B.Y., the Grandmother v. Florida Dep't of Children & Families

THE LAST CASE ON THE COURT'S DOCKET THIS MORNING , IS B.Y. VERSUS THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. BE AT YOURESE FOR A MOMENT. NO HURRY. ALL RIGHT. IF COUNSEL IS READY TO PROCEED , THEN YOU MAYPROCEED. GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT . MY NAME IS MAXINE WILLIAMS AND I REPRESENT THE PETITIONER, B.Y.. TODAY WITH ME IS CO-COUNSEL MICHELLE INC. I.

CHIEF JUSTICE: WELL MICHELLE HINKY . THE TRIAL COURT PROPERLY USED ITS CURRENT AND INHERENT JURISDICTION TO FINALIZE THE ADOPTION OF THE CHILDREN. BECAUSE OF THE CIRCUMSTANCESOF THE CASE AND BECAUSE THE CONSENT IS NOT REQUIRED UNDER FLORIDA LAW .

ALL RIGHT. YOU HAVEN'T PREPARED A CHARTFOR US, HAVE YOU , SETTING OUT ALL OF THESE VARIOUSPROVISION THAT IS GO IN THIS DIRECTION AND THAT DIRECTION?

NO , YOUR HONOR. I REALIZE THIS IS A CASE OTHER THAN, THAT IS NOT EASY TO RESOLVE. IT INVOLVES A LOT OF STATUTORY REVIEW OF STATUTES, REVIEW OF CASE LAW , AND SO I WILL TRY TO EXPLAIN IT TO THE COURT , AS BEST I CAN.

MAYBE YOU CAN HELP ME IN REVIEWING THE SCHEME, BECAUSE I THINK THERE ARE A LOT OF STATUTORY PROVISIONS THAT CAN APPLY HERE. IT SEEMS TO M E , AND CORRECT ME IF I AM WRONG, THAT , UNDER CHAPTER 63 , IN 082 AND 064 , THERE ARE CERTAIN PERSONS WHOSE CONSENT TO ADOPTION MUST B E ACQUIRED , AND IF THEIR CONSENT IS NOT ACQUIRED , THEN IT IS NOT THAT THE ADOPTION MAY NOT TAKE PLACE. IT IS THAT THEY MUST BE GIVEN NOTICE OF THE ADOPTION PROCEEDINGS , SO ESSENTIALLY THEY ARE EITHER WAIVING NOTICE BY CONSENTING TO THE ADOPTION, OR THEY ARE THERE FOR THEY MUST RECEIVE NOTICE OF THE ADOPTION . HOWEVER , THE JUDGE DOESN'T HAVE TO OBTAIN THEIR CONSENT , IN ORDER TO FINALIZE THE ADOPTION. SO IF WE GO BACK TO 39.812-1 , WHERE IT SAYS THE DEPARTMENT MAY THERE AFTER BECOME A PARTY AND APPEAR IN ANY COURT AND CONSENT TO THE ADOPTION, AND THAT CONSENT ALONE , SHALL IN ALL CASES BE SUFFICIENT , SUFFICIENT FOR WHAT? IS IT SUFFICIENT SO THAT NO NOTICE OR CONSENTS OF OTHER PERSONS NEED BE OBTAINED , OR SUFFICIENT FOR THE ADOPTION ?

OUR ARGUMENT , YOUR HONOR, IS THAT IT IS SUFFICIENT FOR, IN TERMS OF N O OTHER NOTICE, BECAUSE IN OUR CASE , THE TERMINATION OF THE PARENTAL RIGHTS HAS ALREADY OCCURRED. THERE ARE NO PERSONS IDENTIFIED UNDER 63.062. THOSE PERSONS WHERE THE COURT, WHERE THE STATUTE INDICATES THAT THESE PERSONS CONSENT IS REQUIRED. DCF IS NOT IDENTIFIED AS ONE OF THOSE PERSONS WHOSE CONSENT IS REQUIRED , AND SO

ISN'T THERE A PROVISION IN CHAPTER 63, THAT SAYS THAT , IF PARENTAL RIGHTS HAVE BEEN TERMINATED , AND DCF CONSENTS TO THE ADOPTION , NO OTHER PERSON'S CONSENT NEED BE OBTAINED?

THAT'S CORRECT . THAT IS IN 63.062 SUBSECTION 7, WHICH SAYS THAT.

SO THEN THAT SEEMS TO ME THAT THAT CONSENT IS SUFFICIENT LANGUAGE, WHEN COMBINED

WITH 39.812-5, WHICH SAYS THAT THESE PROCEEDINGS ARE GOVERNED BY CHAPTER 63. AT LEAST CREATES AN AMBIGUITY AS TO WHAT , IS IT SUFFICIENT FOR CONSENT PURPOSES AND NOTICE , OR IS IT SUFFICIENT TO ALLOW THE JUDGE TO D O THE ADOPTION?

RIGHT. DEFINITELY ITS DOES , YOUR HONOR. OUR POSITION IS THAT , IT DOES CLOUD , THESE STATUTES DO CLOUD THEISH MY , BUT THE ISSUE , BUT WE POINT TO 63.02 , WHICH DOES POINT TO THE ISSUE, AND THAT SUBSECTION SAYS , BEAR WITH ME FOR ONE MOMENT, PLEASE,THAT THE REQUIRED PERSON'S CONSENT TO THE ADOPTION BE OBTAINED O R THE PARENT /CHILD RELATIONSHIP IS TERMINATED BY THE JUDGMENT OF THE COURT.SO IN OUR CASE , TPR HAS ALREADY OCCURRED, AND THE LEGISLATURE SEEMS TO HAVE INTENDED THAT WHAT WE ARELOOKING FOR FROM THE 39 COURTS, IS FOR A TERMINATION OF PLENTYAL RIGHTS , NOT FOR, THEN , THE OF PARENTAL RIGHTS , NOT FOR, THEN , THE DEPARTMENT TO PREVENT THE ADOPTION FROM GOING FORWARD.

COULD YOU ADDRESS , BECAUSE YOU KNOW , THE DEPARTMENT CITES THE CS CASE , AND I KNOW , AGAIN , THERE HAVE BEEN CHANGES IN THE STATUTE, BUT AT LEAST AT THE TIME OF CS , 39.453-1-C , PROVIDED THAT WHAT THE PURPOSE WAS O N THE JUDICIAL REVIEW, AND IT SPECIFICALLY SAYS SUCH JURISDICTION DOES NOT CLUTEXERCISE OF ANY POWER BY THE COURT OVER THESELECTION OF THE ADOPTIVE PARENT. IS THAT I N SOME FORM, WAS THAT STILL IN THE STATUTE , AS OF THE TIME OF THESEPROCEEDINGS?

AS FAR AS I KNOW, YOUR HONOR, IT IS NOT IN THE STATUTE.THAT SUBSECTION THAT YOUREFER TO , AND THE SUBSECTION THAT SAID THAT DCF GETS TO CHOOSE WHERE AND WITH WHOM THE CHILD SHALL LIVE , WHICH ARE ALSO RELIED ON BY CS , ARE NO LONG HER IN THE STATUTORY SCHEME. THEY HAVE BEEN REMOVED AND IN FACT IT HAS BEEN REPLACED BY LANGUAGE, WHICH INDICATESTHAT THE COURT HAS CONTINUING JURISDICTION OVER THE WELFARE OF THE CHILDREN , UNTIL THE ADOPTION

PART OF CONTINUING JURTSDICTION FOR GOOD CAUSE - - JURISDICTION FOR GOOD CAUSE SHOWN BY THE COURT, THAT WASNOT ADD.

THAT WAS NOT ADDED IN THAT WAS ADDED I N .03 , WHICH SHOWS THAT THE COURT HAS A BROADER JURISDICTION, UNTIL THE ADOPTION IS FINALIZED.

