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Richard A. Nx v. Brenda W. Nix

SC06-1326

,
>> PLEASE RISE.

>> GOOD MORNING.~

>> WE'RE A LITTLE WORRIED SOME
OF US MAY HAVE HAD BAD BREATH
OR SOMETHING HERE!

>> LADIES AND GENTLEMEN,
PLEASE BE SEATED.

>> NIX VERSUS NIX.

THANK YOU.

>> I'M USED TO LOSING A LOT OF
-- JUSTICE ANSTEAD --

>> WE'LL TAKE NO OFFENSE IT
HAPPENS VERY AUFERP.

>> MAY IT PLEASE THE CORE, I'M
ROSS KEENE ON BEHALF OF PET
NATION -- PETITIONER, RICHARD
NIX AND TWO QUESTIONS, ONE IS
A CERTIFIED QUESTION AND I'LL
ADDRESS THE FIRST STHIRX
CERTIFIED QUESTION SECOND.
THE FIRST ISSUE IS WHETHER OR
NOT THE TRIAL COURT IN THE
QUALIFIED DOMESTIC RELATIONS
ORDER THAT WAS ENTERED FOUR
YEARS AFTER THE FINAL JUDGMENT
USED AN IMPROPER VALUATION
DATE IN RELATION TO THE
FORMULA THAT WAS USED FOR THE
QUAD DRO --

>> CAN I ASK A QUESTION, DOES
IT CERTIFIED QUESTION REALLY
ADDRESS THE UNDERLYING FACTS
BECAUSE OF THE STIPULATION AND
THE DREEMENT REFLECTED IN THE
OPINION?

>> JUSTICE LEWIS THE CERTIFIED
QUESTION THIS IS E DROP ISSUE,
WHICH IS --

>> JURISDICTION IS BASED, WHY
I WAS WONDERING WHETHER THAT
QUESTION SEEMS TO PHRASE IT
BROADLY.

DO WE NOT HAVE A VERY SPECIFIC
UNDERLYING FACT OF THE
AGREEMENT?

>> NO, I DISPUTE THAT AND I KNOW THAT IS A POSITION JUSTICE IRVING WAS AT ODDS WITH THE MAJORITY IN THE FIRST DCA OPINION ON THAT AND SPECIFICALLY HIS DISSENTING OPINION I THINK WENT THROUGH LINE BY LINE ALMOST AND ARTICULATED WHERE THERE WAS LACK OF DECISIVENESS AND CLARITY WITH RESPECT TO WHAT WAS OR WAS NOT AGREED TO, IN THE --

>> WAIT A MINUTE.

I THOUGHT JUSTICE LEWIS WAS ASKING ABOUT THE DROP ISSUE. AND YOU SEEM TO NOW BE GOING OFF OF THAT ON THE OTHER ISSUE BUT ON THE DROP ISSUE ITSELF. IS THAT ISSUE REALLY SOMETHING THAT IS BEFORE THIS COURT? SHOULD WE EVEN ANSWER THAT CERTIFIED QUESTION? BECAUSE YOUR CLIENT, AS I UNDERSTAND IT, IS NOT ELIGIBLE TO BE IN A DROP PROGRAM AT LEAST AT THIS TIME.

>> JUSTICE QUINCE, I BELIEVE THAT THERE IS A RIPENESS ISSUE AND I DO AGREE AND JUSTICE IRVIN INDICATED THAT IN HIS DISSENTEDDING OPINION THAT HE DID NOT BELIEVE THAT THE MATTER WAS PROPERLY BEFORE ONE DCA AND WE BELIEVE THE ISSUE -- AND I KNOW THERE HAS BEEN OVERLAP OF WHETHER IT IS RIPENESS, BUT I BELIEVE IT IS CAPABLE OF REPETITION AND OBVIOUSLY THE COURT IS INTERESTED IN THAT AND YES, YOU ARE CORRECT THE FACTS OF THIS CASE AND MY CLIENT, HE IS NOT IN A DROP-ELIGIBLE POSITION.

HE LIKELY NEVER WILL BE, HE IS A SENIOR MAJOR IN THE ESCAMBIA SHERIFFS DEPARTMENT WHO IS OVER -- HAS OVER 30 YEARS OF SERVICE AND HAD ONE POSSIBILITY FOR MOVING INTO A DROP-ELIGIBLE PROGRAM AND WOULD HAVE BEEN IF HE HAD RUN FOR THE BOARD OF ELECTIONS IN

ESCAMBIA COUNTY WHICH HE DID AND DID NOT SUCCEED AT AND AT THIS POINT IS LIKELY GOING TO RETIRE, DEPENDING ON CERTAIN MATTERS BEFORE THIS COURT. WITHOUT ANY POSSIBILITY OF GOING INTO DROP.

--

>> YOU ARE SAYING IN EFFECT -- VIRTUALLY THEN WITH AN ADVISORY OPINION OF NOT REALLY A JU -- JUSTICIBLE.

>> WITH RESPECT TO THE DROP, JUSTICE ANSTEAD I WOULD NOT DISPUTE THAT AND THERE WAS A COMPANION CASE THAT CAME OUT OF ONE DCA JUST BEFORE THE NIX CASE CAME UP FOR PROCEDURAL REASONS MY UNDERSTANDING IS THE COUNSEL WAS NOT ALLOWED REVIEW BEFORE THIS COURT. PERHAPS, THAT WAS SOME REASON WHY THE COURT IN FACT LOOKED AT THE NIX CASE.

I BELIEVE, AGAIN, IT'S AN ISSUE THAT IS CAPABLE OF BEING ADDRESSED.

I THINK IT IS GOING TO HAPPEN IN RELATION TO BOYETTE AND I TRY TO GET BACK --

>> AND I KNOW WITH -- THE PROBLEM WE HAVE GOT HERE IS THAT, YOU KNOW, THE MAIN OPINION -- YOU KNOW, THEY GO THROUGH THE WHOLE THING OF, IF IT'S AN ISSUE AND IF HE IS NOT IN DROP AND NEVER GOING TO BE IN DROP, THEN THE ISSUE THAT THE OTHER DISTRICTS HAVE TALKED ABOUT, WHETHER THEY ARE RIGHT OR WRONG, WAS IRRELEVANT TO THE DETERMINATION OF THE ISSUES IN THIS CASE.

DO YOU AGREE WITH THAT?

>> I BELIEVE THERE IS A RELATIONSHIP, JUSTICE PARIENTE BETWEEN OUR ISSUE RAISED AND THE DROP ISSUE AND THE FIRST ISSUE WITH RESPECT TO WHAT WE RAISED ON THE VALUATION DATES. ON THE DROP ISSUE ITSELF, IT IS NOT AN ISSUE THAT AT THIS POINT IS RELEVANT TO MY -- I CANNOT DISAGREE WITH THAT,

JUSTICE PARIENTE AND THAT WAS AN ISSUE THAT WAS A CONCERN WHEN WE WERE COMING BEFORE THE COURT AND REVIEW WAS GRANTED WITH RESPECT TO THE CERTIFIED QUESTION AND OBVIOUSLY WE HAVE RAISED THE OTHER ISSUE ON THE VALUE -- VALUATION AND I BELIEVE THAT IS RELEVANT AND THE DROP CAN AND IS RELEVANT IN RELATION TO THAT BECAUSE I THINK BOTH ISSUES IMPACT ON THIS COURT'S DECISION IN BOYETTE GOING BACK TO POST DISSOLUTION ASSETS AND ACCUMULATION OR ACCRUAL, IF YOU WILL, IN PENSION ASSETS --

>> JUSTICE LEWIS'S FIRST ISSUE, WHICH IS, YOU'VE GOT AN AGREEMENT, AND EVEN IF -- FOR US TO GET INVOLVED WITH AN INTERPRETATION OF AN AGREEMENT ON SOMETHING THAT WE ARE THEN SAYING, YOU CAN APPLY ACROSS THE BOARD, I DON'T KNOW IF YOU QUITE ADDRESS THAT.

