUT THEY MIGHT BE DIFFERENT ROUTES OVER DIFFERENT PARCELS OF PROPERTY.

WHAT DOES THAT HAVE TO DO WITH THE RIGHT AND THE OBLIGATION TO BRING , WITHIN 30 YEARS, AN ACTION FOR THEWAY OF NECESSITY ? I DON'T UNDERSTAND HOW THE TWO RELATE .

BECAUSE A STATUTORY WAY OF NECESSITY DEPENDS ON PROOF OF A PRESENT SET OF CIRCUMSTANCES . YOU HAVE TO PROVE THAT PRESENTLY THIS ROUTE THAT I AM SEEKING IS IT NEARES PRACTICABLE ROUTE. YOU HAVE TO PROVE THAT PRESENTLY NOW, I A M SEEKINGTO USE THIS PROPERTY FOR THIS PURPOSE. WHETHER OR NOT I COULD HAV E USED THE PROPERTY FOR THAT PURPOSE 50 YEARS AGO OR WHETHER I COULD HAVE USED A DIFFERENT ROUTE 50 YEARS AGO , IS REALLY I I S REALLY IRRELEVANT. WHAT IS RELEVANT IS THE PURPOSE TO WHICH I WANT TO USE THE PROPERTY NOW AND THE ROUTE THAT IS BEING SELECTED NOW. AS THE REAL PROPERTY SECTION POINTED OUT IN THEIR BRIEF, IN YEAR ONE IT MAY BE THAT THE NEAREST PRACTICABLE ROUTE IS OVER OWNER As PROPERTY. OWNER A DOES SOMETHING TO THAT PROPERTY IN YEAR 29 THAT MAKES IT IMPOSSIBLE TO USE THAT PROPERTY ANYMORE AS THE

REASONABLE PRACTICAL

ISN'T THAT THE SAME AS SAYING IN A PERSONAL INJURY CLAIM THAT YOUR DAMAGES MAY INCREASE OVER TIME AND THEREFORE THE PLAINTIFF SHOULD BE ABLE TO WAIT FOR TEN OR 20 YEARS , UNDERGOING ALL THE SURGERIES NEEDED , BEFORE BRINGING A CLAIM , BUT THE LAW IS, NO , THERE I S A FOUR OR FIVE-YEAR STATUTE OF LIMITATIONS, AND THEN YOU WILL HAVE TO PROVE FUTURE DAMAGES AT TRIAL, BUT YOU STILL HAVE TO BRING IT WITHIN A TIME CERTAIN.

A TIME CERTAIN FROM A PARTICULAR POINT, AND THAT IS THE KEY DISTINCTION HERE,THAT THERE IS NO PARTICULAR POINT AT WHICH THE STATUTORYWAY OF NECESSITY ARISES. THE STATUTORY WAY OF NECESSITY ALWAYS EXIST TO THE SAME EXTENT THAT A CONDEMNATION RIGHT ALWAYS EXISTS.

BUT YOU ARE REALLY SAYING THAT IS BASED ON THE INTENT ELEMENT, THE INTENT TO USE THE PROPERTY . CORRECT?

THE INTENT TO USE THE PROPERTY AND WHAT THE NEAREST PRACTICABLE ROUTEIS.

THE NEAREST PRACTICABLE ROAD. IT CAN EXPIRE AS TO ONE PROPERTY WITH THE ROAD ON ONE SIDE AND NOT COMMENCE AS TO SOMEWHERE ELSE, BUT IT WOULD COMMENCE AS TO THE PROPERTY THAT HAD A ROAD ACROSS BUT YOU WOULD HAVE TO TRAVERSE TO USE THAT ROAD.IT WOULD SEEM THAT I T BOILS DOWN TO JUST INTENT .

THE DIFFICULTY YOU ARE GOING TO FAITHS, AND I THINK THE REAL PROPERTY SECTION DID A GOOD JOB OF THIS IN THEIR AMICUS BRIEF AS WELL , IS YOU HAVE TO LOOK AT THE ENTIRE HISTORY OF THE PROPERTY , TO DETERMINE, FOR EXAMPLE , IF THERE WAS A RIGHT OF ACCESS IN YEARS ONE AND TWO AND THEN A DRAINAGE DITCH IS BUILT FROM YEARSTHREE TO FIVE AND THEN THE DRAINAGE DITCH IS GONE ANDTHEN A ROAD NEXT DOOR COMESA LITTLE CLOSER I N YEAR SEVEN. WE ARE TALKING ABOUT A VERY NIGHTMARE OF PROOF THAT YOU HAVE GOT TO GO BACK IN THIS CASE, ALMOST TO 8 0 YEARS' WORTH OF PROPERTY TRANSACTIONS, TO DETERMINE HOW THE STATUTORY WAY OF NECESSITY WHEN IT EXISTED , WHEN IT DIDN'T EXIST , THREE-YEAR RUNS.

BECAUSE OF THE SHORTNESS OF TIME, IN YOUR ANSWER CAN YOU SPEAK TO 7.04, WHICHSAYS THAT THE EASEMENT SHALLDATE FROM THE DATE THE AWARD IS PAID. THE LANGUAGE OF THE STATUTE SPEAKS AS THE DATE OF THE EASEMENT BEING THE DATE IT IS DETERMINED BY THE COURT.

