

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Florida Division of Worker's Compensation v. Ricardo Cagnoli

THE NEXT CASE IS DIVISION OF, FLORIDA DIVISION OF WORKERS' COMPENSATION VERSUS CAGNOLI RICARDO GOOD MORNING.

JUSTICES, MY NAME IS DANIEL SUMNER. I REPRESENT THE FLORIDA DIVISION OF WORKERS COMPENSATION. THIS CASE BEFORE THE COURT, ON THE FIRST DISTRICT COURT OF APPEALS ORDER, HOLDING THAT THE REQUIREMENT IN SECTION 441.182, THAT REQUIRES SOCIAL SECURITY NUMBER, IS INVALID AS VIOLATING THE FEDERAL PRIVACY ACT OF 1974.

CHIEF JUSTICE: JUST A PROCEDURAL QUESTION. DID YOU EVER ASSERT IN THE APPEAL OF THE ORDER, TO THE FIRST DISTRICT, THAT IT WAS NOT AN APPEALABLE FINAL ORDER OR AN APPEALABLE NONFINAL ORDER? WAS THAT EVER RAISED IN THE FIRST DISTRICT?

NO, MA'AM. IT WAS NOT, BECAUSE OF THE CONTROLLING CASE LAW AT THE TIME OF THE CAGNOLI DECISION, WAS MARTINA VERSUS COLLIER COUNTY. THAT CASE, ON ITS FACE, APPEARS TO SIMPLIVE INDICATE THAT, IN THAT CASE, WHERE A PETITION FOR BENEFITS WAS DISMISSED WITHOUT PREJUDICE, THAT IT WAS A FINAL ORDER NONETHELESS, BECAUSE REFILEING OF THE PETITION WOULD HAVE BEEN TIME-BARRED, AND THEREFORE IT WAS THE --

THAT WAS A CASE OUT OF THE SECOND DISTRICT.

NO, SIR. THAT WAS ALSO A FIRST DISTRICT CASE.

FIRST DISTRICT CASE. OKAY.

HOWEVER, IF YOU LOOK AT THE CASES FROM THE FIRST DISTRICT, SUBSEQUENT TO MARTINEZ, AND SUBSEQUENT TO THE DECISION IN CAGNOLI, THERE IS A DEPARTURE FROM THE MARTINEZ CASE. AND IN PARTICULAR, I WOULD LIKE TO GO -- MR.^CHIEF JUSTICE

WE CAN'T GO, LET'S, YOU ARE CERTAINLY WELCOME TO ARGUE ANY POINTS, BUT IT IS REALLY DIFFICULT FOR THIS COURT TO ADDRESS A POINT THAT WAS NOT RAISED BELOW, IN TERMS OF THE APPEAL ABILITY OF THE ORDER. SO ARGUE YOUR TIME, HOWEVER YOU WANT.

DO YOU CONSIDER THAT YOUR CLIENT IS A PARTY, A PROPER PARTY IN THIS DISPUTE FOR ALL REASONS?

YES, YOUR HONOR, WE DO.

AND THAT WOULD BE IN THE CHAPTER FOR ATTORNEYS FEES FOR FRIVOLOUS POSITIONS?

I THINK IF YOU LOOK AT BOTH CHAPTER 440 AND LOOKING AT THE FLORIDA RULES OF APPELLATE PROCEDURE, FIRST OF ALL, WHAT 442.71 SAYS IS THAT THE DEPARTMENT SHOULD HAVE THE RIGHT TO INTERVENE IN ANY PROCEEDING, AND THAT IS ON THE APPELLATE LEVEL, AND THEN IN THE APPELLATE RULES, IT SAYS THAT THE DIVISION MAY INTERVENE AS A PARTY APPELLANT OR APPELLEE AND TAKE POSITIONS ON ANY IRRELEVANT MATTERS. I THINK IT IS IMPORTANT --

HOW ABOUT THE PART ABOUT THE SECOND PART? IN THIS COURT, HOW DOES THE DEPARTMENT GET TO BE IN THIS COURT THE SECOND SECTION OF THE RULE 9.180-E-2, SAYS THAT THE

DEPARTMENT MAY INTERVENE IF THERE IS REVIEW IN THIS COURT. YOU ARE THE PARTY WHO ACTUALLY FILED THE NOTICE IN THIS COURT, AREN'T YOU?

THAT'S CORRECT.

AND SO, BUT THE RULE SAYS YOU CAN INTERVENE, IF THE CASE IS ON REVIEW IN THIS COURT, SO MY QUESTION TO YOU IS, DOES THIS RULE GIVE YOU THE RIGHT TO ACTUALLY APPEAL FROM THE DECISION OF THE FIRST DISTRICT?

YES, MA'AM. I BELIEVE THAT I WOULD LOOK AT IT THIS WAY. I BELIEVE THAT 9.180-E-2 DISCUSSES THE RIGHT OF THE DIVISION TO INTERVENE AT THE SUPREME COURT LEVEL, IN OTHER WORDS TO, IN THE FIRST INSTANCE, TO INTERVENE IN A FLORIDA SUPREME COURT CASE.

BUT THE BEGINNING OF IT SAYS, IF REVIEW OF AN ORDER OF THIS COURT IS BROUGHT IN THE SUPREME COURT, THE DIVISION MAY INTERVENE IN ACCORDANCE WITH THESE RULES.

THAT'S CORRECT.