BUT YOU DO HAVE AN AGREEMENT THAT SAYS HOW IT IS -- HOW THE -- HOW THINGS SHOULD BE VALUED, CORRECT.

>> NO, I DISAGREE WITH THAT. AND I -- THERE IS FINAL JUDGMENT, THE FINDINGS OF FACT IN THAT WITH RESPECT TO THE FORMULA THAT WAS USED FOR THE DISTRIBUTION OF THE PENSION. ON THE DROP ISSUE ITSELF, THAT ISSUE CAME UP ONLY IN THE QUADRO WHEN WAS ADDRESSED FOUR YEARS LATER AND THAT ISSUE WAS RAISED, IT WAS -- INITIAL QUADRO WAS VACATED BY THE TRIAL COURT AT THE REQUEST OF COUNSEL FOR MR. NIX BECAUSE OF TWO ISSUES, ONE THE VALUATION DATE AS OF THE DATE OF RETIREMENT AND, NUMBER 2, THE DROP ISSUE THAT WAS IN THERE.

>> WELL, AS TO THE DROP ISSUE.

>> YES, YOUR HONOR.

>> DO YOU AGREE AT LEAST THAT DROP PAYMENTS ARE IN FACT RETIREMENT PAYMENTS?

>> I GUESS DROP PAYMENTS ARE

RETIREMENT, BUT --

>> SO, TO THAT EXTENT, WOULD YOU AGREE THAT A SPOUSE WHO IS ENTITLED -- AN EX-SPOUSE WHO IS ENTITLED TO A PORTION OF A RETIREMENT IS ENTITLED TO A PORTION OF A DROP PAYMENT?

>> YES, I BELIEVE THAT THAT IS TRUE, JUSTICE QUINCE BUT I THINK IT DEPENDS ON, AGAIN WHEN THE VALUATION DATE -->> WE'RE NOT TALKING ABOUT WHAT PERCENTAGE OR WHAT AMOUNT.

BUT, THE PURE QUESTION OF ENTITLEMENT TO DROP, YOU AGREE WITH.

>> YES, I DO.

>> AND WHAT IS YOUR ISSUE WITH THE WAY THE DROP IN THIS PARTICULAR ONE WAS DETERMINED? BECAUSE AS I UNDERSTAND IT, IT IS -- SIMPLY SAID THAT YOU WERE ENTITLED TO DROP A ADDITION TO A CRUDE INTEREST AND -- COBO, I BELIEVE IT WAS.

>> IT INDICATED THERE WOULD BE ENTITLED TO DROP IF THE INDIVIDUAL -- STEPHANIE NIX, EVER WENT INTO DROP WHICH HE WASN'T BECAUSE HE WAS IN HAZARD DUTY WITH THE SHERIFFS DEPARTMENT AND THE ISSUE IS IRRELEVANT AGAIN AS TO WHEN THE VALUATION DATE IS ON THIS, BECAUSE THIS AGREEMENT, I THINK.

>> HAS TO BE LOOKED AT IN TOTALITY IN TERMS OF THE VALUATION ON THE PPX AM AND POTENTIALLY ON THE DROP AND I'M NOT TRYING TO EVADE YOUR QUESTIONS, JUSTICE QUINCE.

>> WE ARE TRYING TO GET TO WHAT YOU WANT TO TALK ABOUT WHICH THIS IS VALUATION DATE AS OPPOSED TO THE CERTIFIED QUESTION, THAT --

>> I CONCEDE MY EFFORTS, ARE, TO DO JUST THAT AND.

>> LET ME HELP YOU IN THAT REGARD.

YOUR ARGUMENT ON THE FIRST ISSUE IS THE VALUATION DATE

SHOULD BE THE DATE OF -- THAT
THE PETITION WAS FILED.

>> YES, SIR.

>> 1998.

>> YES, SIR.

>> WHY WOULDN'T THE PARTIES
HAVE PUT 1998 INSTEAD OF
NUMBER OF YEARS OF HUSBAND'S
EMPLOYMENT AS THE DENOMINATOR.

>> BECAUSE THE PARTIES, WERE
ENDEAVORING TO FOLLOW THE ONE
DCA STANDARD THEY NEEDED TO
FOLLOW AT THAT TIME AND IF YOU
LOOK AT QUADRO FORMULA.

>> WHY WOULDN'T THEY HAVE PUT
THE DATE OF THE PETITION AS
THE --

>> THIS THAT IS THE DATE.
LOOK AT THE ENUMERATOR OF
THAT.

>> 27.

>> YES, 27-7 WAS THE DATE OF
THE FILING ON IT AND HOW MANY
YEARS OF SERVICE AND MONTHS OF
SERVICE DEPUTY DEPUTY NIX HAD
AT THE TIME OF THE FILING AND
WE HAVE A REGULATED DATE
RECOGNIZING AT THAT POINT OR
THE ENUMERATOR OF THE FORMULA
THAT IS THE VALUATION CUT-OFF
PERIOD AND THE DENOMINATOR AND
AGAIN IS CONSISTENT WITH OTHER
QUADRO FORMULAS USED
THROUGHOUT FLORIDA AND ALSO I
THINK YOU DO FACTOR AS THE
DENOMINATOR THE NUMBER OF
TOTAL YEARS OF SERVICE, AND
THAT IS NOT IN CONSISTENT WITH
SAYING YOU VALUED THE PENSION
AT THE TIME OF RETIREMENT.

>> I DON'T UNDERSTAND IF YOU
THEY'RE ONE MAKING THE
PAYMENTS, AND THE LONGER YOUR
YEARS OF SERVICE THE GREATER
THE DENOMINATOR AND, THEREFORE
THE LESSER THE MONTHLY PAYMENT,
WHY ARE YOU MAKING THE
ARGUMENT.

>> JUSTICE, -- JUSTICE CANTERO,
IF YOU LOOK AT THE LAST
COMPONENT OF THE FORMULA IT IS
THE MONTHLY PAYMENT ITSELF AND
THAT IS WHERE OUR CONCERN IS
AND WOULD BE ON THE CONCERN OF

THE DROP AS WELL AND IF YOU LOOK AT THE MONTHLY PAYMENT, TAKE 1/2 TIMES THE FRACTION, THE 27 YEARS SEVEN MONTHS AND THIS DENOMINATOR, HIS TOTAL YEARS OF SERVICE TIMES THE MONTHLY PAYMENT.

AND THE WAY PENSIONS ARE VALUED ON THIS, YOU TAKE THE HIGHEST FIVE YEAR WITH DROP AND THOSE YEARS WILL BE THE YEARS RIGHT NOW, DEPUTY NIX IS EARNING, FOR INSTANCE, IF HE WAS ELIGIBLE TO GO INTO DROP. HE WILL TAKE THE HIGHEST YEARS THAT ARE GOING IN THERE, ALL OF WHICH HAVE APPROVED -- THIS IS NINE YEARS, WE NEED TO LOOK AT.

>> YOUR BASIC POSITION IS IT SHOULD HAVE BEEN THE PAYMENT MADE AS THE DATE OF FILING OF THE PETITION.

>> ABSOLUTELY.

>> AND IF THIS WAS VESD AND MATURED, WAS THE FIGURE NOT DETERMINEABLE AT THE TIME OF THE DISSOLUTION OF MARRIAGE.

