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Florida Dept. of Revenue v. James (Willie) Cummings

THE MARSHAL: PLEASE RISE. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

THE NEXT CASE ON THIS MORNING'S DOCKET IS FLORIDA DEPARTMENT OF REVENUE VERSUS CUMMINGS.

GOOD MORNING, YOUR HONORS, MAY IT PLEASE THE COURT. MY NAME IS BILL BRANCH. I'M AN ASSISTANT ATTORNEY GENERAL WITH THE FLORIDA OFFICE OF THE ATTORNEY GENERAL HERE ON BEHALF OF THE DEPARTMENT OF REVENUE, THE PETITIONER IN THIS ACTION.

CAN YOU CLARIFY SOMETHING FOR ME?

SURE.

IT SEEMS THAT THE PRESUMPTION UNDER THE LAW IN THE CASES CALL IT A STRONG PRESUMPTION IS THAT THE LEGAL FATHER IS THE BIOLOGICAL FATHER.

THAT IS CORRECT, YOUR HONOR.

SO IN THESE CASES, WHY DON'T WE NEED SOME KIND OF JUDICIAL DETERMINATION AT THE BEGINNING THAT THE LEGAL FATHER IS NOT THE BIOLOGICAL FATHER BEFORE WE GO AFTER ANOTHER PUNITIVE FATHER?

YOUR HONOR, WE DON'T FEEL THAT IS NECESSARY, BECAUSE BY GOING AFTER WHO THE MOTHER NAMES AND IN THESE PARTICULAR CASES FOR INSTANCE IN THE PATERNITY COMPLAINT OR THROUGH THE PATERNITY AFFIDAVIT SWORE UNDER OATH THAT ONLY THE BIOLOGICAL -- THE ALLEGED BIOLOGICAL FATHER WAS THE ACTUAL FATHER OF THESE CHILDREN.

THESE CASES, AGAIN DOR HAS A SPECIFIC TARGETED INTEREST. THEY WANT MONEY.

CORRECT, YOUR HONOR.

BACK.

FOR THE PEOPLE OF THE STATE OF FLORIDA.

FOR CHILD SUPPORT THAT THEY ARE SEEKING TO ENFORCE.

THAT'S CORRECT.

SO WHAT IS HAPPENING IN THESE SITUATIONS IS UNDER 4D THAT YOU'VE GOT PAYMENTS HAVE BEEN EITHER MADE BY THE STATE OR YOU ARE SEEKING TO COLLECT FROM THE SOURCE, AND SO YOU ARE GOING AFTER -- SO IT MIGHT BE THE LEGAL, WHOEVER THE MOTHER NAMES THAT YOU THEN TRY TO GO AFTER OR IS THERE SOME INVESTIGATION FIRST TO DETERMINE WHAT THE RELATIONSHIPS ARE? I MEAN, IN OTHER WORDS IS THIS A FACT CASE BY CASE SITUATION OR IS IT GOING TO BE A BRIGHT-LINE RULE OF LAW THAT COMES OUT OF THIS CASE?

WELL, YOUR HONOR, AND I THINK WHAT WE DISCUSSED IN THE BRIEF WAS UNFORTUNATELY THE FACTS AREN'T AS WELL-DEVELOPED IN THIS CASE AS PERHAPS THEY SHOULD HAVE BEEN. I DON'T BELIEVE IT IS EVER GOING TO BE THE POLICY OF THE DEPARTMENT OF REVENUE TO NOT GO AFTER A LEGAL FATHER WHEN THOSE PARTIES STILL ARE MAINTAINING SOME TYPE OF EITHER MARITAL RELATIONSHIP OR THEY ARE SEPARATED, THE FATHER IS MAINTAINING A RELATIONSHIP WITH THE CHILD, YOU KNOW WHERE THAT FATHER IS, HE CAN GET ACCESS TO THEM AND BY SERVICE AND AS A LEGAL FATHER HE HAS THAT DUTY.

THE COMPLAINTS DON'T EVEN ALLEGE THAT THERE HAS BEEN A DIVORCE, CORRECT?

THAT IS CORRECT, YOUR HONOR.

THEY DON'T EVEN ALLEGE A SEPARATION, AS FAR AS I REMEMBER.

THAT IS CORRECT, YOUR HONOR. ALL IT ALLEGES IS THAT EACH CHILD WAS BORN OR CONCEIVED DURING THE MARRIAGE.

HOW IS THE COURT GOING TO SORT ALL OF THIS OUT IF IT DOESN'T HAVE ALL OF THE APPROPRIATE ENTITIES BEFORE THEM TO SORT IT OUT? AS OPPOSED TO HAVING CONFLICTING ORDERS ENTERED IN ONE SITUATION, MAYBE WE HAVE AN ORDER ENTERED FOR SUPPORT, YOU KNOW, CLEARLY IF WE START FROM A VERY POSITIVE FRAMEWORK HERE AND THAT IS THE DEPARTMENT IS SEEKING SUPPORT, REALLY, ON BEHALF OF THESE CHILDREN. IT IS ALMOST AN IN REM PROCEEDING, YOU KNOW, BUT WHAT IS GOING TO HAPPEN IF WE HAVE AN ISOLATED SITUATION HERE WHERE A COURT ORDERS ON THE BASIS OF NATURAL PATERNITY A FATHER TO MAKE SUPPORT PAYMENTS FOR THE CHILD, AND THEN THERE IS A SEPARATION OR DIVORCE DECREE THAT ORDERS THE LEGAL FATHER WHO IS DIFFERENT FROM THE PUNITIVE OR NATURAL FATHER TO MAKE SUPPORT PAYMENTS, AND THESE ARE ALL, YOU KNOW, ONE PROCEEDING IS GOING OUT HERE AND ONE PROCEEDING IS GOING ON HERE, AND YOU KNOW, THEN LATER WE'VE GOT, YOU KNOW, ONE OF THESE COURTS GETS IT AND IT IS BECAUSE NOW THE LEGAL FATHER IS CLAIMING, WELL, I DON'T HAVE TO MAKE SUPPORT PAYMENTS BECAUSE THE NATURAL FATHER HAS BEEN ORDERED TO MAKE SUPPORT PAYMENTS AND, YOU KNOW, SO IF THERE IS GOING TO BE A PROCEEDING AS I SAY THAT IS ALMOST IN AN IN REM PROCEEDING TO BENEFIT THE CHILD, THE AGENCY BEING THERE, YOU KNOW, TO DO THIS AND TO CARRY OUT BOTH THE FEDERAL MANDATES AND THE STATE MANDATES AND ON BEHALF OF THIS CHILD, SHOULDN'T ALL OF THE PARTIES THAT MAY BE AFFECTED BY THIS BE THERE SO THE COURT CAN SORT OUT AND GET THIS THING ON THE RIGHT TRACK? ISN'T THAT JUST A GOOD SENSE APPROACH TO THIS?