WAS THERE A BROADER ATTEMPT HERE, BECAUSE THIS ISN'T AN ISSUE ABOUT THE APPROPRIATENESS OF THE PLACEMENT OR THE SELECTION, WHICH WAS THE ISSUE IN CS , BUT IT APPEARS THAT THE COURT DOES HAVE AUTHORITY, IF THE DEPARTMENT IS NOT ACTING EXPEDITIOUS LY TO ACT , AND WAS THAT SHOWN HERE? I MEAN, IT SEEMED LIKE THE JUDGE GOT EXASPERATED AT SOME POINT , WITH THE DEPARTMENT NOT MOVING , BUTDO YOU THINK THERE IS ENOUGH IN THIS RECORD T O SHOW THAT ACTUALLY , THAT THAT EXCEPTION, ALSO, APPLIES , THAT IS THAT , WHEN THE DEPARTMENT DOES NOT ACT EXPEDITIOUS LY, THAT THE COURT MAY, THEN , COM E IN ATTHAT POINT ?

YES, YOUR HONOR . THERE IS , THE RECORD DOES INDICATE THAT THE CHILDREN HAVE BEEN IN CARE , UP UNTIL THE TIME THE CASE WAS FINALIZED FOR OVER , I BELIEVE IT WAS 1 8 MONTHS. THEY HAD BEEN IN CARE A LONG TIME. THERE WAS ALSO SOME INDICATION THAT DCF HAD TAKEN FINGERPRINTS , SOMETIME IN APRIL '0 2RX AND HAD NOT GONE FORWARD ON CHECKING THOSE OUT , IN ORDER TO ALLOW THE ADOPTION TO GO FORWARD.

BECAUSE THE CASE LAWTHERE, IS A RECENT CASE THATYOU HAVE CITED OUT OF THE FIFTH DISTRICT, AND THEN THERE IS A CASE FROM 2002 , OUT OF THE FOURTH DISTRICT , THAT SAYS THAT , WHERE THE SELECTION IS APPROPRIATE AND CONSONANT WITH ITS POLICIES AND MADE IN AN EXPEDITIOUS MANNER, THE COURT IS NOT TO INTERFERE , WHICH SEEMS TO IMPLY THE OPPOSITE , WHERE EITHER THE PLACEMENT IS NOT PROPRIETOR NOT CONSONANT WITH THE POLICIES OR NOT MADE IN AN EXPEDITIOUS MANNER. AT THAT POINT THE COURT HAS AN

OBLIGATION TO TAKE ACTION .

THAT'S CORRECT , AND THE JUDGE DID LOOK AT THOSE FACTORS . HE NOTED THAT THE FINGERPRINTS WEREN'T DONE. HE NOTED THAT THE KID HAD BEEN IN CARE A LONG TIME . HE ALSO KNEW THAT THE KIDS WERE SAFE AND IN A LOVING ENVIRONMENT.

IS THAT , IS THIS CASE, IKNOW IT IS PROBABLY YORD THE PROBABLY BEYOND THE RECORD, BUT I T ALWAYS BOTHERS ME WHEN SOMETHING SHOULD HAVE HAPPENED TWO YEARS AGO.HAS THIS CASE GONE AHEAD AND THE ADOPTION IS FINALIZED OR IS IT STILL IN ABEYANCE?

THIS IS A CASE WHERE THE ADOPTION IS FINALIZED , AND THE FOURTH DCA BELOW , UNLESS THIS COURT DOES SOMETHING.

WE DON'T HAVE TO WORRY ABOUT THIS CHILD, IN TERMS OF

THESE CHILDREN FINE AND DOING VERY WELL WITH THEIRGRANT GRANDMOTHER .

IS THERE ANY QUESTION ABOUT THE CHILDREN AT ALL?

THERE IS THE QUESTION THAT THE STATE RAISED ON THE APPEAL FOR THE FIRST TIME . THEY DID NOT RAISE IT DOWN BELOW TO THE TRIAL COURT. THERE IS ONE CHILD THAT IS UNRELATED TO THE GRANDMOTHER THAT ADOPTED, BUT THAT CHILDIS RELATED T O THE OTHER TWO CHILDREN, AND THERE ARE STATUTORY EXCEPTION S , STATUTORY PROVISIONS THAT ALLOW A COURT TO CONSIDER THE RELATIVES OF THE SIBLINGS AS RELATIVES OF THAT ONE CHILD. I MEAN THAT IS IN 29.5085 , WHICH IS THE REALMTIVE CAREGIVER PROGRAM. THERE THE RELATIVE CARE FIFER PROGRAM. THERE IS ALSO THING INS 32.061 , I BELIEVE.

THAT WAS RAISED FOR THE 23IRS TIME I N THE FOR THE FIRST TIME IN THE DISTRICT COURT OF APPEAL?

THAT'S CORRECT , YOURHONOR , AND THE ISSUE OF CONSTANT IS NOT RAISED BELOW AND WHEN THEY RAISED IT, WE RESPONDED BY SAYING HERE IS POSSIBLY WHY THEY DIDN'T OBJECT BELOW AND WHY THE COURT, IF IT IS GOING TO BE A CONCERN , WHY THE COURT COULD HAVE GO AHEAD AND FINALIZED IN THIS PARTICULAR CASE, AND ALSO GIVEN THAT THESE CHILDREN WERE RAISED TOGETHER, THERE IS ALSO THE FATHER OF THE FIRST TWO CHILDREN CAME IN AND ACTUALLY CONSENTED TO THE DEPENDENCY AS T O ALL THREECHILDREN, APPARENTLY ASSUMING THEY WERE ALL HIS.

IF WE RULE IN YOUR FAVORIN THIS PARTICULAR CASE , WOULD YOU ADDRESS THE DANGER THAT ADDITIONAL , VERY , VERY IMPORTANT RESPONSIBILITIES OF THE AGENCY MAY , ALSO , END UP BEING SUBSUMED OR WAIVED BY A TRIAL COURT JUDGE , WHEN , REALLY , THERE HAS BEEN NO INTENT TO DO. THAT THAT IS , IS THAT A POTENTIAL CONSEQUENCE OF OUR RULING IN YOUR FAVOR?

I SUPPOSE IT COULD BE , YOUR HONOR , BUT I THINK YOUHAVE TO DO IT ON A CASE-BY-CASE BASIS . I THINK THERE HAS TO BE SOMETHING IN THE STATUTES THAT GIVES THE COURT GUIDANCE, AND A S TO THE CONSTANT ISSUE I N OUR CASE, THERE IS A PUBLIC POLICY AND SORT OF INTENT TO KEEP SIBLINGS TOGETHER.

WE WOULDN'T WANT TO SAYTHAT THE JUDGE HAS , ARE YOU ASSERTING THERE SHOULD BE ARULE OF LAW THAT , ABSENT THIS EXCEPTION FOR THE RELATIONSHIP OF THE CHILDREN , THAT THE COURT WOULD HAVE THE POWER TO WAIVE A HOME STUDYY?

WELL , YOUR HONOR, WE BELIEVE THAT THE HOME STUDY I REQUIREMENT I N 63 IS WAIVEABLE RIGHT NOW BY THEJUDGE. THERE IS LANGUAGE IN NOT ONLY THE SECTION THAT DEALS WITH

THE FINAL HOME STUDY I , WHICH IS IN 63.125, AND IN THE LANGUAGE IN , I BELIEVE IT IS 63.028, WHICH I S THEONE FOR THE PRELIMINARY HOME STUDY I.THEY , BOTH , INDICATE , SPECIFICALLY FOR RELATIVES AND FOR STEPPARENTS , THAT THE JUDGE , UNLESS DIRECTED BY THE COURT, DID NOT REQUIRE IT, SO THAT IS ALREADY IN THE STATUTORY SCHEME. THAT IS NOT SOMETHING

I AM TALKING ABOUT OUTSIDE , LET'S SAY THE HOME STUDY I , FOLLOWING UP WITH WHAT JUSTICE ANSTEAD IS SAYING, THE HOME STUDY I IS A CLEAR REQUIREMENT. YOU ARE NOT SAYING THAT THEJUDGE WOULD HAVE THE ABILITYTO WAIVE IT.