>> IT WOULD HAVE BEEN AND THAT IS WHY TRIAL COUNSEL, FOR MR. NIX OBJECTED TO THE FORM OF THE INITIAL QUADRO BECAUSE IT STATED VALUATION AS OF THE DATE OF RETIREMENT AND THE RESPONDENT IN THE CASE, MS. NIX, WOULD GET THE BENEFIT OF THE DATE OF MR. NIX'S ULTIMATE RETIREMENT WHICH WOULD BE FACTORED IN WITH THE HIGHEST NUMBER OR HIGHEST INCOME THAT HE HAD WHICH HE IS EARNING NOW, ONE OF THE HIGHEST --

>> WHY DIDN'T YOU, OR WHY DIDN'T MR. NIX'S ATTORNEY AT THE TIME OF THE FORMULA -- THAT THE FORMULA WAS ACTUALLY ENTERED INTO, WHEN THEY AGREED ON THE FORMULA, WHY DIDN'T THAT FORMULA SAY MONTHLY PAYMENT AS OF 1998.

WHATEVER YEAR THAT WAS AS OPPOSED TO JUST MONTHLY PAYMENTS.

>> BECAUSE THE QUADRO, JUSTICE QUINCE WAS NOT DONE UNTIL FOUR YEARS LATER.

>> I'M NOT TALKING ABOUT THE QUADRO, I'M TALKING ABOUT THE FORMULA ITSELF, BECAUSE YOU ARE TAKING ISSUE WITH WHAT IS THE FINAL NUMBER IN THE FORMULA.

WHICH IS THE MONTHLY PAYMENT, CORRECT.

>> THAT IS CORRECT.

>> AND SO, WHY WAS NOT THE FORMULA MADE SO THE FINAL NUMBER WOULD HAVE SAID, MONTHLY PAYMENT AS OF WHATEVER DATE IT WAS THAT THE PETITION WAS FILED OR THE DATE THAT THE ACTUAL AGREEMENT WAS ENTERED INTO.

>> PERHAPS IN RETROSPECT, ANY AGREEMENT COULD BE MADE MORE CLEAR, IN THOSE RESPECTS, BUT, TO ANSWER YOUR QUESTION, THE AGREEMENT DOES STATE THAT AND THE AGREEMENT STATES THE PARAGRAPH FOLLOWING THAT, IT STATES THE VALUATION DATE WILL BE AND THAT IS THE DATE OF THE FILING OF THE DISSOLUTION PETITION AND DOES NOT -- I AGREE, THE AGREEMENT DOES NOT SET UP AND JUSTICE IRVIN FOCUSED IN ON THIS IN HIS DISSENT AND DOES NOT STATE A VALUATION DATE FOR THE NORMAL REGULAR ASSETS IN THE CASE AND VALUATION DATE FOR THE PENSION, IT STATES IN THE PARAGRAPH AND DOES FOLLOW THE PARAGRAPHS ADDRESSING THE PENSION ISSUES. IT DOES STATE THE VALUATION DATE IS THE DATE OF FILING IT. I THINK WITHOUT INTERRUPTING, I THINK THAT THAT OKAY CHILLY SATISFIES I THINK WHAT THE COURT IS INQUIRING AS TO WHETHER OR NOT COUNSEL PUT THE PROTECTIVE LANGUAGE IN THERE.

>> LET ME ASK YOU THIS.

IT SEEMS THAT THE -- AS THE SHERIFFS DEPARTMENT PENSION IS A LITTLE BIT DIFFERENT FROM A REGULAR STATE PENSION -- OR IS

IT?

IS IT THE SAME -- DOES IT OPERATE ON THE SAME BASIS AS THE REGULAR FLORIDA RETIREMENT SYSTEM.

>> IT IS, YES, YOUR HONOR, THERE ARE VARIATIONS, I HAVE LEARNED THROUGH MANY DIFFERENT DIVISIONS WITHIN THE STATE UNDER THAT BUT IT FALLS GENERALLY UNDER FIRST.

>> BECAUSE AS I UNDERSTAND YOUR CLIENT'S RETIREMENT WAS VESTED AT THE TIME THAT THIS DIVORCE TOOK PLACE.

THAT HE ALREADY HAD 25 YEARS IN, AS A SPECIAL RISK AND HE COULD HAVE, IN FACT, RETIRED AT THAT POINT?

>> YES, YOUR HONOR.

>> AND SO --

BUT JUST BECAUSE HE WAS ELIGIBLE TO RETIRE, HE WAS NOT ELIGIBLE FOR A DROP PROGRAM.

>> HE'S NOT ELIGIBLE FOR DROP BECAUSE IT IS CONSIDERED A RISK OR HAZARD AT THE TIME. ACTUALLY I RETRACT THAT, AT THE TIME OF THE DISSOLUTION OF MARRIAGE, IT DIDN'T EXIST, IT IS AFTER THE FACT BUT AT THE TIME THE FINAL OR THE -- RATHER THE QUADRO ISSUE CAME UP FOUR YEARS DOWN THE ROAD IN 2002 -- DROP WAS IN EXISTENCE.

>> LET'S TAKE IT FURTHER.

IN THE REGULAR RETIREMENT, IF YOU WORKED BEYOND THOSE -- YOU KNOW, SAY YOU GOT 30 YEARS IN, AND YOU -- BUTTERY NOT 62, WHICH IS THE NORMAL RETIREMENT AGE, AND EACH OF THOSE YEARS WILL COUNT UP AS, YOU KNOW, THE REGULAR RETIREMENT RATE OF 1.6% PER YEAR, IS THAT THE YEAR -- IS THAT THE WAY IT WORKS IN THIS SITUATION, THAT EVERY YEAR BEYOND 25, HE IS ELIGIBLE TO RETIRE IS STILL ADDED IN TOWARD HIS PERCENTAGE OF RETIREMENT.

>> HE CONTINUES TO ACCUMULATE RETIREMENT AND PROPORTIONATELY INCREASES IN -- AND ENHANCES

UP TO LT DATED --

>> HOW?

IS IT PERSONAL?

OR WHAT?

>> JUSTICE QUINCE, I DON'T

KNOW THE EXACT ANSWER.

>> THE PROBLEMS ARE, WE ARE
HAVING IS I WAS LOOKING AT THE
CASE, TRYING TO FIGURE OUT
WHAT BEYOND THE 25 YEARS ARE
ADDED IN TOWARDS HIS
RETIREMENT?

IS IT MORE PERCENTAGE?

IS IT MORE SALARY BASED ON
RACES?

JUST WHAT IS BEING ADDED IN
THAT YOU MAY CLAIM THE WIFE IS
NOT ENTITLED TO.

>> I CAN ABSOLUTELY ON THAT
ISSUE, ANSWER THAT, JUSTICE.
IT IS THE INCREASE IN SALARY,
BECAUSE THE ACTUAL PENSION
AMOUNT IS GOING TO BE BASED ON
THE HIGHEST LEVEL OF SALARY,
THE FIVE AND FIVE AS THEY CALL
IT.

A SALARY THE MAJOR NIX EARNED
WITH THE SHERIFFS DEPARTMENT
AND THE HIGHEST EARNING
POTENTIAL, NINE YEARS REMOVED
FROM THE DATE THAT THE FINAL
JUDGMENT WAS ISSUED WHICH IS
WHY I THINK THAT, YOU KNOW,
AGAIN, VOYEZ ADDRESSES THE
ISSUES IN GENERAL AND WITH
SPECIFICITY AND THE NEED FOR IT
IN THESE CIRCUMSTANCES IS
SOMETHING I THINK IS CRYING
OUT RIGHT NOW AND THAT IS WHY
I THINK THE ISSUE IS CERTAINLY
BEFORE THE COURT.