WELL, YOUR HONOR, IT MAY BE A GOOD SENSE APPROACH. THE POSITION TAKEN BY THE DEPARTMENT IN RELIANCE UPON THE DEPARTMENT OF REVENUE VERSUS PATE CASE OUT OF THE 1ST DCA WHICH IS THE CASE THE 2ND DCA IS IN CONFLICT WITH TOOK THE POSITION THAT ISN'T NECESSARY AND BASED ON THAT RULING AND OUR UNDERSTAND OF PRIVETTE, THAT APPLIES.

YOU COULDN'T, I MEAN AGAIN IF YOU HAVE A SITUATION WHERE THERE HAS BEEN A DIVORCE DECREE, YOU CAN'T JUST AT THAT POINT AT LEAST IN THAT SITUATION, WOULDN'T THE LEGAL FATHER BE AN INDISPENSABLE PARTY?

YOUR HONOR, IF THERE IS A DIVORCE DECREE AND THIS COURT SPOKE TO IT AND IT IS NOT PART OF THE CASES IN THESE BRIEFS BUT ABOUT THREE YEARS AGO THE COURT SPOKE TO THE FACT THAT IF THERE IS A DIVORCE DECREE, THE FATHER IS ORDERED TO PAY CHILD SUPPORT THAT IN EFFECT IS A PATERNITY JUDGMENT. I AM NOT AWARE THAT THE DEPARTMENT WOULD BE GOING AFTER A BIOLOGICAL FATHER UNDER THOSE CIRCUMSTANCES.

IF THEY WERE, WOULDN'T THE FATHER AT THAT POINT BE --

I THINK THE FATHER WOULD PROBABLY HAVE TO BE JOINED AS AN INDISPENSABLE PARTY

BECAUSE HE IS ALREADY UNDER AN ORDER TO PAY.

HOPEFULLY AT LEAST IN THOSE JURISDICTIONS THAT FOLLOW THE COURT'S MANDATE -- MANDATE FOR A UNIFIED FAMILY COURT IF THERE WERE OTHER ACTIONS GOING ON INVOLVING THE SAME FAMILY, THEY WOULD BE IN FRONT OF THE SAME JUDGE, THEY WOULDN'T HAVE CONFLICTING ORDERS. AS A PRACTICAL MATTER, AS I'M UNDERSTANDING THIS, AND YOU ARE SAYING THESE CASES INVOLVE SITUATIONS WHERE THIS MOTHER HAS SWORN THIS PERSON IS THE BIOLOGICAL FATHER AND THEY ARE ON THE BIRTH CERTIFICATE, IT SEEMS TO ME THAT YOUR CONCERN THAT IF WE HOLD AS A MATTER OF LAW THAT THE LEGAL FATHER IS ALWAYS AN INDISPENSABLE PARTY THAT YOU WILL BE NOT ABLE TO PURSUE THE ACTION AGAINST THE PROBABLE BIOLOGICAL FATHER BECAUSE YOU CAN'T -- YOU MAY NOT KNOW WHERE THE LEGAL FATHER IS. THAT'S THE PRACTICAL SITUATION THAT WE ARE CONFRONTING. SO WOULDN'T THAT PRACTICAL SITUATION BE SOLVED IF YOU COULD CONSTRUCTIVELY SERVE THE LEGAL FATHER? I MEAN, IF YOU COULDN'T SERVE THEM BY REGULAR SERVICE, WOULDN'T THAT SOLVE THE WHOLE PROBLEM?

THAT PERHAPS COULD SOLVE THE PROBLEM IF WE COULD DO CONSTRUCTIVE NOTICE.

BECAUSE YOU ALREADY SAY THEY NEED NOTICE.

THEY NEED NOTICE, YOUR HONOR, CORRECT.

SO WE ARE REALLY JUST TALKING ABOUT HOW TO GET SERVICE AND SO IF WE SAY WE INTERPRET THE STATUTES TO SAY THAT YOU CAN CONSTRUCTIVELY SERVE THE LEGAL FATHER, THAT SEEMS TO ME IT SOLVES THE PROBLEM.

WELL, THE PROBLEM WE WOULD HAVE WITH THAT, YOUR HONOR, IS UNDER CHAPTER 7 42 IN PATERNITY ACTIONS, CONSTRUCTIVE SERVICE ISN'T ALLOWED SINCE IT IS AN IN PERSONUM ACTION.

BUT WHAT DO YOU CONSIDER THE PROPER ACTION TO SERVE A LEGAL FATHER? IT JUST SEEMS TO ME THAT IF YOU CAN'T DO IT BY CONSTRUCTIVE SERVICE YOU DON'T KNOW, YOU DON'T HAVE AN ADDRESS, A GOOD ADDRESS FOR THE FATHER, HOW DO YOU GET NOTICE TO THE FATHER WHICH YOU AGREE, THE LEGAL FATHER WHICH YOU AGREE MUST TAKE PLACE?

YOUR HONOR, PRESENTLY THE WAY IT IS BEING DONE IS BASED ON THE LAST KNOWN ADDRESS WE HAVE.

EXCUSE ME?

IT IS BASED ON THE LAST KNOWN ADDRESS WHAT WE HAVE, WHAT IS REASONABLY CALCULATED TO PROVIDE NOTICE.

BUT IF YOU HAVE AN ADDRESS THAT IS NOT A GOOD ADDRESS AND SOMEONE GOES OUT TO SERVE, IT IS OBVIOUSLY NOT SERVED.

THAT IS CORRECT, YOUR HONOR.

IF YOU HAVE CONSTRUCTIVE NOTICE THERE IS AT LEAST A CHANCE THAT THE PERSON MAY READ IT IN WHATEVER NEWSPAPER OR PUBLICATION THAT IT IS PUBLISHED IN AND MAY SEE IT. IS THERE ANY OTHER ALTERNATIVE? IF YOU CAN'T DO IT BY CONSTRUCTIVE PUBLICATION, YOU HAVE NO ADDRESS, WHAT IS THE OTHER ALTERNATIVE WHEN YOU AGREE THAT THE PERSON MUST HAVE SOME KIND OF NOTICE?

WELL, YOUR HONOR, THE BASIS OF THE AGREEMENT THAT THERE MUST BE NOTICE CERTAINLY IF

WE CAN DO IT BY CONSTRUCTIVE NOTICE THEN BASED ON THE CIRCUMSTANCES THAT WE TYPICALLY HAVE AND WHAT I LIKE TO DO IS BACK UP AND JUST GET --

BEFORE YOU FINISH THIS, ARE YOU THEN ARGUING THAT THEY SHOULD NOT EVEN HAVE NOTICE?

NO, YOUR HONOR.

I MEAN YOU CAN'T DO CONSTRUCTIVE NOTICE, YOU HAVE NO ADDRESS, SO IS YOUR ARGUMENT THEN THAT IN THESE KIND OF CASES YOU DON'T REALLY NEED TO GIVE NOTICE TO THE LEGAL FATHER?

