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Shari Daniels v. Florida Department of Health

MARSHAL: HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, AND GIVE ATTENTION. YOU SHALL BE HEARD. GOD SAVE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING, LADIES AND GENTLEMEN, AND WELCOME TO THE FLORIDA SUPREME COURT. THE FIRST CASE ON THIS MORNING'S DOCKET IS DANIELS VERSUS THE FLORIDA DEPARTMENT OF HEALTH. ARE THE PARTIES READY?

WE ARE, YOUR HONOR.

CHIEF JUSTICE: YOU MAY PROCEED.

GOOD MORNING, MADAM CHIEF JUSTICE AND ESTEEMED MEMBERS OF THIS COURT. I GIVE THANKS TO GOD AND THIS COURT, FOR THIS OPPORTUNITY TO BE HEARD THIS MORNING ON BEHALF OF SHARI DANIELS. MRS. DANIELS IS A LICENSED MIDWIFE HERE, IN THE STATE OF FLORIDA, AND SHE COMES BEFORE YOU, AFTER HAVING SUCCESSFULLY DEFENDED AN ADMINISTRATIVE COMPLAINT WHICH WAS BROUGHT AGAINST HER LICENSE. SUBSEQUENT TO SUCCESSFULLY DEFENDING THAT ADMINISTRATIVE COMPLAINT, MRS. DANIELS BROUGHT A PETITION FOR HER ATTORNEYS FEES UNDER THE FLORIDA ACT, WHICH DEALS WITH ATTORNEYS FEES. THAT BEING THE FLORIDA EQUAL ACCESS TO JUSTICE ACT. 57.111

CHIEF JUSTICE: ARE WE HERE NOT JUST ON, BUT IT IS A STATUTORY CONSTRUCTION CASE.

YES, YOUR HONOR.

CHIEF JUSTICE: AND IT SEEMS THAT THERE IS A DISCONNECT, AT LEAST, THAT IF SOMEBODY IS A SOLE PROPRIETOR, THAT THE ACT SPECIFICALLY PROVIDES FOR ATTORNEYS FEES BUT DOES NOT SEEM, BY ITS PLAIN LANGUAGE, TO PROVIDE FOR ATTORNEYS FEES, WHERE SOMEBODY IS THE, HAS FORMED A PROFESSIONAL SERVICE ASSOCIATION OR CORPORATION.

THAT'S CORRECT, YOUR HONOR. THAT IS WHAT IT EVENTUALLY DISTILLED DOWN TO. WHEN IT EVENTUALLY LEFT THE ALJ AND THE ALJ DENIED THE PETITION OF MRS. DANIELS, BOTH HER ORIGINAL AND A MENDED PETITION, THE ALJ ACTUALLY AGREED WITH THE FOURTH DCA RULINGS, BOTH IN THE 58 ALBERT CASE AND IN THE ANN AND JAN CASE, MAKING A FINE DISTINCTION THAT DR. ALBERT WAS A PROFESSIONAL ASSOCIATION. SHARI DANIELS SET UP AS A SUBCHAPTER S CORPORATION.

BUT WHAT SPECIFIC PORTION OF CHAPTER 57., SECTION 57.111, DOES YOUR, DO YOU CONTEND YOURS, YOUR CLIENT FALLS INTO. WHAT SPECIFIC LANGUAGE THERE, INCLUDES YOUR CLIENT?

YOU ARE RIGHT. IT COMES DOWN TO A VERY NARROW DISTINCTION AND UNDER 57.111, IT COMES DOWN TO 3-D -1A AND B.

WHICH SAYS?

WHICH SAYS THIS. WHEN WE LOOK AT A , CL EARLY SHARI DANIELS DOES NOT FALL UNDER SUBSECTION A , BECAUSE SUBSECTION A SAYS SOLE PROPRIETOR OF AN UNINCORPORATED BUSINESS , AND HERE IS THE KEY PHRASE , INCLUDING A PROFESSIONAL PRACTICE. WE AGREE THAT SHARI DANIELS DOESN'T FALL UNDER A. SHE WASN'T A SOL E PRO PRIETOR OF AN UNINCORPORATED BUSINESS. THAT TA KES US DOWN TO THE REMAINING CLAUSE WHICH WOULD BE B. B , SAYS A PARTNERSHIP OR CORPORATION, BUT IT DOESN'T S TOP THERE. BY THE WAY , THE SHEELY COURT IN THE FIRST DC A, IN R ENDER ING THEIR OP INION , STOPPED AT THAT LANGUAGE. CLEARLY THE SUPREME COURT , OVER AND OVER AGAIN , HASSAID THAT THE F ULL LAN GUAGE HAS TO BE GIVEN FULL INTENT. A ND IT GO ES ON TO SA Y , AGAIN, INCLUDING A PROFESSIONAL PRACTICE . THAT IS SHARI DANIELS.

DOESN'T THAT MEAN

SHARI DANIELS IS A COR PORATION, IS THAT WAUR SAYING?

SHARI DANIELS SET HERSELF UP UNDER A CORP ORATION, BUT SHARI DANIELS , EVE N AS A CORPORATION , WAS HERS ELF A PROFESSIONAL PRACTICE. WHEN WE LOOK AT THAT TERMINOLOGY, A PROFESSIONAL PRACTICE

DOESN'T THAT MEANS IT INCLUDES A PA , PROFESSIONAL ASSOCIATION OR LI MITED LIABILITY PARTNERSHIP THATIS MADE UP OF ATTORNEYS OR ACCOUNTANTS OR WHATEVER? I SN'T THAT WHAT IT IS SUPPOSED TO MEAN, BECAUSE IT SAYS INCLUDING NOT AND A PROFESSIONAL PRACTICE.

THAT IS WHAT THE STATE WOULD AR GUE AND HAVE YOU BELIEVE, BUT IF WE GIVE IT THAT RU LING , IT WOULD NULLIFY THE REST OF THAT LANGUAGE, AND THE REASON FOR THAT BEING THAT, WHEN THE STATE BR INGS AN ACTION AGAINST A PROFESSIONAL, THE PROFESSIONAL IS NOW PROTECTED BY ITS P A OR L LC, THE ACTION GOES RIGHTTHROUGH TO THE INDIVIDUAL .

THEY GIVE THE RIGHT TO ATTORNEYS FEES TO S MALL BUSINESS PARTIES, CORRECT?

THAT'S CORRECT.

AND THEN THEY DEFINED A S MALL BUSINESS PARTY. THEY COULD HAVE GIVEN THERIGHT TO ANY INDIVIDUAL , AND THEY COULD HAVE SAID AN INDIVIDUAL, A PARTY , THEYCOULD HAVE SAID A RESPONDENT BUT THEY DI DN'T DO. THAT.

THAT IS CORRECT.

SO WE HAVE TO BE LIEVE THAT THEY MEAN T TO GIVE IT TO SMALL BUSI NESS PARTIES AND NOT EVERY INDIVIDUAL AGAINST WH OM AN ACTION IS BROUGHT BY THE STATE.

CLE ARLY I WO ULD AGREEWITH YOU, WHEN YOU LOO K AT THE INTE NT AS THEY PUT IT. THEY SAY CERTAIN PERSONS ARE PROTECTED.

RIGHT.

CLEARLY THEY DIDN'T GO WITH THE FE DERAL STAT UTE WHICH SAID ALL PERSONS.

THE FEDERAL STATUTE IS M UCH BROAD ER. THE FEDE RAL STATUTE DEFINESIT AS ANY INDIVIDUAL.

ANYONE UNDER , AND IF WE HAD HAD THE FEDERAL STATUTE , THAT WOULD HAVE INCLUDED PEOPLE SUCH AS IN THE TO LEDO CASE OUT OF THE FIRST OR O THER CASES WHICH DEALT WITH EMPLOYEES.