NOT THAT THE DIVISION CAN FILE FOR REVIEW IN THIS COURT. THAT IS THE PROBLEM I AM HAVING WITH THIS. IT SEEMS TO ME THAT THE RULE CONTEMPLATES THAT ONE OF THE PARTIES, FOR LACK OF A BETTER WORD, HAS FILED FOR REVIEW, AND THEN THE DIVISION CAN INTERVENE.

WELL, LET ME MAKE A COUPLE OF POINTS. FIRST OF ALL, I BELIEVE THAT, UNDER 9.180-E-1, THAT THE DIVISION WAS ALREADY A PARTY, UNDER THE TERMS OF THE RULE, THE APPELLATE RULE, AT THE DCA LEVEL, AND IF YOU LOOK AT 9.020-G, WHICH TALKS ABOUT DEFINITIONS, THE APPELLANT IS A PARTY WHO SEEKS TO APPEAL JURISDICTION OF A COURT. NOW, I THINK I JUST NEED TO MAKE A POINT HERE, IF I COULD, AND THAT IS THAT THIS IS A CASE WHERE THAT, AT THE APPELLATE LEVEL ALL THE WAY THROUGH, WE HAVE A SITUATION WHERE THAT THE JUDGE OF COMPENSATION CLAIMS AS THE JUDGE THAT CAGNOLI ARGUED, IS NO A DEFENDANT. THE EMPLOYEE CARRIER WITH NO RECOURSE SOUGHT AGAINST THEM, HAVE CHOSEN TO STAND SILENT WITH REGARD TO THE CONSTITUTIONAL ISSUES IN THIS CLAIM. THE DIVISION OF WORKERS COMPENSATION, WHICH HAS NO ROLE WHATSOEVER UNDER 441.92, SINCE 2001, IN THE PROCESSING OR REVIEW OF PETITIONS FOR BENEFITS, INTERVENED AT THE DCA LEVEL, BECAUSE WE WERE TRYING TO FILL A VOID. THERE APPEARED TO BE NO ONE ELSE --

WAS THE DCA CORRECT IN ITS OPINION THAT YOU DIDN'T SHOW UP AT THE ARGUMENT IN THE CASE?

THAT IS CORRECT. THE --

YOU MENTIONED ABOUT THE CONSTITUTIONAL ISSUES. WHERE DOES THE DCA OPINIONS DISCUSS THE CONSTITUTION?

WELL, I THINK THAT, BY INVALIDATING --

I AM ASKING YOU WHERE, IN THE OPINION, DOES THE DCA DISCUSS THE CONSTITUTION?

I BELIEVE --

DO THEY?

-- INVALID STATE LAW --

IS IT IN THE CONSTITUTION?

IT IS A PREEMPTION CASE. THAT IS A --

THAT IS A VERY SIMPLE QUESTION.

THEY DO NOT MENTION IT IN THE CONSTITUTION. IT IS A VALID STATUTORY LAW.

AMONG THE OTHER PROBLEMS THAT HAVE ALREADY BEEN HIGHLIGHTED HERE, WE HAVE GOT A SITUATION IN WHICH, WHEN THE COMMISSION CAME IN IN THE DISTRICT COURT, AND IS THE DIVISION CORRECT IN THAT IT DID NOT RAISE ANY ISSUE WITH RESPECT TO THE PRIVACY ACT, WHICH HAD BEEN ARGUED BY THE APPELLANT IN ITS BRIEF HERE, AND THAT WAS WHAT THE DISTRICT COURT'S DECISION TURNED ON, BUT THE COMMISSION, IN INTERVENING, DIDN'T ARGUE WITH THAT, AND SO WE HAVE NO ARGUMENT BELOW ON THAT ISSUE.

JUSTICE WELLS, IT WASN'T DONE VERY WELL, BUT THIS IS WHAT THE --

IT WASN'T DONE AT ALL!

THIS IS WHAT THE COUNSEL FOR THE DIVISION SAID, AND I BELIEVE WHAT SHE WAS TRYING TO CONVEY. WHAT SHE SAID WAS THAT THERE WERE CONSTITUTIONAL ISSUES RAISED, BUT THEY WERE NOT PRECISELY PLED, AND THAT THE APPELLANT CAGNOLI, HAD THE BURDEN OF ESTABLISHING UNCONSTITUTIONALITY --

WHAT I AM GETTING IS THE FACT THAT I HAVE, HERE, TWO BRIEFS THAT WERE FILED IN THE DISTRICT COURT. IN THE DISTRICT COURT'S APPELLATE BRIEF, THEY TALK, THE APPELLANT DISCUSSES SECTION 7 OF THE PRIVACY ACT, WHICH THE DECISION OF THE DISTRICT COURT TURNED ON, IN THE BRIEF OF A COMMISSION. THE COMMISSION DIDN'T DISCUSS THAT AT ALL! IT DIDN'T MENTION THAT SECTION. AND THEREFORE, I DON'T SEE HOW WE CAN REACH THAT ISSUE, WHICH WAS NOT PRESENTED BY THE COMMISSION, TO THE DISTRICT COURT.

JUSTICE WELLS, THE BRIEF WAS IN ARTICULATE AND DID NOT ADDRESS. IT SIMPLY SOUGHT TO EXPLAIN THAT THE COUNSEL DID NOT, REALLY, HAVE A SENSE OF HOW TO RESPOND TO A FACT-DRIVEN CHALLENGE OF --

CHIEF JUSTICE: TO STAND UP HERE NOW, I MEAN, IF SOMEONE APPEARED PRO SE BELOW, WE WOULD STILL APPLY THE SAME RULES, WHICH IS IF NOT RAISED, IT IS WAIVED. WHY IN THE WORLD WOULD THIS COURT GRANT AN INTERVENOR, WHO HAS QUESTIONABLE STANDING, THE ABILITY TO RAISE SOMETHING BEFORE THIS COURT THAT WASN'T RAISED BELOW? WHY WOULD WE VIOLATE THAT LONG-STANDING PRINCIPLE? DO YOU HAVE ANY GOOD REASON THAT WE SHOULD DO THAT?