I THINK WE NEED TO ATTEMPT TO PROVIDE NOTICE, AND THE NOTICE THAT WE ATTEMPT TO PROVIDE IS SIMPLY BY REGULAR MAIL AND THE PROBLEM THAT THE DEPARTMENT OF REVENUE RUNS INTO THESE CASES AND I BELIEVE IT WAS TRUE IN THESE CASES, IS WE CAN'T GET GOOD ADDRESSES.

GOING BACK TO THE, YOU SAY YOU WANTED TO GO BACK BUT AGAIN THE PROBLEM IS PRACTICAL PROBLEM WE HOLD THE LEGAL FATHER, THE INDISPENSABLE PARTY, YOU CAN'T GET SERVICE IF YOU CLAIM THAT THE CONSTRUCTIVE SERVICE DOESN'T APPLY YOU MUST GO TO ACTUAL SERVICE. YOU ARE BARRED FROM BEING ABLE TO DO A PATERNITY TEST ON THE ALLEGED BIOLOGICAL FATHER AND GET CHILD SUPPORT FOR THE CHILD.

THAT IS CORRECT, YOUR HONOR.

I MEAN, SO IT SEEMS THOUGH THAT THE SIMPLEST WAY TO SOLVE THAT IS TO LOOK AT THAT STATUTE AND REALLY MAKE SURE THAT THE STATUTE DOESN'T ALLOW CONSTRUCTIVE SERVICE UNDER THIS CIRCUMSTANCE, AND IF IT DOESN'T TO GET THE LEGISLATURE TO UNDER THESE CIRCUMSTANCES TO ALLOW CONSTRUCTIVE SERVICE BECAUSE YOU ARE NOT REALLY, I MEAN YOU ARE ASKING FOR CHILD SUPPORT. YOU ARE NOT REALLY ADVERSELY AFFECTING THE RIGHT OF THE LEGAL FATHER WHO MIGHT HAVE VISITATION OR SOMETHING ELSE TO BE ABLE TO GET THAT VISITATION.

AND, YOUR HONOR, THE REASON I BELIEVE THAT THE DEPARTMENT HASN'T PURSUED LEGISLATIVE ACTION IS BASED ON ITS UNDERSTANDING OF PRIVETTE AS ALSO ADOPTED BY THE FIRST DISTRICT COURT OF APPEALS.

BUT WITH EVERYTHING ELSE THAT WE'VE SAID IN THE PRIOR CASES AND AS JUSTICE CANTERO SAID, WITH THE ASSUMPTION THAT THE LEGAL FATHER IS THE FATHER, TO START TO SAY, WELL, FOR THIS KIND OF ACTION THEY ARE NOT NEEDED OR, YOU KNOW, IT STARTS TO CREATE A FICTION ABOUT HOW WE ARE PROCEEDING THAT IT JUST SEEMS IT WOULD BE BETTER TO HAVE ALL OF THE POTENTIAL FATHERS TOGETHER AT ONE TIME. I MEAN, THAT'S WHY I HAVE BEEN TRYING TO URGE THE DOR TO GO AFTER BEING ABLE TO TRY TO SAY NOT JUST CHILD SUPPORT BUT LET'S GET VISITATION FOR THESE PEOPLE, ALSO, BECAUSE THAT WILL MAKE A PAYMENT OF CHILD SUPPORT MORE MEANINGFUL BUT THAT'S FOR ANOTHER DAY.

I GUESS THE OTHER ISSUE IS WHY AREN'T YOU GOING AFTER THE LEGAL FATHERS BECAUSE IF THEY ARE NOT DIVORCED THEY HAVE THE OBLIGATION.

I THINK THAT SPEAKS TO ISSUES RAISED BY JUSTICE QUINCE AND JUSTICE PARIENTE AND THAT IS IN THESE TYPE OF CASES GENERALLY WE DON'T HAVE THE ABILITY TO LOCATE THE LEGAL FATHER. IF THERE IS A LEGAL FATHER --

YOU AGREE THAT LEGALLY THEY ARE OBLIGATED?

THEY ARE OBLIGATED TO PAY UNTIL THERE IS A DETERMINATION THEY ARE NOT THE

BIOLOGICAL FATHER UNLESS THERE HAS BEEN AN ADJUDICATION THAT THEY HAVE AN OBLIGATION TO PAY CHILD SUPPORT AND IF THAT IS THE CASE WE ARE GOING TO BE ENFORCING THAT OBLIGATION.

DO YOU AGREE THAT TWO MEN CANNOT HAVE THE OBLIGATION TO PROVIDE CHILD SUPPORT?

THAT IS CORRECT. I WOULD AGREE WITH THAT AND, IN FACT --

SO IT SEEMS TO ME UNTIL YOU CAN GET A COURT TO SAY THAT THE LEGAL FATHER IS NOT THE NATURAL FATHER THEN THE LEGAL FATHER'S OBLIGATION IS FOR CHILD SUPPORT AND THE PUNITIVE FATHER'S IS NOT, BECAUSE THAT'S IF YOU AGREE THAT'S WHERE THE CHILD SUPPORT OBLIGATION LIES THEN IT CANNOT LIE ELSEWHERE AS WELL.

WE BELIEVE WE ARE DOING THAT, YOUR HONOR, BY HAVING THE ALLEGED BIOLOGICAL FATHER DETERMINE TO BE THE BIOLOGICAL FATHER THROUGH GENETIC TESTING AND ONCE THAT IS DETERMINED --

BUT ISN'T IT ALSO TRUE THAT A LEGAL FATHER CAN BE OBLIGATED EVEN IF NOT THE BIOLOGICAL FATHER?

THAT IS CORRECT, YOUR HONOR.

SO WHAT YOU ARE DOING IS SAYING THERE ARE TWO MEN OBLIGATED TO PROVIDE CHILD SUPPORT. ONE WE CAN FIND AND THE OTHER WE CAN'T BUT LEGALLY THERE ARE TWO MEN OBLIGATED TO PROVIDE CHILD SUPPORT.

WELL, YOUR HONOR, I SAID CORRECT TO THAT QUESTION, BUT I THINK THE POSITION OF THE DEPARTMENT IS ONCE WE HAVE DETERMINED THE BIOLOGICAL PARENT, WE'VE GOTTEN CHILD SUPPORT AND THE CHILD SUPPORT ORDER FROM THAT PARENT THAT THE LEGAL FATHER SINCE HE IS NOT THE BIOLOGICAL FATHER THEN DOES NOT HAVE FINANCIAL OBLIGATION TO PAY SUPPORT.

BUT HE MIGHT HAVE OTHER RIGHTS?

HE MAY HAVE OTHER RIGHTS, YOUR HONOR.