APPARENTLY THEY KNEW WHAT THEY WERE DOING IN DEFINING IT AS A SMALL BUSINESS PARTY, INSTEAD OF AN INDIVIDUAL OR A PARTY AS DEFINED IN THE FEDERAL STATUTE.

HERE IS WHERE WE GET TO THE DISTINCTION AND I CAN'T STRESS THE IMPORTANCE BECAUSE THAT IS WHAT THIS CASE TURNS UPON, THAT IT DOESN'T PROTECT EMPLOYEES, BECAUSE WHEN YOU READ SECTIONS A AND B, IT TALKS ABOUT OTHER REQUIREMENTS SUCH AS NUMBERS OF EMPLOYEES AND CERTAINLY AN EMPLOYEE COULD NOT HAVE OTHER EMPLOYEES. HOWEVER, YOU CAN'T GIVE SUBSECTION B THE PLAIN MEANING OF A PARTNERSHIP OR CORPORATION, AND THE REASON IS BECAUSE AN ADMINISTRATIVE ACTION CAN'T BE BROUGHT AGAINST A PARTNERSHIP OR CORPORATION. IT CAN'T! AND THAT IS WHY, WHEN WE GET TO THE NEXT PART OF THAT LANGUAGE, AND THAT IS LANGUAGE THIS COURT MUST GIVE INTENT TO, IS A PROFESSIONAL PRACTICE. WHO IS A PROFESSIONAL PRACTICE? WELL, IT IS THE INDIVIDUAL LICENSEE LIKE SHARI DANIELS.

YOU SAY, LET ME UNDERSTAND SOMETHING. IF YOU ARE SAYING THAT YOU CAN'T BRING ANY ADMINISTRATIVE ACTION AGAINST A PARTNERSHIP OR CORPORATION, THEN THAT PART OF THE STATUTE HAS NO EFFECT EVER? I MEAN, THERE ARE NO TIMES WHERE A PARTNERSHIP OR A CORPORATION COULD BE A SMALL BUSINESS PARTY IN AN ADMINISTRATIVE LAW PROCEEDING?

LET ME PUT IT THIS WAY. WHEN WE LOOK AT THE TERM "A PROFESSIONAL PRACTICE".

LET'S NOT PUT IT THAT WAY. LET'S LOOK AT MY QUESTION. DOES B MEAN THERE IS NO TIME A PARTNERSHIP OR CORPORATION HAS AN ADMINISTRATIVE ACTION BROUGHT AGAINST IT?

CERTAINLY WHEN WE DEAL WITH PROFESSIONALS, NO.

WHAT ABOUT THE STATE, CAN YOU BRING AN ADMINISTRATIVE ACTION AGAINST A HOSPITAL FOR EXAMPLE?

AGAIN, IS A HOSPITAL A PROFESSIONAL PRACTICE.

CAN YOU BRING AN ADMINISTRATIVE ACTION AGAINST A HOSPITAL?

EXACTLY. THERE ARE ACTIONS THAT CAN BE BROUGHT AGAINST HOSPITALS.

AND HOSPITALS CAN BE AN UNINCORPORATED BUSINESS OR IT CAN BE A CORPORATION. MOST HOSPITALS ARE CORPORATIONS.

CERTAINLY HOSPITALS CAN CERTAINLY FALL WITHIN THE TERMS AS WELL.

THERE ARE SITUATIONS WHERE THERE COULD BE ADMINISTRATIVE ACTIONS BROUGHT AGAINST A CORPORATION, UNDER SUBSECTION B.

NO DENY THAT. CERTAINLY, I AM SORRY.

GO AHEAD. FINISH.

THAT WOULD ALSO INCLUDE REAL ESTATE AGENCIES, THERE IS A NUMBER OF DIFFERENT ENTITIES THAT COULD BE BROUGHT UNDER, BUT THEN THE QUESTION IS, IS A HOSPITAL A PROFESSIONAL PRACTICE? OKAY. WHEN WE SAY, AND THE PROBLEM WE ARE HAVING

IT SAYS INCLUDING. IT DOESN'T SAY ONLY A PROFESSIONAL PRACTICE. IT SAYS PARTNERSHIP OR CORPORATION, INCLUDING A PROFESSIONAL PRACTICE, SO IT DOESN'T HAVE TO BE A PROFESSIONAL PRACTICE FOR AN ADMINISTRATIVE ACTION TO BE BROUGHT AGAINST A

CORPORATION.

I WOULD AGREE WITH THAT .

CHIEF JUSTICE: AND THAT IS WHY, GOING BACK TO , YOU STARTED OUT SAYING THATTHERE COULDN'T BE ANY ADMINISTRATIVE PROCEEDING AGAINST A PARTNERSHIP OR CORPORATION.YOU HAVE NOW SAID , YES , THERE COULD BE AGAINST A HOSPITAL. YOU COULD HAVE IT AGAINST A REAL ESTATE AGE NCY , SO THERE ARE CIRCUMSTANCES , AND I G O BACK TO, I THINK THE PLAINLANGUAGE OF THIS STATUTE SEEMS TO SU PPORT THE FIRST DISTRICT 'S VIEW , AND WHETHER WE THINK THAT IT WOULD MAKE JUST AS MUCH SENSE THAT THEY SHOULD HAVE EXPANDED IT T O INCLUDE THE PRINCIPLE IN A CORPORATION OR PROFESSIONAL ASSOCIATION, IT JUST , I DON'T SEE WHERE IT SAYS THAT .

DO YOU AN ARGUMENT

CHIEF JUSTICE: CAN HE ANSWER MY QU ESTION, PL EASE .

I AM SORE I DO YOU HAVEAN ANSWER?

IF I COULD RESPOND TO THAT, I WOULD. IT WOULD B E DISINGENIOUS FORME TO SAY THAT A HOSPITAL DOESN'T INCLUDE AGEN CIES AND THAT TYPE OF THING. CERTAINLY IT D BUT THEN WE HAVE TO GO TO THE NEXT P ORTION AND GIVE THAT FULL MEANING AND EFFECT AS WELL.

CHIEF JUSTICE: YOUR WH OLE THING BO ILS DOWN TO , INCLUDING A PROFESSIONAL PRACTICE, IS SOME HOW TRANSFERRED INTO MEAN ING THE PRINCIPLE IN A PROFESSIONAL ASSOCIATION.

ABSOLUTELY . BECAUSE WHEN WE THINK OF AHOSPITAL, WE DON'T THINK OF A HOSPITAL AS A PROFESSIONAL PRACTICE. WE DON'T THINK OF IT AS A REAL ESTATE AGENCY AS A PROFESSIONAL PRACTICE. WHEN WE SEE THAT TERM "A PROFESSIONAL PRACTICE ", YOU ASK ANYBODY THE PLAIN MEANING TO THE LANGUAGE HERE.

BUT DOESN'T THAT , ISN'T IT JUST AS GOOD A READING OF THAT AS , SO THAT THAT MODIFIES A PARTNERSHIP OR CORPORATION? THAT THE PARTNERSHIP OR THE CORPORATION COULD BE A PROFESSIONAL PRACTICE .

I D ON'T THINK IT LIMITS THAT, AND THE REASON BEING

WELL , IT COMES RIGHT AFTER THE TERM "A PARTNERSHIP OR CORPORATION COMMA INCLUDING A PROFESSIONAL PRACTICE" , SO COULD NOT THAT TERM MODIFY THE TERM PARTNERSHIP OR THE TERM CORPORAT ION?

AND THE AN SWER IS NO.

WHY NOT?

THE RE ASON BEING , WHET HER YOU ARE DEA LING WITH A PHYSICIAN, A DENTIST, A OPHTHALMOLOGIST, EVEN A MIDWIFE , IF YOU LOOK AT AL L OF THESE, WHEN THEY SET UP A PROFESSIONAL

THEY CANNOT BE APARTNERSHIP?CAN YOU HAVE A PARTNERSHIP THAT INCLUDES A DENT IS? CAN DENT ISTS PRACTICE AS APARTNERSHIP?