YOU MEAN OUTSIDE OF THOSE RELATIVES AND THE PARENT?

RIGHT.

NO. I AM NOT SUGGESTING THAT AT ALL. I AM SUGGESTING FOR , WHERE IT IS A STEPPARENT OR A RELATIVE LIKE WE HAVE IN OUR CASE. I AM SAYING IF THERE IS SOMETHING IN THE STATUTORYSCHEME THAT GIVES THE COURTAUTHORITY TO DO THAT, LOOKING AT 39 AND 63 TOGETHER, A THAT THAT SHOULD BE ALLOWED TO OCCUR , PARTICULARLY IN WE ARE CONCERNED ABOUT THE WELFAREOF CHILDREN AND GETTING THEM TO PERMANENCY AND DOING SO WHEN IT APPEARS THAT THE DEPARTMENT IN ITS

HOW LONG HAS IT BEEN BEEN , NOW , SINCE THE CHILDREN HAVE BEEN WITH THE GRANDMOTHER?

THEY HAVE BEEN WITH HER SINCE APRIL 2002.

HOW LONG HAS IT BEEN SINCE THE PARENTAL RIGHTS WERE TERMINATEED?

THEY WERE TERMINATED AS TO ONE PARENT, I BELIEVE , SOMETIME IN SEPTEMBER OF 2001. THE ORDER DIDN'T GET SIGNED ON , UNTIL, LIKE, DECEMBER, AND THEN THERE IS ANOTHER PARENT SEVERAL MONTHS LATER, SO IT HAS BEEN SINCE 2001.

HAS THERE EVER BEEN A CLAIM B Y THE AGENCY THAT THE RESIDENCE OF THE CHILDREN , CUSTODY , IN OTHER WORDS , WITH THE GRANDMOTHER , IS POSING ANY DANGER OR THREAT OR IS INAPPROPRIATE?

NO. THERE , THEY NEVER RAISED THAT KERNTION AND EVEN AT THE FINALIZATION HEARING , I BELIEVE ONE OF THE AGENTS OF THE DEPARTMENT , THE CHILDREN'S HOME SOCIETY WORKER , INDICATING HE BELIEVED THE PLACEMENT TO BE SAFE AND LOVING. HE, SO THERE WERE NEVER ANY CONCERNS ABOUT. THAT THEY WERE

WAS THERE , IN ADDITION TO THAT , WAS THERE EVIDENCE BEFORE THE TRIAL COURT JUDGE THAT WOULD BE THE EQUIVALENT OF OR SIMILAR TO WHAT THE PURPOSE OF THE HOME STUDY I WOULD BRING OUT O R REFLECT IN ANY CASE?

IT WAS IN FACT , YES, SIR. I AM SORRY . I DIDN'T MEAN TO INTERRUPT YOU.

THE CONDITIONS , IN OTHER WORDS THAT, WOULD BE FOCUSED ON A HOME STUDY I , THESE ARE ON A HOME STUDY , THESE ARE FAIRLY STANDARDIZED SORT OF STANDARDS , AND SO WHERE WAS THERE EVIDENCE BEFORE THE TRIAL COURT JUDGE THAT WOULD FILL IN THE BLANKS OF SOME OF THOSE THINGS?

THERE WAS EVIDENCE.THERE WAS A HOME STUDY THAT WAS COMPLETED I N MARCH OF '02 BLI THE DEPARTMENT , THAT INDICATE BY THE DEPARTMENT, THAT INDICATEDTHAT THE HOME WAS SAFE , THE HOME WAS ADEQUATE. IT WAS A TRANSITION AL HOUSING THAT WAS SET UP BY THE DEPARTMENT, FOR THE GRANDMOTHER , BUT THEY INDICATED ALL THROUGHOUT THIS HOME

STUDY , THAT SHE WAS INTENT ON ADOPTING THESE CHILDREN.

THE DEPARTMENT WAS CONCERNED THAT THERE WASN'T A PERMANENT HOME YET. I MEAN , THE GRANDMOTHER HAD MOVED DOWN FROM PENNSYLVANIA.

CORRECT.

SO I GUESS GOING BACK TO THE DEPARTMENT'S POINT OF VIEW , WHICH LOOK AT IT AND SAY THEY HAVE GOT AN AWESOME RESPONSIBILITY FOR CHILDREN AROUND THE STATE AND INTEND TO MOVE EXPEDITIOUS LY , UNLESS THERE IS SOME CONCERNS . WASN'T THAT A CONCERN AT THAT TIME, THAT IS THAT THE GRANDMOTHER WAS STILL NOT IN PERMANENT HOUSE SOMETHING.

THAT WAS A CONCERN, BUTTHERE WAS NO CONCERNS WHATSOEVER AS TO THE SAFETY OF THE CHILDREN OR WHETHER OR NOT THEY COULD BE ADEQUATELY CARED FOR B Y THE GRANDMOTHER.

BUT ISN'T IT TRUE IN ANY ADOPTION , OUTSIDE THE DCF , THAT ONE OF THE THINGS THE COURT LOOKS AT , IS THE FINANCIAL RESOURCES OF THEPARENTS?

YES.

PROSPECTIVE ADOPTIVE PARENTS?

YES , THEY DO , YOUR HONOR, AND THEY DO, ALSO, IN ADOPTIONS FOR , IN DCF CASES. THEY DO.THE GRANDMOTHER WAS ELIGIBLE TO RECEIVE A SUBSIDY AND THE DEPARTMENT, BASICALLY , WAS SAYING WE ARE NOT GOING TO GIVE HER THE SUBSIDY, BECAUSE WE DON'T BELIEVE HER HOUSING IS STABLE, BUT IF YOU LOOK AT THE STATUTE THAT DEALS WITH THE SUBSIDY , IT IS FOR A 9.166. IT DOESN'T TALK, WHAT IT SAYS IS THAT WE INTEND , BY PROVIDING THIS FINANCIAL AID, FOR FOLKS WHO CAN'T OTHERWISE ADOPT, TO BE ABLE TO ADOPT SPECIAL-NEEDS CHILDREN.

SO WHAT RULE OF LAW WOULD YOU HAVE US HAVE, IN REGARDSTO THE CONSENT BY THE DEPARTMENT, FROM THE TRIAL COURT'S PERSPECTIVE? THAT YOU GET IT , UNLESS IT IS UNREASONABLY WITHHELD? OR YOU DON'T NEED IT? WHAT WOULD YOU PROPOSE?

WELL , THERE IS TWO. ON ONE HAND , WE ARE SAYING THAT THERE IS SO MUCH IN THE STATUTE THAT INDICATES THAT IT IS NOT NECESSARY, BECAUSE THIS IS A SITUATION WHERE DCF , THE RIGHTS ARE ALREADY TERMINATED. DCF IS NOT A NATURAL PARENT. THEY DON'T STAND IN THE SAME WAY AS A NATURAL PARENT DOES , SO ON THE ONE HAND , YES , IF THE COURT IS NOT VERY COMFORTABLE WITH THAT ARGUMENT, WE ARE SAYING THAT IF DCF IS BEING UNREASONABLE IN WITHHOLDING THAT CONSENT, THEN THE COURT COULD GO AHEAD AND FINALIZE WITH OUT THEIR PERMISSION.