THAT'S WHY IT GETS DANGEROUS TO ME TO BE FRAGMENTING THESE AS WE WOULD BE FRAGMENTING THEM, REALIZING, AGAIN, THE PRACTICAL PROBLEM THAT YOU ARE FACED WITH ABOUT IF YOU, YOU KNOW, AFTER DILIGENT GOOD FAITH EFFORT TO FIND THE LEGAL FATHER YOU CAN'T FIND THEM AND AT THAT POINT IT SEEMS THE CONSTRUCTIVE SERVICE IS THE ONLY APPROPRIATE ALTERNATIVE, BECAUSE OTHERWISE YOU REALLY WOULD BE AGAIN NOT ABLE TO PRODUCE SOMETHING WE ARE REALLY LOOKING FOR IN THE INTEREST OF THE CHILD.

AND UNDER THE PRESENT STATE OF THE LAW WE DON'T BELIEVE WE ARE ABLE TO DO THE CONSTRUCTIVE SERVICE.

DOES THE LEGAL FATHER HAVE SOME KIND OF CAUSE OF ACTION EVEN AFTER YOU HAVE DETERMINED THAT SOMEONE ELSE IS THE BIOLOGICAL FATHER?

THAT IS THE ARGUMENT WE MADE IN OUR BRIEFS, YOUR HONOR, AND THAT ARGUMENT IS THE PATERNITY ACTION IS SIMPLY THE NARROW ISSUE OF PATERNITY. THESE TITLE 4D CASES WHICH IS UNDER WHAT THE DEPARTMENT OF REVENUE OPERATES WHEN IT HANDLES THESE CASES IS A LIMITED SOLELY TO WHAT IS ALLOWED BY STATUTE.

SO HOW DOES THE NEW STATUTE PLAY INTO THIS OR DOES IT HAVE ANY APPLICATION HERE AT

ALL? YOU KNOW, THE STATUTE THAT WAS PASSED BY THE LEGISLATURE I GUESS EARLIER THIS YEAR?

I DON'T THINK IT EVER GOT PASSED.

THAT NEVER GOT PASSED, YOUR HONOR. IT DID NOT. BUT WE ARE SIMPLY LOOKING AT IS IT IS OUR POSITION, THE DEPARTMENT'S POSITION THAT A PATERNITY ACTION DOESN'T IMPACT THE PARENTING RIGHTS OF THE LEGAL FATHER. NOW, AND WE DO NOT ADDRESS THOSE IN TITLE 4D ACTIONS. NOW, IF THE MOTHER, EVEN THOUGH SHE IS REPRESENTED BY THE DEPARTMENT, WANTS TO RAISE PARENTING ISSUES OR THE BIOLOGICAL FATHER IF HE IS OUT THERE BEING SUED AND SAID, WELL, GEE, IF I AM GOING TO BE FOUND TO BE THE BIOLOGICAL FATHER AND HE COUNTER PETITIONS FOR VISITATION OR PERHAPS EVEN CUSTODY, I THINK THERE IS AN ARGUMENT TO BE MADE AT THAT POINT. ONE OF THOSE TWO PEOPLE NEED TO GO BRING IN THE LEGAL FATHER AS A PARTY BECAUSE AT THAT POINT HIS LEGAL RIGHTS MAY BE IMPACTED BUT THEY ARE NOT IMPACTED IN THE NARROW SCOPE OF THESE PARTICULAR CASES WHICH SIMPLY ADDRESS THE PATERNITY AND CHILD SUPPORT.

LET ME SEE, TELL US EXACTLY WHAT YOU LIKE THIS COURT TO SAY ABOUT THE RIGHTS AND DUTIES AND NOTICE TO THE LEGAL FATHER UNDER THESE KIND OF CIRCUMSTANCES.

UNDER THESE CIRCUMSTANCES, YOUR HONOR, WE BELIEVE THE NOTICE THAT HAS TO BE GIVEN IS SIMPLY AT THAT POINT JUST NOTICE BY MAIL OR WHAT IS REASONABLY CALCULATED TO PROVIDE HIM WITH ADEQUATE NOTICE OF WHAT IS PENDING.

WHY EVEN IS NOTICE REQUIRED? WHAT IF YOU ARE SAYING THEY ARE NOT INDISPENSABLE BECAUSE WHY?

HE IS NOT INDISPENSABLE BECAUSE THE CASE CAN BE DECIDED WITHOUT HIS INVOLVEMENT BECAUSE IT IS A PURE BIOLOGICAL ISSUE THAT CAN BE DETERMINED BY GENETIC TESTING.

SO WHY IS NOTICE EVEN REQUIRED?

THE REASON THE DEPARTMENT DOES NOTICES IN THESE CASES IS I THINK IT IS TRACKING TO A GREAT EXTENT THE NOTICE REQUIRED -- REQUIREMENT IN PRIVETTE WHICH IS OUT THERE THAT SAYS BEFORE YOU CAN GO AHEAD AND HAVE GENETIC TESTING ORDERED, IF THERE IS A LEGAL FATHER OUT THERE HE HAS THE RIGHT TO BE PROVIDED NOTICE OF THAT PROCEEDING IN CASE HE WANTS TO COME IN AND ATTEMPT TO IN EFFECT BLOCK THE PATERNITY ACTION FROM PROCEEDING, CLAIMING I HAVE A RELATIONSHIP WITH THIS CHILD, I DON'T WANT THIS DETERMINATION TO BE MADE, AND THAT'S WHEN UNDER PRIVETTE YOU HAVE THE GUARDIAN AD LITEM APPOINTED THAT DETERMINES IF THIS IS ALL IN THE BEST INTEREST OF THE CHILD BECAUSE THAT TYPE OF NOTICE WAS REQUIRED IN PRIVETTE AND THE DEPARTMENT JUST SIMPLY KIND OF HUNG ON TO THAT, AND DOES IT IN THESE OTHER PATERNITY CASES.

BUT THE RULE THEN IS, WELL, THEY ARE NOT AN INDISPENSABLE PARTY, BUT ISN'T THERE -- EXCEPT IF YOU HAVE KNOWLEDGE THAT THERE IS AN ONGOING RELATIONSHIP, WOULD THAT BE THEN AN EXCEPTION OR IS IT JUST UP TO THE DEPARTMENT TO DECIDE?

I THINK UNDER THE WAY THIS ISSUE IS FRAMED, THE POSITION THE DEPARTMENT IS TAKING ON APPEAL THAT INDISPENSABLE PARTY IN ALL CASES AND --

YOU ARE URGING A BRIGHT-LINE RULE AT THIS POINT?

A BRIGHT-LINE RULE AT THIS POINT, YOUR HONOR.

FOR YOUR -- WE ARE INTO YOUR REBUTTAL IF YOU WOULD LIKE TO SAVE TIME JUST FOR THE

PURPOSE OF THE ORAL ARGUMENT RECORD, THE BILL THAT WE WERE REFERRING TO WAS SENATE BILL 1456 WHICH WOULD HAVE GIVEN A MAN THAT'S BEEN ORDERED TO PAY CHILD SUPPORT THE ABILITY TO SET ASIDE DETERMINATION OF THE PATERNITY AT ANY TIME.

AND I BELIEVE THEY ARE STILL WORKING ON THAT TO PERHAPS BRING IT UP NEXT SESSION.