CERTAINLY.

AND CAN DENTISTS PRACTICE AS CORPORATIONS?

THEY CAN.

AND THEY WOULD , I N THAT CIRCUMSTANCE , THEY WOULD BE A PROFESSIONAL PRACTICE , WOULDNT THEY?

BUT THE ANS WER TO THAT IS, NO , WITHIN THE CONFINES OF FJA, BECA USE WHEN AN ADMINISTRATIVE ACTION IS BROUGHT, AN ADMINISTRATIVE ACTION CANNOT BE BROUGHT AGAINST THEIR PARTNERSHIP. IT CAN'T BE BROUGHT AGAINST THEIR PA 'S . IT CAN'T BE BROUGHT AGAINST THEIR LLC'S. IT MUST AND ALWAYS HAS TO BE BROUGHT AGAINST THEIR INDIVIDUAL LICENSE.

SO IF I GO TO A WALK-IN CLINIC, YOU CAN'T BRING AN ADMINISTRATIVE ACTION AGAINST THE WALK-IN CLINIC. YOU HAVE TO BRING IT AGAINST SOMEONE WHO WORK S IN THE WALK-IN CL INIC?

YOU HAVE TO BRING IT AGAINST THE PROFESSIONAL WITHIN THE WALK-IN CLINIC , AND THAT IS THE REAL K EY .

THAT IS JUST WITHIN THIS PARTICULAR CONTEXT , IS IT NOT? AREN'T THERE LOTS OF CONTENTIONS WITHIN ADMINISTRATIVE CONTEXTS WITHIN ADMINISTRATIVE R ULES OR REGU LATIONS , THAT COULD PROVIDE STATUT ORY REGULATIONS OR RUSE AND REGULATE OR RU LES AND REGULATIONS THAT ARE REGUL ATED? THERE ARE MILES AN HOUR YADZ OF WAYS IN WHICH PARTNERSHIPS OR CORPORATIONS COULD HAVE ADMINI STRATIVE PROCEEDINGS IN ITIATED AGAINST THEM, ARE THERE NOT?

I WOULD DISAGREE TO THE EXTENT THAT, WHEN WE TALK A BOUT A PROFESSIONAL PRACTICE, AND WE THINK ABOUT THAT INTERS OF PHYSICIANS , DENT IN TERM S OF PHYSICIANS, DENTISTS , THAT TYPE OF THING.

IS THIS LIMITED JUST TO PROFESSIONAL PRACTICE?

NO.

IN OTHER WORDS THIS IS ABROAD STATUTE, IS IT NOT, WITH RELATION TO ANY ADMINISTRATIVE PROCEEDINGS? BUSINESS PRACTICES OF ALL KINDS, SO I AM JUST HAVING TROUBLE WITH YOUR INITIAL ANSWER TO THE CHIEF JUSTICE'S QUESTION, YOU KNOW , THAT A PARTNERSHIP OR CORPORATION CANNOT HAVE AN ACTION INIT IATED AGAINST IT IN AN ADMINISTRATIVE PROCEEDING. THAT , BUT LET ME , THE QUESTION I WA NTED TO ASK , ARE YOU GO ING TO MAKE AN ARGUMENT HERE OR ALLY , AS TO WHETHER OR NOT AN ABSURD RESULT WOULD END , IF YOU LOSE? THAT IS , ARE YOU GOI NG TO M AKE THAT ARGUMENT?

SURE , I I WOULD.

HOW ABOUT MAKING IT?

CAN I JUST ADDRESS YOUR INITIAL COMMENTS, BECAUSE I THINK WHAT I AM JUST TRYING TO SAY IS THIS , IS GIVEN THE LANGUAGE WHICH TALKS ABOUT A PARTNERSHIP AND TALKS ABOUT CORPORATION , THAT IS PRETTY EXPANSIVE , BUT THE FLORIDA LEGISLATURE TOOK THIS ONE STEP FURT HER, AND FOR SOME REASON, THEY WENT A HEAD , AND THEY ADDED THIS ADDITIONAL LANGUAGE , INCLUDING A PROFESSIONAL PRACTICE .

HOW DO YOU DEFINE A PROFESSIONAL PRACTICE?

THAT IS JUST INTERESTING POINT. THE STATUTE AND NO WHERE IN THE STATUTES, DO WE SEE "PROFESSIONAL PRACTICE" AT ALL.

I THINK EARLIER YOU SAID THAT A REAL ESTATE COMPANY WOULD NOT BE A PROFESSIONAL PRACTICE, AND YOU DEFINED PROFESSIONAL AS DOCTORS, LAWYERS, ETCETERA. SO HOW WOULD MIDWIFERY BE A PROFESSIONAL PRACTICE, AS THAT IS UNDERSTOOD?

TO THE EXTENT THAT SOMEONE GOES TO SEE A MIDWIFE. IN A SENSE THEY ARE DEEMED A LICENSED PROFESSIONAL WITHIN THE STATE, JUST AS IT WOULD BE

THAT IS WHAT I AM ASKING, HOW IS THAT DEEMED PROFESSIONAL? THEY ARE LICENSED. SO IS A REAL ESTATE AGENCY. SO ARE ROOFERS. I AM JUST SAYING HOW DO WE DEFINE, UNDER YOUR ANALYSIS, HOW DO WE DEFINE WHAT THE SCOPE OF "PROFESSIONAL" MEANS? BY THIS LICENSE?

YOU KNOW, WHAT I WOULD SAY IS THIS AND WHAT THE LAW SAYS IS WE HAVE TO GIVE IT ITS PLAIN ORDINARY MEANING, SO WHEN WE SEE PROFESSIONAL PRACTICE, BECAUSE IT IS NOT DEFINED BY THE LAW, THE QUESTION IS THEN BEGGED WHAT IS THIS PERSON

WHY WOULD THE LEGISLATURE PUT PARTNERSHIPS OR CORPORATIONS, IF PROCEEDINGS COULD NEVER BE BROUGHT AGAINST PARTNERSHIPS OR CORPORATIONS? ARE YOU SAYING THE LEGISLATURE IS THAT OUT OF TOUCH THAT, THEY PROVIDED THAT PARTNERSHIPS OR CORPORATIONS ARE COVERED BY IT AND THERE IS NEVER GOING TO BE AN INSTANCE WHERE THERE WILL BE.

I AM SAYING THERE ARE INSTANCES WHERE PARTNERSHIPS AND CORPORATIONS COULD HAVE ACTIONS BROUGHT AGAINST IT. I AM NOT DENYING THAT AND THERE ARE ACTIONS OUT THERE, BUT WHAT I AM SAYING IS THIS IS THAT THE LEGISLATURE WENT ONE STEP FURTHER WITH PROFESSIONALS, LIKE DOCTORS AND OPHTHALMOLOGISTS AND MIDWIVES, TO GIVE THEM THIS ADDITIONAL PROTECTION AS WELL.

BEFORE YOU SIT DOWN, AND YOU ARE INTO YOUR REBUTTAL, WHAT ABOUT THE ABSURD RESULT? LET'S TALK ABOUT THAT FOR A MINUTE. WHAT IS YOUR ARGUMENT IN THAT RESPECT?

