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G.S. v. T.B.

SC07-2370

THE NEXT CASE THIS MORNING IS
G.S. v. T.B.

>> MAY IT PLEASE, THE COURT,
BRIAN GOWDY ON BEHALF OF THE
PETITIONERS G.S. AND B.S.
REFERRED TO AS THE MATERNAL
GRANDPARENTS.

WITH ME IS MADONNA FINNY OF THE
ADOPTION COUNSEL WHO HAS FILED
AN AMICUS BRIEF.

I WILL BE DOING ALL THE
ARGUMENT AND I AM PREPARED TO
ANSWER ALL QUESTIONS ON BOTH
BRIEFS FILED.

>> ARE THESE CHILDREN, THEY ARE
STILL LIVING WITH THE MATERNAL
GRANDPARENTS AND THERE'S BEEN
VISITATION GOING ON WITH THE, I
KNOW THE PATERNAL GRANDPARENTS?

>> YES, YOUR HONOR.

>> I MEAN, IT'S JUST, YOU KNOW,
IN THESE CASES TAKE THIS LONG,
IT IS QUITE DISSTRESSING AT
LEAST TO ME THAT WHATEVER IS
HAPPENING WE HAVE GOT A,
CHILDREN THAT, YOU KNOW, NEEDS
SOME FORM OF FINALITY.

>> YES, YOUR HONOR, I WOULD
AGREE WHOLEHEARTEDLY AND THAT
GOES TO ONE OF THE ISSUES --

>> HAVE WE, IF WE LOOK IT HAD
TRIAL COURT RECORD, WOULD THERE
BE EVIDENCE THAT THERE WERE
CONTINUING HEARINGS BY THE
TRIAL COURT ON ISSUES OF
VISITATION OR THE LIVES OF
THESE CHILDREN?

>> YOU WOULDN'T SEE IT IN THE
RECORD, YOUR HONOR.

BUT THE, THE JUDGMENT WAS
ENTERED IN SEPTEMBER OF 2006.

WE'RE NOW IN MARCH OF 2008.

AND THAT WOULD -- I'D REPRESENT

TO THE COURT THERE HAS BEEN --
I KNOW AT LEAST OF, AT LEAST
ONE HEARING SINCE THEN AND
THERE MAY HAVE BEEN OTHERS.
I'M NOT THE TRIAL COUNSEL, SO I
AM NOT FAMILIAR WITH WHAT'S
BEEN GOING ON.

>> WELL I -- FOR MY, MY FIRST
INTEREST IS THESE CHILDREN.
AND SO, AND I'M SURE THAT'S
YOURS TOO, SO LET'S, I GUESS,
GET TO THE --

>> LET ME ASK ONE MORE SORT OF
BACKGROUND QUESTION, AND THAT,
THAT IS, I NOTE THAT THE TRIAL
COURT SET UP A LEGAL
GUARDIANSHIP THAT IS ARE THERE
ASSETS INDEPENDENT OF THE
CHILDREN THAT THE GRANDPARENTS
HAVE?

>> YOUR HONOR, THAT IS NOT
REFLECTED IN THE RECORD.
IF YOU WOULD LIKE ME TO TELL
YOU ABOUT THINGS OUTSIDE OF THE
RECORD, I WILL BUT I WOULD BE
REALLY HESITANT TO DO THAT
UNLESS THE COURT WERE TO
INSTRUCTED ME --

>> I DON'T THINK THERE IS
ANYTHING WE CAN GO BEYOND THAT
UNLESS WE DO A SUPPLEMENTAL
CASE.

>> AND I DON'T THINK IT'S
PERTINENT.

>> OKAY BUT THERE IS NOTHING IN
THE RECORD AS TO ANY ASSETS.

>> NO, THERE IS NOT, YOUR
HONOR.

>> WELL, ISN'T THERE SOMETHING
IN THE RECORD, IS THERE NOT,
ABOUT THE POTENTIAL CASES
ARISING OUT OF THE DEATHS OF
THE FATHER, FOR INSTANCE.

>> THERE'S ONE REFERENCE --

>> REFERENCE TO POTENTIAL
ASSETS THAT THE CHILD MAY BE
ENTITLED TO, IS THAT CORRECT?

>> THERE IS ONE REFERENCE AT A
NONEVIDENTIARY HEARING WITH
JUST THE LAWYERS PRESENT AND
THE TRIAL JUDGE WHERE THERE IS
A MENTION OF THE LAWSUIT FROM
THE MOTHER'S ESTATE, BUT NOT
FROM THE FATHER.

>> BUT THERE IS NOTHING THAT SHOWS THAT EITHER GRANDPARENT WAS TRYING TO GET SOMETHING IN THIS CASE SO THEY COULD GET THE MONEY.

>> NO, YOUR HONOR, I DON'T THINK THAT'S THE ISSUE AT L. I THINK WHAT YOU HAVE HERE IS, YOU HAVE TWO SETS OF LOVING GRANDPARENTS, BOTH, BOTH OF THEM WHO WANT TO BE INVOLVED IN THE, IN THE CHILDREN'S LIVES, BUT MY CLIENTS ARE THE ONLY ONES THAT SOUGHT TO ADOPT AND TO TAKE ON THE RESPONSIBILITIES OF PARENTHOOD.

AND OUR POSITION IS THAT UNDER THE, UNDER THE DIRECTIONS AND THE POLICIES OF THE LEGISLATURES COUPLED WITH THE CASE LAW OF THIS COURT, THERE IS THE PREEMINENCE FOR A PERMANENT, STABLE, FAMILY LIFE THAT ONLY ADOPTION CAN PROVIDE.

>> WHY -- WE'LL GO THROUGH THERE.

THERE'S SEVERAL THERE.

>> ORDINARILY, WHEN THE LEGISLATURE PASS AS LEGISLATIVE SCHEME, YOU KNOW, THEY HAVE A PARTICULAR PARADIGM OR MODEL IN MIND.

AND SO, AND I QUESTION WHETHER OR NOT IT WAS THIS PARADIGM THAT THEY HAD IN MIND WHEN OF COURSE THERE IS THE PREFERENCE FOR PERMANENT ADOPTION SO THAT CHILDREN ARE NOT LINGERING, YOU KNOW, OUT THERE.

BUT THE ORDINARY PARADIGM IS WHERE THE NATURAL PARENTS, FOR INSTANCE, GIVE THE UP FOR ADOPTION OR NO LONGER HAVE AN INTEREST IN THE CHILD.

IT'S NOT A SITUATION YOU KNOW, THAT WE'RE FACING HERE SO WHY DID THE LEGISLATURE ALSO IN STATING ITS PREFERENCES, AS APPEARED TO GIVE A GREAT DEAL OF FLEXIBILITY TO, TO TRIAL COURTS IN LOOKING OUT FOR THE BEST INTEREST OF A CHILD.

WHY HASN'T THE TRIAL COURT HERE OUT OF CONCERNS FOR THE BEST

INTERESTS OF THE CHILDREN, GOT IT RIGHT?

THAT IS REALLY EVERYBODY'S BEST INTERESTS ARE GOING TO BE BEST SERVED BY HAVING MORE OR LESS PERMANENT CUSTODY GRANTED TO THE ONE SET OF GRANDPARENTS. BUT WITH REALLY, IN THIS CASE, LIBERAL VISITATION RIGHTS TO THE OTHER SETS OF GRANDPARENTS WHO DID NOT SEEK ADOPTION. AND SO WHY HASN'T THIS -- THE TRIAL COURT UNDER THE STATUTORY SCHEME HAS FLEXIBILITY AND WHY DIDN'T THE TRIAL COURT, IN THIS CASE, GET IT RIGHT.

>> WELL, THE SHORT ANSWER IS, THESE CHILDREN NEED PARENTS AND THE --

>> ARE YOU SAYING THEY ARE GOING TO HAVE ANY, THAT THE GRANDPARENTS HERE THAT NOW HAVE PERMANENT CUSTODY, OF THE, IN THIS INSTANCE, ARE GOING TO ACT ANY DIFFERENTLY OR HAVE ANY LESS INTEREST IN THE WELL-BEING OF THESE CHILDREN BECAUSE OF THE, OF THE WORD ADOPTION AS OPPOSED TO CUSTODY?

>> I'M SAYING THESE PARENTS DON'T HAVE THE SAME AUTHORITY UNDER THE LAW AND THEY DON'T HAVE THE SAME RESPONSIBILITIES.

>> ONE OF THE AUTHORITIES THE TRIAL COURT WAS CONCERNED WITH WAS THE AUTHORITY TO CUT OFF VISITATION, THAT IS THAT IF THEY BECOME JUST AS, YOU KNOW, THE NATURAL PARENTS WOULD BECOME, THEY BECOME THE LEGAL PARENTS THEN THEY MIGHT HAVE THE RIGHT IN THE FUTURE TO MOVE AWAY AND TO NOT GRANT ANY VISITATION RIGHTS TO THE OTHER GRANDPARENTS.

SO AGAIN, WHERE IS THE,, THE REALLY THE, WEAK LINK IN WHAT THE TRIAL JUDGE HAS DONE?

>> THE -- WELL, AND FIRST, IT'S A MISNOMER TO SAY THAT THEY'RE CUTTING OFF VISITATION RIGHTS.

>> WELL, I'M NOT SAYING THAT THEY ARE, I'M SAYING THE POTENTIAL.

OH, I AGREE, DO NOT LEGALLY.

>> I MEANT AS A FACTUAL MATTER.

NOT A LEGAL MATTER.

NONE OF THE GRANDPARENTS HAVE A LEGAL RIGHT TO VISITATION AS A LEGAL MATTER BEFORE OR AFTER THE NATURAL PARENTS DIED.

>> BUT AT THE SAME TIME, THE CUSTODY ARRANGEMENTS THAT THE TRIAL COURT HAS ORDER, OKAY.

>> THAT'S THE ONLY GROUND IS THAT THE TRIAL JUDGE DEvised TO THE GUARDIANSHIP.

>> YOUR PARENTS WOULD HAVE THE LEGAL RIGHT TO CUT OFF VISITATION WITH THE OTHER SET OF GRANDPARENTS, IS THAT CORRECT?

>> THE -- MY CLIENT --

>> IF YOU WERE GRANTED A LEGAL ADOPTION.

