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**F.G. v. Agency for Persons with Disabilities
SC06-240**

>> THE MARSHAL: HEAR YE, HEAR
YE, HEAR YE.
THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA,
DRAW NEAR, GIVE ATTENTION AND
YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THIS GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.
LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.

>> CHIEF JUSTICE: GOOD MORNING,
LADIES AND GENTLEMEN AND
WELCOME TO THE FLORIDA SUPREME
COURT.
THE FIRST CASE ON THIS
MORNING'S DOCKET IS F.G. VERSUS
AGENCY FOR PERSONS WITH
DISABILITIES, AND, MR. BLECKE?

>> MAY IT PLEASE THE COURT.
JIM BLECKE APPEARING ON BEHALF
OF JUDGE LEDERMAN.

>> CHIEF JUSTICE: YOU'RE DIED
DIVIDING YOUR TIME WITH MISS
GEVERS?

>> TODAY IS JUNE 29, 2006,
EXACTLY SIX YEARS AGO TODAY ON
JUNE 29, 2000, 12-YEAR-OLD
MENTALLY RETARDED F.G. WAS
DETERMINED TO BE ELIGIBLE FOR
NEEDED AND NECESSARY
DEVELOPMENTAL DISABILITY
SERVICES.

F.G. GREW FROM AGE 12 TO AGE 18
WITHOUT THOSE SERVICES, AND I
BELIEVE IT HAS BEEN APPROPRIATE
AREA FOR THE JUDICIARY TO MAKE
INQUIRY INTO THAT AND
DETERMINE.

>> JUSTICE: CAN YOU EXPLAIN THE
GENESIS OF THIS PARTICULAR
CASE?
JUDGE LEDERMAN'S SUBPOENA WAS

ISSUED IN THE CONTEXT OF WHAT KIND OF A CASE, WHAT KIND OF A HEARING?
IT WAS UNCLEAR FROM THE RECORD.

>> THIS WAS IN THE CONTEXT OF A CHAPTER 39 PENNED EVENSY PROCEEDING, AND THE INQUIRY WAS DIRECTED TO THREE INDIVIDUALS OR PERSON TO BE DESIGNATED BY APD TO PROVIDE THE RECORDS AND TO EXPLAIN BASICALLY WHY THIS CHILD WAS NOT RECEIVING SERVICES OR THE EXTENT OF THOSE SERVICES.

>> CHIEF JUSTICE: THERE WAS AN ONGOING DEPENDENCY.

>> YES.

>> CHIEF JUSTICE: HAD RIGHTS BEEN TERMINATED?
WAS THE CHILD IN FOSTER CARE FOR SIX YEARS?

IS THAT WHAT WAS GOING ON?

>> I CAN'T ANSWER THAT, BECAUSE THERE IS NO RECORD BEFORE THE THIRD DISTRICT OR THIS COURT UPON WHICH TO ANSWER THOSE QUESTIONS AND I'M GOING TO BE PURPOSEFULLY OBTUSE IN THAT REGARD BECAUSE WHAT OCCURRED IN THIS CASE AND WHY I BELIEVE THE IMPORTANCE OF THE SUBPOENA POWER IS SO IMPORTANT IN THIS CASE IS BECAUSE THE THIRD DISTRICT REACHED ITS DECISION BASED UPON REPRESENTATIONS THAT WERE EITHER CORRECT OR INCORRECT FROM APD BUT REPRESENTATIONS THAT ARE DIFFERENT THAN THE REPRESENTATIONS MADE BY APD TO THIS COURT.

I DON'T KNOW WHICH OF THOSE REPRESENTATIONS ARE CORRECT OR INCORRECT.

>> CHIEF JUSTICE: HOLD ON.
BUT YOU UNDERSTAND THAT WE'RE HERE AND YOU ARE TALKING ABOUT SOMETHING THAT WAS GOING ON FOR SIX YEARS, AND WE'RE FIRST CONFRONTED WITH AN ISSUE AND WE'VE GOT TO PUT IT IN CONTEXT WHICH IS THERE IS NO QUESTION IT WAS A CHAPTER 39 PROCEEDING

AND THE JUDGE LEDERMAN WAS ACTING UNDER HER AUTHORITY AS A JUVENILE COURT DEPENDENCY JUDGE IN MONITORING THE CARE, ONGOING CARE OF THIS CHILD?

>> THAT'S CORRECT.

>> JUSTICE: NOW, IN THAT REGARD, YOU JUST SAID THAT HE WAS DETERMINED TO BE ELIGIBLE FOR THE SERVICES SIX YEARS AGO.

WAS THAT REALLY A DETERMINATION THAT HE WAS ELIGIBLE OR DID THE DEPARTMENT ACTUALLY SAY THAT THEY DIDN'T HAVE THE FACILITY TO PUT HIM IN AND THAT ELIGIBILITY WOULD THEN BE DETERMINED AT THE TIME WHEN SPACE BECAME AVAILABLE?

>> I CAN'T ANSWER THAT QUESTION, BECAUSE JUDGE LEDERMAN WAS NOT ALLOWED TO ACCESS TO THE RECORDS THAT WOULD ANSWER THOSE QUESTIONS. IN FACT, I MADE THE COMPLETELY WRONG IN TELLING YOU THAT THIS OCCURRED EXACTLY SIX YEARS AGO, BECAUSE MY ONLY INFORMATION COMES FROM A FOOTNOTE IN THE APD BRIEF.

THAT COMES FROM PAGE 2 WHERE I AM TOLD THAT THIS OCCURRED IN JUNE OF 2000.

>> CHIEF JUSTICE: BUT YOU SEE WHY FOR US IT IS IMPORTANT TO KNOW WHETHER IT IS HEARD IN THE CONTEXT OF THE CHAPTER 39 PROCEEDING INVOLVING THIS CHILD BECAUSE IN TERMS OF WHAT THE SCOPE OF THE JUDGE'S AUTHORITY IS WILL DIFFER DEPENDING ON THE TYPE OF THE PROCEEDING.

WOULD YOU AGREE WITH THAT?

>> YES.

BUT TO DETERMINE THE NATURE AND EXTENT OF JUDGE LEDERMAN'S RESPONSIBILITIES ONE MUST FIRST KNOW, HAVE THE INFORMATION UPON WHICH TO BASE THAT DECISION.

>> JUSTICE: WELL, LET'S SEE THEN IF WE CAN NARROW THE ISSUE THAT IS BEFORE US AND THE LAST STATEMENT THAT YOU MADE, IS THAT THE ISSUE BEFORE US?

IN OTHER WORDS, WAS THE PURPOSE OF THE SUBPOENA HERE AN INFORMATION-GATHERING PURPOSE RELEVANT TO THE CARE OF THIS PARTICULAR CHILD?

IS THAT --

>> THAT'S CORRECT.

>> JUSTICE: HOW WOULD YOU STATE THE ISSUE THAT IS BEFORE US THEN IN TERMS OF THIS INFORMATION-GATHERING FUNCTION OF THE COURT?

>> DOES THE JUDICIARY HAVE THE ABILITY TO, THROUGH THE SUBPOENA POWER, TO GAIN INFORMATION ABOUT CHILDREN IN STATE CARE?

>> JUSTICE: AND WHY DOESN'T RULE 8 --

>> THEY HAVE ANSWERED THAT QUESTION, YES.

>> JUSTICE: WHY DOESN'T RULE 8825 ANSWER THAT QUESTION SIMPLY AND DIRECTLY?

>> IT DOES TOTALLY FOR MY PURPOSES I THINK IT DOES.

HOWEVER, THE THIRD DISTRICT HAS HELD THAT NEITHER THAT RULE NOR THE POWERS OF THE COURT EXTEND TO APD.

THE THIRD DISTRICT HELD THAT JUDGE LEDERMAN HAS A MEMBER OF THE JUDICIARY HAS NO JURISDICTION, NO AUTHORITY TO EVEN ASK THE QUESTION AND I SUBMIT TO YOU --.

>> JUSTICE: WHAT IS -- SPEAKING OF JURISDICTION, THE THEORY THE CASE IS HERE IS HOW IT AFFECTS THE CONSTITUTION.

