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**Beverly Williams v. Cecelia Davis
SC05-1817**

THE COURT WILL TAKE THIS MATTER UNDER ADVISEMENT, AND WE WILL CALL THE NEXT CASE ON THE COURT'S CALENDAR. WHICH IS WILLIAMS VERSUS DAVIS. WE WILL WAIT FOR THE COURTROOM TO CHREERX AND I DON'T WANT YOU TO FEEL OFFENDED THAT THEY ARE LEAVING WHEN YOU COME UP. ALL RIGHT.MR. SHAW.

MAY IT PLEASE THE COURT. MY NAME IS JACK SHAW. I REPRESENT THE PETITIONER BEVERLY WILLIAMS. THIS CASE IS BEFORE THECOURT ON A CERTIFIED CERTIFICATION OF GREAT PUBLIC IMPORTANCE FROM THE FIFTH DISTRICT COURT OF APPEAL. IT CONCERNS THE QUESTION OF WHETHER A PRIVATE RESIDENTIAL LANDOWNER HAS A COMMON LAW DUTY TO STILL MAINTAIN HIS OR HER PROPERTY AS TO ALLOW UNOBAN INSTRUCTED LINE OF - - AN UNOBSTRUCTED LINE OF SIGHTAT THE INTERSECTION.

JUSTICE: IS YOUR ARGUMENT THAT THERE SHOULD BE NO DUTY WHATSOEVER ON BEHALF OF THE LANDOWNER?

IN THE CONTEXT OF THISCASE, YES , YOUR HONOR.

JUSTICE: I AM SAYING UNDER THE LAW IS YOUR ARGUMENT THAT THERE IS NO DUTY ON THE PART OF THE LANDOWNER WHATSOEVER?

I WOULD SAY THAT THERE IS A LIMITED DUTY IN THE CONTEXT OF A STOP SIGN OR YIELD SIGN. OTHERWISE THERE IS NO DUTY .

JUSTICE: LET ME GIVE YOU AN EXAMPLE. LET'S SAY THERE IS A INTERSECTION AND A PIECE OF PROPERTY AT THE INTERSECTION, WHERE THE ONLY WAY THAT A CAR CAN LOOK FOR ON COMING TRAFFIC BECAUSE OF THE WAY THE LANDOWNER HAS SET UP THEPROPERTY, EITHER BECAUSE THERE IS A WALL AT THE EDGE OF THE PROPERTY OR THERE ARE , THERE IS A HEDGE, A TALL HEDGE AT THE EDGE OF THEPROPERTY, SO THAT THE ONLY WAY THAT A VEHICLE CAN LOOK FOR ON COMING TRAFFIC AT THE INTERSECTION, IS TO ACTUALLY PUT THE CAR OUT INTO THE INTERSECTION, SO THAT THE NOSE IS IN THE INTERSECTION , ITSELF, IN THE RIGHT-OF -WAY, AND CAN CAUSE AN ACCIDENT. IS THERE NO DUTY ON BEHALFOF THE LAND OWNER , AT LEASTTO THE KEEP THE PROPERTY IN SUCH A MANNER SO THAT THE VEHICLES DO NOT HAVE TO PUTTHEMSELVES IN DANGER IN ORDER TO LOOK FOR ON COMING TRAFFIC?

I WOULD SUGGEST THERE IS NO DUTY ON THE PART OF THE LANDOWNER, EVEN IN THAT SITUATION, AND THAT THE DUTY TO MAINTAIN THE LINES OF SIGHT IS ON THE PUBLIC ENTITY THAT MAINTAINS THE INTERSECTION.

JUSTICE: AREN'T THERECASES THAT HAVE HELD THAT , IF THE PROPERTY OWNER IS, IF SOMETHING , THE VEGETATION, TREES, WHAT EVER, ARE OBSTRUCTING A TRAFFIC DEVICE , AND THEN THERE WOULD BE SOME DUTY . CORRECT?

YES, YOUR HONOR, THERE ARE, AND I HAVE NO QUARREL WITH THOSE CASES.

JUSTICE: SO HOW DO YOUDISTINGUISH? WHAT REAL POLICY ARE WE ADD ADVANCING BUT -- ADVANCING BY SAYING , BECAUSE THERE IS NO TRAFFIC DEVICE BUT THE SAME KIND OF SITUATION, THEN THERE IS NO DUTY , BUT IT IS STILL OBSTRUCTING A MOTORIST THE ALPS V

ISION . -- A MOTORIST'S VISION.

ACTUALLY THERE WAS A YIELD SIGN AT THIS PARTICULAR INTERSECTION THAT WAS NOT OBSTRUCTED. BUT GETTING TO THE POINT OF YOUR HONOR'S QUESTION, I THINK THE DIFFERENCE BETWEEN OBSTRUCTING THE LINE OF SIGHT AT AN INTERSECTION AND OBSTRUCTING THE TRAFFIC CONTROL DEVICE IS VERY FUNDAMENTAL. MOTORISTS APPROACHING THE INTERSECTION KNOW THERE IS AN INTERSECTION THERE. SIMPLY THE LINE OF SIGHT OF THAT INTERSECTION, HE MAY NOT KNOW THAT THERE IS A STOP SIGN OR YIELD SIGN. NOT KNOWING IT IS THERE, YOU HAVE A MUCH GREATER RISK THAT HE WILL RUN THE STOP SIGN.

JUSTICE: WAS THIS PROPERTY IN THE COUNTY ?

THIS PROPERTY IS, THERE WERE PICTURES OF THE PROPERTY IN THE RECORD. IT IS ABOUT EIGHT MILES SOUTH OF DOWNTOWN ORLANDO. I WOULD CHARACTERIZE IT AS RURAL PROPERTY. MY OPPONENT CHARACTERIZES IT DIFFERENTLY .

JUSTICE: WAS IT GOVERNED BY SETBACKS?

I BELIEVE THERE ARE SETBACKS . I AM NOT SURE WHAT IS IN THE RECORD ON THAT BUT THERE ARE SOME SETBACKS. YOU CAN SEE IN THE PICTURES, A FENCE. YOU CAN SEE THAT THERE IS SOME LINE OF SIGHT. THEY CAN SEE TWELVE FEET DOWN THE ROAD .