RIGHT. I THINK THE POINT IN TIME WHERE A COURT DETERMINES THAT A STATUTORY WAY OF NECESSITY EXISTS , AT THAT POINT IN TIME YOU NOW HAVE AN INTEREST IN THE CHAIN O F TITLE THAT BECOMES SUBJECT TO MART, A JUST LIKE ANY OTHER INTEREST, AND I THINK THAT IS A VERY IMPORTANTPOINT IN THE STATUTE. I SEE MY TIME I S DRAWINGSHORT , S O I HAD BETTER SAVE THE REST FOR REBUTTAL .

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING.I A M TOM HE WILL GET ON BEHALF I AM TOM ELLIGETT . THE STATUTE IS A LITTLE DIFFERENT THAN, MAYBE , THEQUESTION WOULD SUGGEST, BECAUSE THIS IS A SITUATION WHERE PREDECESSORS HAD A COMMON LAW RIGHT-OF-WAY . A WAY OF NECESSITY. AND THEY LET IT LAPSE. IN FACT , IF YOU LOOK , ANDTHAT IS CLEAR YOU LOOK A T PAGE TWO AND THREE OF THE INITIAL BRIEF AND PAGE 23 OF OUR BRIEF , WE TALK ABOUT THAT , AND IN H AND F WHEN THE COMPLAINT WAS FILED , THEY PLEADED FOR THAT , A COMMON LAW WAY OF NECESSITY , AND NOW A STATUTORY WAYACROSS THE SAME PLACE , THE EXACT SAME PLACE IN WHICH THEY LET THEIR COMMON LAW WAY LAPSE. I WOULD SAY THAT WHATEVER YOU DECIDE IN THE ABSTRACT FOR PEOPLE WHO HAVEN'T DONE THAT, THAT OUGHT TO BE CONSIDERED HERE , .

WHAT ABOUT THE BROADER LANGUAGE?

THE PLACE TO GO IS TO LOOK AT THE STATUTORYLANGUAGE OF MART A THEIR PREMISES, MARTA ONLY ADDRESSES CLAIMS BASED ON TITLE. THAT IS WRONGMENT THEIR WHOLE PREMCYST JUST WRONG. HERE IS Y LET'S TAKE A LOOK AT WHAT MARTA SAYS. 712.02 SAYS TITLE TO LAND SHALL BE FREE OF ALL CLAIMS FORM ALL CLAIMS. 712.04 SAYS

ALL CLAIMS ARE NOT DEFINED IN EITHER .02 OR .03. WHAT SEEMS TO BE DETERMINED BY THIS ACT , IT DESCRIBES IT IN .04.

FREE O F ANY EXISTENCE OF CLAIMS DEPENDS ON ANY ACT , TITLE TRANSACTION OR OMISSION. IF WE ARE TALKING ABOUT JUST CLAIMS FROM TITLE , THEY SAY ANYTHING BASE BASED ON TITLE TRANSACTION.THEY DON'T. THEY SAY TITLE TRANSACTION OR OMISSION. JUDGE, LET'S GO BACK TO 712.03.

IT REFERS TO EVERYTHING THAT OCCURRED PRIOR TO THE EFFECTIVE DATE THE ROUTE OF TITLE. NO MATTER WHAT IT IS, IT STILL REFERS TO PRIOR TO THE EFFECTIVE DATE OF THE ROUTE OF TITLE.

RIGHT. NOW, LET'S LOOK AT 712.03. WHERE YOU WERE A MOMENT AGO. WHAT THAT SAYS , IF MARTA WERE ONLY CONCERNED ABOUT THING THAT IS DERIVE FROM TITLE , WHICH IS THEIR PREMISE, THEIR WHOLE PREMISE, HE WE WOULDN'T NEED SOME O F THE THINGS WE WOULDN'T NEED SOME OF THE THINGS LISTED IN 712.03 I N EXISTENCE.

HE IS TALKING ABOUT THE TIMING.

I THOUGHT IT WAS MEANT T O SAY IT ADDRESSES CLAIMS BASED ON TITLE. THAT IS WHY IT DOESN'T HAVE ANYTHING TO DO WITH STATUTORY WAYS OF NECESSITY.

I UNDERSTOOD IT TO SAYTHAT IT IS BASED ON THOSE THINGS THAT OCCURRED PRIORTO THE EFFECTIVE DATE OF THEROUTE OF TITLE , NOTNECESSARILY THE ROUTE OF TITLE. THAT IS THE WAY I UNDERSTOOD HIS ARGUMENT, SO WOULD YOU APPROACH IT IN THAT FASHION.

712.03-3, ONE OF THE THINGS IT LISTS IS POSSESSION. YOU HAVE POSSESSION THAT WAS LONG AGO. YOU COULD HAVE POSSESSION THAT WAS MORE RECENT, BUT ONE OF THE THING THAT IS SAYS YOU WOULDN'T, IF WE WERE ONLY CONCERNED ABOUT THING THAT IS RELATED TO TITLE , WE WOULDN'T HAVE T O MENTION POSSESSION IN THE EXCEPTIONS.