>> MY CLIENTS WOULD HAVE THE RIGHT TO DETERMINE WHO VISITED THE CHILDREN, INCLUDING THE PATERNAL GRANDPARENTS AS WELL AS ANYBODY ELSE.

>> THANK YOU FOR THAT DIRECT ANSWER.

JUSTICE CANTERO HAD A QUESTION. WE ARE GOING TO HAVE TO DO THIS.

>> I'M SORRY.

I'LL GO WHEREVER THE COURT WANTS ME.

>> WELL, WE HAVE SEVERAL QUESTIONS.

THIS IS A VERY SERIOUS CASE.

>> YES, YOUR HONOR.

YES, YOUR HONOR, OF COURSE.

IT SEEMS TO ME THAT THIS QUESTION IS REALLY ONLY ONE OF GREAT PUBLIC IMPORTANCE.

IF WE LOOK AT THINGS MORE BROADLY THAN WHETHER THIS SPECIFIC ORDER WAS AN ABUSE OF DISCRETION.

OTHERWISE, IT'S JUST A VERY FACT SPECIFIC ISSUE THAT MAY NOT COME UP AGAIN, AND TO ME THE BROAD QUESTION IS IN CASES AND JUST TO USE AN EXAMPLE, I HAVE A LARGE EXTENDED FAMILY, AND GOD FORBID THAT MY CHILDREN'S PARENTS SHOULD DIE,

THEY HAVE AUNTS AND UNCLES AND GRANDPARENTS AND GREAT GRANDPARENTS THAT COULD TAKE CARE OF THEM, AND ALL THANK GOD, ALL LOVE THEM AND WOULD WANT TO TAKE CARE OF THEM.

IS IT YOUR POSITION THAT THE LAW REQUIRES IN SUCH A CASE THAT THE COURT PICK OUT ONE OF THOSE SETS OF LOVING RELATIVES TO BE THE ADOPTIVE PARENT AND THAT A COURT ABUSES ITS DISCRETION WHEN IT SAYS I'M NOT GOING TO PICK ANYBODY.

WE HAVE A LOT OF LOVING PEOPLE HERE WHO ARE GOING TO HAVE THEM RAISED BY THESE BUT WE ARE NOT GOING TO GO THROUGH THAT FORMAL PROCESS OF AN ADOPTION TO MAKE THESE PEOPLE NECESSARILY NOW THE PARENTS UNDER THE LAW.

THEY ARE GOING TO BE RAISED BY THESE PEOPLE, BUT IT'S STILL THE FAMILY AND WE'RE GOING TO KEEP IT THE WAY IT WAS.

AND WE'RE NOT GOING TO LEGALLY CHANGE IT.

WHY IS IN THE BROAD SENSE, THAT KIND OF ORDER AN ABUSE OF DISCRETION IF THE JUDGE FINDS THAT THAT WOULD BE IN THE BEST INTEREST OF THE CHILD?

>> BECAUSE WITHOUT PARENTAL AUTHORITY, AND RESPONSIBILITY, THE CHILDREN WILL BE MISSING TWO -- THERE'LL BE TWO DEFICIENCIES.

FIRST, WITHOUT PARENTAL AUTHORITY, THE, THE GUARDIANS' DECISIONS WILL ALWAYS BE SUBJECT TO COURT REVIEW.

WHICH I THINK IS BAD POLICY.

AND THERE WILL BE MANY DIFFERENT TRIAL JUDGES WHO WILL SUPERVISE THIS GUARDIANSHIP IN YOUR HYPOTHETICAL OR IN, IN THE CASE THAT WE'RE HERE BEFORE, OVER THE YEARS.

AND SOMEBODY NEEDS TO BE APPOINTED THAT'S A PARENT, NOT A JUDGE TO HAVE THE AUTHORITY TO MAKE PARENTAL DECISIONS WITHOUT BEING SUBJECTED TO JUDICIAL SUPERVISION.

NUMBER ONE --

>> GO AHEAD AND LET HIM FINISH.

>> DOESN'T THE LAW, PERMIT THE
GUARDIAN DISCRETION IN RAISING
THE CHILD.

>> SUBJECT TO COURT
SUPERVISION.

AND SUBJECT TO THE PUTERNAL
GRANDPARENTS IN OUR IN OUR CASE
COMING BACK AND CHALLENGING
DECISIONS ABOUT SCHOOL, WHERE
THEY GO TO CHURCH.

>> BUT, AGAIN, IF WE ARE
LOOKING AT IT IN THE BROAD
SENSE, DON'T WE NEED AT LEAST
EVIDENCE THAT, THAT THOSE
CHALLENGES ARE GOING TO OCCUR
OR ALREADY HAVE OCCURRED TO
JUST SAY AS A MATTER OF LAW
WE'RE GOING TO ALWAYS ADOPT
VERSUS GUARDIANSHIP.

>> I DON'T, I DON'T THINK SO
BECAUSE OF WHAT JUSTICE
PARIENTE STARTED OFF HERE WITH,
IF WE, IF WE WAIT UNTIL ALL
THESE CHANGES OCCUR, HALF THE
CHILDREN'S CHILDHOOD WOULD BE
OVER BEFORE, BEFORE WE GET A
RESOLUTION.

THEY NEED TO HAVE PARENTS NOW.
AND THE FACT THAT WE'RE GOING
TO WAIT TO SEE IF THERE'S
FURTHER LITIGATION TO DECIDE
THAT IT WOULD BE A MISTAKE.
AND TO TIED INTO THAT, I WANT
TO ANSWER JUSTICE BELL'S
QUESTION.

AND IT TIES INTO MY SECOND
QUESTION IT TIE UNDER TO
PARENTAL RESPONSIBILITY.
MY CLIENTS ARE GOOD PEOPLE WHO
ARE GOING TO TAKE CARE OF THESE
CHILDREN BURT GUARDIANS THEY
DON'T -- THEY CAN JUST WALK
AWAY.

THEY CAN SAY I DON'T WANT TO
TAKE CARE OF THIS CHILD
ANYMORE.

I DON'T WANT TO PAY CHILD
SUPPORT IF THERE'S A DIVORCE.
I DON'T WANT TO HAVE ANY OF
THESE RESPONSIBILITIES.

I'M DONE.

PARENTS CAN DO THAT.

WE CHARGE PARENTS WITH A LIFE-LONG OR AT LEAST UNTIL THEY'RE 18, RESPONSIBILITY OF TAKING CARE, AND THESE CHILDREN IN THIS CASE DON'T HAVE THAT.

>> JUSTICE BELL, YOUR QUESTION.

>> EXPLAIN YOUR POLICY CONSIDERATIONS IN LIGHT OF THE STATUTORY PROVISIONS IN CHAPTER 39 THAT PROVIDE FOR THE COURT TO MAKE A PERMANENT GUARDIANSHIP OF A DEPENDENT CHILD.

>> WELL, I THINK THE PREFERENCE THOUGH IN THAT STATUTE IS FOR ADOPTION FIRST, AND THEN A PERMANENT GUARDIANSHIP SO THE LEGISLATURE'S CLEARLY SAID THAT ADOPTION IS PREFERRED, IS PREFERRED IN CHAPTER 39.

>> AND THAT'S LEFT TO THE DISCRETION OF THE COURTS.

>> IT, IT, WELL, NO, I THINK --

>> ISN'T THE STATE THE REASONS WHY A PERMANENT GUARDIAN IS BEING ESTABLISHED INSTEAD OF AN ADOPTION, SO ALL THE STATUTE REQUIRES IS THE TRIAL JUDGE TO STATE THE REASONS, AND AS LONG AS IT'S NOT AN ABUSIVE DISCRETION AND IT'S REASONABLE, THE STATUTE SEEMS TO IMPLY THAT PERMANENT GUARDIANSHIPS ARE APPROPRIATE AND THERE MAY BE SITUATION WHERE THAT IS THE CASE.

>> LIKE WHAT?

>> I THINK, FOR EXAMPLE, IF YOU HAD A CHILD WHO WAS CONSIDERABLY OLDER THAN THESE CHILDREN, YOU, IT MAY BE SOME GROUNDS THAT YOU WOULD WANT TO HAVE A PERMANENT GUARDIANSHIP BECAUSE, BECAUSE THE CHILD -- OR, I SHOULD SAY -- AND I SHOULD COUPLE THAT WITH THE FACT THAT THERE WAS SOMETHING THAT DISQUALIFIED A READY AND WILLING GUARDIAN FROM TAKING CUSTODY. DISQUALIFIED THAT PERSON FROM ADOPTING. BUT IN THIS CASE, THERE'S ONLY ONE GROUNDS --

>> PROVISION SAYS THAT THE PERMANENT GUARDIAN HAS TO BE SUITABLE AND ABLE TO PROVIDE THE HOME.

ET CETERA.

>> RIGHT BUT THERE MAY BE A SEPARATE.

-- THERE'S DIFFERENT DETERMINATIONS.

>> SO THERE'S A LOT OF FACTUAL DETERMINATIONS A TRIAL JUDGE NEEDS TO MAKE IN EACH AND EVERY CIRCUMSTANCE.

>> CORRECT.

BUT IN THIS CASE IT'S A VERY, IT'S A GOOD CASE FOR THIS COURT TO LOOK AT BECAUSE IT'S CLEAR THAT THIS TRIAL JUDGE RELIED ON A SINGLE FACT.

AND THAT WAS HIS DETERMINATION THAT WAS IN THE BEST INTEREST TO MAINTAIN NONPARENTAL RELATIONSHIPS.

>> LET ME ASK THE QUESTION. THE STANDARD FOR OUR REVIEW IS WHAT.

>> ABUSIVE DISCRETION.

>> IT'S A VERY DIFFICULT BURDEN TO EN TO SUSTAIN AND IS THERE ANY PLACE IN THE STATUTE THAT SAYS A TRIAL COURT FACING A PETITION SIT AS YOU FILE CANNOT, CANNOT, -- SITUATION AS YOU FILE CANNOT OBTAIN GUARDIANSHIP AND MUST PURSUE ADOPTION.

>> NO, THERE IS NO LANGUAGE IN THE STATUTE.