BUT THE FIRST ARGUMENT GOES BACK TO THE WHOLE POINT OF WHAT IS THE POINT OF THE STATUTE , WHICH SAYS THAT DCF'S CONSENT IS SUFFICIENT , IF YOU ARE ARGUING THAT , ONCE PARENTAL RIGHTS ARE TERMINATED, YOU SHOULDN'T EVEN NEED DCF'S CONSENT , SO WHAT IS THE POINT OF THAT STATUTE ?

WELL , THE POINT OF THAT STATUTE IS TO SAY THAT , IF THEY DECIDE THEY WANT TO GIVE CONSENT , THE COURT CAN ACCEPT THAT , BUT IF THEY DON'T HAVE, IT THEN IT IS NOT A JURISDICTIONAL BAR TO THE COURT FINALIZING.

ISN'T THIS A REAL PROBLEM , PRACTICAL PROBLEM HERE , THAT , IF WE CAME OUT WITH A DECISION WHICH SAID THAT W E JUST DON'T HAVE TO GIVE ANY WEIGHT TO DCF'S CONSENT , DCF

DOESN'T HAVE TO PROVIDE A SUBSIDY , DOES IT?

THERE IS NOTHING

IT IS WITHIN THE DISCRETION OF DCF , TOTALLYON THE MONEY SIDE OF THIS THING.

BUT THERE IS NOTHING IN 409.166 , YOUR HONOR, OR I N THE ADMINISTRATIVE CODE , WHICH INDICATES THAT DCF CAN ACTUALLY BHOLD THAT SUBSIDY. I MEAN - - CAN ACTUALLY WITHHELD THAT SUBSIDY. THE INTENT IS W E GIVE THESE CONSENT BECAUSE WE WANT FOLKS TO BE ABLE TO ADOPT SPECIAL-NEEDS CHILDREN. THERE IS NO HOME STUDY I.

DCF DOESN'T HAVE DISCRETION ABOUT THAT?

IT DOESN'T SEEM TO SUGGEST THAT IN 409.166.

IT DOESN'T HAPPEN IN THE REAL WORLD THAT THEY EXERCISE DISCRETION ON THAT?

I BELIEVE THEY EXERCISE DISCRETION BUT WE HAVE T O LOOK A T THE STATUTE AND SEEWHAT THE STATUTE TELLS DCFTHEY CAN GIVE. I WILL RESERVE THE REST OF MY TIME FOR REBUTTAL.

GOOD MORNING. MY NAME IS JEFFREY GILLEN , GILLEN. I AM A LAWYER FOR THE DEPARTMENT OF CHILDREN ANDFAMILIES. IT SEEMS THE DEPARTMENT , YOUR HONOR, THIS CASE , BOILS DOWN TO THE QUESTION OF WHETHER CS IS STILL GOOD LAW AND THE DEPARTMENT BELIEVES WHOLEHEARTEDLY THAT IT IS.

CAN YOU EXPLAIN THE FACT THAT THAT PROVISION THAT WE HAVE BEEN TALKING ABOUT IN 39.812-1, WHERE IT SAYS THAT IF THE DEPARTMENT JOINS AND IT MAY GIVE CONSENT AND ITS CONSENT WILL BE SUFFICIENT, AND IT SEEMS LIKE THE SENTENCE ENDED A LITTLE EARLY, BECAUSE WE DON'T KNOW IF IT IS SUFFICIENT FOR PURPOSES OF THE CONSENT AND NOTICE PROVISIONS OF CHAPTER 63, OR CONSENT TO ADOPT , WHETHER IT IS SUFFICIENT FOR THE COURT TO GO THROUGH WITH THE ADOPTION , AND IT SEEMS TO ME THAT, IF WE LOOK AT NOT JUST 39.812 AND NOT JUST A LITTLE BIT OF 63, BUT THE ENTIRE STATUTORY SCHEME OF BOTH , IT IS THAT 63 PROVIDES FOR CERTAIN PERSONS WHO NEED TO HAVE , TO EITHER CONSENTTO THE ADOPTION OR HAVE NOTICE OF THE ADOPTION , SOTHEY CAN CONTEST IT. HOWEVER, IF PARENTAL RIGHTS HAVE BEEN TERMINATED AND YOU GET DCF'S CONSENT , THEN THAT IS SUFFICIENT.YOU DON'T NEED ANYBODY ELSE'S CONSENT. YOU DON'T NEED ANY NOTICE. SO ONE INTERPRETATION O F 39.812 IS, IF DCF DOES NOT CONSENT, WE GO BACK TO 63. NOW YOU DO NEED EITHER CONSENT OR TO NOTIFY THOSE OTHER PARTIES .

JUSTICE CANTERO , I THINKYOU GET THE ANSWER TO YOUR QUESTION, IF YOU JUST SKIM DOWN T O 39.812-5 , AS IT EXISTED I N 2002 AND EARLY 2003 AND ALL OF 2001. THAT PROVISION SAID , THE PETITION FOR ADOPTION MUST BE FILED IN THE DIVISION OF THE CIRCUIT COURT , WHICHENTERED THE JUDGMENT TERMINATING PARENTAL RIGHTS , UNLESS A MOTION FOR CHANGE OF VENUE IS GRANTED , PURSUANT T O 47.122. A COPY OF THE CONSENT EXECUTED BY THE DEPARTMENT AS REQUIRED BY 63.062-7 , MUST BE ATTACHED TO THE PETITION. I THINK IT IS CLEAR AND UNAMBIGUOUS , THAT LANGUAGE.

WHAT I N 63.062-7, REQUIRES THE DEPARTMENT TO CONSENT? IT SEEMS THAT IT ONLY PERMIT THE DEPARTMENT TO CONSENT , AND IF THE DEPARTMENT DOES CONSENT , THEN N O OTHER CONSENT OR NOTICE IS REQUIRED OF THE COURT. I DON'T SEE ANYTHING I N 63.062-7 THAT REQUIRES THE DEPARTMENT TO CONSENT .

I THINK THAT , WHEN YOU READ THE TWO IN TANDEM , 39.812-5 AND 36.02-7 , ITHINK IT 63.6 H E 062 !!!!-63.062-7 , I THINK THE INTENT IS THE INTENT OF THE DOCUMENT IN THAT LANGUAGE .

IS IT CLEAR THAT WHAT ITSAYS IS THE DEPARTMENT MAY CONSENT, AND IF IT CONSENTS , THE PARENTAL RIGHTS HAVE BEEN TERMINATED , THEN THE COURT DOESN'T NEED TO NOTIFY ANY OTHER PARTIES AND DOESN'T NEED TO GET THE CONSENT OF ANY OTHERPARTIES.

THAT'S CORRECT , JUSTICE CAN'T CAPITAL , BECAUSE THEREIS NO OTHER PARTY OUT THERE. ONCE THE PARENTS' RIGHTS ARE TERMINATED PURSUANT TO CHAPTER 39.

RIGHT.

THE DEPARTMENT STANDS IN THE SHOES , IF YOU WILL , OF THE NATURAL PARENTS OR THEPARENTS.

IF NO NOTICE IS REQUIRED , THOUGH, THEN , GOING , WHY SHOULDN'T THE STATUTE JUST HAVE SAID THAT , IN ALL ADOPTIONS IN WHICH DCF I S THE MOVANT , THAT THE ADOPTION CAN ONLY TAKE PLACE WITH THE CONSENT OF DCF?

OF DCF? IN OTHER WORDS NOW IT GOES FROM THEY MAY CONSENT. NOBODY, YOU KNOW , AND IF NOT, THEN WHAT? WELL, IF THEY DON'T CONSENT AND THERE IS NO OTHER NOTICE REQUIRED BECAUSE THERE IS NO OTHER INTERESTED PARTIES , WHAT HAPPENED ? THE CHILD JUST STAYS IN LIMBO?