>> THE PROBLEM IS, IF YOU TAKE
POLO, IT WAS AN IN-BANK
OPINION AND THERE IS -- POLO
CAME UP WITH -- IN TERMS OF
QUADRO OR THE FINAL JUDGMENT,
A SPECIFIC AMOUNT USING, I
GUESS, DEFERRED DISTRIBUTION
METHODS THAT REDUCED BACK TO
FIGURE OUT WHAT -- IF THAT
PERSON HAD RETIRED, WITHOUT A
PENALTY ON THIS DATED OF THE
FINAL HEARING, WOULD THEY BE
ENTITLED TO AND THERE IS THIS

SPECIFIC AMOUNT AND WHAT I'M HAVING TROUBLE WITH, BECAUSE IF THAT IS WHAT WE AGREE, REALLY IS THE INTENT OF VOYETTE AND THESE OTHER CASES, YOU DON'T GET ANY MORE, THAN WHAT THE PERSON WOULD HAVE BEEN ENTITLED TO, IF THEY RETIRED THE DATE OF RETIREMENT AND MAYBE IS A FRIENDLY QUESTION AND I DON'T UNDERSTAND WHY IN POLO A PERSON SHOULD GET EITHER -- BECAUSE OF DROP, SHOULD EITHER BE -- SHOULDN'T BE PENALIZED, BUT ALSO SHOULDN'T GET A WINDFALL BUT DO YOU -- BUT THAT ONE, WAS A PELVIC AMOUNT, AND YOU KNOW, YOU ARE TELLING ME, YOUR FORMULA WAS -- ATTEMPTED TO DO THAT, BUT THE WAY THE MAJORITY -- READS THE AGREEMENT, THEY DON'T SAY THAT IT WAS LIKE THAT SITUATION AND DO WE HAVE TWO DIFFERENT SITUATIONS, AND ISN'T THAT REALLY THE PROBLEM IN TRYING TO COME UP WITH A -- AN OPINION THAT WILL OFFER SUFFICIENT GUIDANCE TO THE LOWER COURT?

>> AND I CAN OFFER THE COURT A CLEAR DISTINCTION THAT WOULD ALLOW THE COURT TO ENGAGE IN THAT ANALYSIS THAT I THINK IS APPROPRIATE IN WHAT WE CERTAINLY ARE SEEKING AND THAT IS IF IT HAD NOT BEEN FOR THE LANGUAGE, JUSTICE PARIENTE, IN THE AMENDED QUADRO INDICATING THE DATE OF THE RETIREMENT AS BEING THE VALUATION DATE ON THAT, WE CERTAINLY WOULD HAVE BEEN ABLE TO GO BACK SOMEWHAT RETRO ACTIVELY AND GONE TO THE DATE OF RETIREMENT AT THAT TIME IN 1998 AND LIKELY COME UP WITH THE SAME SCENARIO AND PROBABLY DOWN TO THE PAYMENT AMOUNT, AS THE COURT WAS ABLE TO DO, BECAUSE THEY HAVE THAT CLARITY.

I SEE -- MY REBUTTAL TIME, IF IF I MAY...

>> MAY IT PLEASE THE COURT,
FOR MISS BRENDA NIX SHOULD.
>> LET ME ASK YOU THE QUESTION
I'M NOT SURE.

IS THERE ANYTHING IN THE
RECORD THAT SHOWS HOW THIS
PARTICULAR COUNTY SHERIFFS
RETIREMENT WORKS.

>> THERE IS AN INDICATION,
JUSTICE QUINCE, IN THE RECORD
THAT MR. NIX' HIGHEST FIVE
YEARS WILL BE USED IN THE
CALCULATION OR THE MONTHLY
PAYMENT AND THOSE HIGHEST FIVE
YEARS WILL BE AT THE TIME THAT
HE RETIRES.

THIS PARTICULAR FORMULA,
THOUGH, THAT WAS SET FORTH IN
THE FINAL JUDGMENT, AND IN THE
ORDER OF FINDINGS WAS
SPECIFICALLY LABELED AS A
STIPULATION BETWEEN THE
PARTIES.

THERE IS ONE PARAGRAPH THAT
TALKS ABOUT THE FORMULA, IT
SAYS IT IS A STIPULATION AND
THE COURT THEN MOVES TO THOSE
ISSUES THAT WERE TO BE
LITIGATED, BOTH IN THE ORDER
OF FINDINGS AND THE FINAL
JUDGMENT AND IN THE ORDER OF
FINDINGS, BEGINNING IN
PARAGRAPH 4, IS WHERE WE SEE
THE DATE --

>> LET ME JUST STOP YOU THERE.
THE PROBLEM IS THAT THE
PARAGRAPH THAT HAS THE FORMULA
IN IT, JUST SAYS MONTHLY
PAYMENTS.

AND THAT CAN BE READ -- OR
MAYBE I'M WRONG -- THAT -- CAN
THAT BE READ IN A COUPLE OF
WAYS?

THAT IS THE MONTHLY PAYMENT AT
THE TIME THAT HE ACTUALLY
BEGINS TO RECEIVE PAYMENTS, OR
THE MONTHLY PAYMENT THAT WOULD
HAVE BEEN PAID AT THE TIME OF
THE PETITION.

>> AND IF YOU CAN READ IT IN
THOSE TWO WAYS, DOESN'T
VOYETTE REQUIRE YOU TO READ IT
IN THE WAY THAT IT WOULD HAVE
BEEN THE MONTHLY PAYMENT AT

THE TIME THE PETITION WAS
SNILD I BELIEVE THE SHORT
ANSWER TOWER QUESTION IS NO
AND THE REASON IS WE HAVE MORE
INFORMATION THAN JUST THE
FORMULA SIMPLY HAVING AN
UNKNOWN MONTHLY PAYMENT
QUANTITY.

WE HAVE ANOTHER UNKNOWN VALUE
IN THE FORMULA AND IT IS THE
DENOMINATOR IN THE FRACTION
AND IF WE ACCEPT THE
APELLANT'S ARGUMENT HERE TODAY
WE HAVE TO DETERMINE THAT AS
UNKNOWN VALUE IN THE FORMULA
WAS ACTUALLY DETERMINEABLE AT
THE TIME OF RETIREMENT.

>> THEN IT SEEMS YOU WOULD NOT
HAVE HAD ANEE ENUMERATOR AND
DENOMINATOR YOU WOULD HAVE
BEEN WOULD HAVE HAD A NUMBER
THAT WOULD HAVE BEEN 1/2 OF
WHATEVER THE PAYMENT WOULD
HAVE BEEN AS OF THAT DAY.

>> I BELIEVE CORRECT IF WE
ACCEPT THE PETITIONER'S
ARGUMENT IN THIS CASE, THE
FRACTION COULD HAVE BEEN
REDUCED TO A PERCENTAGE,
BECAUSE WHAT WAS KNOWN AS THE
LENGTH OF THE MARRIAGE AND WAS
IN THE ENUMERATOR, WHAT WAS
ALSO KNOWN AT THE TIME OF THE
DECISION WAS THE DENOMINATOR
WHICH WOULD HAVE BEEN THE
LENGTH OF THE MARRIAGE AS
COMPARED TO THE LENGTH OF
CREDIBLE SERVICE UP UNTIL THAT
POINT.

>> AT THAT POINT.

>> THAT WAS CERTAINLY A VALUE
AND -- SEEMS TO ME FROM
READING THE FRACTION ORDER, IT
IS DESIGNED TO SAY YOU AROUND
TITLED TO A PORTION OF MY
RETIREMENT INSOFAR AS OUR
MARRIAGE INCLUDED MY
EMPLOYMENT.

AS SOON AS MY EMPLOYMENT IS
OUTSIDE THE MARRIAGE YOU ARE
NOT ENTITLED TO THAT ANYMORE
AND IN OTHER WORDS, IF YOU
WERE MY WIFE, FOR 75% OF MY
WORKING YEARS, AS A SHERIFF,

YOU ARE ENTITLED TO 75%.