CHIEF JUSTICE: DO YOU SEE, DOES IT MATTER UNDER YOUR THEORY, WHETHER SOMEBODY HAS PUT UP TREES OR THE TREES ARE NATURALLY GROWING? IN OTHER WORDS THE DISTINCTION THAT SOME COURTS HAVE MADE BETWEEN SOMETHING THAT WAS AFFIRMATIVELY DONE TO, SAY, ENHANCE THE PROPERTY, BUT, ALSO, TO OBSTRUCT THE VISION, VERSUS IT NATURALLY OCCURRING CONDITION? DO YOU SEE THAT AS ANY DISTINCTION FOR WHETHER THERE SHOULD BE A DUTY?

I THINK THERE IS A DISTINCTION THERE, BUT I WOULD NOT RELY ON A DISTINCTION BETWEEN ARTIFICIAL VERSUS NATURAL OR MISFEASANCE VERSUS NONFEASANCE .

CHIEF JUSTICE: I AM SORRY. YOU SAID YOU WOULD NOT?

I WOULD NOT.

CHIEF JUSTICE: SO YOU WOULD SAY WHETHER, IS IT BECAUSE IT IS A TREE? WHAT IF IT WAS A, AGAIN, WAS IN COMPLIANCE WITH THE STATUTE, BECAUSE I GUESS IF IT IS NOT IN COMPLIANCE WITH AN ORDINANCE OR A STATUTE, YOU WOULD AGREE THAT THERE MIGHT BE A DIFFERENT BASIS FOR RELIEF, CORRECT? SO WHAT IF IT WAS SOMETHING OTHER THAN A TREE, YOU KNOW, A SCULPTURE THAT HAD BEEN PUT UP? IS THERE ANY, AND IT OBSTRUCTS THE VISION. IS, DOES IT MATTER, AGAIN, BECAUSE IT IS THE DISTINCTION WE ARE MAKING IS THAT IT IS BECAUSE IT IS ON THEIR PROPERTY, AND NOT ON, IN THE INTERSECTION THAT THERE SHOULD BE NO DUTY ?

THE DISTINCTION I WOULD MAKE, YOUR HONOR, NOT DEAL WITH NATURAL AND ARTIFICIAL. IT DEALS WITH THE SITUATION OF THE PROPERTY ITSELF. THE RURAL SUBURBAN, URBAN SETTING.

CHIEF JUSTICE: DOES IT MATTER?

DOES MATTER.

CHIEF JUSTICE: DOES MATTER. WHY DOES IT MATTER?

BECAUSE IN AN URBAN SETTING SUCH AS WAS PRESENT IN WITT VERSUS SILVERMAN, YOU HAVE A MUCH HEAVIER TRAFFIC FLOW, PEOPLE COMING IN AND OUT. PEDESTRIANS. YOU HAVE --

CHIEF JUSTICE: THEN IT IS A ASSESSMENT , SO DOESN'T THAT GO , THEN, TO FORESEEABILITY, WHICH IS R A THER THAN A BRIGHT-LINE RULE , THAT I THOUGHT YOU WERE TRYING TO ASSERT , THAT IS THAT YOU DON'T LOOK AT WHAT, WHAT JUSTICE WHAT JUSTICE CAN TERO WAS AS KING, IS ARE YOU SAYING IT DOESN'T MATTER WHAT THE CIRCUMSTANCES ARE?NOW I AM HEA RING YOU SAY IT DOES MATTER WHETHER IT I S URBAN OR RURAL , W HAT THE N A TURE OF THE OBS TRUCTION IS,WHAT THE FREQUENCY OF THE TRAFFIC IS, HOW BU SY THE INTERSECTION, THAT THAT ALL WOULD GO INT O A DETERMINATION OF WHETHER A DUTY AR ISES ?

NO , YOUR HONOR. THE BRIGHT LINE DISTINCTION I AM SUGGESTING IS BETWEEN RESIDENTIAL PROPERTY S WHERE THE TRAFFI C FLOW IS NOT ON TO AND OF F OF , ON TO AND OFFOF THE PROPERTY AS IN WITT , AND RURAL , O R SUB URBAN RESIDENTIAL PROPERTY, WHERE THE TRAFFIC FLOW IS SIMPLY A PASSING MOTO RIST .

CHIEF JUSTICE: WHAT IF IT WERE SOMEBODY VISITING MY H OUSE AND THEY ARE COMING OUT OF MY DRIVEWAY.DOES THAT MATTER AS FAR AS THE DUTY THAT I O WE?

I BELIEVE THAT THAT DRIVEWAY INTERSECTION IS A N INTERSECTION THAT WOULD BE GOVERNED BY THE SAME RULE. WOULD BE GOVERNED IN THIS CASE. IN OTHER WORDS HERE WE HAVE A ST REET INTERSECTION. IN THE CASE OF SOME ONE COMING OUT OF YOUR DRIVEWAY, THAT IS THE INTERSECTION OF YOUR DRI VEWAY WITH THE ROAD .

JUSTICE: WAS THIS A LO T? I MEAN, JUST --

IT W AS AN UNDEVELOPED L OT. R IGH T.

JUSTICE: AN UNDEVELOPED LOT.

NO BUILDINGS ON THE PROPERTY.

JUSTICE: AND ALL OF THE VEGETATION WAS JUST NATURALLY GROWN ?

AS FAR A S WE ARE AWARE IN THE RECORD, THERE IS N O EVIDENCE THAT ANY THING WAS PLANTED TO DO THIS. THESE PEOPLE BOUGHT THIS PROPERTY A FEW Y EARS BEFOREHAND AS PART OF THE , ANOTHER PROPERTY TRANSACTION.

JUSTICE: DI D WE NOT FOR ANUMBER OF YE ARS FO LLOW THE THEORY THAT RESPONSIBILITY OF THE LAND OWNER CAME TO ARISE WHEN THAT VE GETATION ENCROACHED UP ON THE PUBLIC RIGHT-OF-WAY? DID WE NOT FOLLO W THAT FOR ANUMBER OF AR REARS ?

YES -- FOR A NUMBER OF YEARS?

YES.