I THINK THAT THE ANSWER CAN BE OBTAINED , I THINKTHAT THE FOURTH DISTRICT WHO CAME TO THE CORRECT ANSWER WITH THAT , THE WORD "MAY" IN THIS CONTEXT , CLEARLY CAN HAVE NO OTHER MEANING, WHEN READ WITH 62. 63.062-7 IS READ IN CONTEXT OR TANDEM WITH ON 12-5 , AND IT SAYSTHAT THE DEPARTMENT MAYPROVIDE THAT CONSENT ANDNOBODY ELSE CAN. NOBODY SELLS OUT THERE.

WHAT IS THE CONSENT? IN READING THE PROVISIONS HERE, DOESN'T IT APPEAR THAT THE ONLY PURPOSE OF HAVING THAT LANGUAGE, WITH REFERENCE TO CONSENT , IS TO OBVIATE THIS NEED FOR NOTICE TO ALL THESE OTHER PARTIES? THAT IS TO ACT AS A CUT OFF FOR THAT AND SAY, WELL , IF THE DEPARTMENT CONSENTS , THAT WILL BE ADEQUATE , AND IT IS SORT OF LIKE SAYING YOU KNOW, THERE MAY BE THESE OTHER PEOPLE OUT THERE . THERE MAY STILL BE THE NATURAL PARENTS OR WHATEVER KIND OF THING. BUT WE WANT TO ERECT A PROVISION THAT WILL PROTECT THE COURT FROM HAVING TO WORRY ABOUT THE CLAIMS OF THEM, SO ONCE THE PARENTAL RIGHTS HAVE BEEN TERMINATED , AS ANOTHER WAY TO OBVIATE THIS NOTICE AND EVERYTHING , WE WILL JUST SAY THAT THE CONSENT OF THE DEPARTMENT WILL OBVIATE THAT, AND THAT , IT SEEMS TO ME THAT THAT IS A DIFFERENT PURPOSE THAN SAY ING , NUMBER ONE OR NUMBER TEN , THAT DCF SHALL HAVE THE ABSOLUTE RIGHT , HERE , TO AGREE OR NOT TO AGREE, AND THE COURT CAN'T, YOU KNOW, OVERTURN THAT.

I UNDERSTAND.

YOU UNDERSTAND WHAT I A M

YES, I DO, JUSTICE ANSTEAD , AND I THINK I CAN EXPLAIN IT THIS WAY. IF YOU LOOK AT 63.062-1, ANDALL OF THE PROVISIONS THROUGH SIX , THEY HAVE TO DO WITH TERMINATION O F , THE TERMINATION OF PARENTAL RIGHTS , PURSUANT TO CHAPTER 63. ONCE YOU GET TO PAREN 7 CLOSE PAREN, THAT IS THE POINT AT WHICH CHAPTER 6 3 ADDRESSES THE SITUATION IN WHICH THE PARENTS' PARENTAL RIGHTS HAVE ALREADY BEEN TERMINATED, SO THAT WHEN YOU GET T O 63.062-7, THECHILDREN OR THE CHILD , HASALREADY BEEN PERMANENT LY COMMITTED TO THE DEPARTMENT OF CHILDREN AND FAMILIES FOR ADOPTION PURPOSES.

OKAY.BUT THIS IS THE PROBLEM , THOUGH, WITH THAT LINE THAT HAS BEEN PLACED , MAY PROVIDE CONSENT TO THE ADOPTION. IN SUCH CASE , NO OTHER CONSENT IS REQUIRED . BUT IF THE PARENTAL RIGHTS HAVE ALREADY BEEN TERMINATED , WHOSE OTHER , AND THEY DIDN'T

CONSENT , THEN WHOSE OTHER CONSENT WOULD BE REQUIRED?

THERE WOULD B E NONE OTHER.

WELL, THEN , THEREFORE , IT IS A SUPERFLUOUS PHRASE AND WE DON'T CONSTRUE STATUTES TO BE SUPERFLUOUS .

I THINK THAT THE CONSTRUCTION BEGIN THAT BY THE FOURTH DISTRICT , IS THE CORRECT CONSTRUCTION.

WELL , ISN'T IT PROPER , WOULDN'T THE MORE , ANOTHER CONSTRUCTION BE THAT, IF THE , WHEN THE DEPARTMENT CONSENTS TO A CASE WHERE THE CHILD , THE PARENTAL RIGHTS HAVE BEEN TERMINATED , THEY CONSENT, THAT IS IT. THE COURT JUST, THEN , YOUKNOW, SUBJECT TO SOMEONE , GUARD AND AD LITEM SAYING SOMETHING ABOUT THE APPROPRIATENESS , THE ADOPTION CAN BE FINALIZED.

ABSOLUTELY.

IF THEY DON'T CONSENT , THEN WHAT HAPPENS?

WELL THAT , IS A VERY , THAT I S THE $64 MILLION QUESTION.

ISN'T THE ANSWER, THOUGH,AND IT JUST GOES BACK TO WHAT THE FIFTH DISTRICT HAS RECENTLY TALK ABOUT , IS THAT , AS LONG AS THE DEPARTMENT IS PROCEEDING EXPEDITIOUSLY , IN ACCORDANCE WITH ITS OWN POLICIES , AND THE , AND MAKING AN APPROPRIATE SELECTION , THE COURT DOES NOT HAVE ANY ROLE. IT I S JUST SUPERVISORY. HOWEVER , IF ANY OF THOSE THREE FACTORS , IF THEY DON'T CONSENT AND THEY , AND THEY DON'T ACT EXPEDITIOUSLY , AT THAT POINT, THEN , THE COURT, WHO HAS CONTINUING JURISDICTION OVER THE CHILD , HAS THE AUTHORITY TO ACT. ISN'T THAT A MORE REASONABLE CONSTRUCTION OF THE , OF 63.062-7, AND EVERYTHING SURROUNDING IT?

JUSTICE PARIENTE , I DON'T THINK THAT IT IS , AND THE REASON, AND I THINK I HAVE VERY STRONG SUPPORT FOR THAT BELIEF. IN VIEW OF THE FACT THAT THIS LEGISLATURE HAS PASSED A BILL , 2040 , WHICH IS NOT YET LAW, OF COURSE, WHICH WOULD SPECIFICALLY DO THAT WHICH ARE SUGGESTING.

WELL , THERE IS THEPROBLEM WITH LOOKING T O WHAT HAPPENS SUBSEQUENTLY.

I UNDERSTAND FORM.

I F THIS STATUTE I UNDERSTAND.

IF THIS STATUTE WAS CRYSTAL CLEAR, WE WOULDN'T BE HERE, SO WE HAVE GOT SOME AMBIGUITIES IN THE STATUTE, SO THE FACT THAT THE LEGISLATURE MAY BE , IT HAS BEEN BROUGHT TO THEIR ATTENTION THAT IT IS NOT CRYSTAL CLEAR AND SOMEONE SAYS THEY WANT TO MAKE IT CRYSTAL CLEAR, BUT THAT DOESN'T MEAN IT SAID THE OPPOSITE BEFORE THEN. WOULD YOU AGREE WITH THAT?

YES , JUSTICE.

JUST ON CS , SINCE I GUESS I FEEL SOME PERSONAL RESPONSIBILITY FOR THAT WONDERFUL OPINION , BUT IT REALLY , AT THE TIME, AND WE WERE DEALING , YOU WOULD AGREE , SPECIFICALLY WITH THE QUESTION OF THE DEPARTMENT'S RIGHT TO SELECT AN APPROPRIATE PARENT.

THAT'S CORRECT , JUSTICE .

AND SO THAT IS NOT THE ISSUE IN THIS CASE.

WELL , I AM SORRY.