AGAIN, WOULD YOU ADDRESSNOT RELATED TO TITLE BUT THAT OCCUR PRIOR TO THE ROUTE OF TITLE.

OKAY. IT , HOW WOULD , WHAT DOES THAT DO FOR POSSESSION , IFYOU HAVE IT? WHY WOULD YOU NEED TO LIST POSSESSION THERE ? IN OTHER WORDS IT TALKS ABOUT SOMEBODY WHO IS IN POSSESSION. THAT COULD BE, THEY DON'T TALK ABOUT WHETHER IT IS BEFORE O R AFTER THE ROUTE OF TITLE THERE , BUT THE ROOT OF TITLE THERE, BUT YOU HAVE TO LOOK ATTENTION EGGS.

YOU HAVE TO LOOK AT .04 TO LOOK AT THE ROOT OF TITLE , BECAUSE THAT DESCRIBES WHAT IS EXTINGUISHED .

YES, AND THE ROOT O F TITLE GOES BACK , I THINK, TO 1910. I THINK EVERYBODY AGREES WITH THAT , AND WHAT THEY DID IS THEY HAD , THERE IS NO DISPUTE THEY HAD A COMMON LAW WAY OF NECESSITY. THEY LET IT LAPSE. UNDER H AND F, IT IS GONE.

WHEN YOU PREDICATED YOUR STATEMENT ON THEY ARE JUST TRYING TO CONVERT A COMMON LAW WAY OF NECESSITY INTO A STATUTORY RIGHT.

THEY HAVE LET THEIR COMMON LAW LAPSE. NOW THEY ARE SAYING WE WANT A NEW ONE, A BRAND NEW ONEIN THE SAME CASE.

IS YOUR CASE MAYBE A DIFFERENT SCENARIO THAN MAY BE APPLICABLE IN OTHER SITUATIONS?

MIGHT BE AND THAT IS WHY I START OFF BY SAYING IN GENERAL , WHATEVER YOU DECIDE IN THAT CASE BLANTON SHOULDN'T GET RELIEF. HE BOUGHT THIS AND LET HIS TIME PASS , KNOWING THAT.

IS THAT A N ISSUE OF LACHES ? IN OTHER WORDS, THAT SOMETHING DIFFERENT THAN , BECAUSE YOU CAN'T HAVE , I DON'T KNOW HOW YOU WILL WRITE AN OPINION THAT WOULD SAY, IF THE ONES THAT ARE EXCLUDED ARE THOSE THAT WERE NEVER COMMON LAW RIGHTS O F NECESSITY, I MEAN, HOW WOULD YOU BE FRAMING THAT? THAT IS WHY I SAY GOING BACK TO THE STATUTORY CONSTRUCTION ISSUE , IS THAT IT SEEMS THAT , IF YOU TAKE THE FACT THAT , IF YOU ACCEPT THAT MARTA ONLY APPLIES T O INTERESTS THAT ARISE PRIORTO THE ROOT OF TITLE. DO YOU ACCEPT THAT OR NOTACCEPT THAT, BECAUSE THAT IS WHAT I UNDERSTOOD TO BE THE ARGUMENT THAT WAS BEING MADE.

WELL , THE LANGUAGE IN THE H AND F CASE, SEEMS TO ME, TO BE BROADER. I AM NOT GOING

NOW , THE H AND F CASE DEFINITELY, IN ITS HOLDING, SAYS THAT YOU KNOW , IT MENTIONS STATUTORY WAYS OF NECESSITY.BUT I T NEVER ONCE, IN THE REST OF THE OPINION OR IN THE CERTIFIED QUESTION , EVER EVEN REFERS TO THE STATUTORY

I HIM TALKING MORE ABOUT THE LANGUAGE ABOUT ALL CLAIMS. IT IS DESIGNED, YOU KNOW , THE WORD ALL CLAIMS, APPEARS SEVERAL TIMES IN THE OPINION.WHEN YOU ARE NOT QUOTING THE STATUTE.

LET'S STAY AWAY FROM THE H AND F OPINION , WHICH DIDN'T DEAL WITH STATUTORY RIGHTS OF NECESSITY, AND GET BACK TO

W E CAN'T TELL IT GOOD FROM THE FACE OF IT. IT DID, FROM THE FACE OF IT.

THE CERTIFIED QUESTION WAS ONLY COMMON LAW , AND THE VERY STATUTE THAT WE ARE TALKING ABOUT , WHICH IS 704.012, IS NOT MENTIONED ONCE, IN THE OPINION , SO WE COULDN'T HAVE BEEN ENGAGING IN ANY TYPE OF STATUTORY CONSTRUCTION, WITH THAT , BUTTHAT IS A PARTY OF ARGUMENT . NOW LET'S SET ASIDE H AND F . WHAT I AM ASKING YOU IS THAT, HOW WOULD YOU GET TO YOUR ARGUMENT O N A STATUTORY CONSTRUCTION, OR ARE YOU , REALLY, SAYING THAT THERE SHOULD BE A, EVEN FOR STATUTORY RIGHTS OF NECESSITY, THERE SHOULD BE A LACHES DEFENSE ?