JUSTICE: AND THEN WE HAVE THE MIAMI BEACH CASE WHICH WAS A BUSINESS AND IT DIRECTED PEOPLE IN A PARTICULAR WAY , SO WHY WOULD IT LEAVE US IN THIS CASE, IF WE FOLL OWED THE PRINCIPLE , WAS THE VEG ETATION HERE ACTUALLY IN THE PUBLIC RIGHT-OF-WAY?

NO , YOUR HONOR, IT WASNOT.THERE WAS SOME VEGETATION THAT WAS IN YOU BUT NOT THE VEGETATION THAT WAS OBS CURING THE LINE OF SIGHT.

JUSTICE: I SAY THE RIGHT-OF-WAY, I MEAN THE FOLIAGE OVERHANGING OR IN SOME WAY INTRUDING , WHETHER IN THE GROUND OR ABOVE THE GROUND. IT WAS NOT?

I BELIEVE IT WAS NOT .

JUSTICE: WAS THIS AN URBAN OR RURAL SETTING? ISLAND CHARACTERIZE IT AS RURAL , YOUR HONOR . THERE WERE --

I WOULD CHARACTERIZE IT AS RURAL, YOUR HONOR . THERE WERE A FEW SCATTERED HOUSES ALONG THE ROAD.

JUSTICE: I GUESS THAT WOULD BE AN INITIAL FACT IN SEVERAL CASES, WHETHER THIS WAS YOUR URBAN OR RURAL , DEPENDING ON -- WHETHER IT WAS URBAN OR RURAL, DEPENDING ON THE CASE , AND YOU ARE SAYING REGARDING THE DISTINCTION , I THINK JUDGE SCHWARTZ SAID IN RURAL SETTINGS , THE STANDARDS SHOULD BE DIFFERENT.

I CAN UNDERSTAND IMPOSING HIGHER STANDING IN AN URBAN SITUATION WHERE YOU HAVE HEAVY TRAFFIC. IN A RURAL SITUATION, WITH IT WAS A SITUATION -- WITH IT WAS A SITUATION WHERE THE CUSTOMER WAS LEAVING THE STATION THAT HIT THE PEDESTRIAN .

JUSTICE: WAS THERE A DRIVEWAY INTO AND OUT OF THIS LOT?

THERE IS A ROAD, A DIRT ROAD THAT GOES INTO THE LOT BUT IT WAS NOT INVOLVED IN THIS COLLISION .

CHIEF JUSTICE: IT SEEMS TO ME THAT, WHEN YOU SAID , YOU STARTED OUT SAYING THAT , REALLY, THE DUTY TO MAINTAIN THE LINES OF SIGHT WOULD BE ON THE MUNICIPALITY OR THE COUNTY . BUT GENERALLY , WHEN THERE IS A DISPUTE OF WHO HAD THAT DUTY , YOU WOULD LITIGATE THAT QUESTION ABOUT WHETHER , UNDER THESE CIRCUMSTANCES , THE LANDOWNER WAS REASONABLE , BECAUSE I GUESS THERE IS SOMETHING IN THE RECORD ABOUT THAT THEY HAD ACTUALLY CONTRACTED WITH THE COUNTY TO TAKE CARE OF THIS , AND IT SEEMS TO ME THAT, IF THE LAND, THE MOTORIST , THE PLAINTIFF , IS IN A POSITION OF SAYING I CAN SUE THE COUNTY AND THEN THE COUNTY SAYS WE HAD ALREADY HAD A CONVERSATION, AND, WITH THE LANDOWNER AND IT WAS THEN THAT ALL OF A SUDDEN YOU DON'T HAVE A POTENTIALLY RESPONSIBLE PARTY, SO WHY, IF THAT IS YOUR ARGUMENT , THAT IS THAT WHEN EVEN IF IT IS ON PRIVATE PROPERTY, IT IS UP TO THE GOVERNMENTAL ENTITY TO MAINTAIN THE PROPER LINES OF SIGHT , WHY WOULDN'T THAT BE AN ISSUE OF EITHER INDEMNIFICATION OR JOINT AND SEVERAL LIABILITY ?

I BELIEVE THAT PERHAPS I DID NOT MAKE MY POSITION CLEAR. I BELIEVE THAT IT IS THE GOVERNMENTAL ENTITY 'S RESPONSIBILITY TO CONDEMN THE LAND IF NECESSARY, TO TAKE THE LINE OF SIGHT PROBLEM AND IT CAN BE RESOLVED.

CHIEF JUSTICE: THAT WAS THIS RECORD , I GUESS THERE CAN BE A DIFFERENT ISSUE THAT WAS CLEARLY ESTABLISHED THAT, UNDER THE FACTS OF THIS CASE IT WAS THE COUNTY , BUT I HAVE A SUSPICION THAT THEY MIGHT SAY THERE IS SOVEREIGN IMMUNITY ON THAT ISSUE , THAT IT IS SORT OF A PLANNING DECISION AS TO WHETHER TO TAKE THE LAND OR NOT , AND CERTAINLY THE PERSON, THE MOTORIST CAN SUE BASED ON A PLANNING DECISION THAT YOU DIDN'T TAKE ENOUGH PROPERTY OR SOMETHING. YOU WOULD AGREE WITH THAT?

I WOULD AGREE WITH THAT , THAT IT COULD CERTAINLY AND ISSUE. I DON'T KNOW HOW IT WOULD BE RESOLVED.

CHIEF JUSTICE: I GUESS IN THE MODERN DAY OF , AGAIN , AS FAR AS IF SOMETHING IS IN A RURAL AREA AND THERE IS JUST, YOU KNOW , TREES ALL-AROUND AND ACRES AND ACRES , I CAN SEE A POLICY ARGUMENT THAT IS NOT EVEN A REASONABLE , IT IS NOT REASONABLY FORESEEABLE , BUT SINCE WE ARE ALL , WE ARE NOT ALL PROPERTY OWNERS BUT A LOT OF US ARE PROPERTY OWNERS , THE IDEA THAT WHEN YOU GET TO THE END OF THE DRIVEWAY THAT YOU WANT TO MAKE SURE THAT THE LINE OF SIGHT IS CLEAR , SEEMS TO BE A PRETTY MINIMAL BURDEN, AND IT CERTAINLY IS FORESEEABLE , SO EVEN THAT McCAIN AND ALL THE OTHER CASES SINCE M

cCAIN IN THIS STATE HAVE, REALLY, RELIED ON FORESEEABILITY AS THE LINCHPIN, WHY ISN'T THAT A BETTER ANALYSIS THAN TRYING TO DECIDE HOW URBAN OR R URAL THE AREA IS , IN ANALYZING THIS CASE?