THE ABSURD RESULT IS, IF WE GIVE THE LANGUAGE THAT CERTAINLY THEY ARE GOING TO ARGUE ON THE OTHER SIDE AND IF YOU GO WITH THE FIRST, YOU PUT YOURSELF IN A SITUATION WHERE, IF YOU HAVE A PROFESSIONAL WHO, IF THEY ARE PRACTICING AS JOHN DOE DENTIST OR BOB SMITH PHYSICIAN, THE MOMENT THEY SET UP AS A PARTNERSHIP OR SOME KIND OF CORPORATE ENTITY, ALL OF A SUDDEN THE FIRST DISTRICT COURT OF APPEAL HAS THIS ONE ROUS REQUIREMENT THAT AUTOMATICALLY THEY ARE STRIPPED OF THE PROTECTIONS OF FJA, AND FJA WAS DESIGNED TO LEVEL THE PLAYING FIELD

YOU ARE CHARACTERIZING IN TERMS OF PROTECTIONS, BUT ISN'T IT A RIGHT THAT THE LEGISLATURE DECIDED TO GIVE ON A LIMITED BASIS? IT COULD HAVE SAID NOBODY GETS ATTORNEYS FEES FOR ANY REASON, COULDN'T IT?

CERTAINLY IT COULD HAVE LEFT NO PROVISIONS AND LEFT EVERYBODY HIGH AND DRY BUT CERTAINLY THEY DIDN'T DO THAT, AND THEY CERTAINLY HAVE PROVIDED FOR CERTAIN INDIVIDUALS, NOT EMPLOYEES, BUT CERTAINLY IT DOES PROVIDE FOR PROFESSIONS SUCH AS LAWYER, DOCTORS AND MIDWIVES, WHO PRACTICE PROFESSIONAL PRACTICES WITHIN THE CORPORATE FORM, AND TO NOW PUT THIS ONEROUS REQUIREMENT THAT JUST BECAUSE ONE DAY THEY GO FROM BOB SMITH TO BOB SMITH PA, THEY LOSE ALL OF THE PROTECTION OF FJA, IT IS ABSURD.

THAT IS WHERE YOU ARE GOING BACK TO THE ABSURD RESULT, BUT DO YOU AGREE THAT, AND I JUST WANTED TO MAKE SURE THAT A PROFESSIONAL ASSOCIATION, IS IT A PARTNERSHIP OR CORPORATION OR IS IT SOMETHING ELSE?

A PA WOULD BE A PROFESSIONAL CORPORATION.

AND A LLC IS , AL SO?

A LIMITED LIABILITY CORPORATION , W HERE WE SEE MANY PROFESSIONALS NOW SETTING UP UNDER THAT CORPORATE FORM, WHETHER THEY BE LAWYERS OR DOC TORS. AGAIN

THAT IS WHERE I STILLHAVE A PROBLEM. WHY ISN'T INCLUDING PROFESSIONAL PRACTICE , JUST MEANING THAT IT IS COVERING ALL SO RTS OF PROFESSIONAL CORPORATIONS, NOT JUST STANDARD PARTNERSHIPS OR CORPORATIONS?

WELL , I THINK WHEN , AGAIN, THE SUPREME COURT WENT TO GREAT LENGTHS NOT TO LIMIT IT TO A PROFESSIONAL ASSOCIATION , THEY USED PROFESSIONAL PRACTICE.I MEAN, THAT IS AS EXPANSIVE AS YOU CAN GET, TO INCLUDE A PA, A LLC OR

THAT DOESN'T EXTEND TO THE INDIVIDUAL IN THERE. THAT IS THE PROBLEM WITH THE STATUTORY CONSTRUCTION ARGUMENT, ISN'T IT ?

WELL, NO , I THINK THE INDIVIDUAL

THEY COULD SAY INCLUDING THE PRINCIPAL IN A PROFESSIONAL PRACTICE , AND THAT WOULD BE, THEN , CLEARLY SUPPORTING YOUR VIEW.

TO THE EXTE NT THAT THESUPREME COURT DID WANT T O L IMIT THIS.

YOU DON'T MEAN THE SUPREME COURT AND MA YBE THAT IS THE PROBLEM HERE.

I AM SORR Y. TO THE EXTENT THAT THE LEGISLATURE WANTED TO LIMITTHIS, THEY HAVE LIMITED IT TO INDIVIDUALS , AND THEY HAVE LIMITED IT , CERTAINLY , TO PROFESSIONALS WHO OP ERATE AS PROFESSIONAL PRACTICE S. IT DIDN'T OPEN THE DOOR TO EMPLOYEES .

I KNOW YOU HAD A LOT O F T IME SAVE D FOR REBUTTAL , BUT YOU ARE IN IT NOW.

THANK YOU VERY MUCH.

CHIEF JUSTICE: MRS. BAIRD.

MAY IT PLEASE THE COURT. MY NAME IS DANE BAI RD. I AM COUNSEL FOR THE DEPARTMENT OF HEALTH. THE THIRD DISTRICT COURT ANDTHE FIRST DISTRICT COURT BASICALLY FO UND THAT THE INDIVIDUAL MIDWIFE , MS. DANIELS, COULD NOT RECOVER UNDER 57.1 1.

BUT ISN'T THAT, REALLY, AN ABSURD R E SULT?

NO. I DON'T THINK IT IS.

THAT IF THEY, IF THEREHAD BE EN AN ACTION BROUGHT AGAINST HER SUBCHAPTER S CORPORATION , SHE COULD GET ATTORNEYS FEES , BUT BECAUSE THE ACTION WAS BROUGHT AGAINST HER AS AN INDIVI DUAL , SHE CANNOT GET ATTORNEYS F EES, SO WHAT WOULD , WHEN WOULD THE DE PARTMENT EVER BRING AN ACTION AGAINST THE CORPORATION, IF THEY KNOW THEY ARE GOING TO GETATTORNEYS FEES , YET IF THEY BRING IT AGAINST THE INDIVIDUAL, THEY KNOW THEYARE NOT GOING TO BE ST UCK WITH ATTORNEYS FEES.

THERE IS A REAL ITY , THOUGH, BETWEEN THE BUSI NESS AND THE INDIVIDUAL'S LICENSE, IF THE STATE, FOR EXAMPLE , GOES A FTER A PHARMACY , WHICH IS LICENSED , O R A BARBERSHOP OR FUNERAL HOME, WHAT EVER BUSINESS IT IS, IT IS A PROFESSIONAL BUSINESS.

WELL , IF IT DIDN'T INVOLVE, ACTUALLY , THE LICENSE, BUT IT INVOLVED SOME KIND OF ACTIONS

THAT WERE UNPROFESSIONAL , SEE , TAKEN DURING THE COURSE OF HER EXAMINATION OF A PATIENT OR WHATEVER, COULD YOU BRING THE ACTION , THEN , AGAINST THE CORPORATION, AS OPPOSED TO HER INDIVIDUALLY?

TO HER INDIVIDUALLY ? SOMETHING OTHER THAN A LICENSURE SITUATION.

I AM NOT SURE WHAT THE STATE COULD BRING DIFFERENT ACTIONS AGAINST A CORPORATION CLEARLY.

HELP US WITH WHAT THE RATIONALE OF THE LEGISLATURE MAY HAVE BEEN, IF THEY COVER A SOLE PROPRIETOR , FOR INSTANCE, SO AN INDIVIDUAL PRACTICING MIDWIFERY IS COVERED, RIGHT? SO THIS PERSON WE ARE TALKING ABOUT HERE , THE PETITIONER, IF SHE PRACTICED AS A SOLE PROPRIETOR , SHE WOULD CLEARLY BE COVERED BY THIS, IS THAT CORRECT? AND YOU BROUGHT AN ACTION AGAINST HER . I MEAN THAT, IS NOT A REAL TOUGH QUESTION , IS IT? ISN'T THAT WHAT THE STATUTE SAYS?

YES.

O K A Y. AND NOW , IF WE, IF SHE GOT TOGETHER WITH AN OTHER MIDWIFE AND TWO OF THEM PRACTICED TOGETHER, THEN , CLEARLY IF AN ACTION WAS BROUGHT , THEN THAT WOULD BE COVERED , RIGHT ?