>> THAT IS ONE OF THE BASES. THERE IS ALSO CONFLICT WITH THE OTHER DISTRICT COURTS BECAUSE BOTH THE BROOK CASE AND THE IEC DECISION FROM OTHER DISTRICTS RECOGNIZE THE POWER OF THE COURT TO ASK THE QUESTION.

>> JUSTICE: THERE'S BEEN SOME DIFFICULTY, HAS THERE NOT, IN SEPARATING OUT THE ISSUE OF THE COURT'S AUTHORITY WITH REFERENCE TO GATHERING INFORMATION, AND THE COURT'S AUTHORITY TO COMMAND CERTAIN

SERVICES BE PROVIDED TO A TRIAL.

SO HELP SORT THAT OUT FOR US IN THE CONTEXT OF THIS PARTICULAR CASE.

>> WE NEVER GET TO THAT IN THE CONTEXT OF THIS CASE, BECAUSE THE INFORMATION WAS NEVER MADE AVAILABLE.

IT WAS DENIED JUDGE LEDERMAN BY THE THIRD DISTRICT.

ONCE SHE HAS THAT INFORMATION, WHAT SHE DOES WITH IT THEN BECOMES SUBJECT TO JUDICIAL REVIEW.

IT MAY BE IN THAT CONTEXT THAT APD WILL BE HAPPY WITH WHAT JUDGE LEDERMAN DOES WITH THE INFORMATION AND THE CHILD'S ADVOCATE WOULD BE UNHAPPY ABOUT THAT.

>> JUSTICE: WALK ME BACK THROUGH, WE'LL COME BACK TO THE QUESTION.

[INAUDIBLE].

>> YES.

AND ALSO CONFLICT.

>> JUSTICE: WHAT IS THE THEORY?

[INAUDIBLE].

>> JUDGE LEDERMAN AND EVERY CIRCUIT COURT JUDGE IN MIAMI-DADE AND MONROE COUNTIES.

NO LONGER HAVE SUBPOENA POWER OVER ANYONE ASSOCIATED WITH THE EXECUTIVE BRANCH, WHICH IS NOT THE CASE IN EVERY OTHER DISTRICT.

EVERY OTHER DISTRICT RECOGNIZED THE SUBPOENA POWER OF THE COURT AND THE POWER OF THE COURT COMES SPECIFICALLY FROM CHAPTER 39 AND THE INHERENT POWER OF THE COURT OVER THE CHILDREN IN STATE CARE.

>> CHIEF JUSTICE: GO BACK TO JUSTICE CANTERO'S QUESTION.

>> I BELIEVE THE AUTHORITY, BY BOTH RULE AND STATUTE GIVES THE COURT SUBPOENA POWER.

RULE 8.55, I BELIEVE, GIVES THE COURT SUBPOENA POWER.

>> JUSTICE: ARE YOU ASKING US

TO GO BEYOND THAT NARROW ISSUE
AND TO HOLD THAT JUDGE LEDERMAN
HAS THE AUTHORITY TO ORDER THE
DEPARTMENT TO TAKE CERTAIN
ACTION?

>> NO.

THAT'S NOT BEFORE THE COURT AT
THIS TIME.

APD WANTS YOU TO ANSWER
ABSTRACT QUESTIONS, AT LEAST ON
BEHALF OF JUDGE LEDERMAN.

I CAUTIONED AGAINST THAT.

I THINK THAT BOTH --.

>> JUSTICE: THERE IS NOTHING IN
HER SUBPOENA ORDER THAT
ACTUALLY ORDERED THE DEPARTMENT
TO DO ANYTHING AT THIS POINT?

>> NO, IT WAS PURELY
INFORMATION GATHERING, LOOKING
FOR AN EXPLANATION.

>> JUSTICE: WHAT ABOUT AS FAR
AS A PERSON DESIGNATED IN THIS
CASE THREE INDIVIDUALS
SPECIFICALLY NAMED TO COME
BEFORE THE COURT?

>> I READ THE SUBPOENA A LITTLE
DIFFERENTLY THAN THEY DO, BUT
EVEN READING IT THE WAY THEY
DO, IT IS A SINGLE SUBPOENA,
AND IT NAMES ALL THREE PEOPLE.

IT IS AN EXHIBIT TO THEIR
PETITION, AND THE SUBPOENA IS
SIMPLY, WELL, IT NAMES THREE
INDIVIDUALS, AND THEN SAYS OR
OTHER DESIGNATED PERSON.

I READ THAT AS A SUBPOENA FOR
SOMEONE FROM APD TO APPEAR WITH
THE RECORDS DESIGNATED AND
EXPLAIN WHY THIS CHILD IS NOT
RECEIVING CARE.

>> JUSTICE: SO THEN YOU AGREE
THAT THE DEPARTMENT WOULD HAVE
THE POWER TO DESIGNATE WHOMEVER
THE DEPARTMENT WISHED TO COME
AND PRESENT THAT INFORMATION?

>> INITIALLY, YES, AND IF THE
RESPONSES WERE INADEQUATE IT
COULD GO UP THE LINE.

ALTHOUGH, AGAIN, THE THREE
PEOPLE THAT ARE NAMED, JOSEPH
PERRY, HE IS A FRONT LINE
PERSON.

HE IS THE PERSON DIRECTLY

RESPONSIBLE FOR PROVIDING OR NOT PROVIDING CARE.

THEN THERE IS THE UPPER AGENCY PERSON WHO IS PROBABLY THE BEST PERSON TO RESPOND TO THE SUBPOENA BUT AGAIN THESE ARE THINGS IF THE SUBPOENA IS OVERBROAD THEY SHOULD GO TO JUDGE LEDERMAN AND SAY, JUDGE, THIS SUBPOENA IS OVERBROAD.

>> CHIEF JUSTICE: I GUESS AGAIN AND REALIZING THAT YOU'VE SAID WE ARE SORT OF SEEING THIS CASE IN A VACUUM AND A SNAPSHOT IT WOULD HAVE HELPED TO KNOW WHAT, SINCE MAYBE THIS STARTED SIX YEARS AGO, CERTAINLY IT DIDN'T START THE DAY BEFORE THE SUBPOENA WAS ISSUED, WHAT OTHER EFFORTS HAD BEEN MADE FOR THIS TRIAL.

YOU KNOW, AGAIN WE'RE TALKING ABOUT A SUBPOENA BUT THEN GOT A VERY COMPELLING SITUATION FOR WHATEVER REASON A CHILD UNDER THE CARE OF THE STATE OF FLORIDA APPARENTLY WAS DENIED SERVICES THAT WERE SIGNIFICANT TO THIS CHILD'S CARE FOR OVER A SIGNIFICANT PERIOD OF TIME, BUT WE DON'T AGAIN HAVE ANY OF THAT INFORMATION AND SO, THEREFORE, HOW WE WOULD -- IF WE CONTINUE TO TAKE JURISDICTION IT HAS TO BE ON THE NARROW ISSUE BUT IT DOES HAVE TO RELATE TO AN ONGOING CHAPTER 39 PROCEEDING.

DOES IT NOT?

>> THAT'S CORRECT.

THIS IS A CHILD SPECIFIC, FACT SPECIFIC INQUIRY. BUT IT IS NOT THE ONLY INQUIRY.

THERE IS ANOTHER RN WHERE THE THIRD DISTRICT HELD JUDGE LEDERMAN DID NOT HAVE AUTHORITY TO EVEN ASK THE QUESTIONS.

THERE IS A THIRD CASE CALLED T. G. THAT IS NOW PENDING.

THEY ARE HOLDING IT IN ABEYANCE PENDING REVIEW OF THIS COURT SO THERE ARE MULTIPLE CASES AFFECTED BY THIS CASE.

IT MAY BE IN ONE CASE THE RESPONSE WILL BE APPROPRIATE.

>> CHIEF JUSTICE: BEFORE YOU, BECAUSE YOU ARE IN YOUR TIME FOR MISS DEVERS.

WE HELD THIS SPECIAL ORAL ARGUMENT BECAUSE IT INVOLVED A CHILD.