I N THE KING RE SPECT ANDDISCUSSION OF FORESEEABILITY -- IN THE KING ANDDISCUSSION OF FORESEEABILITY FOLLOWING IT , I WOULD SUGGEST THAT FORESEEA BILITY INCREASING THE RISK IS ONLY ONE FACTOR TO BE CONSIDERED IN DETERMINING WHETHER THERE IS A LEGAL DUTY. OTHER FACT ORS HAVE TO BE CONSIDERED. THE LA W OF THIS STAT E IS THAT WAY , INCREASE ZONE OF RISK BUT NO LIABILITY. THE HO SPITAL , WHERE A SURGEON DEC REASES A CHANCE A FTER PATIENT'S SURVIVAL , CRITICAL CASE.

CHIEF JUSTICE: THAT IS A L EGAL CAUSE THERE. ISN'T THAT A LEGAL CAUSE?

YOUR HONOR , THAT CASE AS I RECALL INVOLVED A QUESTION OF WHETHER THERE WAS A DUTY THAT WAS BREACHED .

CHIEF JUSTICE: SOMETIMES USE WO R DING AND OTHER T Y PES --

PERHAPS AN OTHER EXAMPLE A PSYCHIATRIST WITH A DANGEROUS PATIENT, THE TERRORIST THE SITUATION. HE FA ILS TO WARN.

CHIEF JUSTICE: THAT GOES OFF AND I THINK WE WOULD HAVE TO LOOK AT EACH CASE THE FORESEEABILITY OF THE THIRD PARTY , WHAT IS THE FORESEEABILITY OF A THIRD PARTY DOING SOMETHING THAT CAUSE THE HARM?

THE STATES HAVE UPHELD THAT THERE IS NO DUTY BY THE PSYCHIATRIST TO WARN.

CHIEF JUSTICE: BUT IT IS BASED ON FORESEEABILITY.

FORESEEABILITY IS CERTAINTY A FACTOR. MY POINT IS FORESEEABILITY AND ZONE O F RI SK IS NOT THE ONLY THING. YOU HAVE FOUR TA SKS TO CONSIDER OTHER MATTER S. WHAT THE BURDEN, HOW EXTENSIVE THE BURDEN IS.

CHIEF JUSTICE: I GUESS THAT IS WHERE THE BURDEN ISSUE THAT MAYBE I WAS GETTING TO, WHERE AND AGAIN WHAT IS THE BURDEN , IF IT IS A REASONABLY TRAVELED AREA FOR A LANDOWNER TO , IN AN URBAN OR SUBYOU ARE AND -- SUBURBAN SETTING, K EEP AREAS CLOSE TO INTERSECTIONS CLEAR , SO THERE IS A CLEA R LINE OF SIGHT?

I DON'T DIS AGREE , EXCUSE ME, I DON'T AGRE E THAT IT COULD ONLY APPLY T O INTERSECTIONS , YOUR HO NOR.I THINK IF YOU ARE ON A STRAIGHT STRETCH OF ROAD,FOR IN STANCE , THERE IS ALWAYS THE D ANGER O F SOMEONE DARTING OUT ON TO THE RIGHT-OF-WAY , ON TO THE STR EET . IF YOU HAVE A DRIV EWAY THAT IS A SORT OF INTERSECTION , I THINK YOU CANNOT SAY THAT THIS JUST APPL IES TO INTERSECTIONS. I THINK THE DUTY WOULD APPLY TO ANY PROPERTY AND OUTING THE PUBLIC ROAD . -- TO ANY PROPERTY AB UTTING THE PUBLIC ROAD , SO I DON'T THINK YOU CAN LIMIT IT TO PEOPLE ON THE ENTER EX. THE EXTENT OF THE BURDEN ON EACH PROPERTY OWNER. OBVIOUSLY IT DOES NOT TAKE MUCH TO CUT DOWN A BRANCH NEAR A STOP SIGN OR YIELD SIGN, BUT HOW IS THE PROPERTY OWNTORY KNOW HOW FAR DO I NEED TO CLEAR BA CK THESE TREES?

CHIEF JUSTICE: DOE SN'T THAT GO TO WHETHER THEY EXERCISE REASONABLE CARE UNDER THE CIRCUMSTANCES, IF THIS DEFENDANT ESTABLISHED THAT THEY HAD CONTACTED THE COUNTY. THE COUNTY IS GOING TO TAKE CARE OF IT AND THEY DID EVERYTHING REASONABLE , THEN THERE IS NO LIAB ILITY. I MEAN , I THINK THAT THE ISSUE OF UNDER THE CIRCUMSTANCES , I S VERY BROAD , AND WE DON'T HAVE THOSE FACTS BU ILT IN YET AT THIS TIME AS TO WHAT THE LANDOWNER DID OR DIDN'T KNOW, WHETHER THEY KN EW THERE WASA HAZARD , WHETHER

THEY WERE WARNED ABOUT IT, WHETHER THEY DIDN'T DO ANYTHING DESPITE WARNINGS, WHETHER THERE WERE PRIOR ACCIDENTS AT THE SAME PLACE, WHETHER, YOU KNOW, THE MOTORIST WAS SOMEBODY COMING OUT OF THEIR OWN, THE LANDOWNER'S DRIVEWAY. AREN'T THOSE ALL MULTIPLE FACTORS THAT GO INTO THE EQUATION OF REASONABLE CARE?

ALL OF THOSE THINGS GO INTO QUESTIONS AS IT GOES THROUGH THE STATUTE. THROUGH THE McCAIN ANALYSIS, THE FIRST BEING IS THERE A DUTY AND THE SECOND BEING PROXIMATE CAUSE. SOME OF THEM ONLY APPLY TO ONE AND SOME APPLY TO BOTH, BUT MY SUGGESTION HERE IS THE COURT SHOULD ESTABLISH A RULE -- SHOULD ESTABLISH A RULE FOR RESIDENTIAL OWNER OUTSIDE THE URBAN CONTEXT, THERE IS NO DUTY ALONG WITH COMPLIANCE OF ORDINANCES AND ZONING REQUIREMENT, IS AS LONG AS YOU ARE NOT IMPINGING ON THE RIGHT-OF-WAY, MAINTAIN FOR PASSING MOTORISTS, A LINE OF SIGHT FROM THE INTERSECTION. THAT IS --

CHIEF JUSTICE: YOU YOU WILL ARE IN YOUR REBUTTAL. WITH THAT VERY GOOD STATEMENT OF WHAT YOU WOULD LIKE US TO DETERMINE.

THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS DIRAN SEROPIAN, AND I AM HERE FOR THE PLAINTIFF CECELIA DAVIS.

CHIEF JUSTICE: WHAT IS WRONG WITH THAT RULE THAT MR JUST ENUNCIATED?

I THINK IT IS OVERLY NARROW AND I AM PRACTICABLE IN A MODERN SOCIETY TO ESTABLISH A BRIGHT-LINE RULE THAT CAN WORK FOR ALL FACTUAL SCENARIOS, WHETHER IT IS YOU MADAM JUSTICE, PULLING OUT OF YOUR DRIVEWAY ON TO A STREET OR AT THIS INTERSECTION WHERE TWANDA DAVIS WAS KILLED BECAUSE SHE COULDN'T SEE THE INTERSECTION.

JUSTICE: I AM SORRY. TO ME THAT SEEMS TO BE A FAR DIFFERENT SITUATION THAN PEOPLE PASS A PIECE OF PROPERTY AND SOMEONE BEING THROWN ONTO THAT TRAFFIC BY A PARTICULAR LOCATION OF THE DRIVEWAY. I AM HAVING DIFFICULTY WITH THAT ANALOGY. IT SEEMS TO ME THAT THE COURT HERE IS EXPENDING THIS BUSINESS OPERATION ON MIAMI BEACH, A LITTLE MORE BROADLY THAN WE HAVE EVER SEEN IT APPLIED.

WE'LL THAT, IS PROBABLY TRUE. THE McCAIN ANALYSIS, THE REASONABLE FORESEEABILITY OF RISK ANALYSIS, PROBABLY IS A BROADER INTERPRETATION OF HOW TO DEFINE REASONABLE CARE THAT IS DIFFERENT THAN THE EGRARIAN RULE OR FOR THAT MATTER CONFLICTS THAT RELATE TO EITHER COMMERCIAL OR PRIVATE INJURIES EITHER ON OR OFF THE PROPERTY OR INJURIES THAT RELATE TO WHETHER THEY WERE IN AN URBAN OR IN A SUBURBAN OR RURAL AREA. WHY BE CONSTRAINED TO A BRIGHT-LINE RULE WHICH DOESN'T APPLY TO ALL?

JUSTICE: MY CONCERN IN WITT. IT IS HAS COME BACK, -- MY CONCERN IN WITT HAS COME BACK OBVIOUSLY NOW IN THIS CASE, AND THIS IS SOMEWHAT OF A POLICY MATTER AS DESCRIBED BY THE FIFTH DISTRICT, AND MY CONCERN OF THE OUTLINE THAT JUSTICE PARIENTE WAS REFERRING TO, IS THAT HERE WE HAVE GOT TO RECOGNIZE THAT WE LIVE IN A STATE WHERE WE HAVE THE FABRE DECISION. WE HAVE A SITUATION IN WHICH, IF YOU OPEN UP THIS TYPE OF LIABILITY FOR SOMETHING THAT IS NOT OVERHANGING THE RIGHT-OF-WAY, THAT IS STRICTLY ON A RESIDENTIAL PIECE OF PROPERTY, THAT THE BURDEN OF THAT IS GOING TO FALL ON HOMEOWNERS INSURANCE, AS OPPOSED TO AUTOMOBILE INSURANCE. THAT IS GOING TO BE A BURDEN. AND BECAUSE OF FABRE, LAWYERS ARE GOING TO HAVE TO ADD THESE HOMEOWNERS IN ALMOST EVERY CASE. AND SO IT SEEMS TO ME THAT WE HAVE LIVED WITH A RULE ALL MY CAREER, AND WHY ARE WE GOING TO CHANGE THAT RULE TODAY?

IF I MAY, JUSTICE, THE McCAIN ANALYSIS WAS AS THIS COURT STATED IN WITT, INTENDED TO

BE A RESTATEMENT OF THE LAW OF NEGLIGENCE IN THE STATE OF FLORIDA, SO I AM NOT UNMINDFUL OF THE OBSERVATIONS THAT YOU ARE MAKING, BUT WHERE WE ASK THAT THE FORESEEABILITY OF THE RISK OF HARM, THEN, CREATES A CORRESPONDING DUTY TO DIMINISH OR DECREASE THE HARM, THAT IS NOT AN UNREASONABLE RULE TO APPLY.

CHIEF JUSTICE: BUT LET'S GO BACK TO SOMETHING THAT I THINK IS AN IMPORTANT DISTINCTION BETWEEN WHETHER YOU HAVE A DUTY, IF IT IS SOMEBODY ON YOUR PROPERTY THAT IS COMING OUT INTO THE INTERSECTION, VERSUS PASSING MOTORISTS. AND I AM, WHERE THERE IS COMPLIANCE WITH ALL APPLICABLE STATUTES, AND THE SHRUBBERY IS NOT IMPINGING ON THE RIGHT-OF-WAY, HOW, THE DUTY EXTENDING TO PASSING MOTORISTS, TELL ME WHY THAT IS AN APPROPRIATE EXTENSION OF MCCAIN.

WELL, I THINK THAT JUDGE SCHWARTZ SAID, IN EVANS, IN HIS DISSENT, THAT THE REASON BEING THAT, FOR THE RULE THAT THEN OBTAINED WAS OVER BECAUSE THIS SOCIETY IS NO LONGER AN AGRARIAN SOCIETY, AND I AM NOT MEANING TO DISREGARD YOUR QUESTION FROM APPLYING THE REASONABLE FORESEEABILITY OF A RISK OF HARM, SO IF YOU HAVE AN ENORMOUS PRIVACY HEDGE AT YOUR DRIVEWAY THAT PREVENTS SOMEONE LEAVING FROM SEEING ONCOMING TRAFFIC, IT IS FORESEEABLE THAT THERE CAN BE A RESULTING ACCIDENT.