>> THAT IS CORRECT.

SEEMS TO BE THE GOAL OF THAT FRACTION.

>> IT IS, AND IF WE ACCEPT THE OTHER SIDE OF THE ARGUMENT WE COULD REDUCE TO IT A NUMBER AND KNOW IT IS AN UNKNOWN VALUE AND THIS IS THE FORMULA THAT WAS DISCUSSED AT LENGTH AND A SHORTHAND FORMULA AND A STIPULATION BETWEEN THE PARTIES.

>> YOU ARE YOU WOULD SAY BECAUSE IT INVOLVES STIPULATION BETWEEN THE PARTIES WE SHOULDN'T MESS WITH IT.

BUT, LET'S --

>> I DO AGREE WITH THAT AND IF WE --

>> MY PROBLEM, THOUGH, IS GOING BACK AS I'M LOOKING AT THE PULO OPINION, YOU AGREE THEY WERE ABLE TO COME UP WITH A SOME CERTAIN THAT THE WIFE WOULD BE ENTITLED TO, IF -- ASSUMING THE RETIREMENT DATE BEING AT THE TIME OF DISSOLUTION OF MARRIAGE. I WILL NOT -- WHETHER THE PETITION IS FILED OR FINAL HEARING.

I WON'T GET THAT SPECIFIC. BUT, WHAT I'M CONCERNED ABOUT, WHAT HAS HAPPENED IN THESE OTHER CASES, AND I THINK I HAVE A MODERATE UNDERSTANDING OF DROP BECAUSE I CAN'T SAY THAT I COMPLETELY UNDERSTAND. IS THAT THOUSANDS ARE GETTING THE BENEFIT OF A COST OF LIVING INCREASE AND INTEREST WHICH IS OCCURRING BECAUSE OF AN EVENT THAT WAS PUT INTO PLACE THAT IS REALLY -- AFTER THE DISSOLUTION OF MARRIAGE AND SEEMS COMPLETELY CONTRARY TO BOYETTE AND IF YOU GET MORE BECAUSE YOU ARE GETTING THOSE -- THAT PERIOD OF TIME, THAT DROP, SOMEONE SHOULDN'T BECAUSE THEY -- ENTERS DROP, THE ABSENCE OF THE MONEY

SHOULDN'T BE PENALIZED BUT
SHOULDN'T GET A WINDFALL.
ISN'T THAT REALLY THE GOAL OF
WHAT WE ARE TRYING TO DO HERE.

>> I AGREE BUT IN THIS CASE,
AGAIN --

>> GO BACK TO PULO, THOUGH, AS
LONG AS THE SPOUSE GOT THAT
AMOUNT, WHATEVER, \$1900, OR A
MONTH, STARTING AT THE TIME OF
THE PROJECTED RETIREMENT, WHY
SHOULD THE SPOUSE ACTUALLY GET
MORE THAN WHAT HAD BEEN VALUED
AT THE TIME OF THE DISSOLUTION
OF MARRIAGE.

>> WELL, I BELIEVE OUR
ARGUMENT WOULD BE THE SPOUSE
SHOULD GET -- HIS OR HER --
THE NONPARTICIPANT SPOUSE
SHOULD GET HIS OR HER MONEY
THAT THEY WOULD HAVE RECEIVED
IF NOT FOR THE ELECTION OF THE
DROP ACCOUNT AND PLUS ANY
INTEREST, BECAUSE IT WOULD BE
UNFAIR FOR THE PARTICIPANT
SPOUSE TO RECEIVE INTEREST ON
MONEY OF THE NONPARTICIPANT
SPOUSE THAT HAS BEEN FOR
BETTER -- A BETTER WORD,
HIJACKED INTO THE DROP
ACCOUNTED FOR FIVE YEARS.

>> WHAT I UNDERSTOOD, THE
WHOLE PLAN SHOULD BE HERE, IS
THAT THE DROP IS A -- IS
REALLY A DEFERRED PAYMENT
MECHANISM.

AND -- AND BUT FOR THE DROP,
THE PERSON WOULD HAVE RETIRED
FIVE YEARS EARLIER.

AND SO THERE IS A DEFERRED
PAYMENT OF THAT AMOUNT UNTIL
THE PERSON ACTUALLY RETIRES.
SO ON THE AMOUNT THAT GOES
INTO THE DROP, THAT PORTION
WHICH WOULD HAVE BEEN PAID TO
THE SPOUSE ON THE ACTUAL DATE
OF RETIREMENT, WOULD ACCRUE
INTEREST ON THE -- THAT AMOUNT.

I DON'T KNOW ABOUT COST OF
LIVING ACCRUALS BUT IT SEEMS
TO ME TO BE KIND OF A
DIFFERENT SITUATION.

>> EVEN WITH THE COST OF
LIVING ACRUELS, IT WOULD BE

UNFAIR FOR THE PARTICIPANT SPOUSE TO RECEIVE COST OF LIVING PERCENTAGE INCREASES ON MONEYS THAT WERE ALLOCATED TO THE SPOUSE AS HER -- HIS OR HER SEPARATE PROPERTY IN THE DISSOLUTION OF THE FINAL JUDGMENT SO TO THE EXTENT THAT THAT DROP ACCOUNT IS GROWING, EITHER THROUGH INTEREST OR THROUGH COST OF LIVING ADJUSTMENTS, ALL -- THE NONPARTICIPANT SPOUSE SHREVE IS THE COLAS AND INTEREST ON HER SHARE AND NOT ASKING FOR ANY MONEY THAT WOULD HAVE ACCRUED ON THE PARTICIPANT SPOUSE'S SHARE AND TO THE EXTENT WE AC -- ACCEPT THE STIPULATED FORMULA IN THIS CASE WE KNOW EXACTLY HOW MUCH THE NONPARTICIPANT SPOUSE SHOULD BE ENTITLED TO.

>> MAYBE MY -- MY CONCERN AND MAYBE YOU CAN ADDRESS THIS, MAYBE THE PROBLEM IS THAT THE ISSUE IS WHEN IS THE RETIREMENT DATE?

BECAUSE YOU CAN ACCRUE -- START TO GET INTO DROP, FIVE YEARS BEFORE YOUR ACTUALLY RETIREMENT DATE, OR YOU COULD DECIDE NOT BEING DROPPED TO WORK BEYOND YOUR RETIREMENT DATE.

IS UNDER THESE -- UNDER THE OPINIONS AND THE WAY IT IS ACTUALLY HAPPENING IN THE REAL WORD, IF, SAY, TAKE THE LATTER SITUATION, SOMEONE DECIDES NOT TO GO INTO DROP AND THEN THEY DECIDE STEAD OF -- INSTEAD OF RETIRING AT AGE 62 OR 65 THEY'LL WORK TO AGE 70.

DOES THE SPOUSE GET THE MONEY STARTING ON WEDNESDAY -- ON WHEN THE ANTICIPATED RETIREMENT WAS AT THE TIME OF THE -- DISSOLUTION OF MARRIAGE OR WHAT ACTUALLY HAPPENS IN THE REAL LIFE SCENARIO.

>> WELL, I THINK THE WAY THE REGULATIONS READ, AND I'M NOT SURE IF IT IS THE PULO CASE OR

THE CASE FROM THE 4th DISTRICT WHICH TALKS ABOUT THE REGULATIONS FOR DROP, WHICH, WHEN DROP IS ELECTED, THAT IS ACTUALLY THE RETIREMENT DATE. THE EMPLOYEE IS CONSIDERED A RETIREE FOR MANY PURPOSES INCLUDING RECEIVING THESE PENSION BENEFIT PAYMENTS.