IT IS IMPORTANT , BECAUSEAND THEN THE STATUTE SPECIFICALLY AT THAT TIME , SAID THE JURISDICTION DOES NOT INCLUDE THE EXERCISE OF ANY POWER TO INFLUENCE THE COURT OVER THE SELECTION , BY THE COURT, OVER THE SELECTION BY AN ADOPTIVE PARENT. THAT IS PRETTY POWERFUL LANGUAGE, TO SAY THAT THE COURT CAN'T INTERFERE WITH , IF THE SELECTION IS APPROPRIATE , CONSISTENT WITH POLICIES AND EXPEDITIOUS LY MADE.

VERY POWERFUL LANGUAGE,YOUR HONOR, BUT IN FOOTNOTE

I KNOW. I SAW THAT FOOTNOTE.

HA HA! YOU SPECIFICALLY SAID , YOUR HONOR , THAT THAT WOULD HAVE NO IMPACT ON THIS DECISION.

THIS DICTA .

HA H A !

FROM A LOWER COURT JUDGE.

LET'S MOVE ON, THOUGH , TO SOME OF THE HYPOTHETICAL S THAT YOU GET IN WHEN YOU GET INTO THIS SITUATION , AND TAKE ONE THAT POTENTIALLY COULD HAVE ARISEN IN I N CASE, AND THAT IS THAT THE DEPARTMENT IN THIS CASE , AND THAT IS THAT THE DEPARTMENT APPARENTLY ADMIRES THIS GRANDMOTHER , BUT I AM JUST , AS A HYPOTHETICAL, THE JUDGE, YOUKNOW, SAYS TO THE DEPARTMENT WHAT IS THE HANG UP IN THE CONSENT, AND THE DEPARTMENT SAYS BACK TO THE JUDGE , WELL , YOU KNOW , WE DID A FIRSTHOME STUDY I AND SHE GOT A + ES AND DID EVERYTHING AND ALL OF THE WAY AROUND AND THEN WE HAVE A RULE THAT JUST BEFORE AN ADOPTION IS FINALIZED THAT WE GO AND DO A SUPPLEMENTAL HOME STUDY I, AND WE HAVE HAD A CUTBACK IN PERSONNEL AND WE DON'T HAVE ANYBODY TO DO.THAT WE DON'T KNOW WHEN WE CAN GET THAT DONE AND I AM SORRY, JUDGE , YOU WILL JUST HAVE TO WAIT UNTIL WE GET IT DONE. THE CHILD IS FINE. THE CHILD IS WITH THE GRANDMOTHER NOW , AND , JUDGE , YOU JUST WAIT ON US AND WE WILL LET YOU KNOW , WHEN WEGET THAT SUPPLEMENTAL DONE. AND THE JUDGE SAYS M Y GOSH! I HAVE JUST FINISHED A HEARING , AND IN WHICH ALL OF THE NEIGHBORS CAME AND THE PRIEST CAME AND THE MAYOR CAME AND EVERYBODY YOU KNOW , SAID THAT THEY HAVE ALL , YOU KNOW, HAVE EXAMINED THIS EVERYDAY AND EVERYTHING IS OKAY . NOW, I AM HAVING A LITTLE DIFFICULTY WITH THE JUDGE, TEN , NOT BEING ABLE TO THEN , NOT BEING ABLE T O SAY, WELL , I UNDERSTAND YOUR CONCERNS THAT YOU ALWAYS DO A FOLLOW-UP OR A SUPPLEMENTAL ONE , BUT IN THIS PARTICULAR CASE, I AM FINDING THAT THE CIRCUMSTANCES HAVE BEEN OVERWHELMINGLY ESTABLISHED , THAT WE REALLY DON'T NEED THAT SUPPLEMENTAL ONE . NOW , YOU ARE NOT SAYING THE JUDGE COULDN'T DO THAT , ARE YOU?

JUSTICE ANSTEAD , I N EFFECT, I AM , AND I WILL TELL YOU WHY . THE REASON FOR THE FINAL HOME STUDY I, IS TO MAKE SURE, AS BEST WE CAN , IN THE REAL WORLD THAT PATCHES CAN GO, I GUESS , STIPULATIONS , BUT AS BEST WE CAN , A S BEST THE DEPARTMENT CAN , TO BE ENSURED THAT THE PERMANENT PLACEMENT, WE USE THE TERM PERMANENCY IN DEPENDENCY LAW ALL THE TIME THAT, THE CHILD OR CHILDREN IN THIS CASE , PERMANENT PLACEMENT WILL BE SUFFICIENT, WILL BE THE BEST THAT WE CAN GET FOR THAT CHILD , GIVEN THE FACT THAT WE HAVE TERMINATED THE CHILD'S PARENTAL RIGHTS. THOSE CHILDREN WERE SUBJECTTO ABUSE AND NEGLECT , AND IT IS OUR RESPONSIBILITY , THE DEPARTMENT'S RESPONSIBILITY , I HAVE A

SEVERE

I GUESS I AM COMING BACK TO JUSTICE BELL'S QUESTION EARLIER , AND THAT IS THAT THIS HAS BEEN THE ROLE AND THE RESPONSIBILITY O F TRIAL COURTS, SINCE TIME IMMEMORIAL, WITH REFERENCE TO ADOPTIONS , AND YOU KNOW , TO BE , YOU KNOW, TO TAKE THE RESPONSIBILITY, OF COURSE,TO BE SURE THAT THERE HASBEEN AN ADEQUATE DEMONSTRATION , WITH REFERENCE TO ALL THESE CONCERNS, AND SO WHY SHOULD THERE, NOW , BE AN EXCEPTION , IN A CASE LIKE THIS , WHERE THE WHOLE POLICY OF THIS STATE , IS TO GET THOSE CHILDREN ADOPTED AS SOON AS POSSIBLE , AND SO WHY SHOULDN'T THE RULE THAT HAS ALWAYS APPLIED WITH REFERENCE TO THE AUTHORITY OF A TRIAL COURT JUDGE I N ADOPTIONS, CONTINUE TO BE APPLIED?

TWO THINGS , JUSTICE ANSTEAD.FIRST OF ALL, THERE IS A BIG DISTINCTION , A BIG DIFFERENCE BETWEEN CHAPTER 61 OR CHAPTER , ORDINARY CHAPTER 63 CASES AND THOSE THAT HAVE COME THROUGH CHAPTER 39. IN AN ORDINARY CUSTODY CASE OR ORDINARY ADOPTION CASE,WHERE THE CHILD AT QUESTION HAS NOT BEEN , TO THEKNOWLEDGE OF THE COURT , ANYWAY, BEEN SUBJECTED TO ABUSE OR NEGLECT O R ABANDON MENT. THAT CHILD, THAT CHILD'S ISSUES, IF YOU WILL, ARE PERHAPS NOT AS SIGNIFICANT AS THE CHILD WHO HAS GONE THROUGH THE CHAPTER 39 PROCEEDINGS . WE PERCEIVE THAT THERE IS A SNIFERKT DIFFERENCE. ALSO

HOW COULD THAT MEAN THAT THE COURT , WHO IS , YOU KNOW , MAYBE THE MOST KNOWLEDGEABLEABOUT THAT CHILD , HAS THE BENEFIT OF THE ATTORNEY AD LITEM , A GUARDIAN AD LITEM , CAN'T USE THE DCF INPUT, BUT IN THE END , MAKE A DECISION IF , YOU KNOW, IN THE BEST INTEREST OF THE CHILD, THAT WHAT THE DEPARTMENT IS DOING IN THAT PARTICULAR CASE , IS UNREASONABLE? NOT TO INTERFERE WITH THE DISCRETION IN THE ORDINARY CASE BUT HAVING LOOKED A T EVERYTHING, TO SAY THIS IS NOTHING MORE THAN A , YOUKNOW , YOUR, YOU ARE JUST OVERWORKED AND YOU ARE OVER LOW OVERLOADED AND THAT IS WHY YOU HAVEN'T GOTTEN TO IT, NOT BECAUSE OF ANY CONCERN ABOUT THIS CHILD. THIS IS JUST BUREAUCRACY IN ACTION , AND I HAVE GOT THE OBLIGATION AS THE JUDGE PRESIDING IN THIS CASE, TO DO WHAT IS BEST FOR THIS CHILD.