YOU SAY THERE ARE OTHER CASES BEING HELD.

WE WANT TO MAKE SURE THAT NOTHING THIS COURT IS DOING BY TAKING JURISDICTION IS INTERFERING WITH MOVING ANY CHILD INTO PERMANENCY.

DO WE KNOW THAT OR THESE CASES?

BECAUSE WE JUST DON'T WANT THEM BEING HELD IN ABEYANCE ON SOMETHING THAT IS COLLATERAL, POTENTIALLY COLLATERAL TO THE ISSUE OF CHILDREN GOING INTO PERMANENCY.

IN THIS CASE THE CHILD IS 18. THEY'VE GOT A DIFFERENT SITUATION.

>> IN EACH OF THE CASES THAT I AM AWARE OF THAT ARE IN THE APPELLATE SYSTEM AND THEY ARE THE ONLY ONES I AM AWARE OF, THEY ARE ALL BEING HELD, THERE IS NO INFORMATION BEING PROVIDED TO THE JUDGE IN TERMS OF DISABILITY MATERIAL.

SO MEDICAL ISSUES ARE BEING DELAYED WHILE THIS ISSUE IS PENDING IN MIAMI-DADE AND MONROE COUNTY.

THERE ARE NO SUBPOENAS BEING RESPONDED TO, NO INFORMATION BEING FORTHCOMING AND THE REASON WHY THIS IS IMPORTANT IN THIS CASE AND IN EACH CASE IS BECAUSE THEY ARE -- THERE ARE NEEDS OF THESE CHILDREN THAT ARE NOT BEING MET.

THEY ARE EITHER ELIGIBLE AND IN THE RN CASE THERE IS A QUESTION OF ELIGIBILITY HERE.

THERE IS NO QUESTION OF ELIGIBILITY.

>> CHIEF JUSTICE: ARE YOU GOING TO, AGAIN, ARE YOU SAVING ALL OF THE TIME FOR REBUTTAL OR

SINCE YOU'VE GOT ABOUT SEVEN MINUTES TOTAL LEFT?

>> I HOPEFULLY HAVE BEEN RESPONDING TO THE COURT'S QUESTIONS.

LET ME MAKE ONE POINT AND THEN YIELD.

I WILL RESPOND TO THE COURT'S QUESTIONS, BUT WHY IT IS SO IMPORTANT TO RESTORE THE SUBPOENA POWER, WHICH IS MY FIRST AND PRIMARY MISSION. MY SECOND IS TO AVOID THIS COURT ADDRESSING ISSUES WITHOUT A PROPER RECORD.

AND WHY IS THAT IMPORTANT? THE THIRD DISTRICT WAS TOLD NO LESS THAN FIVE TIMES IT WAS THAT JUDGE LEDERMAN WAS MEDDLING BECAUSE NO ONE ON BEHALF OF THIS CHILD HAD EVER APPLIED FOR CRISIS STATUS. FIVE TIMES, NEVER APPLIED, JUDGE LEDERMAN IS INTERMEDDLING.

THE THIRD DISTRICT APPARENTLY BELIEVED THAT WHEN THEY HEARD THAT OVER AND OVER AGAIN.

>> JUSTICE: AND THAT SEEMS TO BE GOING BEYOND THE NARROW ISSUE.

IF THE ISSUE IS SO NARROW, DOES THE JUDGE HAVE SUBPOENA POWER AND IF THAT INVOKES OUR JURISDICTION AS FAR AS IT AFFECTING A CLASS OF CONSTITUTIONAL OFFICERS THEN THAT GOES BEYOND THE PARTICULAR FACTS OF THE CASE, DO YOU HAVE THE POWER IN A DEPENDENCY CASE TO SUBPOENA THE DEPARTMENT FOR DOCUMENTS AND INFORMATION PERIOD?

>> YES, AND IT IS IMPORTANT BECAUSE WITHOUT THAT POWER YOU DON'T NECESSARILY GET THE CORRECT ANSWER, BECAUSE NOW WE'RE TOLD IN THE BRIEF BEFORE THIS COURT BY APD THAT THE CHILD DID, INDEED, APPLY FOR CRISIS STATUS AND WAS DENIED. WE'RE ALSO TOLD THAT MIRACULOUSLY WITHOUT BENEFIT OF RECORD THAT IN AUGUST SHORTLY

AFTER RECEIPT OF THIS SUBPOENA
THAT THIS CHILD IS GETTING
CARE.

I DON'T KNOW IF THAT IS TRUE OR
NOT.

>> JUSTICE: YOU ARE USING UP
ALL OF THE TIME.

>> I APPRECIATE THAT.

I THINK THAT THIS COURT, FIRST
JUDGE LEDERMAN AND THEN THE
THIRD DISTRICT AND PERHAPS
ULTIMATELY THIS COURT NEEDS TO
KNOW THE TRUTH OF THE MATTER
THAT COMES THROUGH THE SUBPOENA
POWER AND THAT IS WHAT SHOULD
BE REINSTATED BY THIS COURT SO
WE WILL KNOW THE ANSWERS TO THE
QUESTIONS.

THANK YOU.

>> CHIEF JUSTICE: I'M ASSUMING
THAT MR. BLECKE AGREED TO,
BECAUSE YOU WERE HERE ON
AMICUS, SO ARE YOU GOING TO
ADDRESS THE NARROW ISSUE WE'VE
BEEN DISCUSSING?

>> YES, I AM, YOUR HONOR, I'M
HERE NOT ONLY ON BEHALF OF THE
VARIOUS AMICAE BUT F.G., THE
YOUNGSTER WHOSE CASE BRINGS US
HERE.

THIS IS A VERY NARROW ISSUE.

>> CHIEF JUSTICE: SO YOU ARE
APPEARING ON BEHALF OF F.G.?

>> YES, AS FAR AS THE ARGUMENT.

>> JUSTICE: IS THERE A CASE
THAT YOU ALL CITED WHICH THIS
COURT TELLS WHERE THERE IS AN
ISSUE OF JURISDICTION OF A
CIRCUIT COURT JUDGE THAT THAT
COMES WITHIN THE CONSTITUTIONAL
BASIS FOR OUR JURISDICTION ON
THE POWERS OF THE CONSTITUTION?

>> YOUR HONOR, CANDIDLY I HAVE
NOT SEEN ONE.

THIS CASE IS BEFORE THIS COURT
ON REVIEW OF THE ORIGINAL
PROHIBITION PROCEEDING.

>> JUSTICE: IT SEEMS THAT'S A
ROUND-ABOUT WAY TO GET TO AN
ISSUE.

WE WOULD HAVE TO HAVE
SOMETHING.

>> AND FROM THE STANDPOINT OF YOUNGSTERS WE HAVE A SYSTEM IN WHICH ALL OF THE BRANCHES OF GOVERNMENT ARE SUPPOSED TO WORK TOGETHER TO PROVIDE FOR THE NEEDS OF OUR YOUNGSTERS IN THE STATE FOSTER CARE SYSTEM.

THIS WHOLE SYSTEM ONLY WORKS IF EVERYONE WORKS TOGETHER AND WHAT WE SEE HERE BY AN AGENCY THAT SAYS A JUDGE DOESN'T HAVE THE AUTHORITY TO SUBPOENA IT, TO PROVIDE INFORMATION, IS THE BEGINNING OF THE WHEELS COMING OFF THE WAGON TO THE POINT THE SYSTEM WILL BE TOTALLY DYSFUNCTIONAL.

IT IS NOT EASY KNOWING WHO HAS INFORMATION AT THIS POINT.

>> JUSTICE: CAN YOU GIVE US ANY MORE INSIGHT INTO THE GENESIS OF THIS CASE?

MR. BLECKE KEEPS TALKING ABOUT A DATE OF 2000 BUT THE CASE NUMBER IN THE CIRCUIT COURT, JUDGE LEDERMAN'S CASE IS A 2002 CASE NUMBER.

HOW WAS THAT FILED AND IN WHAT CONTEXT, DO YOU KNOW?

>> I REGRET TO SAY THAT I DO NOT.