I WOULD SAY THE STATUTORY SCHEME UNDER CHAPTER 63 IS A LITTLE BIT LIKE CONSTITUTIONAL PROVISION YOU LOOK AT.

BEST INTEREST IS SIMILAR TO DUE PROCESS.

IT'S A BROADLY WORDED CONCEPT WHICH THE, THAT THE COURTS NEED TO PUT BOUNDARIES ON IN, IN THE TRIAL JUDGES, THE APPELLATE COURTS NEEDS TO PUT BOUNDARIES ON A TRIAL JUDGE'S DISCRETION.

I CONCEDE THAT THE TRIAL JUDGE HAS BROAD DISCRETION.

BUT, BUT HE CANNOT, THE SOLE REASON HERE WAS, AND IT'S

CLEAR, I'D ENCOURAGE THE COURT TO READ THE MARCH 16th POST-TRIAL NONEVIDENTIARY HEARING.

IT WAS CLEAR FROM THE TRIAL JUDGE'S COMMENTS THAT HE WANTED TO GRANT MY CLIENTS AN ADOPTION BUT HE DIDN'T WANT TO DO IT BECAUSE OF THE GRANDPARENT CASES.

>> AND HE SAID BRING ME CASES ABOUT THAT, RIGHT, AT THAT TIME.

>> RIGHT.

>> AND WE DID READ THAT.

>> AND ONCE HE REALIZED THAT IF HE GRANTED THE ADOPTION, HE WOULDN'T BE ABLE TO HAVE CONTROL POST-JUDGMENT OF VISITATION RIGHTS.

LEE DECIDED TO DENY AND DEVISE GUARDIANSHIP.

>> LET ME ASK YOU A QUESTION ON THAT BECAUSE IT SEEMS TO ME THAT THE BEST SOLUTION IN THIS CASE IS FOR THERE TO BE WHAT IS NOW CALLED AN OPEN ADOPTION. IT'S CALLED THAT.

AND WHERE YOU HAVE A SITUATION UNLIKE THE CASE WHERE ONE PARENT DIED -- WHERE BOTH PARENTS DIE AND THERE ARE TWO SETS OF LOVING GRANDPARENTS, EVEN THOUGH I HEARD IN THE HEARING THE PATERNAL GRANDPARENTS, I KNOW JUDGE, YOU CAN'T DO THAT, WHY COULDN'T YOU ALL AGREE TO HAVE THIS BE A AN ADOPTION, AND I GUESS I'LL ASK THIS QUESTION TO MR.^GRAESSLE AS WELL, AND AGREE THAT IT'LL BE AN OPEN ADOPTION VIS-A-VIS THE GRANDPARENTS AND SOMEBODY, ONE OF YOU WOULD HAVE TO CHALLENGE IT IN ORDER FOR IT TO BE ILLEGAL, ISN'T THAT REALLY WHAT THE TRIAL JUDGE WAS TRYING TO GET AT?

AND RATHER THAN TRY, TO YOU KNOW, NOW WE GOT THIS ADOPT -- THIS GUARDIANSHIP GOING ON, WAS THAT AT ALL, I MEAN, DO YOU THINK THAT IF THE JUDGE HAD ORDERED THAT, THAT IS, I AM

GRANTING THE ADOPTION, SUBJECT TO THE -- YOUR AGREEMENT THAT THE MATERNAL, THE PATERNAL GRANDPARENTS WILL HAVE THE RIGHT TO VISIT JUST LIKE IN AN OPEN ADOPTION.

COULD THE JUDGE HAVE DONE THAT OR ARE YOU SAYING OUR CASE LAW THAT HAS GOTTEN THAT EVEN WHEN BOTH SETS OF PARENTS HAVE DIED AND THERE ARE TWO SETS OF GRANDPARENTS THAT THAT COULD NOT BE ORDERED BY THE JUDGE.

>> WELL, YOU'RE ACTUALLY -- THE FACTS ARE THAT, THAT MY CLIENT'S TRIAL COUNSEL TOLD THE JUDGE THAT THEY WERE WILLING -- THAT MY CLIENTS WERE WILLING TO SIGN A PIECE OF PAPER AGREEING TO VISITATION RIGHTS.

THE PATERNAL GRANDPARENTS' COUNSEL GOT UP AND JUDGE SAID YOU CAN'T DO THAT UNDER FORBES.

>> DO YOU THINK, I AM ASKING YOU TODAY, CAN THE COURT HAVE GIVEN THIS UNIQUE SITUATION HAVE GRANTED THE ADOPTION SUBJECT TO AND YOUR CLIENTS' AGREEMENT TO ALLOW FOR VISITATION AND UNDER THESE CIRCUMSTANCES, FORBES IS I THINK IS A DIFFERENT SITUATION, IT IS A DIVORCE CASE THAT THAT WOULD BE UPHELD AND NOT BE A VIOLATION OF THE SERIES OF CASES.

>>, MY CLIENTS HAVE TOLD ME THEY ARE WILLING TO ENTER INTO SUCH AN AGREEMENT AND WOULD NOT CHALLENGE IT.

>> WHY CAN'T YOU ALL WORK THIS THING OUT BETWEEN WHEN THIS THING STARTED AND TODAY.

>> SOMETIMES WE ASK THAT WHEN WE GET TO THESE CHILD CASES AND I REALIZE WE HAVE TO DECIDE A JURIS PRUDENTIAL ISSUE AND I AM FRANKLY SYMPATHETIC TO YOUR ARGUMENT THAT A JUDGE CAN'T ORDER A GUARDIANSHIP BECAUSE HE WANTS TO ENFORCE A VISITATION ONE BUT IN THE MATTER OF THE BEST INTEREST OF THE CHILDREN THERE IS NO QUESTION THEY WILL

FLOURISH IN THE UNIQUE
SITUATION WITH INPUT OF BOTH
GRANDPARENTS, SO WHY CAN'T YOU
ALL?

>> WE WOULD, WE WOULD AGREE
WITH THAT.

THE CONCERN THAT THE TRIAL
JUDGE HAD WAS IN LIGHT OF THE
FORBES OPINION.

AND THE CONCERN THAT THE
PATERAL GRANDPARENTS HAD WAW
THAT IN LIGHT OF THE FORBES
OPINION, ANY SUCH AGREEMENT
WOULD BE UNENFORCEMENT.

AND THERE WAS A CONCERN BY BOTH
THE TRIAL JUDGE AND THE
PATERAL GRANDPARENTS' TRIAL
COUNSEL THAT THE MOMENT THE
AGREEMENT WAS SIGNED AND WHICH
ADOPTION WAS APPROVED IT WOULD
BE WORTHLESS BUT MY CLIENTS
HAVE TOLD ME THEY WOULD BE
WILLING TO ENTER INTO SUCH AN
AGREEMENT.

THEY SAID THAT TO THE TRIAL
JUDGE.

THEY MAY NOT BE THE SAME THERE
MAY BE SOME ISSUES ABOUT THE
SCOPE OF THE VISITATION BUT I
THINK AN AGREEMENT COULD BE
HAMMERED OUT, YES, AND I SEE I
HAVE ONLY A MINUTE AND A HALF.

>> WE WILL GIVE YOU TIME TO
TALK ABOUT THIS.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT.

I'M --, EXCUSE ME, BILL
GRAESSLE.

I WANT TO DISCUSS THE POINTS,
PARTICULARLY THE LAST ONE THAT
JUSTICE PARIENTE RAISED.

MY FRIEND MR. ^GOWDY'S
REPRESENTATION IS ABOUT WHAT
HIS CLIENTS WERE WILLING TO DO
ARE CONTRARY TO THE FACTS.
PROVEN AT THIS TRIAL.

WITHIN A COUPLE OF DAYS OF MY
CLIENTS' SON, THE FATHER OF
THESE CHILDREN, BEING KILLED --

>> WE'RE FAMILIAR WITH THE
FACTS.

WHAT AM I ASKING YOU IS COULD
THE JUDGE HAVE LEGALLY HAVE
DONE THAT.

>> WE DON'T THINK SO AND THE REASON IS THAT BECAUSE UNDER THE JURISPRUDENCE OF THIS COURT AS WELL AS THE FORBES DECISION AS SOON AS YOU CREATE AN ADOPTION UNDER FLORIDA STATUTORY LAW THE PARENT THEN HAS A CONSTITUTIONAL RIGHT TO EXCLUDE WHOEVER THEY WANT, AND I DON'T BELIEVE --

>> BUT THAT'S NOT TRUE BECAUSE WE HAVE GOT SOMETHING, WHEN THERE IS TERMINATION PARENTAL RIGHTS WHERE THE JUDGE CAN ORDER THERE BE VISITATION. SO AND NOBODY HAS CHALLENGED THAT AS UNCONSTITUTIONAL.

>> WITH SIBLINGS.

>> SIBLINGS OR ANY OTHER -- IT'S NOT LIMITED TO SIBLINGS. IT IS.

>> 63.0427.

>> AND IT'S BEEN EXPANDED TO OR UPON AGREEMENT OF THE ADOPTIVE PARENTS WITH THE PARENTS WHO'VE HAD THEIR PARENT RIGHTS TERMINATED OR OTHER SPECIFIED BIOLOGICAL RELATIVES.

>> RIGHT BUT THESE PARENTS ARE DEAD.

THEY DIDN'T -- THESE AREN'T TPR'ED PARENTS.

THAT STATUTORY SECTION IN MY VIEW --

>> UPON THE AGREEMENT OF ADOPTIVE PARENTS, WHICH WOULD BE HERE, THE MATERNAL GRANDPARENTS OR WITH OTHER SPECIFIED BIOLOGICAL RELATIVES SO I'M -- THAT'S NOT AT LEAST IT HASN'T BEEN CHALLENGED AS BEING UNCONSTITUTIONAL SO IT'S NOT LIKE IT'S ABSOLUTE RIGHT THAT IN ALL CIRCUMSTANCES, WHEN YOU'VE GOT TWO PARENTS THAT ARE DECEASED WHICH WAS NOT -- SO THAT'S, I UNDERSTAND THAT'S NOT DIRECTLY BEFORE US BUT IT SEEMS THAT RATHER THAN THIS IDEA OF CREATING SOME KIND OF A GUARDIANSHIP, THAT THAT WOULD BE THE, THE LAW WOULD SEEM TO GIVE THAT FLEXIBILITY MORE THAN IT WOULD SAY WELL IF YOU CAN'T

FIGURE OUT A WAY TO DO THIS,
YOU HAVE GOT TO DENY THE
ADOPTION.