WELL , JUSTICE PARIENTE , I THINK THAT IF 20.46 WERE TO BECOME LAW THAT, I S EXACTLYWHAT THE JUDGE WOULD HAVE THE AUTHORITY TO DO , BUT AS THE STATUTE EXISTED THROUGHOUT THE PENDENCY O F THIS MATTER , WE BELIEVE THAT, FROM CS ON FORE , THAT THE ON FORWARD , THAT THE I AM SORRY.

DOESN'T THE LEGISLATURE AND NOT THE HISTORY SAY THAT THE CURRENT LAW ALLOWS DOES NOT ALLOW THIS AND NOW WE ARE GOING TO ALLOW IT?

WE DID FILE SUPPLEMENTAL AUTHORITY AND I BELIEVE THAT THE TWO STAFF ANALYSIS MAKE IT VERY CLEAR , BECAUSE THEY SPECIFICALLY ADDRESSED B.Y. AND THEY SPECIFICALLY ADDRESSED CS , AND IT I S VERY CLEAR FROM THOSE SPECIFIC STAFF ANALYSIS, THAT THE INTENT IN PROMULGATING 2046 , IF IT BECOMES LAW , IS TO CHANGE THE LAW .

BUT THEY ARE NOT INTERPRETING THAT, ANY MORE THAN WE ARE INTERPRETING IT, RIGHT? THAT IS THEY ARE , IN OTHER WORDS , THEIR GLOSS ON THOSE CASES OR INTERPRETATION OF THOSE CASES , DOES NOT BIND US.

OF COURSE NOT .

OKAY .

WHAT I WAS GOING TO SAY , CS , WAS DEALING WITH A LIMITATION ON WHETHER THECOURT CAN MAKE A SELECTION DIFFERENT THAN THE DEPARTMENT.

WELL , YES AND NO. AS WE SAID IN OUR BRIEF , JUSTICE PARIENTE , IT SEEMS TO THE DEPARTMENT, THAT THE SELECTION , THAT SELECTION IS THE FIRST STEP IN THE DEPARTMENT'S GENERATION O F ITS REQUIRED CONSENT. IN OTHER WORDS , WITHOUT THE SELECTION BY THE DEPARTMENT , THERE WOULD BE NO CONSENT ISSUED BY THE DEPARTMENT.

BUT THE TRIAL COURTS , GOAHEAD , I AM SORE I.

BASED ON YOUR I AM SORRY.

BASED ON YOUR ARGUMENT, YOU SEEM TO BE SAYING TO ME THAT THERE IS N O REAL INTERPLAY WITH THE SECTION OF CHAPTER 6 3 THAT WOULD ALLOW YOU TO NOT HAVE ANY HOME STUDY I FOR RELATIVES. SO WHAT IS YOUR TAKE O N HOW THAT INTERPLAYS WITH CHAPTER 39?

I THINK THE FOURTH DISTRICT SAID IT BEST. THEY SAID, IN ESSENCE , IN THIS CASE , IN BY , THEY SAID IN ESSENCE - - I N B.Y. , THEY SAID INESENCE THAT THE CHOICE IS UP TO THE DEPARTMENT F THE DEPARTMENT PERCEIVES THE NEED OF A HOME STUDY, A HOME STUDY OF A RELATIVE WITH WHOM THEY ARE CONTEMPLATING GIVING CONSENT FOR ADOPTION, THEN THEY WILL DO IT.

THE CHAPTER SAYS IF THE TRIAL COURT?

AND THE FOURTH DEPARTMENT , I THINK , QUITE CORRECTLY , SAID THAT, IF THE TRIALCOURT IS UNCOMFORTABLE WITH THE DEPARTMENT 'S DECISION NOT TO DO A HOME STUDY I , THEN THE TRIAL COURT CAN SAY, YOU KNOW, I AM NOT SO COMFORTABLE AS YOU GUYS ARE. YOU GO OUT AND YOU DO A HOME STUDY I.I DON'T CARE IF IT IS A AHOME STUDY. I DON'T CARE IF IT IS A RELATIVE.

IT IS NOT SOMETHING THAT THE TRIAL COURT CAN DISPENSE WITH. IF IT IS A RELATIVE INVOLVED IN THE ADOPTION , IT DOES NOT SAY THAT?

IT DOESN'T USE THE WORD DISPENSE. LET ME LOOK AT THE EXACTLANGUAGE, TO MAKE SURE THAT I DON'T MISS IT IS A .

MISTAKE .

MISSTATE .

IT SAYS UPON RECOMMENDATION BY THE TRIALCOURT , IF THE PETITION DOES DECLINE TO ONE OF PARENTS.

IT SAYS IF WE DISPENSE WITH THAT, THAT THAT IS SUFFICIENT.

LET ME GIVE A PARALLEL. LET'S SAY A STEPPARENT ADOPTION AND YOU HAVE TWO-WAYS , LET'S SAY IT IS A DAD WHO HAS MARRIED THE MOM. IT IS NOT HIS KIDS, AND YOU CAN EITHER GET A CONSENT OF THE REAL DAD , AND THEREFORE THAT IS ENOUGH FOR, TO QUALIFY FOR THE NOTICE F YOU DON'T GET THE CONSENT , YOU NOTICE THE REAL DAD , THE BIOLOGICAL FATHER, YOU SET A HEARING AND THE JUDGE HERE SAYS I T IS A N ABANDONMENT ISSUE , JUST AS YOU WOULD HAVE IN DCF, AND THE TRIAL COURT MAKES A FINDING A T THAT HEARING THAT THE BY LODGE CAL FATHER SHOWS UP BIOLOGICAL FATHER SHOWS UP TO , THAT THERE HAS BEEN ABANDONMENT, AND THE TRIAL COURT HAS THE AUTHORITY TO GRANT ADOPTION, N O HOME STUDIES HERE.

YES.

WHY ISN'T THE CONSENT THAT IS REQUESTED IN THIS STATUTE , SIMILAR TO THAT ABILITY TO

GET THE CONSENT OF THE STEPPARENT, I N THE STEPPARENT ADOPTION?

BECAUSE THE CONSENT THAT IS REQUIRED IN THE COMBINATION OF CHAPTER 39.812-5 AND 63.062-7, IS THE CONSENT TO ADOPT AS I F WE WERE THE BIOLOGICAL FATHER .

BUT THE BIOLOGICAL FATHER , MY POINT IS IN THIS CASE THE COURT HAD A HEARING. IT WAS NOTICED. EVERYBODY APPEARED AND THE COURT MADE THE DETERMINATION THAT HE WAS SATISFIED OR SHE WAS SATISFIED THAT THIS WASIN THE BEST INTEREST OF THIS CHILD, AND THE DEPARTMENT WAS THERE.HOW IS THAT ANY DIFFERENT THAN A STEPPARENT ADOPTION, WHERE YOU NOTICE THE BIOLOGICAL FATHER, THE BIOLOGICAL FATHER HAS NOT CONSENT, REFUSES T O CONSENTTO HAVE THE HEARING. THEY ESTABLISH ABANDONMENT AND THE TRIAL COURT , BASED UPON THAT SIMPLE HEARING , GRANTS THE REQUEST , WITHOUT THE CONSENT OF THE BIOLOGICAL FATHER .