THERE IS A STATE STATUTE AT ISSUE HERE. AND I BELIEVE THAT IN ORDER FOR A STATE STATUTE TO BE INVALIDATED, THAT THERE SHOULD BE AN APPROPRIATE AND SUFFICIENT RECORD UPON WHICH EVIDENCE IS EVALUATED BY A COURT OF COMPETENT JURISDICTION. IN THIS CASE, THE STATE --

CHIEF JUSTICE: SO AREN'T YOU BETTER OFF, IF YOU ARGUE THAT THERE IS NO JURISDICTION FOR US TO EVEN HEAR THIS APPEAL, BECAUSE THE COURT DID NOT EXPRESSLY DECLARE THE LAW UNCONSTITUTIONAL, BECAUSE ON THIS RECORD IN THIS SITUATION, THERE IS, REALLY, NO ANSWER, OTHER THAN THIS LAW IS UNCONSTITUTIONAL. I MEAN, YOU HAVE NO, IF THE GRANDFATHER PROVISION DOESN'T APPLY, DO YOU HAVE ANY ARGUMENT TO SAVE THE STATUTE FROM CONSTITUTION AND WHAT THE PROVISION DID?

WELL, IF I COULD, JUST TALKING ABOUT THE STATUTE, FIRST OF ALL, I THINK IT IS VERY IMPORTANT TO UNDERSTAND THAT THE ISSUE IN THIS CASE IS NOT WHETHER OR NOT THAT MR. CAGNOLI DID NOT SUBMIT A SOCIAL SECURITY NUMBER. I THINK THAT THE JUDGE'S ORDERS ARE VERY CLEAR THAT HE CONTEMPLATED THAT A SOCIAL SECURITY NUMBER MIGHT NOT OR COULD

NOT BE SUBMITTED.

WELL, WOULDN'T THAT BE IN VIOLATION OF THE STATUTE?

WELL, WHAT, I THINK YOU HAVE TO LOOK AT ANY STATUTE AND --

WOULDN'T THAT BE IN VIOLATION OF THE STATUTE? THE PLAIN WORDS OF THE STATUTE. I THINK THAT --

DON'T GIVE ME "I THINK". GIVE ME THE ANSWER. THE STATUTE SAYS YOU CANNOT GIVE BENEFITS IF YOU DO NOT HAVE A SOCIAL SECURITY NUMBER.

WHAT IT ASSUMES IS THAT YOU HAVE THE SOCIAL SECURITY NUMBER.

YOU PROVIDE THE SOCIAL SECURITY NUMBER, RIGHT?

LET ME JUST TELL YOU, THAT STATUTE, 441.92-2-A, ASKS FOR FOUR THINGS. IT ASKS FOR FOUR THINGS, NAME, ADDRESS, TELEPHONE NUMBER AND SOCIAL SECURITY NUMBER. I THINK THAT I WOULD MAKE THE SAME ARGUMENT FOR TELEPHONE NUMBER AND SOCIAL SECURITY NUMBER. IF YOU DON'T HAVE A PHONE, I DON'T THINK ANYONE WOULD ARGUE THAT, IF SOMEONE WROTE DOWN ON THAT PETITION I DO NOT HAVE A PHONE NUMBER OR I DO NOT HAVE A SOCIAL SECURITY NUMBER, THAT THAT STATUTE COULD BE CONSTRUED IN THAT FASHION, TO PERMIT THAT PETITION TO GO FORWARD. I THINK THAT THE ISSUE IS, IN THIS CASE, AN AS-APPLIED ISSUE, IN TERMS OF WHAT THE JUDGE REQUIRED TO SUBSTANTIATE THE FACT THAT THERE WAS NOT A SOCIAL SECURITY NUMBER IN THIS CASE. I BELIEVE THAT IS THE REAL CONSTITUTIONAL ISSUE, BECAUSE THE JUDGE, IN ORDER TO SQUARE 440.02-15, WHICH SAYS THAT INDIVIDUALS LAWFULLY OR UNLAWFULLY EMPLOYED, ARE ENTITLED TO BENEFITS.

CHIEF JUSTICE: ARE YOU SAYING THAT THE DEPUTY CHIEF JUDGE ERRED WHEN IT STATED THAT THE CLAIMANT FAILED TO MEET THE LEGAL REQUIREMENTS OF SECTION 440.192, WHICH SAYS THAT THE SOCIAL SECURITY NUMBER, THE PERSON WHICH IS ACTING ON BEHALF OF THE AGENCY, AND WE ARE TOLD OVER AND OVER THAT WE OUGHT TO LOOK TO AGENCY'S INTERPRETATION OF A STATUTE, ARE YOU TELLING ME THAT THE WORKERS COMPENSATION DIVISION IS NOT UNIFORMLY TAKING THE POSITION THAT THE SOCIAL SECURITY NUMBER MUST APPEAR ON THE APPLICATION?

WE DON'T TAKE THE POSITION. WE ARE NOT INVOLVED IN THE PETITION FOR BENEFITS. THAT WOULD BE THE DEPUTY CHIEF JUDGE. THE DIVISION IS NOT IN ANY WAY INVOLVED IN THE POLICY.