I KNOW THERE WAS A SECOND DETERMINATION THAT F.G. WAS ELIGIBLE.

THAT WAS IN OCTOBER OF 2002, AND THAT WAS A FORM THAT HAD A LIST OF BOXES THAT COULD BE CHECKED TO INDICATE TO THE YOUNGSTER THE REASON THAT HE WAS BEING DENIED THE DISABILITY SERVICES AND THE ONLY BOX THAT WAS CHECKED AND THIS IS IN 2002 THAT THEY HAD A LACK OF FUNDING.

WE COULD SPECULATE THAT JUDGE LEDERMAN SAW NEWSPAPER STORIES LAST SUMMER ABOUT HOW APD HAD SURPLUS FUNDS THAT WERE BEING RETURNED AND FEDERAL MONIES WERE NOT BEING DRAWN DOWN BECAUSE APD WAS NOT SPENDING ITS MONEY.

I DON'T KNOW THE REASON BEHIND THE SUBPOENA.

I CAN ASSURE YOUR HONORS AS I SUSPECT EACH OF YOU ALREADY KNOWS, THAT IT IS ESSENTIAL THAT OUR FRONTLINE JUDICIARY HAVE ALL OF THE INFORMATION ESPECIALLY WHEN SOMETHING IS AS TIME SENSITIVE AS THE LIFE OF A CHILD.

>> JUSTICE: IT SEEMS TO ME THAT BECAUSE THE RECORD IS SO SPARSE IN THIS CASE IF WE DO ISSUE AN OPINION IT NEEDS TO BE PRETTY SHORT.

DOES A CIRCUIT JUDGE HAVE AUTHORITY TO ISSUE SUBPOENAS TO DEPARTMENT?

YES.

SEE RULE 8.225.

IT IS SO ORDERED.

>> YES, THE DEPARTMENT OR AGENCY OR ANYONE WHO HAS INFORMATION REGARDING A CHILD.

IT REALLY IS THAT NARROW AN ISSUE, AND YET THE RIPPLE EFFECT IS CRUCIAL TO THE FUNCTIONING OR THE ABILITY OF THE SYSTEM TO FUNCTION AND KEEP OUR CHILDREN SAFE.

WITHOUT INFORMATION JUDGES CAN'T MAKE PROPER DECISIONS OR MOVE KIDS TO PERMANENCY.

>> CHIEF JUSTICE: YOU AGREE THAT FOR EXAMPLE IF A DEPENDENCY JUDGE GOT FRUSTRATED AS THEY OFTEN DO BECAUSE WHETHER IT IS BUREAUCRACY, LACK OF FUNDING, THERE ARE MANY FACTORS, AND SUBPOENAED THE SECRETARY OF AN AGENCY, THAT THAT MIGHT IMPLICATE SOMETHING ELSE AND THAT'S AS FAR AS WHAT LEVEL EMPLOYEE THAT YOU ARE ASKING TO COME BEFORE THE COURT?

>> RIGHT.

AND I THINK THAT'S BEEN ADDRESSED IN THE BROOK CASE WHERE IT IS CLEAR THAT YOU DON'T START LIKE WITH THE SECRETARY KOHLER OR HIS COUNTERPART AND IN THIS CASE JUDGE LEDERMAN DIDN'T. IT LOOKED LIKE THE SUBPOENA WAS

DRAFTED IN ACCORDANCE WITH
BROOK WHERE THE COURT STARTED
WITH THE FRONT LINE PERSON,
MR.^PERRY AND THEN ADDED THE
OTHER TWO PERSONS KNOWN TO THE
COURT TO BE INVOLVED WITH APD
BUT GAVE THEM AN OUT TO
DESIGNATE THEIR OWN PERSON IF
IT WASN'T THE RIGHT ONE.

>> CHIEF JUSTICE: YOU MIGHT
WANT TO SAVE YOUR 40 SECONDS
FOR REBUTTAL.

>> I'LL DONATE MY 40 SECONDS ON
BEHALF OF ALL OF FLORIDA'S
CHILDREN TO MR.^BLECKE.
THANK YOU.

>> MAY IT PLEASE THE COURT,
I'LL CHARLES FAHLBUSCH, SENIOR
ASSISTANT ATTORNEY GENERAL FOR
THE AGENCY FOR PERSONS WITH
DISABILITIES.

>> CHIEF JUSTICE: DO YOU WANT
TO SPEAK UP A LITTLE BIT?

>> THIS CASE ISN'T ABOUT
WHETHER DEPENDENCY COURTS CAN
ISSUE INFORMATIONAL SUBPOENAS
TO PERSONS WHO HAPPEN TO BE
GOVERNMENT OFFICIALS.

>> JUSTICE: SO YOU AGREE ON
THAT ISSUE THAT THE COURT DOES
HAVE THE AUTHORITY TO ISSUE
SUBPOENAS TO GATHER INFORMATION
ABOUT WHAT CARE THIS CHILD IS
OR IS NOT RECEIVING AND
INQUIRE, YOU KNOW, INFORMATION?

>> ABSOLUTELY.

>> JUSTICE: YOU HAVE NO DISPUTE
ABOUT THAT?

>> ABSOLUTELY NOT.

>> JUSTICE: YOU'RE TAKING THIS,
I ASSUME THEN, AS MORE OF A
SHOW CAUSE ORDER.

THAT IS THAT YOU --

>> WELL, IT WAS CHARACTERIZED

--.

>> JUSTICE: IT WAS
CHARACTERIZED AS AN ORDER TO
SHOW CAUSE WHY YOUR AGENCY IS
NOT PROVIDING THESE SERVICES TO
THIS PARTICULAR CHILD.

>> IT WAS A SUBSTANTIVE SHOW
CAUSE ORDER, YES, YOUR HONOR.

>> JUSTICE: SO LONG AS THIS

COURT TREATS THE ISSUE AS AN INFORMATION-GATHERING SUBPOENA, THEN IS THE ISSUE REALLY THEN MOOT?

I TAKE IT YOUR AGENCY HAS NO OBJECTION TO PROVIDING INFORMATION PURSUANT TO SUBPOENA TO THE INQUIRIES OF A JUDGE THAT HAS JURISDICTION OVER THIS CHILD IN DEPENDENCY COURT?

>> THAT QUESTION WOULD BE SOMEWHAT OVERBROAD FOR US TO ANSWER YES TO.

>> JUSTICE: HOW ABOUT YOU ARTICULATING IN TERMS OF THAT?

>> OF COURSE, YOUR HONOR. WHAT THE DEPENDENCY COURT WAS SEEKING HERE AND WHAT THE THIRD DISTRICT BELIEVED WAS IMPROPER WHICH WE BELIEVE IS PROPERLY LAID FORTH IN ITS OPINION IS REQUIRING TESTIMONY ABOUT THE DELIBERATION PROCESS INVOLVED IN DECISIONS EXCLUSIVELY WITHIN EXECUTIVE DISCRETION.

>> JUSTICE: WHERE IS THE SUBPOENA IS THERE ANYTHING REQUIRING TESTIMONY ABOUT THAT?

THE ONLY POSSIBLE PHRASE IS TO PRODUCE OUR RECORDS AND THEN WHY THIS CHILD IS NOT RECEIVING SERVICES.

IT DOESN'T SAY THERE WHAT WERE YOUR DELIBERATIONS.

IT JUST SAYS TELL US WHY THE CHILD IS NOT RECEIVING SERVICES.

>> THAT WOULD APPEAR TO BE THE ABSOLUTE REASON WHY, SPECIFICALLY REQUEST FOR DELIBERATION.

IT WOULD BE SIMILAR, FOR EXAMPLE, TO SUBPOENAING A JUDGE WHO HAD MADE A CRIMINAL DECISION ON FINDING SOMEONE GUILTY AND SAYING OH, AND BRING ALL DOCUMENTS WITH YOU SAYING WHY YOU FOUND THIS PERSON GUILTY.