I THINK OUR POSITION IS YES.

THAT IS DIFFERENT.

WELL , WHETHER YOU CALL IT LACHES OR WHETHER YOU SAY IT IS 30 YEARS UNDER MART, A EVEN PUTTING ASIDE FROM SOMEBODY WHO IS TRYING TO ASSERT ONE AFTER THEY LET THEIR COMMON LAW WAY LAPSE.

IT SEEMS TO ME , THEN , YOU ARE GETTING INTO AN ISSUE ABOUT POLICY, WHICH IS , IT IS NOT UP TO US AS A MATTER OF POLICY, TO DECIDE THAT PEOPLE THAT HAD A COMMON LAW RIGHT OF NECESSITY , BUT WE HAVE RECOGNIZED THERE ARE MANY DIFFERENCES WITH A STATUTORY

RIGHT OF NECESSITY , INCLUDING THE FACT THAT THEY ARE , HAVE TO BE PAID FOR ANDTHEY CAN ONLY ARISE IN CERTAIN CIRCUMSTANCES , SO IF YOU HAD A SITUATION WHERE THE LAND LAID FALL-FOR THE ENTIRE TIME FALLOW FOR THE ENTIRE TIME , HE WOULD HAVE HAD A COMMON LAW RIGHTOF NECESSITY , ANYWAY , BUT IT WOULD ONLY BE WHEN THE PROPERTY IS STARTING TO BE USED FOR , TO, AND I DON'T , AGAIN , WE ARE HERE ON A COMPLAINT , SO I DON'T , THAT A STATUTORY RIGHT OF NECESSITY WOULD ARISE, SO YOU MAY HAVE MANY SITUATIONS WHERE SOMEONE HAD A COMMON LAW RIGHT OF NECESSITY , DIDN'T USE IT BECAUSE THEY WEREN'T USING THE PROPERTY, AND THEN THEY , NOW , D O HAVE AN ABILITY TO CLAIM A STATUTORY RIGHT , JUST LIKE WE , YOU KNOW, AGAIN , I F YOU ANALOGIZE IT T O EMINENT DOMAIN, I MEAN , GOVERNMENT CAN COME IN WHENEVER THEY DECIDE THAT THEY WANT TO TAKE THAT PROPERTY FOR A PUBLIC PURPOSE.

RIGHT, BUT IT I S NOT EMINENT DOMAIN , AND IT IS NOT , I WOULD SUGGEST WITH ALL DUE RESPECT TO COUNSEL , NOT PROPERLY ANALOGIZE TO DO THAT. THAT IS A SITUATION, I MEAN, WHEN YOU ARE LANDLOCKED , YOU KNOW YOU ARE LANDLOCKED FROM DAY ONE , AND THEY KNEW THEYWERE LANDLOCKED FROM 1910, AND THEY SAT AROUND FOR 3 0 YEARS.

DID THEY USE THE PROPERTY THE ENTIRE TIME?

I DON'T THINK THE RECORD ALLEGES ANYTHING.

BUT ISN'T THAT IMPORTANT?

I DON'T THINK IT IS, YOUR HONOR, BECAUSE IF YOU HAVE GOT A COMMON LAW RIGHT-OF-WAY, ALL YOU DO IS FILE AND RECORD IT AS A RECORD. IF YOU GET IT IN THE RECORD, YOU ARE PROTECTED THEN.

SO WHAT HARM IS THERE TO YOUR CLIENT , BECAUSE WHAT,IF THE COMMON LAW WAY, WHAT HARM IS THERE TO YOUR CLIENT? THE COMMON LAW WAY OF NECESSITY WOULD HAVE BEEN FREE AS A MATTER OF RIGHT VESTED FOR WHATEVER THE PERIOD OF TIME S HERE , A FAIR VALUE HAS TO BE PAID.

THE HARM , WELL , ACTUALLY , AT THE TIME M Y CLIENT GOTTHIS PROPERTY , THE TIME FOR THE COMMON LAW WAY HAD RUN , SO MY CLIENT WOULD HAVE BEEN ENTITLED, HAD THEY FORESEEN H AND F, TO SAY , LOOK, I AM GOING TO BUY THIS. I KNOW , I DON'T HAVE TO WORRY ABOUT IT. IN FACT, ONE OF THE THINGS , THE PUBLIC POLICY REASON AND I DO WANT TO COME BACK TO THAT, BUT ONE OF THE THINGS WHEN YOU TALK ABOUT WHAT I S THE PURPOSE OF MART, A IS T O EXTINGUISH HID ENCLAIMS.NOW, HERE , - - HIDDEN CLAIMS . NOW, HERE , LET'S ASSUME IT IS A STRANGER AND LET'S ASSUME THEY KNOW THE BACKGROUND, BUT IF A STRANGER WERE TO LOOK AT A SERGEI AND ATTACH IT TO A SURVEY AND ATTACHED I T TO 178 OF THIS COMPLAINT , AND YOU SAY 30 FOOT R //W AND SAYS THERE IS A 30-FOOT RIGHT-OF-WAY THERE ACROSS BLANTON 'S PROPERTY AND IDON'T HAVE TO WORRY ABOUT ANYBODY COMING ACROSS THERE WITH EITHER COMMON LAW OR STATUTORY RIGHTS OF CLAIM. I THINK THERE ARE SOME THINGS UNIQUE TO THIS CASE.