CHIEF JUSTICE: WELL, THEN, THAT MAYBE GOES BACK TO WHY YOU ARE HERE AT ALL.

BECAUSE THERE IS NO ONE ELSE TO DEFEND THE STATUTE.

BUT IF YOU ARE NOT HERE TO ARGUE WHAT THE POLICY IS AND YOU LEAVE IT ALL UP TO THE JUDGE OF COMPENSATION CLAIMS OR WHOEVER, THEN WHY ARE YOU HERE?

WE ARE HERE TO ARGUE THAT THIS CASE SHOULD BE REMANDED BACK TO A TRIAL COURT LEVEL, AND AT THAT TRIAL COURT LEVEL, THERE SHOULD BE EVIDENCE ON THE ACCESS TO COURT'S ISSUE, WHICH, AGAIN, I THINK GOES TO THE REGULATORY ISSUE OF WHAT IS REQUIRED ON THE FORM AND HOW A FAILURE TO HAVE A SOCIAL SECURITY NUMBER CAN BE CURED.

CHIEF JUSTICE: TRIAL COURT. THIS NEVER WENT TO A TRIAL COURT, DID IT?

WELL, IN THE SENSE THAT THE DEPUTY CHIEF JUDGE CAN ISSUE AN ORDER, AND IN THIS CASE

SHOULD HAVE, COULD HAVE ISSUED A FINAL ORDER AND HELD A FINAL ORDER HEARING. THE DEPUTY CHIEF JUDGE IS IN A POSITION TO HEAR EVIDENCE ON THE, ON THE CONSTITUTIONAL ISSUES, ESPECIALLY AS SHE THEY ARE APPLIED.

THE JUDGE CANNOT RULE ON CONSTITUTIONAL ISSUES.

THEY CANNOT RULE.

SO WE ARE GOING TO HAVE A HEARING BEFORE A DEPUTY TAKING EVIDENCE, AND THEN YOU JUST SEND THE RECORD UP TO THE FIRST DISTRICT? IS THAT WHAT YOU ARE CONTEMPLATE SOMETHING.

YES, MA'AM, JUST LIKE YOU WOULD DO ON AN AS-APPLIED TO DOA.

CHIEF JUSTICE: JUSTICE CANTERO CAN'T HAS A QUESTION.

DOES THIS HAVE TO DO WITH WHETHER THERE WERE REGULATIONS BEFORE 1995, ISN'T THAT SOMETHING THAT YOU CAN PRESENT IN ARGUMENTS TO THIS COURT, AS I THINK YOU HAVE?

WELL, IT IS MORE THAN THAT. I THINK IF YOU LOOK FOR EXAMPLE, IN THE CAGNOLI'S BRIEF, THERE IS THE FACTUAL ISSUE OF WHETHER OR NOT THAT THE REQUIREMENT FOR SOCIAL SECURITY NUMBER WAS USED TO VERIFY IDENTITY. THAT WILL REQUIRE FACTUAL DISPOSITION OF WHAT ACTUALLY THE SOCIAL SECURITY NUMBER WAS USED FOR IN THE REGULATION.

YOU MEAN IN THIS CASE OR IN THE REGULATIONS? IN THIS CASE OR BEFORE '75?

BEFORE '75.

WON'T THE REGULATIONS STATE WHETHER IT WAS USED TO VERIFY OR NOT?

WELL, I THINK WHAT IT WAS USED TO VERIFY, I THINK THAT, THAT THAT WILL REQUIRE SOME FACTUAL DEVELOPMENT OF THE ACTUAL USE. I THINK THAT USE OF A REGULATION IS BY DEFINITION, GOING TO BE FACT BASED OR HAVE A FACTUAL ELEMENT TO IT.

AGAIN, WOULD THE FEDERAL STATUTE TALK IN TERMS OF WHAT THE REGULATION PERMITS OR REQUIRES AND NOT WHAT THE ACTUAL PRACTICE WAS?

I BELIEVE THAT THE TERMINOLOGY HERE, IS THAT THE STATUTE, I THINK THERE ARE TWO PRONGS TO THIS, AND I BELIEVE THAT ONE OF THOSE IS THAT THE STATUTE WAS USED TO VERIFY, IT IS USED TO VERIFY IDENTITY, SO I THINK IT IS MORE THAN BEING IN EXISTENCE. I THINK THAT THE STATUTE HAS TO HAVE THE PURPOSE OF VERIFYING IDENTITY. THANK YOU.

CHIEF JUSTICE: MS.^COX.

MAY IT PLEASE THE COURT. MY NAME IS ANDREA COX. I AM HERE WITH MARC ZIENTZ, AS REPRESENTING MR. CAGNOLI. MR. CAGNOLI HAD NO OTHER VIABLE PETITION TO HAVE IT REINSTATED. THE DEPUTY CHIEF DISMISSED HIS NOTICE WITHOUT MOTION OR AN OPPORTUNITY TO BE HEARD AND DENIED OUR MOTION TO REHEAR IT, WITHOUT MOTION OR AN OPPORTUNITY TO BE HEARD. THE STATUTE ALLOWS THIS, AND THAT IS WHY WE ARE HERE TODAY, CHALLENGING THE STATUTE.

THE DEPARTMENT IS ARGUING THAT, BECAUSE IT WAS DISMISSED WITHOUT PREJUDICE, IT WAS NOT A FINAL ORDER AND SHOULD NOT HAVE BEEN APPEALED TO THE FIRST DISTRICT IN THE FIRST PLACE.