>> JUSTICE: WELL, HOLD ON. WHY NOT JUST APPEAR BEFORE THIS

JUDGE AND YOU ANSWER THE QUESTION WHY THE CHILD IS NOT RECEIVING SERVICES SAYING, WELL, YOUR HONOR, WE HAVE NOT BEEN ADEQUATELY FUNDED BY THE LEGISLATURE TO PROVIDE ALL SERVICES NECESSARY.

HE IS ON THE WAITING LIST AND WE'LL PLACE HIM AS SOON AS WE CAN AND JUST ANSWER THAT QUESTION?

HOW DOES THAT GO INTO THE DISCRETIONARY FUNCTION?

>> IF THAT WERE THE ANSWER, OF COURSE, IT WOULDN'T, YOUR HONOR.

THE FACT IS, OF COURSE, THE DEPENDENCY COURT WAS ABSOLUTELY AND COMPLETELY AWARE OF THAT AS IT WAS AWARE.

>> JUSTICE: HOW DO WE KNOW THAT FROM THE RECORD?

>> FROM THE RECORD WE CAN'T TELL YOU.

>> JUSTICE: AND ISN'T IT TRUE THAT THE SUBPOENA ISSUED AND THERE WAS NO ATTEMPT TO QUASH, NARROW OR DO ANYTHING ELSE WITH THE CIRCUIT JUDGE, YOU JUST TOOK IT TO THE DCA?

>> THAT'S CORRECT, YOUR HONOR.

THIS WAS ONE OF A NUMBER AS YOUR HONOR IS AWARE OF, SUBPOENAS.

>> CHIEF JUSTICE: AND THE THIRD DISTRICT OPINION SAYS SPECIFICALLY THE TRIAL COURT IS PROHIBITED FROM REQUIRING THE APPEARANCE OF THESE THREE INDIVIDUALS TO TESTIFY OR PRODUCE ANY AND ALL RECORDS CONCERNING F.G. IN REFERENCE TO HIS MID WAIVER STATUS AND SERVICES RENDERED.

END OF STORY.

IT DOESN'T SAY THAT THE SUBPOENA SHOULD BE NARROWED TO ONLY OBTAIN THE RECORDS AND INQUIRE INTO ITS STATUS.

IT IS A BROAD STATEMENT OF PROHIBITION THAT THE COURT LACKS THE CONSTITUTIONAL OR STATUTORY AUTHORITY.

>> REALLY, AND I THINK IT IS CLEAR, IT IS SUFFICIENTLY CLEAR FROM THE OPINION WHAT THE THIRD DISTRICT WAS FOCUSED ON WAS THAT THE COURT WAS REQUIRING RECORDS TO DETERMINE WHY APD HAD MADE THE DECISION THAT IT DID MAKE.

>> CHIEF JUSTICE: IT SAYS WHY THE SERVICES WERE NOT BEING RENDERED.

HOW COULD A JUDGE WHO IS CHARGED WITH INSURING THAT A CHILD WHO IS DEPENDENT IS RECEIVING PROPER SERVICES, HOW CAN YOU IN THIS VACUUM, AGAIN THAT WE ARE OPERATING IN, SAY THAT THEY ARE PREVENTED FROM INQUIRING AS TO SERVICES FOR THE CHILDREN THAT PROBABLY MOST NEEDED THOSE THAT ARE SEVERELY DISABLED?

>> WELL, THE SUBPOENA IS AMBIGUOUS AND THE QUESTION IS SOMEWHAT CONFUSING, BECAUSE AS EVERYONE HERE HAS ADMITTED THE CHILD WASN'T RECEIVING ANY SERVICES.

SO WHEN THE COURT REQUIRING THE APD TO PROVIDE ALL RECORDS WITH REGARD TO SERVICES RENDERED, WE KNOW THAT THE COURT AND ALL OF THE PARTIES WERE AWARE THAT NO SERVICES WERE BEING RENDERED, BECAUSE THE CHILD WAS ON THE WAITING LIST.

>> JUSTICE: WHAT IF THE COURT WAS CONTEMPLATING THAT, YOU KNOW, I'VE GOT LIMITED OPTIONS BUT I DO HAVE SOME OPTIONS, AND IN ORDER TO KNOW WHICH OPTION TO PICK TO BEST SUIT THIS CHILD'S NEEDS, I NEED TO KNOW WHETHER, WELL, NEXT WEEK THIS AGENCY IS GOING TO SAY, JUDGE, AND YOU KNOW NOW WE CAN TAKE THE CHILD IN AND WE CAN PROVIDE THESE SERVICES TO THE CHILD, AND WE KNOW YOU NEED TO KNOW THAT IN ORDER TO MAKE YOUR OTHER DECISIONS ABOUT WHAT TO DO WITH THE CHILD.

WHY WOULDN'T THAT JUST BE GOOD COMMON SENSE?

>> THAT'S INFORMATION THAT IS ABSOLUTELY AVAILABLE TO THE COURT.

IT IS AVAILABLE TO DCF, IT IS AVAILABLE TO THE PARENTS.

>> JUSTICE: BUT JUSTICE BELL HAS ASKED THEN WHY WOULDN'T THE APPROPRIATE WAY TO HANDLE THIS BE, JUDGE, WE'RE HAPPY TO GIVE YOU ANY INFORMATION THAT WE POSSIBLY CAN BUT NOW WHEN YOU GET TO THE POINT THAT YOU WANT TO TELL US WHAT TO DO WE THINK THERE IS A PROBLEM, AND SO WHAT DO YOU WANT TO KNOW?

WHY SHOULDN'T THAT BE THE ATTITUDE OF THE AGENCY?

>> WE CERTAINLY WOULD HAVE A BETTER RECORD IF THERE HAD BEEN AN OBJECTION OR A MOTION TO QUASH POINTING OUT THE PROBLEMS.

>> JUSTICE: IS THIS THE ATTITUDE OF THE AGENCY, THOUGH, NOW HERE?

THAT IS ARE YOU TELLING US WE WOULD BE HAPPY TO BE BEFORE THE JUDGE AND SAY, JUDGE, WHAT DO YOU NEED TO KNOW, WE'LL BE HAPPY TO TELL YOU, BUT WE DRAW A LINE WHEN YOU ARE DIRECTING US TO DO PARTICULAR THINGS THAT WE BELIEVE WE HAVE THE EXCLUSIVE AUTHORITY TO DO?

>> OR INQUIRING INTO OUR MENTAL AND DELIBERATIVE PROCESSES.

>> JUSTICE: BUT YOU ARE AGREEABLE TO PROVIDING ALL OF THE INFORMATION, IS THAT CORRECT?

>> ABSOLUTELY.

WITH REGARD TO FACTUAL INFORMATION, YOUR HONOR, WE HAVE ALWAYS BEEN AGREEABLE TO PROVIDE IT.

WE PROVIDE IT UPON REQUEST FROM THE COURT.

WE PROVIDE IT UPON REQUEST --.

>> JUSTICE: YOU DIDN'T SHOW UP PURSUANT TO THIS SUBPOENA AND SAID WHAT DO YOU WANT TO KNOW.

>> THAT COULD HAVE BEEN DONE

BUT WHAT THE COURT WAS DOING IS REQUIRING THE HIGHEST RANKING OFFICIALS OF THE AGENCY.

>> JUSTICE: HOW LONG ARE WE NOW BETWEEN THE TIME THAT THE SUBPOENA WAS ISSUED AND YOUR APPEARANCE HERE IN COURT?

>> A LITTLE OVER A YEAR.

>> CHIEF JUSTICE: JUSTICE LEWIS?

>> YOU KNOW, THE TROUBLESOME THING IS THAT IT WASN'T THE JUDGE NOR WAS IT THE CHILD THAT SELECTED THE REMEDY THAT THE AGENCY SELECTED AND THAT'S THE PROHIBITION, AND YOU ARE MAKING ALL KINDS OF ARGUMENTS IT SEEMS AND WE'RE HAVING DIFFICULTY DEALING WITH THAT IS THAT YOU ARE SEEKING TO PROHIBIT SOMETHING THAT DOESN'T EXIST AND IT JUST DIDN'T GO THE RIGHT WAY AND IT SEEMS TO BE A PROCEDURAL NIGHTMARE THAT NEITHER THE THIRD DISTRICT NOR DO WE KNOW REALLY WHAT IS GOING ON BECAUSE THE PROHIBITION IS SUCH A DRASTIC REMEDY TO JUST STOP.