MAYBE YOU CAN HAVE THEM WORK ON THE CONSTRUCTIVE SERVICE THING THEN.

GOOD MORNING, MAY IT PLEASE THE COURT. MY NAME IS LOUIS ROSENBLIUM, AND I REPRESENT THE RESPONDENTS IN THIS CASE WHO ARE THE ALLEGED BIOLOGICAL FATHERS AND SOME OF THE ARGUMENTS I MAKE, MAKE IT SOUND LIKE I AM ALSO REPRESENTING THE LEGAL FATHERS. OF COURSE I AM NOT BUT THEIR RIGHTS ARE OF PARAMOUNT INTEREST TO MY CLIENTS BECAUSE THE ACTIONS WERE DISMISSED.

LET'S JUST LOOK AT THAT, THOUGH, AS YOU SAY YOU ARE REPRESENTING THE BIOLOGICAL FATHERS. HOW, IF YOUR FATHERS ARE SUBJECTED TO A PATERNITY TEST AND THEY ARE FOUND TO BE THE BIOLOGICAL FATHER, HOW ARE YOU HARMED BY THE LACK OF PRESENCE OF THE LEGAL FATHER?

WELL, HERE IS WHERE I HAVE TO ARGUE THE LEGAL FATHERS' RIGHTS.

THAT'S THE PROBLEM, THOUGH.

EVEN THOUGH THE DEPARTMENT HAS ALLEGED THAT THESE ARE PROCEEDINGS THAT DON'T AFFECT THE RIGHTS AND OBLIGATIONS OF THE LEGAL FATHER, THEY DEFINITELY DO.

THEY AFFECT THE OBLIGATIONS POSSIBLY, BUT HOW DO THEY AFFECT THE RIGHTS?

WELL, IT EFFECTIVELY IF SUCCESSFUL, THESE ACTIONS WOULD TERMINATE THE LEGAL FATHERS' RIGHTS AS A, QUOTE, PARENT. IN FOUR OF THE PETITIONS SIGNED BY THESE MOTHERS, THE DEPARTMENT HAS ACTUALLY ASKED THE COURT TO ORDER THE OFFICE OF VITAL STATISTICS TO CHANGE THE BIRTH CERTIFICATES TO REMOVE THE LEGAL FATHER'S NAME AND PUT THE BIOLOGICAL FATHER'S NAME ON IT.

IT WOULD BE DIFFICULT, THOUGH, IN A SITUATION WHERE THERE WAS A DIVORCE ACTION AND A LEGAL FATHER ORDERED TO PAY CHILD SUPPORT FOR IN A SEPARATE ACTION WHERE THAT FATHER WASN'T PRESENT TO BE ABLE TO EFFECT THAT JUDGMENT. WOULD YOU AGREE WITH THAT?

YES.

SO IN THAT SITUATION I DON'T THINK EVEN DESPITE THIS BRIGHT-LINE RULE THEY WOULD HAVE TO BE AN INDISPENSABLE PARTY AND THEY PROBABLY WOULD GLADLY IN MANY OF THESE CASES WE ARE HAVING LEGAL FATHERS SAYING I SHOULDN'T HAVE HAD TO PAY CHILD SUPPORT ALL OF THESE YEARS BECAUSE I AM NOT THE BIOLOGICAL FATHER SO WE KIND OF HAVE THE REVERSE SITUATION HERE.

WELL, THE DISTRICT COURT DECISION IN THIS CASE SAID YOU DON'T HAVE TO JOIN THE LEGAL FATHER IF THE DEPARTMENT CAN PRODUCE A JUDGMENT WHICH CONCLUSIVELY ESTABLISHES THAT HE IS OUT OF THE PICTURE SO TO SPEAK AND ONE OF THE DEPARTMENTS AS THE DEPARTMENT HAS CONCEDED HERE IS WE REALLY DON'T HAVE A WELL-DEVELOPED RECORD ON ANY OF THESE CASES.

BUT WE KNOW FROM THE COMPLAINTS THAT THE ALLEGATIONS ARE THAT THERE IS NO DIVORCE, THERE IS NO SEPARATION, THERE IS A LEGAL FATHER. WHAT THE DEPARTMENT IS SEEKING IS

CHILD SUPPORT PAYMENTS. THE DEPARTMENT HAS CONCEDED THAT IF THE PUNITIVE FATHER'S COUNTER-PETITION FOR VISITATION RIGHTS OR CUSTODY, THAT AT THAT POINT THE LEGAL FATHERS COULD BECOME INDISPENSABLE PARTIES BUT AS LONG AS THE ONLY ISSUE IS CHILD SUPPORT, THAT THE LEGAL FATHER IS NOT AN INDISPENSABLE PARTY. WHY IS THAT NOT CORRECT?

WELL, JUST ONE SLIGHT CLARIFICATION OF THE RECORD. THERE IS ONE OF THE SIX CASES THAT ALLEGES A SEPARATION THAT ACTUALLY OCCURRED IN 1977 IT IS ALLEGED, AND, YOU KNOW, A SUBSTANTIAL NUMBER OF YEARS BEFORE THE CHILD WAS BORN, BUT THE REASON -- IT IS NOT JUST AN ACTION.

IT WOULD BE HARD TO STILL GET CHILD SUPPORT FOR A CHILD BORN IN 1977.

SOME OF THESE CHILDREN ARE ADULTS.

HAVING A CHILD BORN IN '77.

I THINK '84 IS THE EARLIEST OF THE CHILDREN'S BIRTH DATES, BUT THE ACTIONS APPEAR TO ME TO BE MORE THAN JUST CHILD SUPPORT, BECAUSE ONCE YOU ARE MAKING THIS DETERMINATION OF PATERNITY AND ASKING THE OFFICE OF VITAL STATISTICS TO CHANGE THE BIRTH CERTIFICATE, THEN IT IS MORE THAN JUST CHILD SUPPORT.

CHANGING THE BIRTH CERTIFICATE, HOW DOES THAT AFFECT THE RIGHTS OF THE LEGAL FATHER?

IT EFFECTIVELY TERMINATES HIS RIGHT AS A PARENT. I THINK IN ONE OF THE CASES FROM THIS COURT WHETHER IT WAS PRIVETTE OR DANIEL THE COURT SAID THAT THESE PROCEEDINGS ARE IN THE NATURE OF, THEY ARE NOT A TERMINATION PROCEEDING BUT IN TERMS OF THE LEGAL FATHER'S RIGHTS IT DOES EFFECTIVELY TERMINATE.

IS THERE ANY CASE THAT ACTUALLY SAYS IF THE NAME OF THE FATHER ON A BIRTH CERTIFICATE IS CHANGED THEN THE LEGAL FATHER IPSO FACTO HAS NO FURTHER RIGHTS OF VISITATION OR CUSTODY OR ANYTHING LIKE THAT?