RIGHT, YOUR HONOR, AND ABSOLUTELY IT WAS INITIALLY PRESENTED TO THE DISTRICT COURT

AS A PETITION FOR WRIT OF CERTIORARI ON A BASIS THAT THERE WOULD HAVE BEEN IRREPARABLE HARM IF MR. CAGNOLI WAS REQUIRED TO SUBMIT HIS SOCIAL SECURITY NUMBER OR ADMIT TO UNLAWFUL EMPLOYMENT.

IS THE FIRST DISTRICT RULE ON THAT BASIS?

NO, IN FACT, YOUR HONOR, THEY TOOK IT AS A PLENARY APPEAL, AND WE DON'T HAVE AN ORDER THAT EXPLAINS THE RATIONALE BEHIND THAT, OTHER THAN IT MAY HAVE --

CHIEF JUSTICE: SO YOU FILED A PETITION FOR CERT. THE COURT CONVERTED IT TO A FULL APPEAL, AND NOBODY ON THE OTHER SIDE EVER ARGUED THAT IT SHOULD HAVE BEEN DISMISSED FOR LACK OF JURISDICTION.

THAT IS CORRECT, YOUR HONOR.

BUT YOU HAD THE CERT ASPECTS THERE.

OUR INITIAL PLEADING WAS APPEAL OR ENTITLEMENT TO WRIT OF CERTIORARI, BUT IT MAY HAVE BEEN A PLENARY APPEAL WITH THE KNOWLEDGE THAT THE DEPUTY CHIEF DID NOT HAVE SUBJECT MATTER JURISDICTION IN ORDER TO HEAR THE CONSTITUTIONAL ISSUE, AND THEY MAY HAVE REALIZED THAT IT WAS ESSENTIALLY FINAL.

LET ME ASK YOU THIS ABOUT THE CONSTITUTIONAL ISSUE. I DON'T SEE A CONSTITUTIONAL ISSUE HERE. IT IS, REALLY, MORE OF A FEDERAL PREEMPTION, SUPREMACY ISSUE, SO, AND I AM FAMILIAR WITH THE LAW THAT SAYS THAT AN ALJ CANNOT DETERMINE CONSTITUTIONAL ISSUES, BUT IS THE LAW, ALSO, THAT AN ALJ CANNOT DETERMINE THE INVALIDITY OF A STATE STATUTE, BASED ON PREEMPTION?

WELL, IT IS IMPORTANT TO REMEMBER THAT, ALTHOUGH THE ISSUE BEFORE THIS COURT IS THE PRIVACY ACT, THERE WERE CONSTITUTIONAL CLAIMS THAT WERE RAISED IN FRONT OF THE DCA, THE ACCESS TO COURT, SELF-INCRIMINATION, ARGUMENTS THAT WERE, ALSO, RAISED IN WHAT WOULD HAVE ENTITLED OUR POSITION FOR WRIT OF CERTIORARI.

BUT MY QUESTION IS, COULD YOU AND THEREFORE SHOULD YOU HAVE RAISED THE PRIVACY RIGHT ISSUE BEFORE THE ALJ?

I THINK CALLING HIM AN ALJ, IS A LITTLE MISLEADING, BECAUSE WORKERS COMP IS EXPRESSLY EXEMPT FROM CHAPTER 120, THE ADMINISTRATIVE PROCEEDINGS ACT.

OKAY, FORGET ABOUT THAT.

WELL, IT IS IMPORTANT BECAUSE IN THE APA, THERE IS AN OPPORTUNITY FOR YOU TO HAVE A HEARING TO DISCUSS THOSE MATTERS AND WHERE THE AGENCY CAN REPRESENT THEMSELVES, AND WE DON'T HAVE THAT KIND OF PROCEDURE IN WORKERS COMPENSATION.

BUT DON'T YOU NORMALLY, THOUGH, IF YOU HAVE A DISPUTE WITH REGARD TO WHETHER A CLAIM IS COMPENSABLE OR THERE IS GOING TO BE A BATTLE, WITH REGARD TO FOR EXAMPLE AT ONE TIME THERE WERE LIMITATIONS ON FOLKS LIVING OUTSIDE THE COUNTRY AND WHAT THEY COULD RECOVER. THOSE CHALLENGES WERE NORMALLY FILED IN THE CIRCUIT COURT, WERE THEY NOT, CHALLENGING IN THE NATURE OF A DEC ACTION OR SOMETHING LIKE THAT AND NOT AS AN ORIGINAL PROCEEDING IN A DISTRICT COURT OF APPEAL.

THAT IS CORRECT, AND WE WERE ASKED WHY WE DO NOT PROCEED WITH A DEC ACT, AND THERE ARE TWO REASONS, ONE IS THAT THE JUDGE'S ORDER REQUIRED CAGNOLI TO ADMIT TO UNLAWFUL EMPLOYMENT. THAT IS NOWHERE IN THE STATUTE, SO WE COULDN'T GO TO THE

COURT AND HAVE THEM DECLARE SOMETHING INVALID THAT ISN'T IN A STATUTE OR IN THE RULE. THAT WAS STRICTLY BASED ON THE JUDGE'S ORDER, AND THAT HAD TO BE APPEALED TO A DISTRICT COURT, AND THE OTHER PRACTICAL ASPECT IS THAT THERE IS A TWO-YEAR STATUTE OF LIMITATION WITH THESE ACTIONS. WE ARE NOW TWO YEARS OUT IN FRONT OF THIS COURT, WITHOUT HAVING, FIRST, GONE BEFORE A CIRCUIT COURT, AND THERE ARE NO PROCEEDINGS TO STAY THE ACTION IN FRONT OF THE JUDGE, WHILE WE WORK, PROCEEDING ON --

DOESN'T THE WHOLE SCHEME WHICH ALLOWS WORKERS COMP BENEFITS FOR PEOPLE WHO ARE NOT HERE PROPERLY, DOESN'T IT CONTEMPLATE THAT SOMEONE IN MR. CAGNOLI'S POSITION WILL STILL BE ABLE TO GET WORKERS COMPENSATION BENEFITS?