HOW COULD PROHIBITION BE APPLICABLE UNDER A SITUATION WHERE THERE IS A SUBPOENA AND IT DIRECTS NOT THOSE PEOPLE BUT SOMEONE ELSE IF YOU DESIGNATE THEM, WHICH IS NOT YOU DON'T FIND THAT UNCOMMON IN THE LEGAL PRACTICE, DO YOU?

>> NO, CERTAINLY NOT.

>> JUSTICE: AND SO WHY SELECT THE REMEDY OF PROHIBITION, RATHER THAN FOLLOWING THROUGH AND DOING THIS IN THE APPROPRIATE, PROCEDURAL WAY?

>> TO ANSWER YOUR HONOR'S INQUIRY, WE WERE GETTING SUBPOENA AFTER SUBPOENA AFTER SUBPOENA.

>> JUSTICE: YOU UNDERSTAND WE CAN'T DEAL WITH THOSE OTHER ONES.

>> I UNDERSTAND WE WERE GETTING ORDERS TO PROVIDE SERVICES. WE WERE GETTING ORDERS TO SHOW CAUSE WHY WE SHOULDN'T BE HELD

IN CONTEMPT FOR FAILING TO PROVIDE SERVICES.

>> JUSTICE: MAYBE THAT SHOULD HAVE BEEN ONE OF THE OTHER CASES THEN. WE MUST DEAL WITH WHAT WE HAVE.

>> I UNDERSTAND, YOUR HONOR, BUT AS A RESULT APD FOUND ITSELF IN A POSITION RESPONDING TO SITUATION AFTER SITUATION AFTER SITUATION AND SO INSTEAD OF FILING A MOTION TO QUASH OR OBJECTION NOTING THAT WITH REGARD TO INFORMATIONAL PURPOSES CERTAINLY WE WOULD BE HAPPY TO PROVIDE BUT WITH REGARD TO DETERMINING THESE PERSONS OR DETERMINING WHY A DELIBERATIVE PROCESS WAS CONDUCTED THE WAY IT WAS WE DID HAVE AN OBJECTION AND IT WAS DONE THE WAY IT WAS BECAUSE OF THE AMOUNT OF TIME AND THE NUMBER OF CASES THAT WERE HAPPENING.

>> JUSTICE: DO YOU SEE HOW MUCH A CONCERN THE DECISION THAT THE THIRD DISTRICT HAS RENDERED IN THIS CASE WITH THAT SWEEPING LANGUAGE HOW DRASTICALLY THAT IMPACTS SO MANY THINGS. DO YOU RECOGNIZE THAT?

>> I DO PERCEIVE THAT, YES, YOUR HONOR.

>> JUSTICE: AND CERTAINLY WE RESPECT AND UNDERSTAND PROBLEMS IN OTHER CASES, BUT YOU MUST UNDERSTAND THAT PROHIBITION IS SUCH A DRASTIC REMEDY AND IN THIS CASE IT A VERY DIFFICULT HURDLE TO OVERCOME. DO YOU SEE THAT?

>> I DO UNDERSTAND THAT, YOUR HONOR. OF COURSE, IF THE ONLY THING THAT HAPPENS IS IT IS REVERSED, THEN THAT IS LIKELY TO BE TAKEN AS A GREEN LIGHT TO SAY JUDGES CAN INQUIRE INTO WHY PEOPLE AREN'T RECEIVING SERVICES, EVEN THOUGH THE DECISION ON WHETHER OR NOT THOSE SERVICES SHOULD BE PROVIDED IS A MATTER

EXCLUSIVELY WITHIN EXECUTIVE

--.

>> CHIEF JUSTICE: NOW, THE WHY IS DIFFERENT AND AGAIN THERE IS A LEVEL OF THE SWEEPING LANGUAGE, AND WHETHER THIS COURT WILL STOP AT THAT BECAUSE THE PROHIBITION WAS JUST AGAINST THE SUBPOENA GENERALLY, BUT LET'S MAKE SURE WE UNDERSTAND THAT WHY SOMEONE ISN'T RECEIVING SERVICES COULD BE THEY WEREN'T ELIGIBLE, THERE WASN'T INFORMATION PROVIDED OR IT COULD BE LACK OF FUNDING. THE DIFFICULT THING HERE IS THAT WE'VE GOT AN AGENCY NOW SEPARATE FROM DCF WHO WAS SORT OF STANDING IN AND SAYING THAT, WELL, NOW YOU CAN'T INQUIRE. OF COURSE THE COURT CAN ALWAYS INQUIRE OF DCF AS TO WHY SOMETHING IS NOT HAPPENING. THEY CAN'T ORDER THEM INTO A SPECIFIC PLACEMENT.

WHY AREN'T THOSE SAME STANDARDS OR WOULD YOU AGREE THAT WHATEVER THE SAME PARAMETERS HAVE ALWAYS BEEN WITH DCF IS WHAT A JUDGE CAN DO, SHOULD LIKEWISE APPLY TO THE AGENCY FOR PERSONS WITH DISABILITIES FOR CHILDREN THAT ARE IN UNDER CHAPTER 39, DO YOU UNDERSTAND WHAT I AM SAYING?

>> NOT EXACTLY, BUT I WILL DO ANY BEST TO ANSWER YOUR INQUIRY, JUSTICE.

I'M NOT SURE THAT WE DO -- THAT APD DOES STAND SPECIFICALLY IN THE SAME SHOES AS DCF DOES. WHAT ACCORDING TO THE J.M. CASE WHICH THIS COURT DENIED REVIEW OF LAST MONTH, THE DECISION OF WHETHER OR NOT TO PROVIDE SERVICES UNDER MED WAIVER IS EXCLUSIVELY WITHIN THE EXECUTIVE DISCRETION OF APD. NOW, IF THAT IS TRUE, BRINGING A SENIOR APD OFFICIAL INTO COURT UNDER CONTEMPT TO ANSWER THE QUESTION WHY AREN'T YOU PROVIDING SERVICES TO THAT CHILD WOULD CERTAINLY PURSUANT

TO THE BROOK CASE APPEAR TO BE VIOLATIVE OF THE SEPARATION WITH REGARD TO LIMITING INQUIRY INTO THE PROCESS.

>> JUSTICE: I WOULD ASSUME IF THIS COURT ISSUED A BRIEF OPINION WHICH IT LINED UP THE THIRD DISTRICT FIRST WITH LANGUAGE FROM BROOK, [INAUDIBLE].

>> I'M AFRAID TO WAIVE MY CLIENT'S RIGHTS BUT THAT SOUNDS APPROPRIATE, YES, JUSTICE WELLS.

OUR CONCERNS AS YOU HAVE POINTED OUT IS WITH REGARD TO OVERBROAD INQUIRIES WHICH GET INTO INQUIRING CONCERNING THAT.

>> JUSTICE: DOESN'T THIS PROCESS DEMAND THAT OVERBROAD INDIVIDUAL PROCESS BE DEALT WITH ON A CASE-BY-CASE BASIS? IT IS VERY DIFFICULT TO DEAL WITH A BROAD UMBRELLA BASIS.

>> THAT IS CERTAINLY CORRECT, YOUR HONOR.

>> JUSTICE: SO WHAT, IF YOU AGREE, AND YOU CAN TELL FROM THE QUESTIONS THAT IS BEING ANSWERED THAT THE COURT IS NOT COMFORTABLE WITH THE SCOPE OF THE THIRD DISTRICT'S OPINION, SO IF YOU AGREE THAT THAT OPINION IS PRETTY BROAD THEY DON'T EVEN SAY THE DISCRETION OF THE DEPARTMENT, THEY SAY THE AUTHORITY, ANYTHING WITHIN THE DEPARTMENT'S AUTHORITY.

SO IF YOU AGREE THAT THAT IS OVERBROAD, WHAT WOULD BE YOUR SUGGESTION AS TO THE SCOPE OF A CIRCUIT JUDGE'S SUBPOENA POWER UNDER THESE KINDS OF CIRCUMSTANCES?