I AM NOT AWARE OF THAT AND SIMPLY CHANGING THE BIRTH CERTIFICATE HYPOTHETICALLY DOESN'T ALTER THE PRESUMPTION OF LEGITIMATE ', BUT AS A -- LEGITIMACY.

BUT YOU WOULD HAVE TO HAVE SOME FURTHER PROCEEDING AT WHICH THE LEGAL FATHER WOULD HAVE TO BE PRESENT IN ORDER TO CHANGE HIS RIGHTS TO EITHER CUSTODY OR VISION?

-- VISITATION?

WOULDN'T IT BE BETTER TO HAVE IT ALL IN ONE PROCEEDING.

BUT THE PROBLEM IS THE WAY YOU FRAMED THE ISSUE IS NOT WHAT WOULD BE BETTER, BUT WHAT WOULD HAVE TO OCCUR. YOU'VE SAID THAT THEY ARE INDISPENSABLE PARTIES WHICH MEANS NOT WE WOULD LIKE TO HAVE THEM THERE IF THEY ARE AVAILABLE, WELCOME TO THE PARTY, BUT THIS PARTY IS NOT GOING ON UNLESS YOU ARE HERE.

THEY ARE INDISPENSABLE FOR THREE REASONS. ONE, THE STATUTE THAT THE DEPARTMENT IS PROCEEDING UNDER REQUIRES THE DEPARTMENT TO PURSUE THE OBLIGOR. THAT COULD BE A LEGAL FATHER JUST AS MUCH AS THE BIOLOGICAL FATHER. NUMBER TWO, THESE PROCEEDINGS, BY DETERMINING PATERNITY IN SOME MAN OTHER THAN THE LEGAL FATHER YOU ARE AT LEAST INTERFERING IF NOT TERMINATING THE LEGAL FATHER'S PARENTAL RIGHTS, AND NUMBER THREE I THINK THE COURT SHOULD BE CONCERNED ABOUT THE STIGMA OF ILLEGITIMACY THAT

COULD ARISE.

ON THAT ISSUE, HOW IS ARE YOU DEALING WITH THE PRIVETTE ISSUE ON GUARDIAN AD LITEM FOR THE CHILD AND WHETHER THIS DETERMINATION IS IN THE CHILD'S BEST INTERESTS? I ASSUME THAT IS NOT ANYWHERE IN HERE, AM I CORRECT?

I DON'T THINK THE RECORD REFLECTS THAT AND THE COURT IS PROBABLY AWARE OF MY LACK OF EXPERTISE IN THESE CHILD SUPPORT CASES BUT I'M NOT SURE HOW THEY ARE HANDLING IT.

AND IF A NEW BIRTH CERTIFICATE IS ISSUED THEN DOES THAT NOT AFFECT THE CHILD'S RIGHT TO IT? THERE IS SOME IMPACT REFLECTED IN PRIVETTE?

PRIVETTE, THIS WHOLE ISSUE AROSE BECAUSE OF THESE TWO -- THE WHOLE CONTROVERSY OF CONFLICT AROSE BECAUSE OF THE FOOTNOTES 4 AND 5 IN THE PRIVETTE DECISION WHERE THE COURT SAID, YOU KNOW, THAT THE LEGAL FATHER SHOULD HAVE NOTICE AND THAT A GUARD A -- GUARDIAN AD LITEM IS AN INDISPENSABLE PARTY AND THEY HAVE TAKEN THOSE FOOTNOTES LITERALLY BUT ASSUMING THAT THE GUARDIAN AD LITEM IS INDISPENSABLE BUT THE LEGAL FATHER IS NOT.

DO WE HAVE GUARDIAN AD LITEMS IN THESE PATERNITY ACTIONS THEN?

I DON'T THINK THE RECORD REFLECTS ONE APPOINTED, NO, NOT IN THESE CASES.

I REALIZE THAT BETTER OR LEGALLY THEY ARE INDISPENSABLE FROM YOUR POINT OF VIEW, THE BIOLOGICAL FATHER'S POINT OF VIEW, THE DETERMINATION THAT THE LEGAL FATHER IS AN INDISPENSABLE PARTY AND IF THE DEPARTMENT OR THE MOTHER DOESN'T KNOW WHERE THE LEGAL FATHER IS, DOESN'T HAVE AN ADDRESS, WHAT ARE THE LEGAL CONSEQUENCES OF FINDING THE LEGAL FATHER TO BE AN INDISPENSABLE PARTY?

WELL, IF HE IS NOT JOINED AS IN THESE CASES HE IS DISMISSED.

SO, YOU KNOW --

THE ACTION IS DISMISSED.

THE HAT OF THE BIOLOGICAL FATHER IS THAT THEY DON'T EVEN -- CAN'T EVEN BE SUBJECTED TO A PATERNITY TEST UNTIL THE LEGAL FATHER IS THERE.

THAT WOULD BE CORRECT.

NOW, DO YOU SEE THAT THERE IS A BAR TO CONSTRUCTIVELY SERVE THE LEGAL FATHERS?

WELL, I HAVEN'T SEEN THAT ARGUMENT MADE IN THE BRIEFS. THE CHAPTER 7 42 PROHIBITS CONSTRUCTIVE SERVICE OF A LEGAL FATHER. NOW, I COULD BE WRONG ABOUT THAT. IT MAY PROHIBIT CONSTRUCTIVE SERVICE OF THE BIOLOGICAL FATHER.

SO YOU WOULD FIND THAT TO BE, I MEAN TO ME THAT'S SORT OF THE EASIEST SOLUTION IS TO SAY THAT THEY ARE INDISPENSABLE FOR ALL OF THE GOOD REASONS THAT YOU HAVE POINTED OUT, BUT TO ALLOW FOR CONSTRUCTIVE SERVICE IF, IN FACT, THEY CAN'T GET ACTUAL SERVICE.

THE ANALOGY THAT CAN BE DRAWN IS CONSTRUCTIVE SERVICE IS PERMITTED UNDER CHAPTER 39 TERMINATION PROCEEDINGS AND IF THEY ARE PERMITTED UNDER CHAPTER 39 THEN SURELY THEY SHOULD BE PERMITTED UNDER THESE TYPES OF CIRCUMSTANCES AND THE COURT, I THINK YOU CAN FIGURE OUT FROM THESE RECORDS, WHAT IS GOING TO HAPPEN IN ALMOST EVERY CASE. THERE IS GOING TO BE CONSTRUCTIVE SERVICE AND THERE IS GOING TO BE A DEFAULT

AND IT SHOULDN'T BE AN ONEROUS BURDEN ON THE DEPARTMENT.

I THINK WE CAN ALL AGREE WE WOULDN'T BE HERE IF THE LEGAL FATHERS COULD BE FOUND, CORRECT? I MEAN, THAT'S REALLY, IT SEEMS TO ME THE REASON WE ARE HERE BECAUSE IF THEY WERE DEEMED TO BE INDISPENSABLE PARTIES AND YOU CAN FIND THEM THEN, OKAY, FINE.