CHIEF JUSTICE: AS I AM HEARING WHAT MR. SHAW IN HIS LAST STATEMENT WAS, IS HE WAS TALKING ABOUT A DUTY OF PASSING MOTORISTS. HE MIGHT HAVE GONE TO VERSUS SOMEBODY LEAVING YOUR OWN PROPERTY.

IN DEED AND I AM MINDFUL OF THE CASES THAT TALK ABOUT WHETHER OR NOT A DUTY IS OWED TO PERSONS OFF THE PREMISES VERSUS PERSONS WHO ARE INVITEES OR ON THE PREMISES. I DON'T BELIEVE THAT THAT, EITHER, IS A MEANINGFUL DISTINCTION WHICH SHOULD OBTAIN IN THE COURT'S DETERMINATION OF WHETHER A DUTY IS OWED UNDER THE PARTICULAR FACTS OF THE CASE, SO FOR MOTORISTS PASSING BY, FOR EXAMPLE LET'S USE THE FACTS OF THIS CASE, WHERE TWANDA GREEN CAME TO THIS INTERSECTION. THERE IS A YIELD SIGN ON HER RIGHT. SHE IS SUPPOSED TO YIELD TO TRAFFIC ON THE OTHER ROAD. THE SIDNEY HAYES ROAD. IN THIS CASE THERE IS AN ENORMOUS FOLIAGE STAND OF TREES, HEDGES, BUSHES. IT IS COMPLETELY UNCLEAR IN THE RECORD WHETHER THEY ARE NATURAL OR ARTIFICIAL -- OR ARTIFICIAL.

JUSTICE: LET ME ASK YOU A QUESTION ON THAT POINT. YOU TALK ABOUT A MODERN SOCIETY WITH HEAVY ZONES, RIGHT-OF-WAY LINKS, AND LET'S SAY ON THIS CASE THERE IS A, LOOKING AT THE PICTURE, A CLEAR RIGHT-OF-WAY AND A DIFFERENCE BETWEEN THE PAVED ROAD AND THE FENCE AND THE SHRUBBERY, AND DO YOU AGREE THERE IS NO INDICATION THAT ANY OF THIS WAS ON THE RIGHT-OF-WAY.

I AGREE WITH THAT.

JUSTICE: YOU AGREE WITH THAT. SO THIS PROPERTY OWNER WAS IN COMPLIANCE WITH ALL COUNTY, CITY AND STATE ORDINANCES AND THE WIDTH OF THE RIGHT-OF-WAY AS DETERMINED BY THE MUNICIPALITY.

TO THE EXTENT THAT IS DEVELOPED IN THE RECORD, I WOULD AGREE WITH THAT.

JUSTICE: WHY SHOULDN'T THAT BE SUFFICIENT?

BECAUSE IT IS FORESEEABLE THAT, IF YOU HAVE AN ENORMOUS STAND OF FOLIAGE THERE, A PERSON WHO IS SUPPOSED TO OPERATE THE MOTOR VEHICLE AND COMPLY WITH THE YIELD SIGN WILL NOT BE ABLE TO DO SO WITHOUT INCHING FORWARD INTO THE INTERSECTION, TO THE POINT OF RISK. AND SO THAT IS THE FORESEEABLE HARM THAT ARISES FROM NOT TRIMMING THE TREES AND THAT FOLIAGE BACK. I MEAN, IF WE ARE LOOKING AT WHAT IS THE BURDEN ON

THE LANDOWNER THAT IS IMPOSED BY OBSERVING A DUTY OR BY ESTABLISHING A DUTY - -

JUSTICE: HOW IS THE LANDOWNER, IF THE LANDOWNER IS COMPLIANT WITH THE LEGISLATION ORDINANCES , WHATEVER, THAT SAYS THIS IS HOW FAR YOU HAVE TO MAINTAIN A CLEAR EASEMENT ADJACENT TO THE RIGHT-OF-WAY , AND LANDOWNER IS COMPLIANT WITH THAT , HOW , AREN'T WE GETTING INTO A REAL GRAY AREA ON HOW MUCH FURTHER THE LANDOWNER MUST GO?

I SUPPOSE, BUT IT IS SUBSUMED WITHIN YOUR QUESTION, THE NOTION THAT COMPLIANCE WITH ORDINANCES OR EASEMENTS OR WHATEVER THE REGULATION RESPECT AS TO A SIGHT LINE IS SUFFICIENT TO DISCHARGE THE DUTY THAT RELATES TO THE RISK OF HARM .

JUSTICE: LET ME GIVE YOU A PRACTICAL EXAMPLE.

YES, SIR .

JUSTICE: I SAW AN ACCIDENT HERE IN TALLAHASSEE MYSELF WITH A TEN FOOT DIAMETER OAK TREE ON THE CORNER OF SOMEBODY'S PROPERTY AT THE INTERSECTION IN A RESIDENTIAL URBAN SETTING. IF WE TAKE YOUR POSITION AND THE SDURS , IS THAT HOME OWN - - AND THAT ACCIDENT OCCURS, IS THAT HOMEOWNER LIABLE FOR NOT REMOVING THE 300-YEAR-OLD OAK TREE THAT STANDS ON THE CORNER OF THEIR PROPERTY TO KEEP THE VIEW OF THE PASSING MOTORIST?

CONCEIVABLY THERE CAN BE A CORRESPONDING DUTY ON THE LAND OWN TORY DO SOMETHING TO EMELIORATE THE -- TO EMELIORATE THE REASONABLE RISK, AND WE DO HAVE CASES THAT ARE CITED IN OUR BRIEF THAT TALK ABOUT OBSTRUCTION AFTER STOP SIGN, AND AS THE FIFTH DISTRICT STATED, IF THE SITUATION ON THE PROPERTY CAN CREATE A HARM BY HAVING A TREE LIMB BLOCK A SIGN, THEN WHY IS IT ANY DIFFERENT TO HAVE AN ENTIRE STAND OF FOLIAGE THAT OBSTRUCTS THE INTERSECTION , ALSO GIVE RISE TO A DUTY TO EMELIORATE TO THE RISE OF HARM.