IF THERE WERE

IT SAYS A PARTNERSHIP. SO , I MEAN , I AM JUST READING THE STATUTE , AND I AM TRYING TO SEE WHETHER OR NOT IT DOES LEAD US TO AN ABSURD RESULT OR IT DOESN'T LEAD US TO AN ABSURD RESULT, BECAUSE I AM VERY CONCERNED , IF IT COVERS AN INDIVIDUAL , IF IT COVERS TWO INDIVIDUALS , AND THEN IF IT COVERS A CORPORATION , I AM HAVING A LOT OF DIFFICULTY FIGURING OUT ANY RATIONALE THAT WOULD HAVE THE LEGISLATURE ACTING TO EXCLUDE THIS SITUATION. I MEAN, THEY SEEM TO HAVE , HAVE COVERED THE WATERFRONT HERE, AND I AM TRYING , TELL ME WHAT THE RATIONALE IS, OF THE LEGISLATURE AND WHERE SHE MEETS ALL OF THESE OTHER REQUIREMENTS , OF WHY THE LEGISLATURE WOULD EXCLUDE HER FROM COVERAGE , WHEN THEY HAVE COVERED AN INDIVIDUAL.THEY HAVE COVERED TWO INDIVIDUALS. AND THEY HAVE COVERED THEM WHEN THEY ARE A CORPORATION , AND SO IF YOU BRING IT AGAINST AN INDIVIDUAL , IF SHE HAPPENED TO BE A SOLE PROPRIETORSHIP , TELL ME WHAT THE RATIONALE IS THAT THE LEGISLATURE MAY HAVE HAD FOR EXCLUDING HER .

> THE LEGISLATURE , WHEN IT PASSED SMALL BUSINESS , THE SMALL BUSINESS FAIR, THE ACT, IT INTENDED TO PROTECT SMALL BUSINESSES.

HOW COULD YOU GET MORE OF A SMALL BUSINESS THAN WHAT YOU HAVE HERE?

BUT THE PROBLEM IS, IS THAT THE STATE DIDN'T GO AGAINST HER BUSINESS. THE BUSINESS COULD STILL EXIST . MIDWIVES COULD STILL PERFORM THERE. THE STATE WENT AGAINST HER INDIVIDUALLY, AND IN THE CAUSE OF ACTION UNDER 57.11-4, IT SAYS , WHEN THE UNDERLYING ACTION IS BROUGHT BY THE STATE , AGAINST AN INDIVIDUAL , AND THEN IF THAT ACTION IS BROUGHT AGAINST A SMALL BUSINESS , THEN YOU WOULD GO TO THE DEFINITION, TO SEE WHAT , EXACTLY , IS A SMALL BUSINESS .

SO ALL YOU ARE DOING IS READING BACK TO THE STATUTE FOR ME, WHICH I APPRECIATE YOU DOING THAT FOR ME, BUT YOU ARE NOT TELLING ME WHAT THE RATIONALE IS THAT THE LEGISLATURE WOULD HAVE HAD , IF THIS PERSON AS WE INDICATED BEFORE, IF SHE DIDN'T FORM THE SUBCHAPTER S CORPORATION AND SHE JUST PRACTICED AS A SOLE PROPRIETOR AND YOU BROUGHT THE ACTION , SHE WOULD BE ENTITLED TO THIS. IF SHE GOT TOGETHER WITH ANOTHER MIDWIFE AND DID THIS , YOU KNOW , SHE WOULD BE COVERED.NOW, WHAT IS THE RA

GS N AMM WHAT IS T HE RATIONALE FOR EXCLUDING HER IN THIS S ITUATION ?

BECAUSE , WELL , THE RATIONALE TO ME , IS THAT THE P LAIN LANGUAGE DOESN'T INCLUDE THE INDIVIDUAL WITHIN THAT SUBSECTION, WHICH SAYS

I AM TRYING TO GET PAST LANGUAGE, IN SAYING THAT , YOU KNOW, WE HAD A GO OD REASON FOR EXCLUDING THIS PARTICULAR AS PECT AND NOT ALLOW ING. WHAT IS THE GOOD REASON ?

WELL , THE GOOD REASON ISTHAT THE LEGISLATURE, WHEN IT PAS SED THE ACT, I T DID NOT FO LLOW THE FEDERAL ACT , WHICH IT WAS PATTERNED AFTER , AND INCLUDE INDIVIDUALS WITHIN THE MEANING OF THE SMALL BUSINESS ACT .

IT HAS GOT SOLE PROPRIETOR? THAT IS AN INDIVIDUAL , RIGHT?

YES.

SO THEY DID INCLUDE INDIVIDUALS .

IT INCLUDED AN INDIVIDUAL, IF THE INDIVIDUAL BUSINESS WAS BEING SUED BY THE STATE.

WELL , WHAT , I THINK IN FOLLOWING UP WHAT JUSTICE ANSTEAD IS AS KING.

OK AY.

THE THING THAT I , THAT BOTHERS ME, IS THAT , SAY I HAVE GOT TWO N URSE PRACTITIONERS OUT HERE , IN THE SAME OFFICE. THEY ARE NOT PARTNERS I N , BUT THEY ARE, ONE OF THEM , ACCOUNTANT , DIDN'T TELL THEM TO FORM A SUBC HAPTER S. AND THE OTHER DID. AND YE T YOU MOVE IN , AND YOU BRING THIS ADMINISTRATIVE PROCEEDING AGAINST BOTH OF THEM, BECAUSE YOU ARE CLAIMING THAT THEY DIDSOMETHING IN THAT B U ILDING , AND THE STATE DIDN'T PREVAIL , WELL , ONE OF THEM , BECAUSE THEY, THEIR ACCOUNTANT DIDN'T TELL THEM TO FILE A SUBCHAPTER S, GETS ATTORNEYSFEES, BUT BECAUSE THE ACCOUNTANT TO THE ACCOUNTANT TOLD THE OTHER ONE TO DO IT , T HEY DIDN'T GET ATTORNEYS FEES. THAT DOESN'T MAKE ANY SE NSE TO ME . NOW , HOW DID IT MAKE ANYSENSE?

YOU HAVE TO READ THE STATUTE AS IT IS WRITTEN , AND , A LSO , YOU COULD SAY THAT DOESN'T MAKE ANY SENSE, BUT IF THE LEGISLATURE HAD BEEN INTENDING TO INCLUDE PROFESSIONAL PRACTICES , THEN , WHY , IT DOESN'T MAKE ANY SENSE THAT THEY DIDN'T INC LUDE

WOULD THE ONE WHO DID NOT F ILE FOR SUBCHAPTER S CORPORATION AND IT WAS OUT THERE AS JUST AN INDIVIDUAL , WOULD THAT ONE BE A SOLE PROPRIETOR?

TO ME , I MEAN, I KNOW , JUSTICE AN STEAD SAID THAT WAS A SIMPLE QUESTION, BUT TO ME, NO. NOT , I DO NOT THINK THAT , I F YOU FILED A DISCIPLINARY ACTION AGAINST A PROFESSIONAL, A PROFESSIONAL , E VEN OF SOLE PROP RIETOR OF AN UNINCORPORATED BUSINESS , I DO NOT BELIEVE THAT THAT PROFESSIONAL CAN, THEN , GO TO HER BUSINESS OR HIS BUSINESS AND SAY M Y BUSINESS , WHICH MAY B E A BARBERSHOP , A COSMETOLOGY SHOP, PHARMACY , I DON'T THINK THEY CAN G O TO THE BUSINESS TO CL AIM, THEN , SMALL BUSINESS. I BELIEVE THAT THE , A PROFESSIONAL IN A LIC ENSURE C ASE , IS AN INDIVIDUAL ACTION, AND THE UNDERLYING ACTION, ACCORDING TO THE STATUTE , IS ONLY AGAINST THE INDIVIDUAL.