ABSOLUTELY, YOUR HONOR, AND THAT IS WHY THE STATUTE IS INCONSISTENT. YOU CAN'T HAVE A STATUTE THAT ALLOWS FOR ILLEGAL ALIENS AND THEN SIMULTANEOUSLY REQUIRE THEM TO PROVIDE --

IF YOUR CLIENT HAD SIMPLY SAID ON WHATEVER LINE THAT THE SOCIAL SECURITY IS, THAT I DON'T HAVE A SOCIAL SECURITY NUMBER, THAT WOULD NOT HAVE BEEN ENOUGH? I MEAN, IT SEEMS TO ME THAT THAT IS WHAT THE ALJ SAYS IS YOU HAVE GOT TO PUT SOMETHING ON THAT LINE ABOUT NOT HAVING A SOCIAL SECURITY NUMBER.

RIGHT. WELL, THE STATUTE DOESN'T REQUIRE THAT. AND THE PROBLEM IS THE CHILLING EFFECT THAT THAT IS GOING TO HAVE ON PEOPLE WHO WOULD RATHER FOREGO THEIR RIGHT TO WORKERS COMPENSATION BENEFITS, THAN RISK TELLING THE STATE THAT THEY DON'T HAVE A SOCIAL SECURITY NUMBER AND THE IMPLICATIONS THAT THEY ARE ILLEGAL. THEY WILL GO TO PUBLIC AID. THEY WILL GO TO THE COUNTY HOSPITAL. THE CLIENTS THAT COME INTO MY OFFICE WOULD RATHER NOT HAVE THEIR PETITION FILED, IF THEY ARE GOING TO HAVE TO ADMIT SOMETHING LIKE THAT TO THE STATE, AND YOUR HONORS ARE ASKING BEFORE, WHETHER THE JUDGE HAS THE ABILITY TO DEVIATE FROM THE STATUTE, BUT THE DISTRICT COURT, IN ITS KENNEDY DECISION, SAID THAT THEY, THE PLEADING REQUIREMENTS ARE ABSOLUTE, AND THAT EVERY ONE OF THEM MUST BE MET IN ORDER FOR THE PETITION FOR BENEFITS TO BE VALID. SO JUDGE STEVENS, REALLY, DOES NOT HAVE THE AUTHORITY TO EXCUSE FAILURE TO PUT ANY ELEMENT THERE.

I THOUGHT YOUR ARGUMENT BELOW WAS THAT WHAT WAS WRONG WAS REQUIRING YOU TO STATE WHY YOU DIDN'T HAVE A SOCIAL SECURITY NUMBER, THAT YOU WERE ILLEGAL ALIEN, BUT NOT THE FACT THAT YOU DON'T HAVE ONE AT ALL. I MEAN, ALL YOU ARE SAYING IS, UNDER THAT LINE "SOCIAL SECURITY NUMBER" YOU ARE PUTTING "NONE". I DIDN'T HEAR YOUR ARGUMENT BELOW AS BEING THAT, IN ITSELF, IS WRONG.

WELL, I THINK THERE IS A DISTINCTION, AS FAR AS SAYING, I THINK JUSTICE QUINCE WAS ASKING IF YOU CAN PUT "I DON'T HAVE ONE." MAYBE IF YOU PUT "NONE", IT MIGHT BE DRAWING A FINE LINE, BUT I INTERPRET "NONE" TO MEAN I AM NOT GOING TO SUPPLY IT TO YOU, AS OPPOSED TO SOMETHING THAT MIGHT BE MORE OF AN ADMISSION OF NOT HAVING ONE.

EVEN IF YOU ARE NOT HAVING ONE, IT SEEMS LIKE WHAT THE DEPUTY CHIEF WAS REQUIRING IS, IF YOU TELL ME WHY YOU ARE NOT PROVIDING ONE, IF YOU ARE SAYING THAT YOU ARE AN ILLEGAL ALIEN, YOU KNOW, FINE, ILL ACCEPT THAT, AS LONG AS THAT IS WHAT YOU ARE TELLING A ME, BUT IF YOU TELL ME YOU DON'T HAVE ONE, THEN THAT IS ENOUGH. I WILL ACCEPT IT.

WELL, I MEAN THAT IS CORRECT. WE ARE JUST TRYING TO GET THE PETITIONS HEARD, AND THERE IS NO AUTHORITY FOR THE JUDGE TO EXCUSE IT. THERE IS NO AUTHORITY FOR HIM TO MAKE A DETERMINATION OF WHAT IS A JUSTIFIABLE EXCUSE, NOT "I AM NOT GOING TO SUPPLY ONE", OR WHAT ISN'T A JUSTIFIABLE EXCUSE, AND AT THIS POINT WE ENTER INTO A QUAGMIRE OF ADMINISTRATIVE HURDLES THAT THWART THE VERY PURPOSE OF THE WORKERS COMPENSATION

ACT, WHICH IS TO SPEDLY PUT BENEFITS INTO INJURED WORKERS' HANDS.