WHAT LANGUAGE WOULD YOU SUGGEST TO THE COURT TO USE?

>> THE THIRD DISTRICT OPINION TO THE EXTENT THAT IT INFERS THAT CIRCUIT COURT DEPENDENCY JUDGES DON'T HAVE SUBPOENA POWER FOR INFORMATIONAL PURPOSES MAY BE OVERBROAD, BUT THAT NOTHING IN THE OPINION IS

TO BE CONSTRUED TO INDICATE THAT SUCH SUBPOENAS OR INFORMATIONAL REQUESTS MAY GO INTO THE DELIBERATION PROCESS FOR MATTERS EXCLUSIVELY WITHIN EXECUTIVE DISCRETION.

>> JUSTICE: WHAT DOES THAT MEAN?

DOES THAT MEAN THAT YOU CAN'T GET THE PIECE OF PAPER ON WHICH WHATEVER THE DECISION IS AS RECORDED AFTER THAT DELIBERATIVE PROCESS?

>> CERTAINLY NOT.

>> JUSTICE: WELL, YOU SEE THAT'S WHAT WE GET INTO WHEN WE START USING BROAD LANGUAGE WITHOUT REFERENCE TO FACTS IN CASES.

WOULD YOU NOT AGREE?

>> YES, YOUR HONOR.

>> JUSTICE: SO DON'T YOU THINK THAT PROBABLY WE NEED TO KNOW WHAT THE FACTS ARE AND WHAT THE QUESTIONS ARE AND WHAT THE INFORMATION IS THAT IS ON IT BEFORE WE CAN REALLY CRAFT FOR EITHER PARTY WHAT THE RULE SHOULD BE?

>> THAT MAY BE TRUE, BUT WE ARE FACED WITH THE SITUATION THAT WE HAVE AT THE MOMENT, YOUR HONOR, AND THE PROBLEM IS STILL HERE WITH AN OVERBROAD OPINION WHICH COULD BE LOOKED UPON AS A GREEN LIGHT TO SAY OH, WE CAN GO INTO EXECUTIVE DISCRETION. WE CAN SUBPOENA SENIOR AGENCY OFFICIALS TO COME BEFORE THE COURT AND WE CAN MAKE THEM EXPLAIN WHY THEY MADE THE DECISIONS THAT THEY MADE CONCERNING THE PROVISION OR NONPROVISION OF SERVICES.

>> JUSTICE: BUT IF YOU LOOK AT THE RESPONSE THAT THE JUDGE FILED IN THE LOWER COURT SHE SAID IT IS BEYOND PURVIEW THAT A CIRCUIT COURT JUDGE DOES NOT HAVE THE AUTHORITY TO CONTRAVENE THE INTERNAL WORKINGS OF A STATE AGENCY. THE RESPONSE TO THE THIRD DCA THE JUDGE SIMPLY SAYS I JUST

WANT TO KNOW WHAT IS HAPPENING.

WHY ISN'T THAT APPROPRIATE?
I MEAN WHY DIDN'T IT STOP AT
THAT POINT IF YOU UNDERSTOOD
WITHOUT EVER GOING TO THE JUDGE
AND ASKING WHAT'S THE SCOPE OF
THE SUBPOENA OR SEEKING TO
QUASH IT AND YOU GO DIRECTLY TO
THE DCA AND A RESPONSE FILED BY
THE JUDGE IS I DON'T WANT TO
GET INTO THE EXECUTIVE
DECISION-MAKING PROCESS.
I JUST WANT TO KNOW WHAT IS
HAPPENING.

WHY DIDN'T IT STOP THERE?
>> THE REASON IT DIDN'T STOP
THERE IS BECAUSE THAT WAS
INCONSISTENT WITH THE LANGUAGE
OF THE SUBPOENA OR AT LEAST THE
THIRD DISTRICT BELIEVED AND WE
BELIEVE WHERE WHAT THE COURT
WAS LOOKING FOR WAS WHY THIS
CHILD IS NOT RECEIVING
SERVICES.

>> JUSTICE: LET ME ASK YOU A
QUESTION ABOUT THE SUBPOENA.
YOU REFER TO THE FACT THAT THE
JUDGE CANNOT SUBPOENA SENIOR
OFFICIALS.

HOW DO YOU INTERPRET THE
LANGUAGE IN THE SUBPOENA THAT
IDENTIFIES THREE OFFICIALS BUT
THEN IN PARENTHESES SAYS OR
OTHER DESIGNATED PERSONS WHICH
SEEMS TO ALLOW THE AGENCY TO
DETERMINE FOR ITSELF WHO WILL
ANSWER THE SUBPOENA AND WHO
WILL ATTEND THE HEARING?

>> I UNDERSTAND YOUR CONCERN,
JUSTICE, BUT WHEN YOU COMBINE
THE FACT THAT THESE PERSONS ARE
NAMED WITH THE FACT THAT THE
SUBPOENA IDENTIFIES ALBEIT AS
RECORDS WHAT THE COURT WANTS TO
KNOW AS TO WHY THIS CHILD IS
NOT RECEIVING SERVICES,
OBVIOUSLY THIS ISN'T SOMETHING
THAT A RECORDS CUSTODIAN OR A
LOWER LEVEL PERSON IS GOING TO
BE AWARE OF.

>> JUSTICE: IT SEEMS TO ME FROM
READING THE SUBPOENA THAT THAT
LANGUAGE IS DESIGNED TO ELICIT

THE PERSON WITH THE MOST KNOWLEDGE ABOUT F.G. AND WHY F.G. IS NOT RECEIVING SERVICES.

WHETHER IT IS ONE OF THE THREE NAMED OR SOME OTHER PERSON IN THE AGENCY.

>> YES, YOUR HONOR, IT WAS DESIGNED TO REQUIRE THE ATTENDANCE OF THE PERSON WITH THE MOST KNOWLEDGE OF THE DELIBERATIVE PROCESS.

>> JUSTICE: I DON'T SEE THE WORD DELIBERATIVE ANYWHERE IN THE SUBPOENA OR ANYWHERE ELSE, ANY HEARING, ANY TRANSCRIPT. I DON'T KNOW WHERE YOU ARE GETTING THAT LANGUAGE DELIBERATIVE FROM.

>> I UNDERSTAND BUT WE ARE INFERRING IT FROM THE WORD WHY.

WHEN SOMEONE WANTS TO KNOW WHY A DECISION WAS MADE, THAT WOULD SEEM BY VERY STRONG INFERENCE TO BE AN INQUIRY WITH REGARD TO THE DELIBERATIVE PROCESS.

>> CHIEF JUSTICE: LET'S GO BACK AGAIN TO WHAT I JUST SAID WHICH IS WHY IS INFORMATIONAL, WHY IS THERE IS NO FUNDING, WHY IS THAT HE DIDN'T MEET THE CRITERIA, WHY IS THAT WE DIDN'T HAVE ENOUGH MEDICAL INFORMATION, WHY MIGHT BE HE DIDN'T FILL OUT THIS FORM. NONE OF THAT GOES INTO SOMEBODY'S INSIDE THEIR HEAD AS TO THE GREATER ISSUE OF WE WERE MAKING OR EVEN SAYING WE HAD ONLY THIS MUCH MONEY. WE COULDN'T SPEND IT ON THIS CHILD.

WHERE IS THAT AGAIN INTERFERING WITH THE DELIBERATIVE PROCESS OF AN EXECUTIVE BRANCH AGENCY WHEN THE COURT IS GIVEN THE EXPLICIT AUTHORITY BY THE LEGISLATURE AGAIN TO BE RESPONSIBLE FOR THE BEST INTERESTS OF CHILDREN IN THE DEPENDENCY SYSTEM.