SO ARE YOU SAYING THAT , AGAIN, IN THE HYPOTHETICAL S

YES.

THAT , IF THE MIDW IFE WHO DIDN'T HAVE A PROFESSIONAL ASSOCIATION WAS SUED IN A , FOR

AN ACT THAT WAS COMMITTED , THAT THAT P ERSON WOULDN'T BE ENTITLED TO RECOVER ATTORNEYS FEES U NDER 1-A?

NO. I DON'T BELIEVE SO , BECAUSE I DON'T - -

SEE , THAT , THAT IS A WHOLE OTHER IS SUE .

YES.

BECAUSE I THINK WHAT WE HAVE BEEN OPERATING UNDER IS THAT, AND THAT IS WHAT MAYBE, THAT THOSE WOULD BE COVERED , AND , UNDER , UNDER 1-A, IF THEY WERE SUED INDIVIDUALLY, AND NOW YOU ARE SAYING THAT A SOLE PROPRIETOR AFTER UNINCORPORATED BUSINESS , IF , WAS SUED , SO , WHAT WOULD A COVER? WHAT DOES A COVER? ONLY IF THEIR BUSINESS IS BEING SUED?

EXACTLY, BECAUSE IT IS REGARDING SMALL BUSINESSES , AND THE DEPARTMENT TAKES THE POSITION THAT A LICENSE IS INDIVIDUAL.

SO ARE THERE ANY CASES OUT THERE , WHERE AN INDIVIDUAL WHO WAS NOT A PROFESSIONAL ASSOCIATION WAS SUED FOR LICENSURE , AND TRIED TO OBTAIN ATTORNEYS FEES, AND DIDN'T , AND IT WENT UP ON APPEAL?

YES. I THINK THAT IS THE SHE ELY CASE IN THE F I RST D CA. HE WAS DENIED A LICENSE FOR REAL ESTATE. HE SAID THAT HE WAS A SOLE PROPRIETOR. HE WAS , WELL, IN THAT ONE IT WAS A CORPORATION. THERE WAS ONE WITH , IT WAS , LET ME THINK OF WHICH CASE . THERE WAS ONE CASE WITHIN THE BRIE FS , WHERE THE PERSON ARGUED THAT HE WAS CONSIDERED BY THE STATE , BY THE COURT , AN EMPLOYEE , BUT HE AR GUED THAT , REALLY , BECAUSE HE WAS PRACTICING HIS PROFESSION , HE WAS A SOLE PROPRIETOR OF A BUSINESS , AND THE COURT SAID , WELL , WE ARE GOING TO LOOK TO THE UNDERLYING ACTION. WAS IT AGAINST YOU

SO IF I GO OUT AND HANG UP A SH INGLE AND PRACTICE LAW , I HAVE NOT FORMED ANY KIND OF PA. AM I A SOLE PROPRIETOR?

I WOULD SAY YES.

WELL , SO, WHAT IS THE DIFFERENCE, IN THE EXA MPLE THAT JUSTICE PARIENTE WAS TALKING ABOUT? I MEAN, IF AN INDIVIDUAL IS PRACTICING SOME K IN D OF PROFESSION.

CORRECT.

THEY WOULD FALL UNDER SUBSECTION " A" , CORRECT , AND THEY WOULD NOT , DID NOT MAKE ANY SUBCHAPTER S

EXACTLY. THEY WOULD , BUT IF T HEY ARE BEING SUED BECAUSE OF THEIR PROFESSIONAL LICENSE , THEIR BUSINESS IS NOT BEING SUED , THE FIRM THAT

HOW CAN YOU SEPARATE THE FACT OF A PERSON HAV ING A LICENSE , YOU HAVE TO HAVE A LICENSE TO PRACTICE LAW IN THE STATE OF FLORIDA, AND SO YOU GO OUT AND DO IT, SO HOW DO YOU S E PARATE THE LICENSE F ROM DOING THE BUSINESS?

THEY ARE SEPARATED, BECAUSE YOU CAN'T DO THE BUSINESS

WHAT COULD YOU SUE ME FOR, I AM HAV ING A HARD T IME TRYING TO FIGURE OUT WHAT THE DEPAR TMENT COULD SUE ME FOR , OTHER THAN AS A SOLE PROPRIETOR .

THE DEPA RTMENT COULD SUE YOU AS SOLE PROPRIETOR. THE DEPARTMENT COULD SUE THE

PERSON.

WHY DON'T YOU GIVE US EXAMPLES. LET'S JUST TAKE THE DEPARTMENT OF HEALTH. ARE THERE ACTIONS IN THE DEPARTMENT OF HEALTH THAT SOLELY INVOLVE INDIVIDUALS, AND ARE THERE ACTIONS BY THE DEPARTMENT OF HEALTH THAT INVOLVE THAT INDIVIDUAL IN ITS BUSINESS SET SOMETHING COULD YOU GIVE US TWO EXAMPLES OF WHERE ONE WOULD GET ATTORNEYS FEES AND THE OTHER WOULD NOT.

YES. THE DEPARTMENT OF HEALTH COULD SUE, SAY, THE PHARMACY, AND I GAVE AN EXAMPLE, I THINK, IN THE APPENDIX, AND THE PHARMACY IS A PROFESSIONAL PRACTICE, AND IT COULD GO AFTER THE PHARMACY LICENSE. IF THE PHARMACY PREVAILED AND THERE WAS NOT SUBSTANTIAL JUSTIFICATION FOR BRINGING THE ACTION OR IT WOULD OTHERWISE BE UNJUST, THAT CORPORATION COULD RECEIVE ATTORNEY FEES.

SO IN A PHARMACY SITUATION.

YES.

YOU HAVE A PHARMACY, A PHARMACY HAS A LICENSE.

YES.

SEPARATE AND APART FROM EACH PHARMACIES HAVING A FROM EACH PHARMACIST HAVING A LICENSE.

CORRECT.

SO IF YOU WENT AGAINST EACH PHARMACIST'S LICENSE, THE INDIVIDUAL PHARMACIST DOESN'T GET PROTECTION UNDER THIS SUBSECTION, EITHER, NO MATTER WHAT TYPE OF BUSINESS ORGANIZATION THEY HAVE FORMED.

CORRECT.

SO NO LICENSED INDIVIDUAL WOULD BE ENTITLED TO, IS THAT YOUR POSITION?

PARDON?

NO LICENSED INDIVIDUAL.

IF THE ACTION, IF THE UNDERLYING ACTION IS ON THE LICENSE, AND IF YOU LOOK AT THE HOLDING, REALLY, THE ONLY WORDS THAT THE COURT IN THE FIRST DCA, AND THE THIRD DCA SAID, IS THAT, IF THE UNDERLYING ACTION, WHICH IS THE BASIS FOR THIS CAUSE OF ACTION, IF THE UNDERLYING ACTION IS ONLY AGAINST THE INDIVIDUAL, IF IT IS NOT AGAINST A CORPORATION, IF IT IS NOT AGAINST A BUSINESS.

SO LET ME GO BACK TO THE EXAMPLE OF PHARMACY.

OK AY.

LET'S SAY THAT JOE PHARMACIST OPERATES JOE'S PHARMACY AS A SOLE PROPRIETOR, AND ONE OF JOE'S EMPLOYEES ACCIDENTALLY POISONS A CUSTOMER A CUSTOMER, BUT IT WASN'T JOE THE PHARMACIST WHO DID IT, CAN THE DEPARTMENT THEN GO AGAINST JOE'S PHARMACY AND IMPOSE DISCIPLINE ON JOE'S PHARMACY OR EVEN REVOKE THE LICENSE OF JOE'S PHARMACY OR DO SOMETHING AGAINST THE COMPANY, THE PROPRIETORSHIP, BUT WITHOUT DOING ANYTHING TO JOE PHARMACIST'S LICENSE?