REGARDLESS OF THIS CASE , COME BACK TO THE BROADER PUBLIC POLICY , AND DOESN'T ANY SCHEME, LIKE THIS , HAVE TO HAVE A RELIEF VALVE? THAT IS LIKE THIS STATUTORY , IN OTHER WORDS , ISN'T THAT IMPLICIT I N CONSTRUCTING A SCHEME LIKE THIS , THAT THERE HAS TO BE SOME KIND OF RELIEF VALVE LIKE THE STATUTORY RIGHT-OF-WAY , OR OTHERWISE A SCHEME LIKE THIS, REALLY, COULD NOT PROPERLY WORK. HELP ME WITH THAT. THAT IS REALLY THE PUBLIC POLICY.

THE COURT LOOKED AT SOME OF THOSE THING INS H AND F AND THE COURT SAID IN FOOTNOTE 12 , WE ARE NOT SAYING THAT THE LANDLOCKED PARCEL HERE IS WITHOUT A REMEDY. THEY CAN GO AND SEEK AN EASEMENT FROM THE DEFENDANT THERE. YOU DIDN'T SAY , YOU CAN

START YOUR STATUTORY WAY OF NECESSITY ACTION NOW. THE OTHER THING IS , THERE IS NOT ALWAYS .

THERE IS A FAR GREATER DIFFERENCE, THOUGH , BETWEENSOMEBODY THAT IS IN A POSITION TO SAY , WELL , IFYOU WILL JUST DEED ALL YOUR PROPERTY TO ME , I WILL LET YOU KEEP THE LITTLE CORNER OF IT AND GIVE YOU SOME KIND OF A RIGHT-OF-WAY.I AM TALKING ABOUT THE ISSUE THAT THEY RAISE , ABOUTWHETHER OR NOT THE COMPENSATION, YOU KNOW , THAT IS GOING TO BE PAID, IS GOING TO BE A MATTER OF THEY DIDN'T USE THE WORD EXTORTION, BUT CLEARLY THAT IS THE IMPLICATION HERE , FORWHETHER OR NOT FLORIDA PUBLIC POLICY IS GOING TO ALLOW THERE TO BE A MORE RATIONAL SCHEME FOR PROPERTY THAT IS LANDLOCKED .

YOUR HONOR , FIRST OF ALL , LET'S TAKE A STEP BACK. THE STATUTORY WAY OF NECESSITY DOES NOT , EVEN I F YOU FORGET THE TIME LIMIT ISSUE, FORGET THE 30 YEARS, DOESN'T PROVIDE A REMEDY FOREVERYBODY. DOESN'T APPLY IF YOU ARE A MUNICIPALITY.

LET ME ASK YOU THE SAME QUESTION THAT I ASKED YOUR OPPONENT , AND QUITE CANDIDLY , I AM SURPRISED, THAT , HAVE YOU EXAMINED THE STATUTORY SCHEMES IN OTHER STATES?

NO.

AND WHY NOT?

WE THOUGHT THE LANGUAGE IN H AND F AND THE LANGUAGE IN THIS STATUTE, HERE , WERE CLEAR THAT IT WASN'T LIMITED TO TITLE, WHICH WE UNDERSTOOD TO BE THEIR ARGUMENT.

BUT YOU HAVE NOT EXAMINED THE STATUTE.

NO.

SO WE HAVE NO INSIGHT INTO WHETHER OR NOT SECTIONS LIKE THIS APPEAR I N OTHER STATUTORY SCHEMES BUT USE DIFFERENT LANGUAGE , LIKE SAYING WE ARE GOING TO PUT IT IN AN EXCEPTION OR NOT NOTWITHSTANDING.

I THINK THE FACT THAT WE FIND SOME THINGS IN THE EXCEPTIONS THAT HAVE NOTHINGTO DO WITH TITLE , TELLS US THAT THE PEOPLE WHO DRAFTED THIS IN THE LEGISLATURE , THOUGHT, WELL , IT IS , MARTA IS ALL ENCOMPASSING AND IT IS GOING BEYOND TITLE, SO WHEN WE ARE ARE GOING TO EXCEPT SOMETHING OUT WE DO THAT. AND I WANT TO COME BACK TO FOLLOWING YOUR POINT. STATUTORY WAY OF NECESSITY IS NOT AN ABSOLUTE SAFETY VALVE. IT ISN'T. FOR EXAMPLE IT DOES NOT APPLY TO MUNICIPALITIES. WHERE IS THE MORE VALUABLE LAND?

LET'S GO BACK TO , BECAUSEI DON'T THINK YOU ADEQUATELY , AT LEAST I N MY MIND , ANSWERED ONE OF THE PREVIOUS QUESTIONS, WHICH IS THAT, IF THE PERSON OWNS THIS LANDLOCKED PIECE OF LAND ANDJUST ALLOWS I T TO GROW WILD AND DOES NOTHING WITH IT , AND THEY WOULD HAVE HAD A RIGHT TO A COMMON LAW WAY OF NECESSITY , CORRECT?