>> THAT WOULDN'T BE, JUSTICE. IF WHAT THE COURT WAS SEEKING

WAS NOW INFORMATIONAL INFORMATION OF A FACTUAL NATURE, WE HAD EVERY REASON TO BELIEVE, OF COURSE, WITH REGARD TO THE INFORMATION THAT YOUR HONOR HAS POINTED OUT THAT THE COURT WAS AWARE OF OUR FINANCIAL STATUS AND WAS AWARE HE WAS ON A WAITING LIST. HE WAS AWARE THAT HE HAD PREVIOUSLY PROVIDED FOR -- APPLIED FOR CRISIS STATUS AND BEEN DENIED.

THAT WAS AVAILABLE TO DCF. THERE WAS NO MYSTERY WITH REGARD TO THAT AND SINCE WE KNEW THAT THAT INFORMATION WAS AVAILABLE IT SEEMED A REASONABLE INTERPRETATION OF THE SUBPOENA THAT WHAT THE COURT WAS REALLY SEEKING WASN'T NARROW INFORMATIONAL FACTUAL MATTERS AT ALL, BUT INFORMATION WITH REGARD TO THE PROCESS.

>> JUSTICE: SINCE WE ARE IN A VACUUM LET'S ASSUME LIKE JUSTICE ANSTEAD SAID, LET'S ASSUME THERE IS A RELATIVE OUT OF STATE THAT'S WILLING TO TAKE THIS CHILD BECAUSE ANOTHER STATE CAN PROVIDE THESE SERVICES AND BEFORE THE JUDGE CAN MAKE THE DETERMINATION TO CHANGE PLACEMENT THEY HAVE TO GET A CLEAR DETERMINATION FROM THE DEPARTMENT THAT HAVE THE DEPARTMENT COME BEFORE THE COURT AND SAID YOUR HONOR WE WOULD LOVE TO PROVIDE THE SERVICES THAT THE CHILD IS ELIGIBLE.

WE SIMPLY DON'T HAVE SPACE OR FUNDING AND WE DON'T ANTICIPATE THIS CHILD BEING PLACED FOR ANOTHER TWO YEARS, AND IF THAT INFORMATION IS PROVIDED TO THE JUDGE THE JUDGE IS THEN ABLE TO DETERMINE WHETHER OR NOT PLACING THE CHILD IN ANOTHER STATE WITH A RELATIVE OR WHATEVER THAT MAY HAVE THOSE SERVICES IS APPROPRIATE, BUT BY YOU NOT BEING ABLE TO COME BEFORE THE JUDGE OR BEING

UNWILLING TO COME TO THE JUDGE
AND GIVE THAT JUDGE THAT
INFORMATION THE JUDGE CAN'T
MAKE THAT DETERMINATION.
>> I UNDERSTAND, AND IF THAT'S
WHAT THE JUDGE WAS SEEKING THAT
CERTAINLY WOULD BE APPROPRIATE.

>> CHIEF JUSTICE: AND WITH
THAT, WE HAVE WITH OUR HELP YOU
HAVE GONE OVER YOUR TIME.
WE APPRECIATE THE CANDOR OR THE
CONCESSIONS.

WE CAN ALSO APPRECIATE THAT
THIS MAY BE, THERE MIGHT BE
MUCH MORE TO THIS STORY BUT WE
DON'T HAVE IT IN FRONT OF US,
AND SO IN THAT WAY WE
APPRECIATE YOUR AT LEAST
AGREEING THAT THE THIRD
DISTRICT COULD BE READ AS BEING
EXTREMELY OVERBROAD.
THANK YOU VERY MUCH.

>> THANK YOU, YOUR HONOR.
>> IF I MAY, COUNSEL WANTS A
RESTRICTION.
EVEN THE BROOK CASE RESTRICTS

--.

>> JUSTICE: LET ME ASK YOU
ABOUT THE SUBPOENA.
ASSUMING THEY GO AND TESTIFY
AND THE JUDGE ASKS A QUESTION
AT THE HEARING ABOUT THE
DELIBERATIVE PROCESS, HOW DOES
THE AGENCY SEEK RELIEF IF THE
JUDGE IS ORDERING AN OFFICIAL
TO TESTIFY ABOUT THAT SUBJECT?

>> I WOULD IMAGINE THE SAME WAY
ANY QUESTION THAT'S EVER ASKED
IN ANY COURT PROCEEDING.
THERE IS AN OBJECTION MADE.
IT IS EITHER SUSTAINED OR
OVERRULED.

>> JUSTICE: THAT'S THE POINT
HERE.
IT IS NOT THE ATTORNEY WHO IS
ASKING THE QUESTION.
IT IS THE JUDGE SO THE JUDGE
WOULD BE IN THE POSITION OF
SUSTAINING HER OWN OBJECTION OR
OF SUSTAINING AN OBJECTION TO
HER OWN QUESTION.
>> THEY COULD ASK TO SUSPEND

THE PROCEEDINGS TO GET A RULING
ON THE COURT'S DECISION.

THESE ARE ALL QUESTIONS THAT
ARE CASE SPECIFIC, QUESTION
SPECIFIC, FACT SPECIFIC, AND
I'LL GO BACK TO THE BROOK CASE
AS AN EXAMPLE.

IN BROOK, SECRETARY PULLER WAS
SUBPOENAED.

THE COURT HAD THAT SUBPOENA
POWER.

THE DISTRICT COURT SIMPLY HELD
THAT THE COURT ABUSED ITS
DISCRETION IN THAT CASE,
BECAUSE OF THE FACTS SPECIFIC
TO THAT CASE.

MY CONCERN IS THAT IN
RECOGNIZING THE SUBPOENA POWER
YOU MAY SAY SOMETHING IN THE
ABSTRACT, SOME BROAD LANGUAGE.

THIS IS TO MAKE THE SAME
MISTAKE THE THIRD DISTRICT IS
WHICH IS ISSUE SOME STATEMENT
OR PROCLAMATION THAT WILL NOT
BE THE RIGHT ANSWER IN A FACT
SPECIFIC CASE, SO I SAY TO THIS
COURT, YES, IT IS A GREEN
LIGHT.

THEY HAVE THE SUBPOENA POWER,
IT CAN BE ABUSED AND IF IT IS
ABUSED YOU START AT THE TRIAL
COURT LEVEL AND WORK YOUR WAY
UP.

YOU DON'T READ THAT HERE.

THERE IS A QUESTION FROM THE
COURT THAT I DIDN'T APPRECIATE
AND THAT HAD TO DO WITH
JURISDICTIONAL QUESTION.

I THINK THE JURISDICTIONAL
QUESTION IS ANSWERED BY THE
CASE OF STATE VERSUS WOOD.

IT IS CITED IN THE
JURISDICTIONAL BRIEF.

THAT INVOLVED A CLASS OF
CONSTITUTIONAL OFFICERS, THE
CIRCUIT COURT JUDGES.

IT HAD TO DO WITH THE WRIT OF
DENOVIS.

ANOTHER QUESTION FROM THIS
COURT ON THIS ASPECT FROM 327
SOUTHERN 2D 3.

THERE THIS COURT REVIEWED THE
CLERK'S ABILITY OR INABILITY TO

ISSUE SUBPOENAS.

I THINK THOSE TWO CASES ARE THE TWO CLOSEST THAT COME ON POINT JURISDICTIONALLY AND GIVES THIS COURT ITS JURISDICTION AND UNLESS THERE ARE ANY OTHER QUESTIONS OF MYSELF OR MISS GIEVERS I URGE REVERSAL OF THE THIRD DISTRICT DECISION AND RESTATEMENT OF THE SUBPOENA.

>> CHIEF JUSTICE: THANK YOU TO EVERYONE, AND AGAIN THE COURT WILL ACT EXPEDITIOUSLY BUT HOPES THAT ANYTHING WE'VE DONE HAS NOT DELAYED ANY CHILD'S WELFARE AND THAT'S IN THE END WE HOPE THAT NOTHING IS UNNECESSARILY IN ABEYANCE AND IF THERE IS ANY WAY TO WORK ANY OF THESE OTHER ISSUES OUT AMONG YOURSELVES THAT IS WHAT WE HAVE ALL HAVE TO BEAR IN MIND SO I HOPE THAT YOU BRING THAT MESSAGE BACK TO THE AGENCY. THANK YOU VERY MUCH.