AM I CORRECT THAT YOU DID ARGUE IN THE DISTRICT COURT THAT IT WAS A VIOLATION OF THE FEDERAL PRIVACY ACT, FOR THE STATUTE TO REQUIRE THE SOCIAL SECURITY NUMBER AT ALL.

THAT'S CORRECT, YOUR HONOR.

SO THAT WAS ARGUED IN THE DISTRICT COURT.

ABSOLUTELY. AND THAT IS OUR POSITION, THAT, IF IT IS NOT REQUIRED FOR ILLEGAL ALIENS, THEN IT SHOULDN'T BE A REQUIREMENT FOR THE CITIZENS AND RESIDENTS OF THIS STATE, IN ORDER TO GET THEIR PETITION HEARD. THE STATE, HERE, HAS A BURDEN OF PROVING THAT THE GRANDFATHER ACT, THAT THEY WERE GRANDFATHERED IN AND THAT THERE WAS AN EXCEPTION TO THE PRIVACY ACT. WE HAD TO PROVE THAT A RIGHT WAS BEING DENIED BECAUSE MR. CAGNOLI FAILED TO PUT HIS SOCIAL SECURITY NUMBER. THAT IS ON THE FACE OF THE THING. SENDING THIS CASE BACK FOR AN EVIDENTIARY HEARING, SERVES NO PURPOSE, BECAUSE --

WAS THAT RAISED IN THE DISTRICT COURT, THAT THEY WERE EXEMPT, BASED ON THE GRANDFATHER PROVISION?

WELL, WAS NOT RAISED IN THEIR ANSWER BRIEF. IT WAS NOT RAISED, AGAIN, UNTIL THEIR MOTION FOR REHEARING AFTER THE DISTRICT COURT ALREADY MADE A DETERMINATION THAT THE STATUTE WAS INVALID. AT THIS POINT, THE ONLY BASIS THAT THE STATE HAS ALLEGED FOR REQUIRING A SOCIAL SECURITY NUMBER, IS BECAUSE OF THEIR COMPUTER SYSTEM USING IT, BUT BECAUSE CONSTITUTIONAL RIGHTS THAT ARE PROTECTED UNDER THE FLORIDA CONSTITUTION, OF PRIVACY AND ACCESS TO COURTS, ARE IMPLICATED HERE, THEY HAVE TO HAVE A COMPELLING STATE INTEREST, AND SIMPLY USING THE SOCIAL SECURITY NUMBER FOR EASE OF THEIR COMPUTER SYSTEM, DOES NOT RISE TO THAT LEVEL.

I KNOW IT IS NOT IN THIS RECORD, BUT DO YOU HAVE ANY ANECDOTAL INFORMATION ABOUT HOW OTHER PEOPLE WHO ARE NOT DOCUMENTED WORKERS, WHO MAY HAVE HAD WORKERS COMP CLAIMS, HAVE GOTTEN THEIR CLAIMS HEARD?

WELL, THIS IS A NEW EVENT THAT HAPPENED, WHEN MR. CAGNOLI FILED HIS PETITION. IT USED TO BE THAT YOU WOULD PUT NINE ZEROS ON THE PETITION FOR BENEFITS, AND THERE WAS SORT OF AN UNDERSTANDING OF WHAT THAT MEANT, AND THE PETITION WOULD GO FORWARD, BUT DEPUTY CHIEF JUDGE IMPLEMENTED THIS NEW RULE AROUND OCTOBER OF 2003, AND SO WITH SOME ILLEGAL ALIENS, THEY ARE PUTTING THE SOCIAL SECURITY NUMBER THAT THEY USED IN ORDER TO SECURE EMPLOYMENT. PERHAPS IT WASN'T THEIR SOCIAL SECURITY NUMBER, BUT THEY, YOU KNOW, JUST USED IT IN ORDER TO GET A JOB. THERE IS VERY IMPORTANT REASONS WHY YOU WOULDN'T WANT TO DO THAT AS A CLAIMANT ON A PETITION FOR BENEFITS. JUST FOR FRAUD REASONS, YOU HAVE TO SIGN THAT EVERYTHING ON IT IS ACCURATE, AND IF YOU ARE USING A FALSE SOCIAL SECURITY NUMBER, YOU CAN GET INTO TROUBLE THERE. IF THE DIVISION IS NOT AN INTERVENOR, WHICH, I MEAN, A PARTY, AS WE SUBMIT, THEN THEY DO NOT HAVE STANDING TO BRING THESE CHALLENGES, AND IF THE COURT FINDS THAT THEY ARE, THEN JUSTICE LEWIS, THEY WOULD BE SUBJECT, I THINK, TO CHAPTER 57.

CHIEF JUSTICE: ARE THERE ANY OTHER BASIS, YOU CLAIMED ATTORNEY FEES. ARE THERE ANY OTHER STATUTORY BASIS, DID YOU CLAIM 57.105, ATTORNEYS FEES?

I DON'T THINK SO.

CHIEF JUSTICE: ALL RIGHT. THEN, WHAT BASIS ARE YOU CLAIMING ATTORNEYS FEES?

WELL, THE IDEA IS THAT MR. CAGNOLI NEEDS TO HAVE HIS CASE HEARD. HE HAS TO BE ABLE TO

HAVE ADEQUATE REPRESENTATION, IN ORDER TO CHALLENGE --

BUT THERE HAS TO BE A STATUTORY BASIS. WHAT IS THE STATUTORY BASIS?