>> UNFORTUNATELY, JUSTICE
PARIENTE, THERE IS NO BASIS
THAT I CAN ADDRESS THAT ON
EXCEPT TO TELL YOU THAT THIS
JUDGE DID NOT BELIEVE THAT THIS
WOULD HAPPEN.

AND MY CLIENTS DID NOT BELIEVE
THIS WOULD HAPPEN.

>> WELL, LET ME, LET ME ASK YOU
THIS, MR. ^GRAESSLE, YOU WOULD
AGREE THAT THE FLORIDA
LEGISLATURE ADOPTION BEING A
CREATURE OF STATUTE, HAS
INDICATE A PREFERENCE FRESH
INDICATED A PREFERENCE FOR
FAMILY UNITS AND FRUADOPTION OF
CHILDREN, WOULD YOU AGREE WITH
THAT.

>> ABSOLUTELY, BUT THAT'S NOT
IN EVERY INSTANCE.

>> NOW LET ME ASK YOU THIS.
IN ONE OF THE REASONS THAT
ADOPTION IS PREFERABLE IS TO A
LONG-TERM GUARDIANSHIP IS THAT
THE, AN ADOPTION PROVIDES THE
CHILDREN WITH CERTAIN RIGHTS
THAT NATURAL CHILDREN HAVE.
CORRECT?

>> THEY HAVE A RIGHT TO -- FOR,
FOR INSTANCE, THEY HAVE A RIGHT
TO DISTRIBUTION.
UNDER WILL.

>> THAT'S IN MOST INSTANCES
THAT IS THE PREFERED --

>> THEY HAVE A PREFERENCE.

>> WE HAVE NEVER DISPUTE THAT.

>> WELL, BUT, SO THIS, THIS,
THESE TWO CHILDREN, DANOT HAVE
THAT PREFERENCE BY REASON OF
THE DENIAL OF THE ADOPTION.
THEY WOULD HAVE THE RIGHT TO
DISTRIBUTION UNDER 732 FROM THE
-- MATERNAL GRANDPARENT IF THEY
WERE ADOPTED, CORRECT?

OKAY.

IS THAT CORRECT?

>> IF YOU SAY SO, YOUR HONOR.

>> WELL, I BELIEVE THAT WE ALL
HAVE TO AGREE WITH THAT.

AND THEY WOULD HAVE A RIGHT IF
THE ADOPTIVE PARENTS WERE

KILLED IN AN ACCIDENT.
TO A WRONGFUL DEATH ACTION,
THEY DO NOT HAVE THAT RIGHT IN
A GUARDIANSHIP, IS THAT
CORRECT.

>> THAT'S CORRECT.

>> IN A GUARDIANSHIP, THIS IS
AN UNUSUAL GUARDIANSHIP IN MY
EXPERIENCE IN THAT THE
GUARDIANSHIP OF THE PERSON AND
THE GUARDIANSHIP OF THE
PROPERTY HAS BEEN SEPARATED.

>> AND I THINK THAT GOES TO A
QUESTION THAT JUSTICE PARIENTE
ASKED INITIALLY ABOUT THE FACT
THAT THOSE --

>> BUT IN, IN A GUARDIANSHIP,
THERE HAS TO BE AN ANNUAL PLAN
AND ESSENTIALLY FOR THE TERM OF
THESE CHILDREN'S MINORITY THEY
ARE GOING TO, TO BE WARDS OF
THE COURT.

FROM THE STANDPOINT THAT EVERY
DECISION HAS TO BE AS TO THEIR
PROPERTY WILL BE MADE BY THE
COURT.

>> IT HAS TO BE APPROVED BY THE
COURT.

>> AND AS TO THEIR PERSON, IT,
THERE HAS TO BE AN ANNUAL PLAN
FILED SO THAT THEY WILL BE, THE
COURT WILL STAY INVOLVED.
IN THEIR UPBRINGING, CORRECT?

>> NO, I THINK THAT'S
OVERSTATING IT.

IT IS --

>> WELL, THAT'S WHAT THE
STATUTE PROVIDES.

>> IN A TECHNICAL LEGAL SENSE,
THERE IS GOING TO BE A REPORT.

>> WHO PAYS FOR THE CONTINUING
GUARDIANSHIP IN THIS INSTANCE?
ARE BOTH --

>> I AM ASSUMING THAT THE
PETITIONERS WILL PAY FOR THE
REPORTING OF THE GUARDIANSHIP
OF THE PERSON AND MY CLIENTS
WILL PAY FOR THE COST OF THE
HEARING.

>> HAS THAT BEEN PART OF A PLAN
SOMEWHERE.

>> THAT'S NOT IN THIS RECORD.
THAT'S NOT BEFORE THE COURT.

>> SO IT HASN'T BEEN DEALT

WITH?

>> NOT AS FAR AS THIS CASE IS CONCERNED BUT I THINK THE IMPORTANT NO, THE FUNDAMENTALLY CRUCIAL AND RESPONSE TO THE QUESTION IS THE TRIAL COURT'S FINDING THAT IT WAS NOT IN THESE CHILDREN'S BEST INTEREST FOR THERE TO BE AN ADOPTION AND I THINK TO RESTATE THE QUESTION MORE SPECIFICALLY, IS WHETHER A TRIAL COURT MUST GRANT A PETRITION FOR ADOPTION EVEN IF HE HAS MADE A FINDING THAT IT IS CONTRARY TO THE BEST INTEREST OF THE CHILDREN.

>> SO HOW FAR, SEE THIS IS WHERE I HAVE PROBLEMS HAVING REREAD IT.

WHAT IF THE JUDGE IN HEARING THE TESTIMONY OF THE ADOPTIVE PARENTS AND THEY ASK WHERE ARE YOU GOING TO BE SENDING LITTLE SUE AND LITTLE MARY TO SCHOOL? AND THEY GO, WELL, WE ARE GOING TO BE SENDING THEM TO THE THIS, YOU KNOW, THIS PRIVATE CHRISTIAN SCHOOL.

AND, YOU KNOW, THE MATERNAL GRANDPARENTS SAID, BUT, JUDGE, YOU KNOW THEY HAVE BEEN GOING TO THIS PUBLIC SCHOOL.

IT'S RIGHT NEAR WHERE WE ARE.

WE ARE NOT GOING TO BE ABLE TO SEE THEM.

I DON'T AGREE WITH THE WAY THAT THIS, THIS OTHER SCHOOL, YOU KNOW, WHAT GOES ON THERE.

AND THE JUDGE SAYS, YOU KNOW WHAT?

I THINK THEIR BEST INTERESTS WOULD BE SERVED BY THEM GOING TO THAT SCHOOL AND BECAUSE I WON'T BE ABLE TO CONTROL THAT DECISION, IF I GRANT THE JUDGMENT OF ADOPTION, I'M GOING TO DENY BECAUSE IT'S NOT IN THEIR BEST INTERESTS, YOU REALLY THINK.

>> AND THAT'S A WHOLE DIFFERENT CASE, YOUR HONOR.

>> NOW WAIT A SECOND.

I AM ASKING YOU DO YOU REALLY BELIEVE THAT WHEN THE JUDGE

SAID THAT IN FINDING THAT -- IF THEIR BEST INTEREST THAT THE JUDGE CAN LOOK AT ONE SPECIFIC THING THAT THE JUDGE THINKS IS A GOOD IDEA WHERE THERE IS ENOUGH EVIDENCE THAT THERE WOULD BE HARM TO THE CHILD FROM BRANDING THE ADOPTION AND THE JUDGE FINDS THAT THAT CHILD, THAT THE PARENTS ARE FIT PARENTS, A LOVING PARENTS, AND WANT TO ADOPT THAT THEY CAN DENY IT BECAUSE OF ONE FACTOR THAT THEY THINK IT WOULD BE BETTER FOR THE CHILD TO HAVE THIS?

>> OF COURSE NOT.

UNDER YOUR HYPOTHETICAL -- THERE'S NO COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S DETERMINATION AND BY DEFINITION IT'S AN ABUSIVE DISCRETION.

>> BUT HERE THE ONLY THING THAT THE JUDGE SAID IS I WANT TO MAKE SURE THAT THERE IS VISITATION.

WHAT IF THE JUDGE SAID WHAT IF IT WASN'T THE OTHER MATERNAL GRANDPARENTS.

WHAT IF IT IS BECAUSE AGAIN JUSTICE CANTERO DOES HAVE A VERY EXTENDED FAMILY, IT WAS A COUSIN THAT THE CHILDREN HAD BEEN COME CLOSE TO?

WOULD THAT BE, YOU KNOW, SAY I THINK IT WAS GOING TO BE IN THAT CHILD'S BEST INTEREST TO CONTINUE A RELATIONSHIP WITH THE COUSIN.

I'M NOT SO SURE THAT THIS, THESE SET OF PARENTS ARE GOING TO ALLOW THAT.

IS THAT THE KIND OF BEST INTERESTS THAT YOU CAN -- YOU THINK THAT IT'S JUST LIKE IF IT WAS A DIVORCE CASE AND YOU ARE LOOKING AT WHETHER BOTH PARENTS SHOULD MAINTAIN CUSTODY?

>> THIS IS LIKE A DIVORCE CASE.

>> WELL, THAT'S, I THINK, SEE, AND THAT'S MAYBE WHERE YOU AND I WILL DISAGREE AS TO THE INTENT OF THE LEDGE --

LEGISLATURE BECAUSE IT WOULD POSIT, AND I THINK THE, THE AMICUS STATED IT VERY WELL. THIS IS NOT LIKE A DIVORCE CASE WHERE THERE ARE TWO SETS OF NATURAL PARENTS.

THIS IS AN ADOPTION WHERE ONLY ONE SET OF GRANDPARENTS ATTEMPTED TO ADOPT THIS CHILD. I THINK YOU'D HAVE A STRONGER CASE IF YOUR CLIENTS HAD FILED A COUNTERPETITION AND WERE EQUALLY THERE AND YOU SAID, JEEZ, THEY ARE BOTH GREAT PEOPLE.