>> BUT, IS THE -- SOME DATES IT MAY BE AFTER RETIREMENT. BUT YOU CAN ACTUALLY START A DROP BEFORE -- BEFORE YOU WERE INTENDING TO RETIRE. THE DATE GIVEN FOR WHATEVER REASON THIS INCENTIVE TO SAY WE WANT THEM OUT OF THE SYSTEM QUICKER THAN THEY MIGHT HAVE BEEN OTHERWISE.

>> THE TERMS THAT HAVE BEEN USED IN THE CASE IS THE RETIREMENT DATE THIS IS DATE THE DROP IS ELECTED AND CONTRIBUTIONS BEGIN TO GO INTO THE DROP ACCOUNT AND THERE IS AN EMPLOYEE TERMINATION DATE WHICH IS UP TO FIVE YEARS LATER. SO DURING THAT LAST FIVE YEARS OF EMPLOYMENT, THE EMPLOYEE IS RETIRED FOR PURPOSES OF THE RETIREMENT PLAN AND PENSION PLAN, STILL ACTING AS AN EMPLOYEE --

>> WHAT IT DOES, WHAT DROP DOES IS FIX THE AMOUNT OF THE RETIREMENT AS OF THE DATE THAT YOU GO INTO THE DROP PROGRAM. THEN, YOU DON'T DRAW THE MONEY OUT UNTIL THE END, WHEN YOU ACTUALLY RETIRE. AND DURING THAT PERIOD OF TIME, THERE IS AN ACCUMULATION ON THE DROP ACCOUNT. AND BECAUSE, RATHER THAN YOU GETTING YOUR MONEY THAT GOES INTO THE ACCOUNT, THAT IS WHAT THE DROP IS NOW. NOW I THINK BOYETTE WAS CENTERED AROUND THE IDEA THAT YOU COULD FIX AS OF THE DATE OF THE PETITION WHAT THE ACTUAL AMOUNT OF THE RETIREMENT BENEFIT WAS GOING

TO BE.

AND VALUE IT, AS OF THAT DATE.

>> THAT'S CORRECT AND THE COURT SAID IN BOYETTE THAT IN VALUING A PLAN AND IF THIS WAS YOUR MARRIAGE YOU SHOULD NOT INCLUDE IN THE NONPORP PANT SPOUSE'S SHARE ANY POST MARRIAGE ENHANCEMENTS OR CONTRIBUTION AND THAT IS NOT WHAT WE ARE ASKING FOR IN THIS CASE, ALL WE ARE ASKING FOR IN THIS CASE IS TO THE EXTENT SEPARATE PROPERTY WAS AWARDED TO MISS NIX IN THIS CASE AND TO THE EXTENT, HER FORMER HUSBAND MAKES AN ELECTION TO ENTER INTO A DROP ACCOUNT AND DEFER, NOT ONLY HIS SHARE OF THE PENSION BENEFITS BUT HERS INTO A DROP PLAN, SHE SHOULD BE ENTITLED TO ANY OF THOSE ENHANCEAL THAT COME FROM SIMPLY THE ACCRUALS AND INTEREST AND COLAs ATTRIBUTABLE ONLY TO HER SHARE.

>> YOU AGREE HER SHARE IS SIMPLY WHAT IT WOULD HAVE BEEN AS OF THE DATE OF THE PETITION.

>> I AGREE THAT --

>> I AGREE HER SHARE IS AS STATED IN THE FORMULA IN THE FINAL JUDGMENT.

I DO NOT AGREE THAT WE HAVE TO MOVE TO PARAGRAPH 4 IN THE ORDER OF FINDINGS TO PICK UP A VALUATION DATE WHICH WAS CLEARLY USED BY THE TRIAL COURT --

>> LET ME BACK UP.

DO YOU AGREE THAT THIS RETIREMENT WAGS VESTED AND MATURED?

>> I DO AGREE WITH THAT.

>> AND COULD THE DOLLAR -- MONTHLY PAYMENT AMOUNT HAVE BEEN DETERMINED IF THE ATTORNEYS SPENT THE TIME AN EFFORT TO TRY TO DETERMINE WHAT THE PAYMENT AMOUNT WAS.

>> I AGREE, NOT ONLY THE MONTHLY PAYMENT BUT THE

DENOMINATOR AND TO SOME EXTENT
MAY HAVE ACQUIRED ADDITIONAL
TESTIMONY WHICH MAY HAVE BEEN
THE REASON IN THIS CASE THERE
IS A SHORTHAND STIPULATED
FORMULA.

>> AND I AGREE, I MEAN, THAT
IS -- OFTEN HAPPENS BECAUSE
THINGS GET HECTIC AND DON'T
TAKE THE TIME, BECAUSE THEY
WORRY ABOUT IT UNTIL I LATER
TIME AND YOU AGREE THAT
DENOMINATOR COULD HAVE BEEN
DETERMINED AT THE TIME OF THE
FINAL JUDGMENT.

>> AND MONTHLY PAYMENT AND NOT
ONLY COULD THE DENOMINATOR
BEEN DETERMINED IT WOULD HAVE
BEEN EASILY DETERMINABLE
BECAUSE THE HUSBAND'S LENGTH
OF SERVICE AT THAT POINT WAS
EQUAL TO THE --

>> EQUAL TO THE LENGTH OF THE
MARRIAGE.

>> I BELIEVE IN THIS CASE THE
HUSBAND MAY HAVE STARTED
SOMETIME BEFORE, WHICH WOULD
HAVE GIVEN HIM SOME DISCOUNT
FOR THOSE -- YOU KNOW,
PRE-MARITAL CONTRIBUTIONS TO
THE PLAN.

>> WHICH WOULD HAVE BEEN 99
OVER 100.

>> I'M NOT EVEN SURE THAT THE
RECORD IS CLEAR ON THIS POINT
BUT CERTAINLY THE HUSBAND WAS
THERE, TESTIFYING IN COURT,
HIS WIFE WAS THERE.

>> AND LET ME ASK YOU A
QUESTION.

DIDN'T YOU AGREE THAT NUMBER
COULD HAVE BEEN DETERMINED AND
-- THEN AND CAN BE DETERMINED
NOW.

>> I DO AGREE WITH THAT BUT I
ALSO ASSERT TO THE COURT THAT
THE REASON IT WASN'T
DETERMINED IS BECAUSE AND THE
REASON THE MONTHLY PAYMENT WAS
NOT DETERMINED IS BECAUSE
THOSE WERE UNKNOWN VALUES AS
READ BY THE LOWER COURT HERE,
AND IS --

>> ARGUING EQUITY AND FAIRNESS

ABOUT THE COLA AND INTEREST,
WHAT IS YOUR EQUITABLE
FAIRNESS ARGUMENT THAT YOUR
CLIENT SHOULD BENEFIT IN THE
ADDITIONAL PAYMENTS THAT
MR. NIX WILL BE GIVING BECAUSE
OF HIS ADDITIONAL EMPLOYMENT?
>> YOUR HONOR, I DON'T BELIEVE
IT IS CLEAR FROM THE RECORD
THAT MISNIX IS GOING TO
BENEFIT FROM THOSE FUTURE
PAYMENT AND THIS IS WHY.
YOU HAVE AND IN -- POTENTIALLY
INCREASING PAYMENTS AS MR. NIX
MAKES HIGHER AND HIGHER
SALARIES AND THE MONTHLY
PAYMENT AMOUNT GOES UP BUT YOU
HAVE -- WE ALL CAN SEE WE HAVE
A DECREASING FRACTION BECAUSE
THE DENOMINATOR OF THE
FRACTION IS GROWING AS
MR. NIX'S TIME AND SERVICE
GROWS.