YES, AND THAT HAPPENS.

SO THEN IN A REAL ESTATE CONTEXT , ARE YOU SAYING THAT, IF A , EACH INDIVIDUAL'S REAL ESTATE LICENSE , A GAIN , NO MATTER HOW THEY ARE PRACTICING , THE Y ARE NOT COVERED UNDER " D" , ONLY IF THE REAL ESTATE AGENCY, IF SOMEBODY IS TRYING TO TAKE A WAY OR DO SOMETHING AGAINST THE AGENCY OR HOWEVER IT IS FORMED AS A WHOLE , IS THAT YOUR, THAT I T IS E QUAL?

YES.

BUT THEN THE IDEA IS THAT WE ARE G IVING, FOR WHATEVER REASON, THAT THE LEGISLATURE DECIDED TO GIVE M ORE PRO TECTION T O SM ALL BUSINESSES THAN TO INDIVIDUALS IN SMALL BUSINESSES .

EXACTLY. AND IF YOU THINK LOGICALLY , IN TE RM S OF THE WHOLE SCHEME THAT THE LEGISLATURE IS INTENDING , SO THE DEPARTMENT'S READING OF PROFESSIONAL PRACTICE IS A DESCRIPTIVE OF THE TER MS BUSINESS, CORPORATION, AND IT IS NOT MEANT TO BE AN ADDITIONAL PROVISION INCLUDING THE INDIVIDUAL , ONLY IN THE CASES WHERE THEY ARE LICENSED BY THE STATE OF FLORIDA.

WHEN , WHAT WE ARE DEALING WITH, WHAT WE ARE TRYING TO FIGURE OUT IS THAT D SAYS THE TERM, QUOTE , SMALL BUSINESS PARTY , MEAN S A SOLE PROPRIETOR OF AN UNINCORPORATED BUSINESS. NOW , IT SEEMS TO ME THAT WE ARE TRYI NG TO FIG URE OUT WHAT IT MEANS WHEN IT SAYS WHEN IT SAYS PARTY, WHAT IT INDICATES, WHEN IT SAYS PARTY MEANS A SOLE PROPRIETOR, THAT WE CAN'T GO LOOKING AT WHAT THEY ARE TRYING TO DO , AS FAR AS THE BUSINESS IS CONCERNED. WHAT WE HAVE GOT TO FIGURE O UT IS WHAT IS A SOLE PROPRIETOR? AND ISN'T IT JUST P LAIN AND OBVIOUS THAT A SOLE PROPRIETOR IS AN INDIVIDUAL PER SON THAT IS OPERATING IN THAT CAPACI TY ? THAT IS THE PARTY , IS THE INDIVIDUAL.

I AG REE WITH THAT , SIR.

AND SO IF THE PARTY IS THE INDIVIDUAL THAT IS IN THE OF FICE OF THE BARBER OR THE MID WIFE , I DON'T SEE HOW YOU GET TO ANYTHING ELSE, OTHER THAN THE FACT THAT THAT IS THE PERSON THAT IS COVERED BY THIS STATUTE.

THE, YOU STILL HAVE , YOU CANNOT AVOID, IN MY OP INION , THAT WHAT THE ACTION IS BROUGHT UNDER. YOU

IS THAT BECAUSE IT SAYS , INSTEAD OF SAY ING, IT USES THE DESCRIPTIVE TERM "SMALL BUSINESS PARTY"?

YES.

THEN IT SEEMS NOW WE ARE GOING TO WHERE , SINCE MOST OF US , AT L E AST ON THE FIRST PART OF THIS AR GUMENT, ASSUMED THAT PLAINLY IT COVERED SOME BODY WHO WAS BEING SUED IF THEY WERE UNHIJTED UNINCORPORATED , E VEN IN A LICENSURE ACTION, NOW WE GO FROM THIS IS A P LAIN AND UNAMBIGUOUS STATUTE, TO IT BEING AMBIGUOUS .

THE

BECAUSE AT LEAST THE MAJORITY OF US UP HERE ARE READING IT AND SAYING THIS IS SURE PLAIN THAT , IF THIS WOMAN WAS OPERATING AS A SOLE PROPRIETOR SHIP , SH E WOULD BE ABLE TO RECOVER FEES, AND YOU ARE SAYING, NO , SHE WOULDN'T HAVE , CORRECT?

CORREC T. EXCUSE M E . I THINK THAT

SO NOW WE ARE DEALING WITH SOMETHING THAT SEEMED PLAIN BUT NOW IT SEEMS AMBIGUOUS.

I THINK THAT ISSUE WASN'T THE CONFLICT ISSUE THAT WAS BROUGHT TO THE COURT. THAT SECTION ON SOLE PROPRIETORS.

BUT WHEN WE ARE HERE, TRYING TO UNDERSTAND WHAT THE LEGISLATURE INTENDED, AND WHO THEY INTENDED TO PROTECT, WE HAVE TO LOOK AT "A" WHEN WE ARE LOOKING AT "B", BECAUSE THE WHOLE ARGUMENT ABOUT ABSURDITY EITHER RISES AND FALLS ON WHO IS COVERED UNDER "A".

IF "A" COVERS A SOLE PROPRIETOR OF A BUSINESS, SO THAT IF THAT PERSON HAS A LICENSURE ACTION AND IS DISCIPLINED AS AN INDIVIDUAL, AND MAY, THEN, SAY, BECAUSE I AM HIM A SOLE PROPRIETOR, I CAN FALL UNDER THE SMALL BUSINESS ACT AS A SOLE PROPRIETOR, IT STILL WOULD NOT BE ABSURD TO SAY, IF YOU ARE A CORPORATION AND YOU ARE O'CLOCK, AN INDIVIDUAL IS BEING SUED, AND THEY, THE BUSINESS, THEY HAVE CHOSEN TO INCORPORATE, THEY HAVE CHOSEN THAT DECISION, IT WOULDN'T BE AN UNSORTED RESULT AN ABSURD RESULT OVERALL, BECAUSE THEY HAVE MADE THAT CHOICE TO BECOME INCORPORATED, AND THAT SECTION PROVIDES FOR A CORPORATION OR PARTNERSHIP, INCLUDING A PROFESSIONAL PRACTICE, AND THERE ARE ACTIONS THAT THE DEPARTMENT CAN TAKE AGAINST A CORPORATION, WHERE THEY WOULD BE ABLE TO CLAIM SMALL BUSINESS, BUT NOT AS AN INDIVIDUAL WITHIN THE CORPORATION. I DON'T THINK THAT IT IS

CHIEF JUSTICE: YOUR TIME IS UP. DOES ANYONE ON THE PANEL HAVE ANY MORE QUESTIONS OF MRS. BAIRD. JUSTICE BELL? ANYBODY. YOU MAY CONCLUDE.

WE WOULD ASK THAT YOU FOLLOW THE FIRST AND THE THIRD DC A'S OPINION AND AFFIRM DANIELS, LOWER COURT, IF THE COURT SHOULD OR IF THE COURT SHOULD INTERPRET THE STATUTE DIFFERENTLY FROM THE FIRST AND THE THIRD, WE WOULD ASK THAT YOU REMAND SO THAT THE HEARING CAN GO FORTH ON WHETHER THE DEPARTMENT WAS SUBSTANTIALLY JUSTIFIED IN TAKING ITS ACTION. THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU. ALL RIGHT. MR. PRICE. THREE MINUTES.

MR. PRICE, COULD YOU ADDRESS JUST A FUNDAMENTAL PRINCIPLE IN THIS WHOLE MATTER. IT APPEARS, FROM READING THESE TWO PROVISIONS TOGETHER, THAT, IF A PROFESSIONAL DECIDES TO INCORPORATE OR FORM A PARTNERSHIP, THEY, THEREBY, WILL LOSE THE PROTECTION IN LICENSURE OR INDIVIDUAL ACTIONS, THE PROTECTION OF THESE ATTORNEYS FEES.