THEY ARE BOTH BILLING TO ADOPT BUT THEY DIDN'T WANT TO DO THAT.

>> MAY I RESPOND.

>> YES.

>> OKAY.

THERE'S SEVERAL ANSWERS TO YOUR QUESTIONS.

FIRST, THE REASON A TRIAL COURT GIVES TO DENY ADOPTION IS SUBJECT TO APPELLATE REVIEW AND THE STANDARDS OF WHETHER IT IS AN ABUSIVE DISCRETION OR WHETHER THERE IS COMPITANT SUBSTANTIAL EVIDENCE.

THE QUESTION WE HAVE HERE IS BASED ON THIS RECORD.

MY CLIENTS DID NOT FILE AN ADOPTION PETITION BECAUSE EXACTLY THE REASON WHY WE'RE HERE.

THEY DIDN'T NOT WANT THERE TO BE A SEVERING OF THE LEGAL RELATIONSHIPS.

THIS QUOTE IS FROM MY CLIENT'S TESTIMONY.

THE PATERNAL GRANDMOTHER, QUOTE, THESE CHILDREN NEED EVERYBODY.

THERE IS A HISTORY AND LEGACY ABOUT THEIR MOTHER THAT I CANNOT GIVE THE CHILDREN NOR CAN THE PETITIONERS GIVE THEM ANY INFORMATION, HISTORY, LEGACY ON THEIR FATHER.

THESE CHILDREN NEED EVERYBODY. I CHANGE THE PETITIONER AND PARENTS NAMES FOR THE PURPOSES OF THE SEALING OF THE REPORT

RECORD BUT THE POINT WAS THEY DIDN'T, MY CLIENTS DID NOT WANT THERE TO BE A SEVERING OF A RELATIONSHIP.

WE'RE ALL AWARE OF THE, OF THE AWFUL CASE OF THE RAIMI CASE WHERE THE PEOPLE FOUGHT FOR 12 YEARS OF THIS LITTLE GIRL'S LIFE AND FINALLY WHEN SHE WAS 14 SHE SAID I JUST WANT TO BE ADOPTED AND BE DONE WITH THIS. I'M DRAWN IN PREPARATION FOR TODAY'S ARGUMENT TO THE DECISION OF THIS COURT, THE HYT DECISION THAT JUSTICE URLIC WROTE THE OPINION ON BECAUSE ADOPTIONS ARE DIFFERENT.

WHAT HE SAID IS THAT IN NORMAL LITIGATION, THE COURT IS DISINTERESTS BUT A ADOPTION PROCEEDING IS DIFFERENT.

THEY ARE TO DETERMINE THE OBJECT OF THE LITIGATION. THIS JUDGE DID EXACTLY WHAT THE STATUTE REQUIRES HIM TO DO, TO DETERMINE WHAT'S IN THE BEST INTEREST OF THE CHILD AND TO HAVE CONSTANT INVOLVEMENT BY BOTH SETS OF GRANDPARENTS, WHICH ALL OF THE GRANDPARENTS AT THIS TRIAL TESTIFIED SHOULD BE THE CASE.

WAS EXACTLY WHAT THE LEGISLATURE HAS ANTICIPATED. NOW --

>> CAN YOU RESPOND TO YOUR OPPONENT'S ARGUMENT THAT WHAT THE LAW COMPELS OR AT LEAST IS AIMED AT IS A PERMANENT DECISIONMAKER THAT IF WE DON'T HAVE AN ADOPTION HERE AND AGAIN YOU NEED TO LOOK AT THE BROADER QUESTION IF WE ARE GOING TO ADDRESS THIS LEGALLY IF YOU DON'T HAVE A PERMANENT DECISIONMAKER AND AN ADOPTIVE PARENT, THEN THE GUARDIAN IS SUBJECT TO COURT SUPERVISION AND THE DECISIONS OF THE GUARDIAN CAN CONSTANTLY BE QUESTIONED.

FROM WHERE THE, WHERE THE CHILD IS GOING TO GO TO SCHOOL, TO, YOU KNOW, A HOST OF OTHER

THINGS, INCLUDING VISITATION.
>> MY EXPERIENCE, YOUR HONOR,
AND I BELIEVE THAT THIS IS
GOING TO BE COMMON TO ANYONE
WHO'S EVER PRACTICED IN ANY
FAMILY LAW COURT IS THAT
VEXATIOUS AND FRIVOLOUS
ATTEMPTS TO HAVE THE COURT
INVOLVED IN ASPECTS SUCH AS
WHAT YOU'VE POSITED AND WHAT,
WHAT I LEARNED TO CALL THE
PARADE OF HORRIBLES WHERE YOU
TROT OUT ALL THESE AWFUL THINGS
THAT IF THIS DECISION SUFIRMED,
WE DON'T HAVE ANY EVIDENCE THAT
THAT'S GOING TO HAPPEN AND
UNTIL SOMETHING LIKE OCCURS IN
THIS CASE, I THINK WHAT YOU
HAVE DONE IS YOU'VE SUGGESTED
THAT YOU COULDN'T EVER HAVE A
GUARDIANSHIP AND THERE COULD
NEVER BE A DENIAL OF A, AN
ADOPTION PETITION AS A MATTER
OF LAW, WHICH IS WHAT JUDGE
THOMAS BELOW -- HIS BASIS OF
HIS DISSENT AND THAT'S WHAT
PETITIONER'S PETITION S. EVEN
IF IT'S CONTRARY TO THE BEST
INTEREST OF THE CHILD AND THAT
HAS BEEN DETERMINED BASED ON
COMPETENT SUBSTANTIAL EVIDENCE
THAT AS A MATTER OF LAW --
>> LET ME ASK YOU THIS --
>> THE TRIAL COURT IN FAIRNESS
REALLY DIDN'T SAY THAT THE
ADOPTION WAS CONTRARY TO THE
BEST INTERESTS OF THE CHILD.
AS JUSTICE PARIENTE HAS BEEN
POINTING OUT AND I'M READING
FROM T. HE SAYS IT WOULD BE IN
THE BEST INTEREST OF THE MINOR
CHILDREN TO ENJOY THE LOVE AND
AFFECTION AND INVOLVEMENT OF
ALL THEIR GRANDPARENTS NO
MATTER WHO MAINTAINS THEIR
PRIMARY RESIDENCE.
>> YES.
>> AND SO THAT'S ONE ELEMENT.
BUT HE DIDN'T MAKE A FINDING.
GENERALLY THAT I HAVE FOUND,
EITHER FROM THE BENCH BECAUSE
FROM THE BENCH WHAT HE SAID IS
BOTH OF YOU GUYS ARE NINES
TALKING TO THE GRANDPARENTS.

>> YEAH BUT WE -WHAT HE ALSO HAD WAS THE TRANSCRIPT MR.^GOWDY REFERRED TO WAS AN ENTIRE DISCUSSION ABOUT THE FACT THAT ONCE YOU ENTER AN INADOPTION -- AN ADOPTION JUDGEMENT THAT LEGALLY TERMINATES THE RIGHT OF ANYONE OTHER THAN THE ADOPTING PARENTS TO DETERMINE WHO SEES THE CHILDREN.

>> CAN I JUST ASK -- THE CERTIFIED QUESTION WHETHER WE BROADEN IT OR NOT, RIGHT NOW SAYS, AND YOU AGREE THAT WHERE THERE DEEMED, THE GRANDPARENTS ARE DEEMED TO BE FIT PERSPECTIVE PARENTS, THAT THEY DENY IT BECAUSE THEY DEEM IT TO BE IN THE CHILD'S BEST INTERESTS FOR ENSURING THE PATERNAL GRANDPARENTS' INVOLVEMENT.

THAT'S THE ONLY -- YOU WOULD AGREE THAT THAT'S THE ONLY REASON THAT THE JUDGE DENIED IT BECAUSE HE THOUGHT IT WAS IN THEIR BEST INTEREST FOR ENSURING THEIR INVOLVEMENT?

>> YES.

>> WITHOUT KNOWING GENERALLY WHETHER ADOPTION WOULD BE IN THEIR BEST INTEREST. HE NEVER MADE A DETERMINATION THAT IT WAS NOT IN THEIR BEST INTEREST TO BE ADOPTED IN A STABLE AND PERMANENT HOME AS IS THE POLICY OF THE LEGISLATURE.

>> NO.

I DISAGREE.

YOUR HONOR, THIS CONVERSATION BETWEEN COUNSEL AND THAT MAY 16th TRANSCRIPT IS ALL ABOUT THE LEGAL RAMIFICATIONS OF ADOPTION VERSUS GUARDIANSHIP. THE CONTEXT FOR THE JUDGE'S PETITION WAS TO DENY THE PETITION PRECISELY BECAUSE IT WOULD ALLOW THE PETITIONERS TO CUT OFF ALL ACCESS TO THE RESPONDANTS AND THAT'S WHAT THE WHOLE TRIAL WAS ABOUT.

>> I GUESS MY QUESTION IS, AND IT DOVETAILS INTO WHAT JUSTICE

WELLS WAS ASKING EARLIER, THE WHOLE FOCUS HERE IS ON THE RIGHTS OF THE GRANDPARENTS TO HAVE VISITATION WITH THESE KIDS SPEAK TO ME AS TO TWO THINGS. THE SUPPORT OBLIGATION, WHAT SUPPORT OBLIGATION IS AS A MATTER OF LAW BORN BY THESE GRANDPARENTS AS A MATTER OF LAW UNDER THIS GUARDIANSHIP, NUMBER ONE, AND NUMBER TWO, THE WAY THAT IT'S SET UP, IF I'LL CORRECT, THE PATERNAL GRANDMOTHER IS THE GUARDIAN OF THE PERSON AND THEY, ON THE OTHER SIDE.

SO EVERY TIME SHE'S GOING TO DO AN EXPENDITURE OR WHATEVER, SHE'S THE PRIMARY CAREGIVER OF THIS CHILD BUT EVERY EXPENDITURE IS SUBJECT TO THE GUARDIAN OF THE PROPERTY. THE REVIEW, AND THEN REVIEW OF THE COURT AND THIS GOES ON FOR 15, 16 YEARS HERE IN THIS CASE.