FROM THE COMMON GRANT O R , YES. AND THEY LET THAT LAPSE.

BUT THEY DO NOTHING WITH IT , AND THEN THIS PROPERTY GETS ZONED SO THAT THEY CAN, IN FACT , BUILD HOUSES ON IT . ARE YOU , WAS YOUR PREVIOUS ANSWER TO THE QUESTION , IS THAT NOW THEY CANNOT GET A STATUTORY WAY OF NECESSITY , IN ORDER TO USE THAT PROPERTY IN THAT MANNER ? BECAUSE THEY ONCE HAD A RIGHT TO GET A COMMON LAWWAY OF NECESSITY.

I THINK , WELL , TO BACK UP ON THE PREMISE OF YOUR QUESTION, I MEAN , I AM NOT SURE WHEN

THERE EVER WOULD HAVE BEEN ZONING THAT WOULDN'T HAVE PERMIT ADD DWELLING O R AGRICULTURE AL USE , WHICH ARE TWO OF THE THINGS UNDER THE STATUTE OF NECESSITY , ON SO I DON'T KNOW THAT THERE EVER WAS A TIME WHEN YOU COULDN'T HAVE DONE ONE OF THOSE TWO THINGS.

BUT ASSUMING THAT THEY DIDN'T.

THEY COULD HAVE RECORDED THE COMMON LAW RIGHT-OF-WAY. IN OTHER FACTS, WHEN MARTA COMES IN , IT GAVE UNTIL 1965, SO THEY HAD UNTIL 1965 TO RECORD THAT. LET'S ASSUME THEY HAD A STATUTORY RIGHT-OF-WAY STARTING AT THAT POINT , STARTING IN 1965, ONCE THE COMMON LAW ONE RAN. 30 YEARS FROM THAT IS 1995. THEY DIDN'T FILE THIS SUIT UNTIL 1997.

WHERE DOES IT SAY THAT THEY HAVE TO DO IT UNDER THE30 YEARS, UNDER THE STATUTORY WAY OF NECESSITY?

IF MARTA APPLIES , THEY SHOULD ACT WITHIN 30 YEARS , SHOULDN'T THEY?

IT SAID THAT THE STATUTORY WAY OF NECESSITY , IT APPLIES TO LAND OUTSIDE OF A MUNICIPALITY THAT IS USED FOR RESIDENTIAL OR AGRICULTURAL PURPOSES, SO IN JUSTICE QUINCE'S HYPOTHETICAL, I F THE PERSON, EVEN THOUGH IT IS ZONED FOR RESIDENTIAL OR AGRICULTURAL PURPOSES, IF IT IS NOT USED FOR RESIDENTIAL OR AGRICULTURAL PURPOSES , THEY COULDN'T COME IN AND ESTABLISH A STATUTORY RIGHT OF NECESSITY .

WELL , IT SAYS THE RIGHT EXIST, WHEN ANY LAND I S BEING USED OR DESIRED TO B E USED.

SO THERE IS THE INTENT ASPECT OF IT.

CAN YOU HAVE A SECRET DESIRE AND YOU DON'T TELL ANYBODY FOR A HUNDRED YEARS AND THEN YOU ARE GOING TO COME AND GO THROUGH THE SFWHLING.

BUT THE STATUTE , WE DIDN'T MAKE UP THE LANGUAGE OF THE STATUTE. YOU JUST READ FROM THELANGUAGE OF THE STATUTE. IT SAYS USED OR DESIRED TO BE. SO WHAT HAS BEEN REPRESENTEDIS THAT IS WHY THIS BECOMES FLUID , BECAUSE UNTIL YOU DESIRE TO USE IT, YOU KNOW , THERE MAY BE AN ISSUE HERE , AS TO , BECAUSE I A M STILL CONCERNED ABOUT THE IDEA THAT THERE IS JUST THIS OPEN ENDED , YOU KNOW , FOREVER AND EVER, THAT, IF I N A GIVEN CASE YOU CAN ESTABLISH THAT THE PERSON , AND I DON'T KNOW WHY THEY WOULD INTEND FOR 30 YEARS TO USE SOMETHING AS A RESIDENCE AND DIDN'T BACK BEFORE THEN , SEEM, BUT , SO WE DON'T KNOW THE FACT OF THIS CASE TO REALLY HASH IT OUT , BUT IT SEEMS THAT , THE IDEA THAT W E ARE TALKING ABOUT WITH THE STATUTORY RIGHT OF NECESSITY, IS NOTSOMETHING THAT JUST EXISTS AT ONE SPECIFIC POINT O F TIME, AND THAT IS WHY I AM JUST , I AM, YOU KNOW , PERHAPS IT , PERHAPS THE STATUTE OF LIMITATIONS HAS TO RUN FROM FOUR YEARS FROM THE TIME, YOU KNOW , IF IT IS A STATUTE OF LIMITATIONS DEALING WITH A STATUTE , FROM THE TIME THAT THEY HAVE INTENDED TO USE IT . I MEAN, MAYBE THAT IS THE ANSWER, THAT THERE IS A STATUTE OF LIMITATION , BUT IT ARISES AT THE TIME THAT ALL O F THOSE CONDITIONS ARE MET AND THEN THEY SHOW THAT THEY INTENDED TO USE IT, THEN THEY CAN'T WAIT MORE THAN FOUR YEARS TO BRING THAT CLAIM.