QUITE FRANKLY I THINK THAT IS AN ABSURD

I AM SAYING JUST AS SUME.

READING OF IT.

A SOLE PROPRIETOR HAS GOT A CERTAIN DEFINITION, CERTAINLY, AND AS WE HAVE BEEN DISCUSSING THIS MORNING, A PROFESSIONAL OPERATES INDIVIDUALLY, WOULD BE A SOLE PROPRIETORSHIP, IF THEY DO NOT INCORPORATE OR FORM A PARTNERSHIP, CORRECT? BUT ONCE THEY TAKE THAT STEP TO FORM A PARTNERSHIP, THEY FALL INTO A DIFFERENT CATEGORY UNDER THE STATUTE.

WELL, THAT IS CERTAINLY WHAT THE STATE WANTS TO READ, SURE.

I UNDERSTAND. IF WE DO THAT AND WE TAKE THAT LOOK, IS THERE A REQUIREMENT THAT THERE BE SOME RATIONAL REASON FOR OR SOME BASIS FOR THE LEGISLATURE TO DRAW THAT DISTINCTION, OR CAN WE LOOK AT IT AND SAY THE LEGISLATURE, YOU HAVE DRAWN

THAT DISTINCTION, TAN MA KES NO SE NSE, BECAUSE THE SAME INDIVIDUAL FACI NG THE SAME CIRCUMSTANCES , IF IT IS A CORPORATION , THEY ARE NOT PAID. IF THEY ARE SI MPLY ONE PERSON AND I AM RUN NING A PA , I AM NOT COVERED, BUT IF I AM A SOLE PROPRIETOR , I AM COVERED, SO IT MAKES NO , THERE IS NO RATIONAL BASIS FOR THIS. AND THAT IS THE P OINT OF MY QUESTION. IS IT REQUIRED THAT THERE BE A RATI ONAL BASIS , A GO OD REASON FOR DRAWING THAT , OR COULD THE LEGISLATURE JUST SIMPLY DO THAT?

WELL , I WOULD THINK THAT THE LEGISLATURE , IN ENACTING THIS L AW AS ANY OTHER LAW , WOULD HAVE A GOOD REASONABLE AND RATIONAL BASIS FOR THEDECISION, AND WHEN WE LOOK AT THE LEGISLATIVE HISTORY , AND WE EVEN LOOK AT THE LEGISLATIVE INTENT OF FEAJA, WE DON'T SEE ANY OF THIS CUTTING OF FINE HAIRS TO COME UP WITH THIS DISTINCTION BUSINESS FORM .

UNLE SS IT WAS A BARBERSHOP CASE.

LET'S GO TO THE BARBERSHOP CASE. LET'S SAY YOU HAVE A BA RBER WHO IS LICENSED INDIVIDUALLY A S A BAR BER. HE ALSO HAS, HE OR SHE HAS A LICENSE AS , THROUGH THE BUSINESS PROFESSIONAL , BUSINESS LICENSE , IN ADDITION TO THE , S AY , PROFESSIONAL LICENSE FOR. EXAMPLE THEY HAVE TO KEEP THEIR IMPLEMENT, THE TOOLSTHAT THEY U S E TO CUT HAIR , UNDER A LIGHT OR IN A LI QUID OR WHATEVER , AND THE DEPARTMENT OF HEALTH HASCONCERNS. IT SEEM S THAT , WHAT THESTATE IS ARGUING HERE , IS THAT, LET'S SAY THEDEPARTMENT OF HEALTH C O MES IN AND DOES ADMINISTRATIVE ACTION AGAINST THE BARBERSHOP FOR NOT KEEPINGTHE IMPLEM ENTS , THE HAIR OFF THE F LOOR, THE OTHER ST UFF CLEAN, THAT THAT WOULD BE AN ACTION AGAINST THE BUSINESS FOR WH ICH THIS PROVISION WOULD APPLY TO , BUT IF THEY WERE ACTUALLY GOING AFTER THE INDIVIDUAL'S ABILITY TO PRACTICE AS A BARBER , THAT THIS ACT WOULD NOT APPLY . WOULD YOU SPEAK TO THAT ARGUMENT.

I CERTAINLY THINK THAT THAT IS WHAT THEY WANT YOU TO DEFINE , CERTAINLY THE TERM UNDER BOTH "A" AND " B" , WHICH SAYS "A PROFESSIONAL PRACTICE" , BECAUSE WE DON'T SEE A DEFI NITION FOR PROFESSIONAL PRACTICE , ANYWHERE WITHIN FLORIDA LAW , AND SO NOW THEY WANT TO COME IN AND SAY A BARBERSHOP IS A PROFESSIONAL PRACTICE.IF I WE NT OUT ON THE ST REET F ROM THE PLAIN MEANING PLAINLANGUAGE OF THE STATUTE AND ASKED SOMEBODY DO YOU CONSIDER YOUR BARBER A PROFESSIONAL PRACTICE , THEY WOULD SAY

MY DISTINCTION IS THE DIFFERENCE BETWEEN GOING AFTER THE INDIVIDUAL WHO IS LICENSED, AS OPPOSED TO GOING TO THE BUSINESS , ITSELF.

SURE. BUT THAT IS WHERE THEY WANTED T O DEFINE WHAT A PROFESSIONAL PRACTICE IS, AND THE QUESTION, IS A BARBERSHOP A PROFESSIONAL PRACTICE, AND WHAT I AM TRYING TO SAY , IS WHEN W E LOOK AT THAT TERM "A PROFESSIONAL PRACTICE" WITHIN "A" AND "B" , PROFINGTSAL PRACTICE AS WE UNDERSTAND THE PLAIN MEANING I SN'T A BARBER SHOP. IT ISN'T A FU NERAL HO ME.

YOU ARE OUT OF TIME BUT IHAVE ONE QUESTION WHICH YOUTOUCHEDED ON EARLIER , AND I WANT TO MAKE SURE ABOUT WHAT IS FAIR AND NOT FAIR . IF TWO MIDWIVES FORM A PROFESSIONAL ASSOCIATION , AND THERE IS A THIRD MIDWIFE WHO IS EMPLOYED THERE, AND THEY, ALL, DO THE EXACT SAME THING, WHICH IS , THAT CA USE THE DEPARTMENT OF HEALTH TOGO AFTER THEIR INDIVIDUAL LICENSES, EV EN YOU AGREE THAT THE PERSON THAT WAS ON A SA LARY WOULDN'T BE AB LE TO GET A N ATTORNEYS FEES , ENTITLED TO ATTORNEYS FEES , AS A , EVEN UNDER "A" OR "B" , CORRECT? SO THE WHOLE THING DOESN'T SEEM QUITE, IF WE ARE REALLY LOOKING BACK, WE WOULDREALLY SAY IT WAS THE FEDERAL STATUTE THAT WAS SORT OF FAIRER, IF THEGOVERNMENT IS GOING AFTER SOMEBODY, YOU K NOW, SO YOU AGREE , THOUGH, THAT EMPLOYEE WOULD NOT BE COVERED I N ANY CIRCUMSTANCE.

I WOULD HAVE TO AGREE , GIVEN THE LANGUAGE WE HAVE SEEN IN "A" AND "B". THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH TO BOTH OF YOU , SPOKE RESPONDING TO OUR QUESTIONS. THIS ALWAYS SHOWS THE VALUE OF ORAL ARGUMENT. IT SEEMS SO EASY COMING IN, AND YOU HAVE, BOTH, GIVEN VERY INTERESTING TAKES ON YOUR SIDES OF THE ARGUMENT. THANK YOU TO BOTH OF YOU . ALL RIGHT .