JUSTICE: BECAUSE IT PROTRUDES ON THE PUBLIC RIGHT-OF-WAY AND HERE YOU SEEM TO BEING A DEGREEING THAT IT DOES NOT PROTRUDE INTO THE PUBLIC WAY, WHETHER THAT IS AIR SPACE OR LAND SPACE OR ANYTHING , SO YOU DON'T SEE A DIFFERENCE BETWEEN SOMETHING THAT ACTUALLY PROTRUDES INTO THE PUBLIC AREA AND SOMETHING THAT DOES NOT?

I DON'T WHEN WE ARE APPLYING THE McCAIN ZONE OF FORESEEABILITY RISK OF ANALYSIS.

JUSTICE: WAS THAT NOT MORE FROM A BUSINESS OPERATIONAL STANDPOINT THAN IT WAS AN OWNER OF PROPERTY , BECAUSE IT IS THE WAY THEY OPERATED THAT SERVICE STATION AND IT WAS AS THOUGH YOU FUNNELED PEOPLE OUT PAST ONLY ONE AREA. YOU COULDN'T GET OUT ANYWHERE ELSE AS I RECALL. THERE WERE HEDGES AND DROP-OFFS , SO THAT WAS MORE AFTER BUSINESS OPERATION OF YOUR LAND THAN IT WAS JUST A PURE LANDOWNER, WAS IT NOT?

ABSOLUTELY . WITT CERTAINLY WAS, EVOLVED OR MADE THOSE STATEMENTS WITHIN THE PURVIEW OF A COMMERCIAL ESTABLISHMENT , AND THE INGRESS AND EGRESS TO IT , BUT FOR PURPOSES OF THE CORRESPONDING DUTY THAT A LANDOWNER HAS, WHETHER IT IS A PRIVATE LANDOWNER OR A PRIVATE RESIDENCE VERSUS A COMMERCIAL ONE , HOW IS THE RISK OF HARM DIFFERENT TO THE PASSING MOTORIST WHO CAN'T SEE THE INTERSECTION VERSUS THE MOTORIST WHO IS LEAVING THE GAS STATION, WHO CAN'T SEE THE PEDESTRIANS BECAUSE THEY ARE OBSTRUCTED BY A STAND OF FOALS A.M.? EACH HAS THE SAME -- OF FOLIAGE? EACH HAS THE SAME ESSENTIAL RISK, WHICH IS THAT OBSTRUCTION OF THE VIEW OF THE MOTORIST INCREASING THE LIKELIHOOD OF AN ACCIDENT , AND IT SEEMS TO ME THAT THE POLICY CONSIDERATIONS THAT THE COURT HAS ALLUDED TO ARE SUBSUMED -- THAT THE COURT HAS ALLUDED TO ARE SUBSUMED WITHIN REASONABLE FORESEEABILITY. WHAT IS A REASONABLE

STANDARD TO DAY IN 2006 OR WHEN THIS DISAPPEARED?

CHIEF JUSTICE: JUSTICE CANTERO HAS A QUESTION.

JUSTICE: DOES THERE HAVE TO BE KNOWLEDGE ON THE PART OF THE PROPERTY OWNER THAT WHATEVER FOLIAGE OR ARTIFICIAL OBSTRUCTION OBSTRUCTS THE VIEW OF THE RIGHT-OF-WAY ?

I WOULD BELIEVE THAT COMMON SENSE OF THE PROPERTY OWNER IN THIS CASE WHERE IT IS AN UNDEVELOPED PIECE OF PROPERTY , I GUESS THAT THEY WOULD HAVE SOME KNOWLEDGE , JUST ON THE FACT THAT THEY --

JUSTICE: I AM NOT SAYING WHETHER SOMEBODY WOULD HAVE KNOWLEDGE BUT WOULD THEY HAVE TO HAVE KNOWLEDGE IN ORDER TO IMPOSE LIABILITY?

THAT WOULD BE LIKE AS ON STITCH STICKING ITS HEAD IN THE SAND IN THE SAND AND SAYING I WASN'T OFF MY PROPERTY AND DIDN'T KNOW THE TREES HAD GROWN AND THEREFORE I HAVE NO DUTY.

JUSTICE: THAT IS WHAT I AM GETTING AT. MANY PEOPLE OWN PROPERTY IN OTHER STATES, OTHER COUNTIES AND THEY -- AND OTHER COUNTIES AND THEY DON'T GO THERE ON A PERIODIC BASIS TO SEE HOW MUCH TREES OR BUSHES HAVE GROWN, SO IF THEY DON'T KNOW THAT SOMETHING IS OBSTRUCTING THE VIEW, DO THEY HAVE LIABILITY ANYWAY , VERSUS A HOMEOWNER WHO IS THERE ALL THE TIME AND KNOWS OR SHOULD KNOW WHETHER SOMETHING IS OBSTRUCTING THE VISION OF MOTORISTS?