SO, YOU HAVE A DECREASING
PERCENTAGE OF AN INCREASING
AMOUNT.

I WOULD STATE NONE OF US HERE
ARE CAPABLE OF DECIDING
WHETHER MISNIX BY USING THE
SHORTHAND FORMULA AS
STIPULATED BY THE PARTIES, I
ASSERTED THERE IS NO WAY WE
CAN TELL THAT SHE IS GOING TO
RECEIVE POST-MARITAL
CONTRIBUTIONS.

>> WHAT YOU ARE SAYING AS I
UNDERSTAND IT, WHEN WE LOOK AT
THE FORMULA, THE 27 YEARS AND
SEVEN MONTHS, AT THE TIME OF
THE MARRIAGE, LET'S JUST
ASSUME FOR THE SAKE OF
ARGUMENT THAT MR. NIX HAD
WORKED FOR 29 YEARS.
AS A SHERIFF SO THAT
DENOMINATOR WOULD BE 27.7 OVER
29.

>> CORRECT.

>> BUT, NOW, THAT HE IS -- HAS
WORKED AN ADDITIONAL NINE
YEARS, SAY, THAT DENOMINATOR
IS NOW 30-SOMETHING.
AND SO, THE FRACTION OF 27.7
OVER THE 30, BECOMES SMALLER
IN MRS. NIX'S FAVOR AND SO WE

DON'T KNOW THAT SHE IS GETTING MORE BECAUSE OF THE MONTHLY PAYMENT WHEN SHE MIGHT BE GETTING LESS BECAUSE OF THE LARGER DENOMINATOR.

>> CORRECT.

>> IS THAT BASICALLY WHAT YOU ARE SAYING.

>> AND THAT IS THE GIVE-AND-TAKE I BELIEVE IN THE STIPULATION.

I -- I MEAN, IT IS NOT JUST THAT MRS. NIX HAD THE ABILITY TO RECEIVE SOME PERCENTAGE OF IN A KREEKZ -- INCREASING PAYMENT AMOUNT SHE TOOK THE RISK THAT SHE IS GETTING A LOWER PERCENTAGE WHICH IS COMPLETELY IN THE CONTROL OF HER HUSBAND.

HAD MR. NIX ELECTED TO HE COULD HAVE RETIRED --

>> SEEMS TO ME EVERYTHING YOU ARE SAYING MAKES ME REALIZE THAT I DON'T SEE HOW WE TAKE THIS CASE AN DECIDE IT.

BECAUSE PULO, THE BIG CASE AND THERE IS A STRONG DISSENT THERE, IT WAS A SPECIFIC AMOUNT THAT WAS DETERMINED, SO IS THIS DISTINGUISHABLE FROM -- EVEN IF YOU AGREE WITH PULO, YOU COULD WIN EVEN IF WE DISAGREED WITH.

>> IT IS HARD TOR FOR ME TO DISAGREE WITH THAT, JUSTICE PARIENTE.

>> THAT IS EXACTLY OUR ALLEGATION, THE CASE IS BASED ON A STIPULATION.

>> IT IS, AND, YOU KNOW, THERE HAS BEEN ARGUMENT, SEVERAL YEARS LAPSE BETWEEN THE QUADRO AND THE FINAL JUDGMENT THAT THAT SHOULD MAKE A DIFFERENCE AND WE DON'T BELIEVE THAT MAKES A DIFFERENCE HERE.

IN FACT THE FORM -- FORMULA AS REFLECTED IN THE FINAL JUDGMENT IS WHAT IS REFLECTED IN THE AMENDED QUADRO.

AND --

>> AND DO YOU AGREE, AGAIN, ONE OF THE BIG ISSUES SEEMS TO

BE HOW DO YOU LOOK AT DROP AND THE SON AND HUSBAND IN THIS CASE WAS -- DIDN'T GO INTO DROP -- DOESN'T QUALIFY FOR DROP AND WOULD BE PURELY ADVISORY ON THAT ISSUE.

>> WELL, AND WE EVEN SET THAT OUT IN OUR BRIEF, TO THE EXTENT THE FORMER HUSBAND IS NOT ELIGIBLE FOR A DROP PLAN I GUESS THE ISSUE IS MOOT AND TO THE EXTENT HE HAS A FUTURE ABILITY THEORETICALLY TO BE ELECTED TO PUBLIC OFFICE AND MAYBE AT THAT TIME, BECOME ELIGIBLE AGAIN, I WOULD ARGUE THE ISSUE ISN'T RIPE YET. BUT TO THE EXTENT THE COURT IS GOING TO MAKE A DETERMINATION ON THAT ISSUE, IT WOULD BE INCONCEIVABLE THAT A PARTICIPANT SPOUSE COULD ELECT A DROP PLAN, DEFER NOT ONLY HIS BUT HIS WIFE'S SEPARATE PROPERTY, FROM THE DISSOLUTION INTO A DROP PLAN, AND THAT NOT ONLY DOES SHE NOT GET ANY INTEREST, OR OTHER ACCUMULATIONS ON IT, SHE JUST SIMPLY DOESN'T GET IT ALL AND WOULD BE UNJUST.

>> THE SPOUSE ADVOCATING THROUGH THE LAWYER REALLY HAS THREE OPTIONS -- I SEE AS THREE OPTIONS AT THE TIME OF THE DISSOLUTION, ACTION ASSUMING THE HUSBANDS IN AGREEMENT AND ONE IS TO TRY TO COME UP WITH A PRESENT VALUE AND JUST EVEN THOUGH THE SPOUSE MAY OR MAY NOT HAVE THAT, THAT DEPENDS IF THERE IS OTHER MONEY TO PAY OFF THE SPOUSE AND FIGURE OUT WHAT IS THAT FUTURE VALUE AND REDUCE TO -- LUMP SUM, CORRECT? IT CAN BE DONE.

>> IT CAN BE BUT OFTENTIMES, IN MY PRACTICE OF FAMILY LAW, OFTEN YOU NEED AN EXPERT TO DO THAT AND SIMPLY, DON'T HAVE THE RESOURCES, THIS FORMULA -- >> THAT IS ONE OF THE OPTIONS AND WHEN THAT HAPPENS, ALL

FUTURE LITIGATION IS GONE, BUT IT IS A MORE COMPLICATED METHOD AND REQUIRES EXPERT TESTIMONY, CORRECT?

>> IT IS AND I THINK THAT IS WHY THE FINAL JUDGMENT AND ORDER OF FINDINGS, LISTS FIRST THE STIPULATION.

AND THEN, TALK ABOUT VALUATION AND THEN THERE ARE PAGES IN THE ORDER OF FINDINGS FOR THAT VALUATION -- BEFORE THE DATE IS ACTUALLY APPLIED TO DETERMINE VALUES OF ASSETS.

>> -- WOULD AGREE -- WOULD YOU AGREE THAT WE COULD IN FACT -- THE LOWER COURT, NOT US, SET US SO BACK ON THIS CASE AND FIGURE OUT A DENOMINATOR AS OF THE DATE OF THE FILING OF THIS PETITION, AND COME UP WITH A MONTHLY PAYMENT BASED ON THAT.

>> I AGREE WITH THAT.

JUSTICE QUINCE, THE ONLY PROBLEM IS BECAUSE THERE WAS A STIPULATION IN THIS CASE AND WE HAVE THE TWO UNKNOWN VARIABLES, THERE IS ONLY ONE WAY TO INTERPRET THAT, IF WE WANTED TO GO BACK AND INSERT THAT DENOMINATOR WE'D HAVE TO MAKE THE ASSUMPTION THAT THERE WAS SOME EARLIER VALUATION DATE WHICH IS NOT SUPPORTED IN THE RECORD.