>> YOUR HONOR, IT MAY WELL BUT I DON'T HAVE ANYTHING IN THIS RECORD THAT SUGGESTS THAT THAT ISSUE HAS BEEN ADDRESSED.

>> THAT'S NOT A QUESTION OF THE ISSUE.

THE MATTER OF FACT IS THAT IF YOU HAVE ONE SET OF THE GUARDIAN OF THE PROPERTY AND ANOTHER SET IS THE GUARDIAN OF THE PERSON PART OF THAT IS TO DO CHECKS AND BALANCES AGAINST EACH OTHER.

IS THE REASON JUDGES DO THAT AND THERE IS ABSOLUTELY NOTHING IN THIS RECORD TO SHOW THAT YOU NEEDED THAT CHECK AND BALANCES FOR FINANCIAL REASONS BECAUSE THE ONLY DISPUTE WAS THE VISITATION ISSUE.

>> RIGHT.

BUT, BUT I THINK TO ANSWER THE QUESTION ABOUT WHETHER THERE WAS MONEY INVOLVED, I THINK THAT THE REASON THAT THERE WAS A SEPARATE GUARDIANSHIP OF THE PERSON SOUGHT WAS BECAUSE THERE POTENTIALLY IS AND I DON'T KNOW ANYTHING ELSE THAT'S IN THIS

RECORD THAT WOULD REFLECT THAT
BUT THAT, THAT IS A --

>> SO OTHER THAN MAKING THE
VISITATION AND THE RELATIONSHIP
BETWEEN THE KIDS AND ALL THESE
GRANDPARENTS PERMANENT, THERE
IS NO PERMANANCY FOR THESE KIDS
AS TO DETERMINE THEIR PRIMARY
SUPPORTER FINANCIALLY.

>> WELL, PRESUMING I GUESS IS
GOING TO BE CONSTANTLY CHANGING
THE SUBJECT TO CHANGE AND
UNLESS SOMETHING DRASTICALLY
FUNDAMENTALLY DIFFERENT HAPPENS
THAT'S CONTRARY TO THESE
CHILDREN'S BEST INTEREST, THIS
IS GOING TO STAY THE SITUATION.

>> BUT, BUT IF THERE'S AN
ADOPTION, IN THE LAW -- THEN
THE LAW TAKES CARE OF THAT
BECAUSE THE LAW SAYS THAT THESE
ADOPTIVE PARENTS HAVE JUST AS
MUCH OF AN OBLIGATION TO THIS
CHILD AS IF THEY WERE THEIR
NATURAL PARENTS.

>> YES.

>> AND IN FACT, IF THE
GRANDFATHER DIES OR THE
GRANDMOTHER DIES, AND THERE ARE
SOCIAL SECURITY BENEFITS, THEN
THE CHILDREN GET THE SOCIAL
SECURITY BENEFITS.

>> YES.

>> UNDER THIS ARRANGEMENT THEY
DON'T.

>> YES, I UNDERSTAND THAT, BUT
MY POINT IS, THE JUDGE, THIS
JUDGE HAS MADE A
FACTUALLY-BASED DETERMINATION
THAT IT IS CONTRARY TO THE BEST
INTERESTS OF THESE CHILDREN TO
HAVE ONE SET OF GRANDPARENTS
CUT OUT.

AND --

>> LOOK AT AND SEE HOW HE SAID
T. I DON'T HAPPEN TO THINK THAT
HE, I THINK HE WAS JUST SAYING
IT WOULD BE BETTER FOR THE
CHILDREN TO HAVE THIS, AND I
THINK THAT'S A, THAT'S AN
IMPORTANT DIFFERENCE TO ME.
WHAT COULD -- THAT'S WHY I SAY,
WHAT COULD BE BETTER, YOU KNOW,
IS WE COULD LOOK AT A LOT OF

SITUATIONS THAT WE'D LIKE TO CREATE IN A FAMILY, AND SAY THIS WOULD BE BETTER FOR THE CHILDREN.

BUT THE COURTS DON'T INTERVENE. NOW, I DO HAVE A VERY SPECIFIC QUESTION, AND IT HAS TO DO WITH WHETHER THE LEGISLATURE REALLY EVER CONTEMPLATED THAT IF YOU COULDN'T ACCOMPLISH WHAT YOU WANT TO ACCOMPLISH THROUGH ADOPTION YOU COULD SET UP A GUARDIANSHIP.

I KNOW WITH, UNDER CHAPTER 39, THERE IS THAT, THERE IS A TRIAGING OF WHAT THE COURT SHOULD DO, YOU KNOW, THEY FIRST WANT TO TRY TO GET REUNIFICATION.

AND THEN THE SECOND CHOICE IS ADOPTION AND THEN THE THIRD IS, YOU KNOW, GUARDIANSHIP.

WHERE IS THAT WHEN THERE ISN'T A CHAPTER 39 PROCEEDING TO DIRECT A JUDGE A -- THAT IF THEY LOOK AND THEY SAY, NOT ADOPTING BY THESE PARENTS THAT THE NEXT THING THEY WOULD DO IS SAY THE GUARDIANSHIP OF THESE PARENTS?

IS THERE A SPECIFIC STATUTORY SCHEME LIKE THERE IS FOR CHAPTER 39?

>> NO, YOUR HONOR.

JUSTICE THOMAS IN DISSENT IN WHAT IS BEING RELIED ON BY THE PETITIONERS IS THE REVISION OF 63.0223 WHICH SAYS, YOU KNOW, ADOPTION IS THE REFERED THING AND WE HAVE NEVER REFUTED THAT.

>> BUT MORE IMPORTANTLY SINCE WE ARE DEALING WITH LEGISLATURE -- LEGISLATIVE SCHEMES, AND WHAT THEY INTENDED, WOULDN'T IT HAVE MADE SENSE THAT IF THE LEGISLATURE WANTED A JUDGE TO CONSIDER, I DON'T KNOW ABOUT ADOPTION, I THINK I WILL GO WITH GUARDIANSHIP FOR CHILDREN THAT ARE NOT OTHERWISE IN THE DEPENDENCY SYSTEM THAT THEY WOULD'VE SET IT UP THE WAY THEY SET IT UP UNDER CHAPTER 39.

>> WHAT THE LEGISLATURE DID WAS

GAVE BROAD DISCRETION TO THE TRIAL COURTS TO FIND WHAT WAS IN THE --

>> YOU AGREE THAT THEY DO -- THEY DID IT SPECIFICALLY --

>> IN THE DEPENDENCY.

>> IN THE CHAPTER IS AND NOT -- >> THAT'S CORRECT.

THAT'S CORRECT.

>> SO WE WOULD REALLY BE CREATING LAW THAT SAYS IF YOU DON'T LIKE THE WAY GRANDPARENTS MIGHT DO SOMETHING, AND SOMETHING WOULD BE BETTER FOR A CHILD THAT YOU CAN SET UP A PERMANENT GUARDIANSHIP AND THAT'S WHAT THE LEGISLATURE INTENDED.

>> I THINK TO SAY IT DIFFERENTLY IS IF THIS COURT IS TO GO WITH THE PETITIONER'S ARGUMENT TMEANS THAT AS A MATTER OF LAW, A JUDGE HAS TO GRANT AN ADOPTION PETITION EVEN IF HE FINDS TO DO SO WOULD BE CONTRARY TO THE BEST INTERESTS OF THE CHILDREN.

AND THAT'S REALLY THE INVERSE OF THIS QUESTION, AND JUST, JUDGE BROWNING WROTE AN OPINION THAT SAID IF A TRIAL COURT'S DISCRETION IS TO BE LIMITED AS THE APPELLANTS MAINTAIN HERE IT SHOULD BE DONE BY THE LEGISLATURE AND NOT THE COURT.

I THINK THAT IS THE REAL QUESTION THAT FOR THOSE OF US LIKE MR. ^GOWDY AND I WHO HAVE CHILDREN AND WOULD DO ANYTHING IN THE WORLD FOR THEM, THIS IS HEARTBREAKING.

OF OUR QUESTION -- OUR JOB HERE IS I THINK VERY STRAIGHTFORWARD.

IT'S NOT EASY BUT IT'S STRAIGHTFORWARD.

IS THE JUDGE'S DETERMINATION THAT THIS WAS IN THE BEST INTEREST OF THE CHILD.

CHILDREN -- WHICH IS WHAT HE SAID.

AND IT'S BASED ON COMPETENT SUBSTANTIAL EVIDENCE.

IS THERE SOME RULE OF LAW THAT

WOULD SAY, WELL, NO THAT CAN'T BE DONE BECAUSE THE LEGISLATURE REALLY DIDN'T MEAN THAT YOU COULD NOT ENTER A JUDGMENT OF ADOPTION UNLESS.

>> LET ME ASK YOU ABOUT THE COMPETENT SUBSTANTIAL EVIDENCE ISSUE.

WOULD YOU AGREE THAT IF ALL OF THE EVIDENCE IN THIS CASE WAS THAT THE, THE GRANDPARENT THAT YOU REPRESENT, YOU REPRESENT JUST THE GRAND MOTHER S THAT CORRECT.

>> NO, I REPRESENT BOTH SETS OF PARTIES HERE HAVE A STEP-PARENT.

HIS, THE MOTHER, IN HIS, THE WIFE AND HIS IS A STEPMOTHER. MY, MY HUSBAND IS A STEPFATHER.

>> SO THERE IS A STEPGRANDPARENT ON EACH SIDE.

>> YES, AND I KNOW I SAID --

>> TRY IT AGAIN.

SIMPLE IN ANY CASE.

THAT IF THE JUDGE WAS MAKING THIS RULING, OUT OF THE CONSIDERATION OF VISITATION, OF, OF ONE SET OF GRANDPARENTS, PURELY ON SPECULATION, AS OPPOSED TO SUBSTANTIAL COMPETENT EVIDENCE, THAT WE SHOULD REVERSE HIS DECISION. THAT IS THAT IF, IF ALL THE EVIDENCE WAS THAT THE ADOPTING GRANDPARENTS WOULD GRANT LIBERAL VISITATION RIGHTS AND THE OTHER SIDE IS ADOPT -- ACCOMMODATING TO THAT THAT ALL WE HAD WAS THE LEGAL SPECULATION OR POTENTIAL OF CUTTING OFF VISITATION RIGHTS. THAT THAT WOULD NOT BE ENOUGH FOR THE TRIAL COURT TO DENY ADOPTION.