THE STATUTORY BASIS IS THAT THERE WAS A REVIEW OF THE, OF AN ORDER DENYING HIS CLAIM, UNDER 440.34. UPON REVIEW, YOU ARE ENTITLED TO BENEFITS. IF THE DIVISION IS A PARTY, THEN WE SUBMIT THAT THEY ARE TAKING THE --

THERE WAS NEVER AN ORDER DENYING HIS CLAIM, WAS THERE? IT DIDN'T EVEN ACCEPT HIS CLAIM FOR FILE SOMETHING.

THAT'S CORRECT, AND I WAS MORE LIMITING ON THE ATTORNEY STATUTE THAN I SHOULD HAVE BEEN. IT SAYS REVIEW OF ANY ORDER, THEN YOU CAN BE ENTITLED.

BUT THAT ATTORNEYS PROVISION GOES TO THE, REALLY, IS INTENDED TO BE, TO DEAL WITH THE PARTY THAT, EITHER THE EMPLOYER OR EMPLOYER'S CARRIER, NOT WITH THE DIVISION, CORRECT?

THAT WOULD DEPEND ON WHETHER THIS COURT FINDS THAT THE STATE IS A PARTY, UNDER THE CASE. FROM, IN OTHER WORDS, --

CHIEF JUSTICE: IN OTHER WORDS, SOMEHOW OR THE OTHER, YOU HAD TO COME UP HERE AND DEFEND THE DECISION OF THE FIRST DISTRICT, AND YOU CERTAINLY AREN'T INTENDING TO DO THIS PRO BONO, BUT THE QUESTION IS, BY THEM HAVING BROUGHT THE APPEAL, DO THEY STAND IN THE SHOES OF A PARTY, IF WE ARE ARE GOING TO ACCEPT THEM AS A PARTY? THAT'S CORRECT, YOUR HONOR, AND WE ARE ASKING THE COURT TO FORGE A REMEDY FOR MR. CAGNOLI, SO THAT HE IS NOT THE ONE THAT IS RESPONSIBLE FOR BRINGING THESE ISSUES TO THE COURT'S ATTENTION. IF THE COURT HAS NO OTHER FURTHER QUESTIONS, I WILL BRIEFLY CONCLUDE. ANY PROCEDURAL REQUIREMENT THAT HAS A CHILLING EFFECT ON OBTAINING WORKERS COMPENSATION BENEFITS, DEFEATS THE WHOLE PURPOSE. FROM OCTOBER 2003 TO APRIL 2004, JUST A MATTER OF A FEW MONTHS, MORE THAN 900 PETITIONS FOR BENEFITS WERE DISMISSED FOR FAILURE TO INCLUDE A SOCIAL SECURITY NUMBER. BASED ON THESE NUMBERS, THERE CAN BE NO QUESTION THAT THE ISSUE WILL BE REVISITED, THAT IT IS ONE OF GREAT PUBLIC IMPORTANCE, AND WE ASK THE COURT TO GIVE US GUIDANCE ON APPLICATION OF THE PRIVACY ACT. THANK YOU.

CHIEF JUSTICE: REBUTTAL.

> JUSTICE CANTERO, IN REGARD TO THE GRANDFATHER PROVISION, WHAT THE 550.552 SAYS THAT THE DISCLOSURE OF RELYVATION ADOPTED TO JANUARY 1, 1975, IS TO VERIFY THE IDENTITY OF AN INDIVIDUAL, SO THE STATUTE IS NOT REALLY CLEAR, OTHER THAN TO SAY THAT THAT IS THE PURPOSE OF THE --

IT SAYS IF SUCH DISCLOSURE WAS REQUIRED UNDER STATUTE OR REGULATION, SO ALL YOU HAVE TO DO IS LOOK TO THE STATUTE OR REGULATION, TO SEE IF IT WAS REQUIRED TO VERIFY THE IDENTITY OF AN INDIVIDUAL. YOU DON'T NEED ANY EVIDENCE FOR. THAT YOU CAN LOOK AT THE STATUTE OR REGULATIONS.

MY ONLY OTHER POINT IS THAT, WITH REGARD TO THE RECOURSE AT THE DEPUTY COMMISSIONER LEVEL, WITH REGARD TO THE, WITH DENIALS OR THE DISMISSALS WITH PREJUDICE, WITHOUT, WITH PREJUDICE, THAT IS TO BE DONE UNDER THE AUGUSTINE VERSUS BLOUNT CASES, WHICH PRECEDED THIS CASE. IT SAID THAT, IF THE CLAIMANT IS UNABLE OR UNWILLING TO AMEND HIS CLAIM TO CORRECT THE DEFECTS, HIS PROPER COURSE IS TO SO ADVISE THE JCC AND REQUEST ENTRY OF A FINAL ORDER OF DISMISSAL WITH PREJUDICE, WHICH MAY BE APPEALED, AND, AGAIN, THAT IS THE PROCEDURE THAT WAS REFERENCED IN THE MIRINO

CASES.

CHIEF JUSTICE: YOU ASSERT THAT THEY DID ASSERT THAT FOR THE PETITION AS WELL.

YES, MA'AM.

CHIEF JUSTICE: THANK YOU. THE COURT WILL TAKE A SHORT RECESS OF ONLY TEN MINUTES, TO RETURN AT 10:30 TO HEAR THE LAST TWO CASES.

MARSHAL: ALL RISE.