>> THANK YOU, IF THERE ARE NO OTHER QUESTIONS?

THANK YOU.

>> THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT, BRIEFLY, ADDRESSING JUSTICE CANTERO ON THE ISSUE OF THE STIPULATION, THERE WAS NOT A STIPULATION IN THIS CASE WITH RESPECT TO PARAGRAPH FIVE OF THE AMENDED QUADRO.

THAT IS WHERE THE LANGUAGE THAT STATES THAT THE VALUATION WILL BE AT THE TIME OF RETIREMENT, THAT IS WHERE THAT ISSUE COMES INTO PLAY AND IT WAS HOTLY DEBATED AND VACATED AND THEN THE ORDER WAS NEVERTHELESS, ENTERED AGAIN BY

THE JUDGE BECAUSE EACH SIDE
SUBMITTED COMPETING ORDERS
WITH REGARD TO THAT.

BUT --

>> STIPULATION WAS -- I'M
SORRY TO INTERRUPT.

THE STIPULATION WE AGREE WAS
TO THE FORMULA ITSELF, A
FORMULA WHICH DOES -- AND I
THINK JUSTICE BELL MIGHT HAVE
BEEN LOOKING AT THIS ALSO, THE
DENOMINATOR ON THAT DOES WORK
TO THE ADVANTAGE OF MR. NIX AS
TIME GOES ON BECAUSE IT SERVES
TO DECREASE, IF YOU WILL, THE
PER-SHARE OF THAT BASED ON HIS
EXTENDED YEARS OF SERVICE\ ""\$
POST-SIS SOLUTION AND IF IT
HAD BEEN SALE -- DISSOLUTION
AND IT -- PERHAPS IF COUNSEL
FOR MS. NIX WENT,,,,,,,,,
DON'T SEE HOW THAT FORMULA
WOULD'VE BEEN STATED THE WAY
IT WAS.

IF YOU INTENDED IT TO BE AT
THE TIME OF THE PETITION,
THE DENOMINATOR WOULD'VE
SAID SO.

IT WOULDN'T HAVE SAID NUMBER
OF YEARS OF EMPLOYMENT.

IT WOULD'VE SAID NUMBER OF
YEARS OF EMPLOYMENT AT THE
TIME THE PETITION WAS FILED.

>> THE THAT WE STIPULATED TO
IS, IS, IS NOT THE SAME

THING AS THE LANGUAGE WE
OBJECTED TO IN THE AMENDED
QUADROW, I MEAN THAT'S THE
WHOLE BASIS OF OUR APPEAL
WITH ALL DUE RESPECT TO DCA.

WE CLEARLY OBJECT WITH THAT.
THE FORMULA IS DELOACH.

WE FOLLOWED THE LAW WITH
RESPECT TO THE FORMULA IN
REVIEWED DISTRIBUTION
SCHEMES.

WHERE THIS WANT AFOUL AND
WHERE OBJECTIONS LED UP TO
THIS COURT WAS WHERE THE
RETIREMENT DATE WAS USED AS
VALUATION OF PAYMENTS.

IT WOULD BE HIS HIGHEST YEAR
OF INCOME.

>> YOU ARE SAYING FOR THE

MONTHLY PAYMENT PRONG?

>> YES, SIR.

>> I DON'T SEE HOW ON THE ONE HAND YOU CAN SAY THAT THE LENGTH OF YEARS OF EMPLOYMENT CAN BE USED FOR THE DENOMINATOR BUT THEN THE MONTHLY PAYMENT HAS TO BE FROZEN AT THE TIME OF THE PETITION.

>> BECAUSE IF WE TAKE HIS HIGHEST YEARS, IF YOU LOOK AT HOW HIS PENSION AMOUNT MONTHLY IS GOING TO BE CALCULATED, IT IS GOING TO BE HIGHER MONTHLY NOW AS A RESULT OF HIM HAVING NINE MORE YEARS OF SERVICE THAN IT WOULD'VE BEEN AT THAT TIME AND I UNDERSTAND COUNCIL'S ARGUMENTS THAT WE DON'T EVEN KNOW OR AT LEAST THEY ARE TAKING THE POSITION THAT THEY DON'T EVEN KNOW WHETHER OR NOT MS. 96 WOULD BENEFIT FROM HAVING THE RETIREMENT VALUE I WOULD SERIOUSLY DOUBT IF THEY WOULD ARGUE UP TO THIS COURT AND OBJECT IF THERE WAS SOME BENEFIT.

>> HOW ABOUT THIS? WOULD YOU BE SATISFIED IF THE DENOMINATOR IS FROZEN AT WHATEVER NUMBER OF YEARS HE HAD AT THE TIME OF THE PETITION, IN ADDITION TO THE MONTHLY PAYMENT BEING FROZEN AT THAT TIME.

>> WELL, I THINK AT THAT TIME, AND JUSTICE QUINCE, TO THE EXTENT, AND I DON'T KNOW THE ANSWER TO THE EXACT NUMBER OF YEARS OF SERVICE MR. NIX HAD AT THAT TIME. IT MIGHT'VE BEEN THE FRACTION OF THE DENOMINATOR. IT MIGHT WELL HAVE BEEN 1 OVER 1.

277, 277 AT ONE TIME.

1.5 TIMES.

THERE'S OUR ARGUMENT BAROBECAUSE YOU ARE LOOKING AT A MONTHLY PAYMENT THAT

WOULD'VE BEEN AT THE TIME OF RETIREMENT.

>> IN ANSWER TO THE QUESTION, YES, YOU WOULD'VE BEEN SATISFIED IF THE DENOMINATOR IS FROZEN IN ADDITION TO THE MONTHLY PAYMENT BEING FROZEN.

>> I THINK FREEZING THE DENOMINATOR IS INCONSISTENT WITH DELOACH AND THE LAW WE NEED TO FOLLOW ON DEFERRED DISTRIBUTION.

>> IT SEEMS TO ME IF YOU ARE NOT FREEZING THOSE YOU ARE PUTTING MRS. NIX AT A REAL DISADVANTAGE BECAUSE SHE ENDS UP WITH A SMALLER PERCENT BLG ON A SMALLER AMOUNT.

WHAT YOU WANT IS A SMALLER PERCENTAGE ON, -- IT'S NOT BEING FAIR TO HER IT SEEMS TO ME.

IF YOU ARE GOING TO FREEZE ONE, YOU HAVE GOT TO FREEZE BOTH OF THOSE AT THE TIME THAT THE PETITION IS FILED.

>> I, I DON'T KNOW, JUSTICE QUINCE.

I UNDERSTAND YOUR ARGUMENT, AND I DON'T MEAN TO BE COMBATIVE WITH YOU, BUT I THINK THAT THAT WOULD -- IF A PRACTITIONER DID THAT IN THE NINETY-FIRST DISTRICT RIGHT NOW I BELIEVE YOU WOULD RUN AFOUL OF DELOACH, BECAUSE THERE IS, AND JUSTICE SERVANT POINTS THIS OUT --

>> BUT I THINK PART OF YOUR ARGUMENT BOYETT CHANGED DELOACH ANYWAY.

>> THERE IS A PORTION OF DELOACH WHICH IS SUBJECT TO A BOYETT CONSIDERATION, AND THAT'S WHAT JUSTICE IRVINE POINTS OUT IN HIS --

>> WITH OUR ASSISTANT, YOU HAVE YULE UTILIZED YOUR TIME, WELL OVER.

>> WE ASK THE COURT --

>> ALL RIGHT.

THANK YOU VERY MUCH.

>> THANK YOU.

>> WE THANK YOU FOR THE FINE
ARGUMENTS.

WE'LL TAKE THE CASE UNDER
CONSIDERATION.