>> WELL, THERE'S TWO ANSWERS TO THAT, YOUR HONOR.

THE FIRST IS A JUDGE WHO MAKE AS FINDING BASED ON SPECULATION HAS BY DEFINITION NOT BASED IT ON COMPETENT SUBSTANTIAL EVIDENCE.

YOU CAN'T AFFIRM THAT AND SECONDLY, IF THERE IS A

LEGITIMATE CONCERN THAT HAS A FACTUAL BASIS FOR WHAT'S IN THE BEST INTEREST OF THE CHILDREN, THEN YOU GET AN ADOPTION AND YOU LOSE THE JUDICIAL POWER TO

>> WHAT IS -- WHAT IS THE, WHAT IS THE COMPETENT SUBSTANTIAL EVIDENCE IN THIS RECORD THAT THERE IS A LEGITIMATE CONCERN?

>> I THOUGHT YOU ALL HERE WERE LOVEY-DOVEY AND AGREEING WITH EACH OTHER THAT THERE REALLY AREN'T ANY DIFFERENCES BETWEEN YOU AND ON THE ONE SIDE THEY AGREE -- VISITATION.

>> LIP SERVICE BY THE, BY THE PETITIONERS.

>> SO WHAT, WHAT COMPETENT SUBSTANTIAL EVIDENCE IS THERE IN THE RECORD THAT VISITATION RIGHTS MAY BE OBJECTED.

>> FROM THE MOMENT MY CLIENT'S SON DIED THE FATHER OF THESE CHILDREN, IMMEDIATELY THE PETITIONER GRANDFATHER ADVISED MY CLIENT WHILE SHE HAD JUST FINISHED BURYING HER SON THAT THEY WERE GOING TO ADOPT THE CHILDREN AND IN MY CLIENT HAD NO SAY IN THE MATTER AND HE TOLD HER, AND THIS IS ALL IN THE TESTIMONY, THAT IF, IF THEY WANTED TO VISIT THESE CHILDREN THEY COULD DO SO WITH ARRANGEMENT AT THE PETITIONER'S HOUSE.

HE REFERRED TO MY CLIENT'S SON, THE FATHER OF THESE CHILDREN, AS QUOTE, MERE SPERM DONOR, END OF QUOTE.

AND REFUSED TO ALLOW ANY SIGNIFICANT CONTACT WITH THESE CHILDREN OR ANY DISCUSSION ABOUT THESE CHILDREN WITH MY CLIENTS UNTIL MY CLIENTS HIRED COUNSEL, FILED A PETITION AND GOT A COURT ORDER ALLOWING VISITATION.

THAT IS THE ACTIONS THAT RIN THIS RECORD THAT DROVE THE TRIAL COURT TO THIS CONCLUSION. THIS WASN'T SOME CUT OUT HOLE CLOTH WELL BOTH PARTIES SHOULD HAVE EQUAL RIGHTS BECAUSE THEY

ARE BOTH GRANDPARENTS.
IT IS BECAUSE BOTH OF THESE
CHILDREN NEED BOTH SETS OF
GRANDPARENTS WHO AND WHILE THE
PETITIONERS PAID LIP SERVICE TO
THIS AT TRIAL THEIR ACTIONS
BELIED THAT AND THE JUDGE
CLEARLY UNDERSTOOD THAT HE
WOULD HAVE NO ABILITY TO ENSURE
THAT THESE CHILDREN'S BEST
INTEREST IN HAVING THEIR
PARENTS INVOLVED WOULD EVER BE
ENFORCEABLE.

THAT ONCE AN ADOPTION WAS
ENTERED IT WAS COMPLETELY OUT
OF HIS HAND.

>> IF THIS COURT WERE TO RULE
AN ADOPTION SITUATION LIKE
THIS, THAT THE GRANDPARENTS
THAT WERE NOT THE ADOPTIVE
PARENTS WERE ENTITLED.
TO VISITATION RIGHTS, WOULD
THAT RESOLVE THE ISSUE IN THIS
CASE.

>> WHAT YOU WOULD BE REALLY
DOING IS AFFIRMING THE FIRST
DISTRICT'S DISPOSITION,
AFFIRMANCE OF THE TRIAL COURT
BECAUSE YOU ARE NOT GRANTING --

>> VISITATION RIGHTS, THERE
STILL ARE A HOST AS THE OTHER
JUDGES HAVE BEEN POINTING OUT.
THERE STILL ARE A HOST OF LEGAL

--

>> NONE OF WHICH ARE AT
ISSUANCE HERE BECAUSE ALL --

>> BUT DO YOU AGREE?

THAT IF THIS COURT WERE TO
RULE, THAT THE GRANDPARENTS
THAT DID NOT ADOPT THE CHILD
WERE ENTITLED TO SOME LEGAL
VISITATION RIGHTS.

THAT THAT WOULD RESOLVE THIS
ISSUE HERE THAT THAT WOULD
RESOLVE THIS ISSUE IN THIS
CASE.

>> WAIT, WAIT, WHAT I THINK
JUSTIN ANSTEAD IS GETTING TO IS
THAT THERE IS A FIGHT HERE.
I THINK HE NEEDS A BERT ANSWER
TO IS THERE ANYTHING ELSE
THAT'S OUT THERE.

>> THERE REALLY WAS NO ISSUE
BETWEEN THE PARTIES ABOUT

SOMEBODY HAVING GUARDIANSHIP OF THE PROPERTY AND SOMEBODY HAVING GUARDIANSHIP OF THE --
>> AS FAR AS I AM AWARE, THE SOLE ISSUE WAS BEING ABLE TO HAVE SOME AUTHORITY TO ENFORCE VISITATION RIGHTS WITHIN THE COURT.

>> THAT'S CORRECT.

>> WELL, AND SO WHAT YOU'RE SAYING IS THAT THIS COURT WOULD REVERSE THE TRIAL COURT'S -- COULD REVERSE THIS TRIAL COURT'S DENIAL OF THE ADOPTION. BUT WITH A CONDITION IN THE ADOPTION THAT THERE BE VISITATION RIGHTS.

>> I DON'T THINK THE COURT HAS THE AUTHORITY TO DO THAT --

>> YEAH, I DO TOO.

>> THAT'S WHAT THIS QUESTION.

>> I'M SORRY.

I MISSED IT.

AND I APOLOGIZE.

>> WELL, I'VE NOT -- I'M ASKING YOU HYPOTHETICALLY THAT THAT IS THE SOLE LEGAL FLAW IN THE CASE, THAT'S WHAT YOU ARE SAYING.

[INAUDIBLE]

>> EVERYBODY'S UNDERSTANDING OF THE LAW WAS THAT IMMEDIATELY UPON THE GRANT OF ADOPTION THAT ONE SET OF GRANDPARENTS THAT THEY COULD NOT WAIVE THEIR RIGHTS TO CUT OFF VISITATION BY THE -- AND THAT REALLY IS THE SOLE LEGAL ISSUE THAT STOOD IN THE WAY OF A COURT GRANTING THE ADOPTION.

>> YES, AND I APOLOGIZE FOR WASTING THE TIME.

>> OH, NO.

>> NO WASTE IN THIS CASE.

>> IF I COULD HAVE 30 SECONDS.

>> 30 SECOND.

>> I GUESS THAT IF THIS COURT DETERMINES TO GO THAT ROUTE TO SAY THAT AS A MATTER OF LAW THE ADOPTION PETITION HAS TO BE GRANTED THEN THAT REPRESENTS SOMETHING DIFFERENT THAN WHAT THE TRIAL COURT IN MY CLIENTS THOUGHT WAS THE STATE OF THE

LAW AT THE TIME AND I, I HATE TO SAY THIS BECAUSE IT, IT'S AWFUL, AWFUL, CONTEMPLATION, BUT MY CLIENTS SHOULD BE ALLOWED TO FILE THEIR OWN ADOPTION PETITION AND MAKE THE TRIAL COURT, MAKE THAT DRUCONIAN CHOICE THAT HE DID EVERYTHING HE POSSIBLY COULD TO AVOID, AND SECONDLY, I WOULD BE REMISIF I DID NOT RAISE THE JURISDICTIONAL ISSUE.

WE HAVE THREE DIFFERENT DECISIONS.

THE CERTIFIED QUESTION WAS EXPLICITLY NOT ANSWERED BY JUDGE WOLF AND JUDGE THOMAS IN DISSENT ANSWER ADSEPARATE QUESTION WHICH IS THAT THERE IS NO DISCRETION THAT ONCE A PETITION SHOWS ON ITS, YOU KNOW, THAT THEY'RE FIT AND PROPER THAT IT IS A MATTER OF LAW THAT HAS TO BE GRANTED SO YOU HAVE GOT 3 DIFFERENT DECISIONS.

THAT I THINK REPRESENTS INTERESTING AND COMPLEX JURISDICTIONAL ISSUE.

THANK YOU, YOUR HONOR.

>> REBUTTAL?

>>> I WANT TO START OFF WHERE JUSTICE ANSTEAD LEFT IT TO BE CLEAR ABOUT MY CLIENTS' POSITION -- PETITION.

THEY ARE AMENABLE INTO ENTERING INTO AN AGREEMENT AND ENJOY ACTUALLY WHEN THE PATERNAL GET THE GRANDPARENTS OFF THEIR HANDS FOR A FEW HOURS ON THE WEEKEND AND THEY WOULD BE AMENABLE.

>> MY UNDERSTANDING OF THE RECORD IS THAT THEY ALLOWED VISITATION BUT ONLY AT THE GRANDPARENTS' HOME AND WITH -- HOME AND WITH SOMEBODY SUPERVISING PRESENT.

>> THAT'S CORRECT, YOUR HONOR, IMMEDIATELY AFTER THE FATHER DIED DURING THE FIRST COUPLE MONTHS, THE, MY CLIENTS WANTED THE VISITATION TEWKER IN THEIR HOME AND THEN THAT CAUSED THE

PATERNAL GRANDPARENTS TO GET AN ATTORNEY, AND THERE'S DISCUSSION THAT THERE WAS SOME NEGOTIATIONS BETWEEN THE ATTORNEYS AND EVENTUALLY THEY WENT TO THE TRIAL COURT AND THE TRIAL COURT ORDERED THE STANDARD VISITATION THAT YOU HAVE IN DIVORCE CASES IN THE FOURTH JUDICIAL CIRCUIT.