BECAUSE IN THAT CASE , ESSENTIALLY WHAT YOU ARE DOING IS YOU ARE ESTABLISHING IN THAT HEARING THAT YOU REFERRED TO, YOU ARE ESTABLISHING THE GROUNDS FOR ABANDONMENT AT THAT CASE. IN THIS SITUATION

IT HAS ALREADY BEEN DONE. THAT HAS ALREADY BEEN LAID AND THOSE BEEN MADE AND THOSE RIGHTS HAVE BEEN TERMINATED.

WHY ISN'T THERE THE AUTHORITY, IN MY VIEW, TO PARAPHRASE.

GO AHEAD .

LESS AUTHORITY FOR THE TRIAL COURT IN THIS SITUATION THAN THE TRIAL COURT HAS IN THE SITUATION THAT JUSTICE BELL DESCRIBED ? IT SEEMS TO ME THAT , WITH ALL THE ADDED PROTECTIONSAND LAYERS AND EVERYTHING IN THIS SITUATION , THAT THE TRIAL COURT WOULD AT LEAST HAVE THAT MUCH AUTHORITY , YOU KNOW , BECAUSE YOU DON'T HAVE ALL THAT OTHER STUFF IN THE SITUATION THAT HE DESCRIBED , WHEREAS YOU DO HAVE IT HERE , SO WHY SHOULD THE TRIAL COURT HAVE LESS AUTHORITY HERE , WHEN WE HAVE ALL THESE POSITIVE LAYERS OF THINGS, THAN THE TRIAL COURTHAS IN THAT SITUATION?

IN A VERY SIMPLE PHRASE , IT IS BECAUSE THE STATE OF FLORIDA , TO WHOM THIS CHILD HAS BEEN PERMANENTLY COMMITTED , HAS A COMPELLING INTEREST TO MAKE SURE THAT THE CHILD IS PLACED IN A, IN AS PERMANENT A HOME AS POSSIBLE , AS GOOD A HOME A S POSSIBLE, FOR PURPOSES O F THE REMAINDER OF THAT CHILD'S

THIS COMES BACK TO OUR INTERPRETATION OF THE CONSENT PROVISIONS OF THE STATUTE AND THOSE OTHER PROVISIONS.

YES , JUSTICE.

CHIEF JUSTICE: ALL RIGHT. THANK YOU VERY MUCH . MR . MARSHAL, HOW MUCH TIME ? TWO AND-A-HALF MINUTES. OKAY .

YES, YOUR HONOR, JUST BRIEFLY , I BELIEVE IF I UNDERSTAND THE DEPARTMENT'S ARGUMENT, IS THAT THE CHILD SHOULD HAVE A NEAR PER PERFECT HOME, AND I DON'TTHINK ANYBODY CAN GUARANTEE THAT FOR ANYONE. I THINK THE DCF IN THIS CASE INDICATED THAT THIS WAS A VERY LOVING AND SAFE HOME, AND THE GUARDIAN AD LITEM CONCEDED THAT.

IS THERE ANY REQUIREMENT IN ANY OF THESE STATUTES , AT ANY OF THE DCF RULES THAT , REQUIRES THAT THE ADOPTING PARENT HAVE A PERMANENT RESIDENCE ? IS THAT TERM USED?

THAT TERM "PERMANENT RESIDENCE" NO , IS NOT USED.

BECAUSE WHAT BOTHERS ME ABOUT THIS CASE QUITE FRANKLY THAT DCF, WHO IS CHARGED WITH TAKING , HAVING CARE AND CUSTODY OF THESECHILDREN, WANTS THE PARENTAL RIGHTS ONCE THE PARENTAL RIGHTS ARE TERMINATED , IS TRYING TO DETERMINE WHETHEROR NOT THIS LADY , IT SEEMSTO ME BY SAYING SHE IN A TEMPORARY SITUATION, THEY ARE TRYING TO DETERMINE IF, IN FACT , THIS ADOPTION GOES THROUGH, THE LIKELIHOOD OF HER CONTINUING TO BE ABLE TO TAKE CARE OF THE CHILDREN. CORRECT?

THAT'S CORRECT.

AND SO IF THERE IS A REQUIREMENT THAT, IN ORDER TO BE AN ADOPTIVE PARENT, YOU BE IN A SITUATION THAT DEMONSTRATES SOME KIND O F PERMANENCY , WOULDN'T THE DEPARTMENT B E IN A GOOD POSITION SAYING, NO , WE DON'T WANT THIS ADOPTION TO GO THROUGH, UNTIL SHE HAS DEMONSTRATED THAT?

WE THINK NO , BECAUSE THIS IS A SITUATION WHERE A TEMPORARY, IN THIS CASE , DIDN'T MEAN JUST FOR A COUPLE OF WEEKS. THIS WAS A TWO-YEAR COMMITMENT TO BE IN THIS PROGRAM.

WHICH WAS ALMOST UP , AT THE TIME - -

WHICH WAS ALMOST UP , ANDSHE HAD BEEN SAVING ALL THAT TIME TO GET INTO AN PERMANENT HOME, TO GET INTO AN APARTMENT , IF YOU CAN CALL THAT PERMANENT HOME, BECAUSE WE NEVER KNOW WHAT IS GOING TO HAPPEN WITH PEOPLE'S FINANCES, BUT CERTAINLY SHE SINCE THAT TIME IS IN AN APARTMENT AND IS DOING QUITE WELL , SO SHE WAS SAVING AND WAS ALMOST ATTHAT POINT WHERE SHE WOULD BE

WHY ISN'T IT LOGICAL , IF NOTHING ELSE AND NOT TRY ING TO MERB ALL OF THE LANGUAGE OF THESE - - TO MESH ALL OF LANGUAGE OF THESE STATUTES , BUT IN THIS CASE WE HAVE GOT A SITUATION WHERE THE PARENTAL RIGHTS HAVE BEEN TERMINATED OF THESE CHILDREN, AND IN FACT THE POLICY DECISION HAS BEEN MADE BY THE LEGISLATURE THAT THESE CHILDREN ARE , THE STATE HAS TAKEN OVER THE PARENTAL ROLE OF THESE CHILDREN, AND SO IF THE STATE HAS TAKEN OVER THE PARENTAL ROLE O F THESECHILDREN, WHY SHOULDN'T IT BE THAT THE STATE AGENCY THAT HAS THAT RESPONSIBILITY , HAS TO CONSENT TO WHAT HAPPENS NEXT WITH THE CHILDREN?

I THINK BECAUSE, JUDGE, THE STATE HAS TAKEN OVER THE PARENTAL ROLE BUT THE STATE DOESN'T JUST MEAN THEDEPARTMENT. IT INCLUDES THE COURT. IT INCLUDES EVERYONE THAT IS INVOLVED IN THE STATE. AND SO THE COURT, ALSO , HAS SOME INTEREST , AND ABILITY TO

BUT THE THING THAT BOTHERS ME IS THAT THE DECISION, THE WAY THAT WE ARE WORKING HERE , IS THAT THE STATE I S ACTING THROUGH DCF. THAT IS THE POLICY DECISION. WE ARE GOING TO GIVE THE PARENTAL RESPONSIBILITY TO DCF , UNTIL SOMETHING HAPPENS NEXT.

BUT IT IS NOT A TOLINGT FULL PARENTAL RESPONSIBILITY. THE A TOTAL FULL PARENTAL RESPONSIBILITY. THE COURT STILL RETAINS SOME OF THE RESPONSIBILITY FOR THE CHILDREN. THANK YOU, YOUR HONOR. WE REQUEST THAT YOU REVERSE.

CHIEF JUSTICE: WE THANK YOU AND VERY MUCH APPRECIATE YOU ALL DISCUSSING THIS WITH US AND RESPONDING TO OUR QUESTIONS.WE WILL NOW STAND IN RECESS UNTIL TOMORROW MORNING.

MARSHAL: PLEASE RISE.