IF THE DEPARTMENT HAD LOCATED THESE LEGAL FATHERS THEY STILL WOULDN'T HAVE MADE THEM PARTIES. I THINK THEY WERE ADAMANT THAT THEY WEREN'T GOING TO MAKE THEM PARTIES. THEY WOULD HAVE GIVEN THEM NOTICE. OUR POSITION THAT MERELY RECEIVING NOTICE DOESN'T CONFER THE SAME PROCEDURAL BENEFITS.

I UNDERSTAND THAT. MY CONCERN IN THESE CASES IT SEEMS LIKE IT IS GOING TO GIVE THE MOTHER AND THE CHILD THE LEAST PROTECTION IN THOSE CASES IN WHICH THEY MOST NEED IT. THAT IS YOU CAN'T FIND THE LEGAL FATHER SO YOU CAN'T GET CHILD SUPPORT FROM HIM. SO YOU NEED TO GO TO THE NATURAL FATHER AND WHEN YOU FIND THE NATURAL FATHER BUT BECAUSE YOU CAN'T FIND THE LEGAL FATHER NOW YOU CAN'T SUE THE NATURAL FATHER.

IF YOU PERMIT CONSTRUCTIVE SERVICE THE INABILITY TO LOCATE THE LEGAL FATHER WILL NOT BE AN IMPEDIMENT.

BUT THE REASON YOU ARE ARGUING FOR MAKING THE LEGAL FATHER INDISPENSABLE IS THAT YOU ARE DETERMINING THE LEGAL FATHER'S RIGHTS, AND HE HAS GOT THE RIGHT TO PARTICIPATE IN THESE PROCEEDINGS, WE WANT TO HAVE EVERYTHING TOGETHER, AS YOU SAID. IT WOULD BE BETTER TO HAVE EVERYTHING TOGETHER IN ONE PLACE. IF YOU HAVE CONSTRUCTIVE NOTICE, WELL, THEN YOUR DISREGARDING THAT WHOLE THEORY BECAUSE THE FATHER IS NOT GOING TO BE THERE, ANYWAY, THE LEGAL FATHER.

THAT'S TRUE, BUT YOU MAY HAVE -- I'M SURE IN 99 OUT OF 100 CASES WHETHER THE LEGAL FATHER IS PERSONALLY SERVED OR CONSTRUCTIVELY SERVED MAY NOT APPEAR, BUT WE NEED TO BE CONCERNED ABOUT THE ONE CASE WHERE THE LEGAL FATHER MAY HAVE A RELATIONSHIP WITH THE CHILD AND THE MOTHER IS GIVING WRONG INFORMATION ABOUT IT. I MEAN, THESE ARE JUST ALLEGATIONS.

DOESN'T THE NOTICE REQUIREMENT SATISFY THAT PROBLEM? DOESN'T THE NOTICE REQUIREMENT SATISFY THAT PROBLEM?

NOT ENTIRELY, BECAUSE IF YOU JUST GIVE THE FATHER NOTICE HE IS NOT A PARTY. NOW, I REALIZE HE COULD HIRE AN ATTORNEY.

HE COULD MOVE TO INTERVENE.

BUT AN INTERVENTION IS DISCRETIONARY, AND AN INTERVENORS RIGHTS IN THE ACTION ARE SUBSERVIENT TO THE RIGHTS OF THE PARTIES SO AN INTERVENTION WILL NOT GIVE YOU THE SAME GUARANTEE AS THE RIGHTS OF A TRUE PARTY WHICH IS TO CALL WITNESS ITSELF, CONDUCT DISCOVERY AND CROSS-EXAMINE AND FILE AN APPEAL AND THINGS WE MENTIONED IN OUR BRIEF.

YOU ARE SAYING THAT AN INTERVENOR DOESN'T HAVE A RIGHT TO CROSS-EXAMINE WITNESSES AND FILE --

YES, ONCE YOU ARE AN INTERVENOR YOU HAVE THE RIGHTS OF A PARTY, BUT THEY ARE SUBSERVIENT TO THE RIGHTS OF THE ORIGINAL PARTIES AND YOU TAKE THE RECORD AS YOU FIND IT WHEN YOU COME IN AS AN INTERVENOR SO TO THAT EXTENT AN INTERVENOR DOES NOT HAVE ALL OF THE IDENTICAL RIGHTS OF THE PARTY. THE COURT COULD -- THERE IS A LOT OF DISCRETION INVOLVED.

BUT YOUR POINT IS AGAIN IF THEY ARE ALLOWED FOR CONSTRUCTIVE SERVICE AND TERMINATION OF A PARENTAL RIGHT, SURELY CONSTRUCTIVE SERVICE SHOULD BE ALLOWED OR UNDER THE STATUTE IS ALLOWED WHEN YOU ARE ADJUDICATING PATERNITY.

WELL, IT SEEMS LIKE A REASONABLE ANALOGY TO ME, BECAUSE AS I THINK THE COURT SAID IN PRIVETTE THESE TYPES OF ACTIONS ARE IN EFFECT A TERMINATION PROCEEDING. IF THERE ARE NO FURTHER QUESTIONS THAT CONCLUDES MY ARGUMENT. THANK YOU.

JUST BRIEFLY, YOUR HONORS, JUDGE CANTERO, I AM NOT AWARE OF THERE BEING ANY CASES OUT THERE THAT SAY PUTTING A PERSON'S NAME ON A BIRTH CERTIFICATE OR CHANGING THE BIRTH CERTIFICATE WOULD TERMINATE THE LEGAL RIGHTS OF THE PREVIOUS LEGAL FATHER.

DOES IT AFFECT THE LEGAL FATHER'S RIGHTS IN ANY WAY?

YOUR HONOR, OUR POSITION IS NO, IT DOESN'T. THAT SINCE THE ONLY ISSUES BEING ADDRESSED IN THE PATERNITY ACTION ARE PATERNITY AND CHILD SUPPORT. NO PARENTING ISSUES ARE BEING RAISED BY ANY OF THE PARTIES. THAT THE HUSBAND CAN COME BACK IN A LATER TIME IF HE SO CHOOSES AND ATTEMPT TO ENFORCE WHATEVER RIGHTS THOSE RIGHTS THAT STILL EXIST.

BUT AGAIN GOING BACK TO THE BEST OF ALL WORLDS, IF WE AGREE THAT CONSTRUCTIVE SERVICE IS APPROPRIATE, THAT ELIMINATES THE MAJOR STUMBLING BLOCK OF THE DEPARTMENT AND IN BETTER SITUATIONS FOR THE CHILD AND FOR THE FATHERS TO HAVE THIS ADJUDICATED IN ONE PROCEEDING. IF THERE ARE OTHER ISSUES THAT NEED TO BE RAISED SUCH AS VISITATION OR CUSTODY TO BE ABLE TO HAVE THOSE LOOKED AT THE WHOLE PICTURE.