IN MY VIEW , THEY CAN HAVE LIABILITY, BECAUSE IT IS A MATTER OF WHAT IS REASONABLE. IF IT IS A 10,000 ACRE RANCH , I THINK THAT IT BECOMES EASIER FOR A COURT TO MAKE A DETERMINATION THAT, UNDER THOSE FACTS , WHAT EVER MIGHT OBTAIN , THAT THERE MAY NOT BE A CORRESPONDING DUTY , BUT IN A RULE OR A SUBURBAN OR AN URBAN AREA AS THIS SEEMS TO BE , THERE IS A CORRESPONDING DUTY TO BE AWARE OF WHAT IS HAPPENING ON YOUR PROPERTY. THOSE PICTURES THAT ARE IN THE RECORD AND THAT MS TESTIFIED TO , DEMONSTRATE THAT THERE ARE HOMES , RESIDENCES, CHILDREN -- THERE ARE HOMES, RESIDENCES , CHILDREN, PEOPLE DRIVING THROUGH THERE. SHE EVEN SAID SHE DROVE HER HUSBAND THROUGH THERE AT SOME POINT AND THIS PERSON HAS KNOWLEDGE OF THE INTERSECTION, THE FACT THAT IT WAS CONTROLLED BY A YIELD SIGN AND NOT A TRAFFIC LIGHT, WHICH IS AN IMPORTANT OBSERVATION THAT I THOUGHT OF IN PREPARATION FOR TODAY , BECAUSE A YIELD SIGN REQUIRES A MORE ACTIVE PARTICIPATION OF A MOTORIST -- PARTICIPATION OF A MOTORIST TO BE ABLE TO SEE THE ENTIRE INTERSECTION, THAN A TRAFFIC LIGHT WHERE YOU COULD RELY ON THE TRAFFIC LIGHT, ALTHOUGH I WOULD SUBMIT THAT PRUDENT DRIVERS SHOULD NOT ENTER INTERSECTIONS WITHOUT LOOKING BOTH WAYS, WHETHER THEY HAVE A GREEN LIGHT OR NOT. IN ANSWER TO YOUR QUESTION , JUSTICE CANTERO , IS YES , I THINK THAT THERE SHOULD BE A REASONABLE DUTY THAT EVOLVES UPON THE LANDOWNER THAT IS DIRECTLY RELATED TO THE FACTS AND CIRCUMSTANCES OF EACH CASE , WHICH IS WHY THE McCAIN FORESEEABILITY ZONE OF RISK WILL WORK FOR A RESIDENTIAL LANDOWNER AS EASILY AS IT WORKED FOR A COMMERCIAL ESTABLISHMENT , AND FOR THAT REASON WE BELIEVE THAT THE FIFTH DISTRICT GOT IT RIGHT IN REVERSING THE SUMMARY JUDGMENT WHICH FOUND THAT THERE WAS NO DUTY UNDER THE FACTS OF THIS PARTICULAR CASE. IF THERE ARE NO MORE QUESTIONS WE RELY ON OUR BRIEF AND WE ASK THE COURT TO ANSWER THE AFFIRMATIVE QUESTION, ANSWER THE CERTIFIED QUESTION AFFIRMATIVELY AND REMAND THE CASE FOR FURTHER PROCEEDINGS. THANK YOU.

CHIEF JUSTICE: THANK YOU. MR . SHAW.

MAY IT PLEASE THE COURT. I ALSO WOULD RELY ON MY BRIEF FOR THE ISSUES. I CLARIFY ONE

FACT UAL THING THAT I DON'T THINK WAS CLEAR.MR. AND MRS. WILLIAMS DID NOT LIVE ON THIS PROPERTY.

CHIEF JUSTICE: USING THAT AS A DISTINCTION , IN OTHER WORDS IN ANSW ERING THIS OR REFRAMEING IT , MAKING A DISTINCTION BETWEEN AT LE AST PASSING MOTORISTS VERSUS SOMEBODY COMING OFF OF YOUR PROPERTY, AND WHETHER THE PROPERTY IS ONE THAT SOME ONE LIVES ON VERSUS A N UNDEVELOPED LOT. IS THAT AT LEAST FOR , I GUESS FOR NOW THAT WOULD SATISFY YOU, IF WE NARROWED IT , BUT DO YOU THINK THAT IS A REASONABLE DISTINCTION?

I THINK THE BA SIC DISTINCTION AND A VERY REASONABLE ONE IS BET WEENTHE PASSING MOTORIST AND THE PERSON WHO WAS INGRESSING OR EGRESSING. OBVIOUSLY THE FACT THAT THESE PEOPLE DID NOT L I VE ON THIS PROPERTY , THERE WOULDN'T HAVE BEEN A PROBLEM WITH THAT. I DON'T THINK IT IS NECESSARY .

JUSTICE: IN THIS CASE , THERE APPEARS TO BE SOME PICTURES THAT ARE IN THE RECORD THAT , WHAT W E REALLY HAVE ON THIS PROPERTY IS IT IS REALLY BIG TREES , AND THAT THE LIMBS FROM THE TREEARE HANGING OVER INTO THE ROADWAY , SO WHY ISN'T THAT AN OBSTRU CTION OF THE RIGHT-OF-WAY ?

YOUR HONOR , I HAVE LOOKED AT THOSE PICTURES. ALSO I HAVE LOOKED AT THE SURVEYOR, THE SU RVEY OF THIS A REA, AND I HAVE LOOKED AT THE RECORD. A S FAR AS I CAN TELL FROM THIS RECORD , AL THOUGH THE LIMBS EXTEND OUT BEYOND THE FENCE , THEY DO NOT EX TEND INTO THE RIGHT-OF-WAY.

JUSTICE: WHAT PART OF IT , THEY EXTEND BE YOND THE FENCE , WHERE DO YOU HAVE, HOW FAR DO THEY HAVE TO BE TO SEETHE RIGHT-OF -WAY , BECAUSE IT SEEMS TO ME THAT THEY AREOUT THERE PRETTY FAR OVER THE STREET. HOW FAR OUT DOES I T HAVE TO BE IN OR DER TO EXTEND BEY OND THE RIGHT-OF -WAY?

I THINK THAT , IF THE LIMB IS EXTENDE D INTO THE AIR S PACE ABO VE THE RIGHT-OF -WAY THAT CREATES A DIFFERENT SITUATION. I DON'T KNOW WHAT THE DISTANCE IN THIS PARTICULAR SITUATION IS, IF THAT IS YOUR QUESTION. I THINK IT HAS BEEN AGREED TO BY BOTH PARTIES THAT THIS IS NOT A CASE IN WHIC H IT DOES EXTEND ON TO THE RIGHT-OF-WAY.

CHIEF JUSTICE: THAT IS PART OF THE PARAMETERS O F WHAT YOU ARE AT LEAST PROPOSING HERE , NO VIOLATIONOF STATUTE AND NO EXTENSIONINTO THE RIGHT-OF-WAY , PASSING MOTORIST , UNDEVELOPED LOT.

EXACTLY. IF THERE ARE NO FURTHER QUESTIONS , THANK THE COURTVERY MUCH.

CHIEF JUSTICE: T HANK YOU V ERY MU CH. THE COURT WILL TAKE ITS MORNING RECESS. IF POSSIBLE , WE ARE GOING TO TRY TO T AKE IT FOR TEN MINUTES R AATHER THAN 15 MINUTES, BECAUSE WE HAVE T WO MORE CASES AND ONE IS A DEATH CASE. WE WILL NORTHBOUND RECESS FOR TEN M INUTES .

MARSHAL: PLEASE RISE.