I THINK YOUR HONOR IS CORRECT THAT WE ARE GETTING INTO A LOT OF PUBLIC POLICY OR LEGISLATIVE TYPE THINGS THAT

I AM GETTING INTO A FACT OF WHETHER THIS STATUTE HASA STATUTE OF LIMIT AGENCIES. YOU ARE SAY IN G IT IS THE STATUTE OF LIMITATIONS OF MART A THEY ARE SAYING THAT IT I S NO STATUTE OF LIMITATIONS , AND I AM WONDERING WHETHER, IF IT IS THE STATUTORY CAUSE OF ACTION, WHY ISN'T IT THE STATUTORY , STATUTE OF LIMITATIONS FOR STATUTORYCAUSE OF ACTION.

LET ME , AND I AM NOT SURE I HAVE AN ANSWER FOR THAT, BUT LET ME GO BACK TO YOUR EARLIER POINT IF I COULD , WHEN YOU STARTED SAYING IT IS THIS CAYENNE OF LEGISLATIVE INTENT TYPE OF THIS KIND OF LEGISLATIVEINTENT TYPE OF STUFF. I THINK WE CAN DETERMINEFROM THE LEGISLATIVE INTENT NOT ONLY WHAT HAS OCCURRED BUT WHAT HAS HAPPENED SINCE THEN , BECAUSE THIS COURTSAID IN H AND F, WHETHER IT IS DICTA OR NOT , STATUTORYWAYS OF NECESSITY ARE CONTROLLED BY MART A YOU SAID THAT IN 1989. NOW, LET'S LOOK AT WHAT HAPPENED. THEY CITE THE ODOM CASE AND SAY THAT IS DICK ATTACHMENT ODOM IS A MARTA CASE . IT SAID ODOM APPLIES T O BEDS UNWATERWAY S AND AND YOU KNOW WHAT THIS COURT DID , THOUGH , AMENDED 712.03 TO ADD A SUBPART EXCEPTION THAT TOOK NAVIGABLE WATERWAY S OUT O F MART, A SO WHEN THIS COURT SPOKE AND LET'S SAY IT DIDN'T AGREE, IT AMEND THESTATUTE.YOU SPOKE IN 1989. DICTA WAS CLEAR. AND YOU KNOW WHAT HAPPENED ? 2000 THEY AMENDED MART A THEY DIDN'T ADD ANYTHING FOR COMMON LAW WAY OF NECESSITY OR STATUTE. IN 2003, THE SECOND DISTRICT SAID THIS IS WHAT WE THINK H AND F MEANS T APPLIES TO STATUTORY. JUST LIKE YOU SAID. YOU KNOW WAP I N 2004 DO YOU KNOW WHAT HAPPENED IN 2004 IN THE LEGISLATURE? NOTHING ON THIS.

DOES IT DEPEND ON THERE BEING AN UNIT OF TITLE? HERE IS MY QUESTION AN UNITY OF TITLE IN HERE I S MY QUESTION. IF YOU HAVE A COMMON LAW WAYOF NECESSITY BASED ON UNITYOF TITLE AND YOU SIT ON I T FOR 30 YEARS. YOUR PROPERTY IS LANDLOCKED. LET'S SAY THEN YOU TRY TO SEEK STATUTORY WAY OF NECESSITY AGAINST SOMEBODY OUTSIDE THE UNITY OF TITLE , ANOTHER, ON THE EAST SIDE OF THE PROPERTY.

A DIFFERENT FACT.

YES. ANOTHER AREA. WOULD YOUR ARGUMENT BE THAT , BECAUSE THE LANDOWNER HAD THE COMMON LAW RIGHT OF NECESSITY AND THE STATUTORYRIGHT OF NECESSITY AND HE SAT ON IT FOR 30 YEARS , THAT THAT OWNER IS FOREVER PRECLUDED , IF NOT WHY KNOW THE?

WHY NOT?

I DON'T HAVE TO ARGUE IN 24 CASE.

THAT IS THE OCCASION IN THIS CASE.

THAT IS THE OCCASION OF WHAT YOU ARE ARGUING , BECAUSE THE RIGHT STARTED TO ACCRUE WHEN THE COMMON LAW RIGHT STARTED TO ACCRUE. THAT IS WHAT YOU ARE ARGUING . DOES THE PERSON HAVE UNITY OF TITLE ?