IF THOSE OTHER ISSUES ARE RAISED. IF WE ARE DEALING JUST WITH THE NATURE OF THE CASES WE HAVE BEFORE THE COURT IT IS OUR POSITION THAT IS NOT NECESSARY.

BUT YOU SAY IT IS A LIMITED RECORD SO WE DON'T KNOW WHAT THE LEGAL FATHER WOULD RAISE IF THE LEGAL FATHER WAS IN THERE.

THAT IS CORRECT, YOUR HONOR.

WHAT WOULD THE LEGAL FATHER BE, A PLAINTIFF, A DEFENDANT, IF THEY ARE A PARTY?

WELL, IF HE IS AN INDISPENSABLE PARTY?

YES.

THAT'S ONE OF THE ISSUES THAT GIVES US CONCERN. THESE ACTIONS ARE BROUGHT PURSUANT TO 742 WHICH IS TO ESTABLISH PATERNITY. IF MOTHER SAYS HE IS NOT THE FATHER, OUR QUESTION IS WHAT ARE WE -- HE WOULD HAVE TO BE JOINED, I ASSUME, AS A DEFENDANT. WHAT ARE WE SUING HIM FOR? 742 IS AN ESTABLISHMENT STATUTE.

WELL, YOU HAVE HIM THERE JUST IN CASE THE BIOLOGICAL FATHER TURNS OUT NOT TO BE THE BIOLOGICAL FATHER. I MEAN, I DON'T SEE HOW THE DEPARTMENT REALLY LOSES IN THIS SITUATION, BECAUSE JUST WHO KNOWS IN THAT 1 IN 100 MAYBE THE LEGAL FATHER ACTUALLY JUST WON THE LOTLY. -- LOTTERY.

WHAT IS THE EFFECT OF A PATERNITY JUDGMENT?

THE EFFECT OF A PATERNITY JUDGMENT IS AS STATED IN THE CASES THAT WE BROUGHT BEFORE THE COURT IN THE DEPARTMENT OF REVENUE CASES THE PURPOSE OF IT IS TO ESTABLISH BIOLOGY SO WE CAN ESTABLISH CHILD SUPPORT.

A MOTHER BRINGS A PATERNITY ACTION AGAINST THE NATURAL FATHER ALLEGED, AND PREVAILS AND A PATERNITY JUDGMENT IS ENTERED. DOESN'T THAT HAVE THE EFFECT OF ESTABLISHING THAT PERSON AS THE LEGAL FATHER OF THE CHILD?

THE BIOLOGICAL FATHER WOULD BE THE LEGAL FATHER OF THE CHILD WHEN HIS NAME IS PUT ON THE BIRTH CERTIFICATE.

SO WE END UP POTENTIALLY WITH TWO CONTRARY LEGAL DETERMINATIONS, IN OTHER WORDS WE'VE GOT NOW TWO LEGAL FATHERS OF A CHILD.

THAT DOES RAISE A PROBLEM. OUR POSITION, HOWEVER, GOES BACK TO WITH THE PATERNITY ACTION, THE ONLY ISSUES BEING ADDRESSED ARE PATERNITY.

I MEAN THAT MAY BE TRUE THAT THE DEPARTMENT, AND I KNOW THE DEPARTMENT'S POSITION. THEY ARE JUST LOOKING AT CHILD SUPPORT, CHILD SUPPORT, BUT I THINK, AND I APPRECIATE YOUR CANDOR, THAT THERE ARE OTHER IMPLICATIONS AND WE HAD -- WHEN WE HAD THE CASE ABOUT THE LEGAL FATHER WHO FOUND OUT THAT HE WASN'T THE BIOLOGICAL FATHER, YOU KNOW, I THINK IT WAS, I KNOW IT WAS SOME SUBDIVISION OF THE STATE WAS SORT OF ARGUING, WELL, THE LEGAL FATHER IS STUCK WITH THAT CHILD SUPPORT OBLIGATION, AND I ASKED THE QUESTION, WELL, WHAT IF THE BIOLOGICAL FATHER TURNED OUT TO BE THE ONE WITH ALL OF THE MONEY YOU WOULD BE STUCK THERE. SO THE POINT, AND WE REALLY WANT TO GET TO A SITUATION WHERE THE FIRST TIME WHEN CHILD SUPPORT IS BEING ESTABLISHED THAT WE HAVE ALL POTENTIAL FATHERS IN THE PROCEEDING, AND IF IT WAS THE FIRST ONE WAS THE DIVORCE PROCEEDING, THAT SHOULD BE THE CASE. IF THE FIRST ONE IS HIM, IT SEEMS THAT SHOULD BE THE CASE AS WELL. BECAUSE WE'VE GOT THE CHILD'S INTEREST, ALSO. IF THIS IS A YOUNG CHILD THAT WHO IS THEIR FATHER GOING TO BE ON THEIR BIRTH CERTIFICATE COULD MAKE A VERY SIGNIFICANT PSYCHOLOGICAL EFFECT FOR THAT CHILD.

AND IT ALSO IMPACTS MEDICAL HISTORY ISSUES, TOO, WHICH IS WHY IT IS IMPORTANT FOR THE DEPARTMENT TO BE ABLE TO GO FORWARD AND ESTABLISH PATERNITY AGAINST A BIOLOGICAL FATHER.

WHAT'S THE DEPARTMENT'S INTEREST IN CHANGING THE BIRTH CERTIFICATE?

IT IS A STATUTORY REQUIREMENT. WHEN THE FINAL JUDGMENT IS FILED I BELIEVE THE CLERK OF THE COURT IS REQUIRED TO SEND THAT TO VITAL STATISTICS.

SO IT REALLY ISN'T A MATTER OF GETTING SUPPORT FOR THE CHILD. YOU ARE DOING -- IF YOU ARE REQUIRED TO ALSO CHANGE THE BIRTH CERTIFICATE THEN YOU ARE DOING A LOT MORE IN THIS PROCEEDING THAN JUST ESTABLISHING CHILD SUPPORT AND PATERNITY.

BUT LASTLY OUR POSITION WOULD BE BUT IT IS NOT AFFECTING THE PARENTING RIGHTS OF THE HUSBAND AND UNTIL THAT OCCURS HE IS NOT AN INDISPENSABLE PARTY TO THE ACTION.

DID YOU HAVE ANY ADDITIONAL QUESTIONS? OKAY. I WANTED TO THANK BOTH SIDES FOR THIS PARTICIPATION IN THE ORAL ARGUMENT, BUT IN PARTICULAR I WOULD LIKE TO THANK MR.^ROSENBLUM. COUNSEL FOR RESPONDENTS, WHO HAS UNDERTAKEN THE REPRESENTATION BEFORE THIS COURT PRO BONO. WE GREATLY APPRECIATE YOUR SERVICE TO THE COURT. THANK YOU. JUSTICE BELL WANTED TO POINT OUT AND YOU WERE FROM PENSACOLA.

I WANTED TO MAKE SURE THEY RECOGNIZED MR.^ROSENBLUM FROM PENSACOLA.