IN OUR CASE WE HAVE THE SITUATION WHERE THEY ARE TRYING TO COME ACROSS WHERE THEY HAD THE COMMON LAW GRANT , COMMON LAW RIGHT-OF-WAY AND THEY LET IT LAPSE. SECOND THING IS, FRO M OUR FACTS , ONCE AGAIN , YOU CAN START THE 30 YEARS AFTER THE COMMON LAW HAD LAPSED, BECAUSE I AGREE YOU CAN'TGET A STATUTORY WHEN YOU HAVE A COMMON LAW.LET'S ASSUME , BECAUSE THE CASES SAY THAT, AND WHAT THEY ARE USUALLY TALKING ABOUT AND THAT IS ONE OF THE THINGS THEY HAVE TO PROVE IS THEY DON'T HAVE THE COMMON LAW ONE SO THEY PROVE NECESSITY.BUT LET'S ASSUME THAT IS THE CASE. IF MARTA IS GOING T O APPLYTO IT , WHICH WE SAY IT SHOULD , THEN YOUR 30 YEARS WOULD START TO RUN.

LET'S SAY BLANTON PURCHASE INS 1985.

YES, WHEN IT WAS ALREADY , RIGHT.

WHAT IF BLANTON SOLD THIS PIECE OF PROPERTY TO SMITH IN 1980 , DOES SMITH GET T O ASSERT A STATUTORY RIGHT OFNESSES SNIT.

NO.I WOULD SAY NOT.

WHY NOT?

BECAUSE HE STUCK WITH , HE IS A SUCCESSOR TO BLANTON. BLANTON BOUGHT IT KNOWING IT WAS LANDLOCKED. THE TITLE FUND NOTES THAT WE CITE IN OUR BRIEF, SAY , HEY , YOU HAVE GOT TO CHECK OUT ACCESS AND YOU HAVE GOT TO BE CAREFUL, BECAUSE YOUR ACCESS, YOU MAY NOT HAVE IT, PER H AND F.

CHIEF JUSTICE: THANK YOU VERY MUCH. MR. MARSHAL . WE WILL GIVE YOU, IF YOU CAN GET SOME WORDS OUT OF YOUR MOUTH, A MINUTE.

ALL RIGHT . A QUICK POINT, I F THEY ARECORRECT , THIS PROPERTY IS LANDLOCKED FOREVER. THAT IS BAD PUBLIC POLICY. THAT IS THE WHOLE REASON WE HAVE THIS LEGISLATIVE SAFETY VALVE.MR . BLANTON PURCHASES PROPERTY 55 YEARS AFTER IT BECAME LANDLOCKED. HIS PREDECESSORS , PARTIES HE SELLS TO , 200 YEARS IT IS STILL LANDLOCKED. BAD PUBLIC POLICY. SECOND, IT IS A PRIVATE IMMINENT DOMAIN PROCEEDING. JUSTICE SUMMER LIEN CHARACTERIZED IT THAT IN THE DESERET RANCH THAT DESCRIBES IMPORTANT PUBLIC POLICY.

IN THE DISSENT.

IN THE DISSENT AND FINALLY THERE ARE A LOT OF FACTS ABOUT WHAT HAPPENED IN THIS 30-YEAR , 50-YEAR, AGAIN , WE ARE HERE ON A MOTION TO DISMISS AND NONE OF THOSE FACTS GOT BEFORE A COURT OF LAW. AND WE ARE BACK.

THE PROBLEM IS THOSE FACTS DIDN'T COME OUT , BUT IF WE ARE GOING TO B E WRITING AN OPINION , EACH OF YOU ARE TAKING AN ALL OR NOTHING OPINION. YOU ARE SAYING IT ALWAYS EXIST AND HE IS SAYING IT DOESN'T EXIST IF THE TIME EXPIRES . WHAT WOULD BE THE FACTORS THAT A COURT WOULD LOOK AT?

IT WOULD LOOK AT THE NATURE OF THE SURROUNDING PARCELS OF PROPERTY. WHERE WAS THE NEAREST PRACTICABLE ROUTE. IT WOULD LOOK AT THE INTENT.

WOULD THERE B E SOMETHING LIKE LACHES DEFENSE IN A PARTICULAR CASE? THAT IS , WOULD THERE BE A CIRCUMSTANCE , WHERE , THAT THERE COULD STILL BE AN ARGUMENT THAT YOU ACHIEVED A RIGHT BUT YOU SAT ON IT , AND THAT , NOW , THAT THAT IS GOING TOES TOP YOU FROM IS GOING TO ESTOP YOU FROM CLAIM AGO RIGHT-OF-WAY.

NO BECAUSE YOU HAVE TO PAY FOR THAT.

WOULD IT BE YOUR POSITION THAT THAT IS NOT REALLY AN ISSUE IN THIS CASE NOW?

NOW IT IS NOT AN ISSUE IN THIS CASE , DEPENDING ON HOW THIS COURT WERE TO RULE F THIS COURT WERE TO RULE THATYOU HAD TO TAKE A LOOK AT THE INTENT OF THE PARTIES THROUGHOUT THE TIME THAT THE LAND WAS LANDLOCKED , IF YOUHAD TO LOOK AT THE SURROUNDING PARCELS TO SEE WHAT THE NEAREST PRACTICABLE ROUTE WAS AND WHETHER THAT CHANGED BACK AND FORTH , THAT WOULD BECOME RELEVANT.

CHIEF JUSTICE: WE AREGOING TO HAVE TO CLOSE. THANK YOU VERY , VERY MUCH. OKAY.