>> THAT'S A FAR CRY FROM SAYING WE ENJOY GETTING THE KIDS OFF OUR HANDS FOR A WHILE, TAKING THEM TO THE PARK, SPENDING A NIGHT AT THE HOUSE, TAKING THEM TO DIDNY WORLD, I MEAN TO SAY THE VISITATION IS LIMITING TO COMING OVER TO THE HOUSE AND SPENDING SOME TIME WITH THEM AS LONG AS SOMEBODY ELSE IS PRESENT WITH YOU YOU, THAT'S, TOTALLY DIFFERENT KIND OF VISITATION.

I AM REPRESENTING TO THE COURT, -- I AGREE, I AM REPRESENTING TO THE COURT.

FIRST OF ALL, AT THE TRIAL, MY CLIENTS SAID THAT THEY WERE, WERE WILLING TO AALLOW THE PATERNAL GRANDPARENTS TO HAVE THE TYPE OF VISITATION THAT THE COURT HAD ORDERED.

>> YOU'RE SAYING YOUR CLIENTS WOULD WAIVE ANY CONSTITUTIONAL RIGHT THAT THEY HAD TO BAR COURT SUPERVISED VISITATION IS THAT WHAT YOU'RE SAYING.

>> NO, YOUR HONOR, I AM SAYING THEY WOULD BE WILLING TO ENTER INTO AN AGREEMENT IF THE COURT -- I THINK IT'S GOING TO -- IT'S GOING --

>> SO YOU ARE TALKING ABOUT YOUR CLIENTS IN ESSENCE CALLING THE SHOTS WITH REFERENCE TO WHAT THE VISITATION WOULD BE AS OPPOSED TO ANY COURT SUPERVISED VISITATION

>> JUST SAYING THE SCOPE OF THE VISITATION MIGHT HAVE TO BE DIFFERENT THAN IT CURRENTLY IS.

>> ANYTIME THERE IS VISITATION OBVIOUSLY THERE HAS TO BE AN AUTHORITY TO SUPERVISE IT

BECAUSE WE DO KNOW INEVITABLY WHETHER IT'S IN A DISSOLUTION SITUATION OR WHATEVER, THAT EVENTUALLY THERE ARE GOING TO BE TIMES THAT PARTIES DISAGREE. ABOUT WHETHER A CHILD CAN HAVE, A VISIT WITH ONE PARENT DURING THE HOLIDAYS OR WHATEVER THE SITUATION MAY BE, SO YOUR CLIENT IS NOT WILLING TO STIPULATE TO WAIVE THEIR RIGHTS FOR THERE TO BE COURT SUPERVISED VISITATION.

>> I THINK IT WOULD DEPEND ON THE SCOPE OF THE VISITATION.

>> WELL, SO THAT'S WHY I SAID -- YOU ARE --

>> YOU ARE SAYING THAT THAT WOULD BE PART OF THE RIGHTS YOU WOULD ACQUIRE AND SO YOU'RE NOT WILLING.

>> I CAN'T REPRESENT TODAY WITHOUT KNOWING.

>> WELL, THERE'S NO REASON FOR YOU HAVE TO DO THIS.

>> RIGHT.

>> OKAY.

SO DON'T WORRY ABOUT THAT. WE ARE TRYING TO ZONE IN AND ZERO IN ON APPARENTLY THE ONLY ISSUE THAT SEPARATES THESE VERY CARING GRANDPARENTS.

IT APPEARS NOW THE ISSUE IS MORE INTRACTABLE THAN IT APPEARED IN THE ARE RECORD.

>> JUSTICE PARIENTE.

>> I WANT TO MAKE SURE ABOUT SOMETHING ABOUT THE STATE OF THE RECORD.

JUSTICE ANSTEAD HAD ASKED EARLIER TO MR. GRAESSLE, IS THERE EVIDENCE -- IF IT WAS JUST BASED ON SPECULATION THAT THEY WOULDN'T ALL -- BE OBSTRUCTED WOULDN'T BE OBSTRUCTED TO THE GRANDPARENTS, THAT THIS WOULD BE BAD TO KIDS AND HE SAID NO THERE IS EVIDENCE THAT RIGHT AFTER THE FATHER DIED, THEY RESTRICTED OF COURSE THE CHILDREN AT THAT AGE, WERE HOLD? TWO YEARS OLD? 1 YEARS OLD.

>> THEY WERE 1 AND 2.

>> IS THERE ANYTHING IN THE RECORD THAT THE COURT FOUND BECAUSE I KNOW THERE'S REFERENCES TO BEING, YOUR FATHER, YOUR FATHER WAS JUST THE SPERM DONOR, WERE THE JUDGE FOUND VIS-A-VIS THERE IS ACTION IN VISITATION THAT THEY WERE NOT ACTING IN THE BEST INTEREST OF THE CHILD?

DID THE JUDGE -- BECAUSE I COULDN'T FIND THAT, HE SAID ACTUALLY, THAT THERE THE FATHER, THEIR SON WANTED, YOUR CLIENTS TO ADOPT THIS CHILD.

>> THE JUDGE MADE A FINDING THE PATERNAL GRANDFATHER'S SON WANTED THE MUTERNAL GRANDPARENTS TO ADOPT.

>> HE SAID THEY ARE BOTH NINES AND SO HE DIDN'T SAY YOUR CLIENTS WOULD'VE BEEN NINES BUT THEY HAVE ACTED POORLY IN TERMS OF HOW THEY DEALT WITH VISITATION.

>> HE WANTED THE MATERNAL GRANDPARENTS TO CARE FOR THE CHILDREN.

THERE IS NO WILL.

WE ARE GOING ON THE ACTIONS OF THE FATHER.

THERE IS NO FINDING FROM THE TIME THE JUDGE ORDERED THE VISITATION THAT MY CLIENTS WERE WILLFULLY DISOBEYING IT OR ANYTHING LIKE THAT.

I THINK THERE WAS SOME CONFUSION AT THE BEGINNING FROM MY CLIENT'S PERSPECTIVE ABOUT WHAT THEY SHOULD DO AND THERE'S SOME -- THE ONLY THING THAT'S IN THE RECORD, IS THAT MY CLIENT THEY WANTED THE VISITATION TO TAKE PLACE IN THEIR HOME AND THAT'S WHAT'S IN THE RECORD ON THAT.

AND I KNOW -- I'M WAY OVER MY TIME BUT I WANT TO CLARIFY JUSTICE ANSTEAD AGAIN IF IT WENT ON REMAN IT WOULD DEPEND ON THE SCOPE AT THIS POINT.

IF YOU WERE TO SAY, IF THE TRIAL JUDGE WERE TO SAY -- YOU

HAVE A WEEK-LONG VISITATION
CLEARLY THEY WOULDN'T BE
WILLING TO WAIVE THAT.

>> WE UNDERSTAND.

WE ALL UNDERSTAND IT'S
DIFFICULT FOR A LAWYER STANDING
BEFORE US AND CLIENTS NOT WITH
YOU.

THOSE KINDS OF THINGS I THINK
YOU GET THE FEEL OF THE COURT
IS VERY CONCERNED WITH THE
ENTIRE CASE OF THE OUTCOME AND
THAT'S WHAT YOU ARE SEEING.

>> CAN I MAKE TWO BRIEF POINTS?

>> SURE.

>> ONE IS I THINK JUSTICE
PARIENTE ANSWERED A QUESTION
THAT JUSTICE CANTERO POSED TO
ME ABOUT THE BROADER PUBLIC
IMPORTANCE HERE, WHICH IS THAT
THIS RULING ALLOWS A TRIAL
JUDGE TO DENY AN ADOPTION, IN
ORDER TO DETERMINE POST
ADOPTION -- OR POST JUDGEMENT
WHAT SCHOOL, WHAT CHURCH,
PLETHORA OF DECISIONS THAT
PARENTS HAVE TRADITIONALLY MADE
IS, IS NUMBER ONE.

AND I WOULD STATE THAT THE
ADOPTIONS STATUTES EMPOWER THE
TRIAL JUDGE TO DETERMINE WHAT'S
THE BEST INTEREST WHEN HE'S
GRANING OR DENYING THE
ADOPTION.

IT DOES NOT, THEY DO NOT
EMPOWER HIM TO REGULATE POST
ADOPTION OR POST JUDGMENT WHAT
IS IN THE BEST INTERIOUS.

THIS IS NOT A DIVORCE CASE --
INTEREST.

THIS IS NOT A DIVORCE CASE
WHERE YOU HAVE CHAPTER 61 WHERE
IT SAYS THERE THAL BE SHARED
PARENTAL RESPONSIBILITIES.

>> THE DECISION THE TRIAL JUDGE
MADE, IT IMPACTS THE FUTURE.

>> CORRECT.

>> THAT'S SOFT OF A CIRCULAR
KIND OF THING NO MATTER WHAT A
TRIAL JUDGE DOES, IT'S GOING TO
IMPACT THE FUTURE.

>> IT'S GOING TO IMPACT BUT
UNLIKE IN A DIVORCE CASE WHERE
A TRIAL JUDGE IS DAWN

CONSTANTLY INVOLVED IN THE LIVES OF THE CHILDREN BECAUSE OF THE LEGISLATIVE DIRECTIVE ABOUT SHARED PARENTAL RESPONSIBILITY, AND HAD DONE AN ADOPTION CASE, THE TRIAL JUDGE'S INVOLVEMENT SHOULD END AT THE MOMENT THE ADOPTION IS GRANTED.

>> WELL, I MEAN, NOT IF IT'S -- HE SHOULDN'T GRANT THE ADOPTION IF IT'S NOT IN THE BEST -- ISN'T THAT WHAT THE STATUTE SAYS, IF IT'S NOT IN THE BEST INTEREST OF THE CHILD.

>> RIGHT BUT I THINK IT HAS TO BE READ DIFFERENTLY THAN CHAPTER 61 AND THAT HE IS NOT CHARGED WITH MAKING DECISIONS ON AN ONGOING BASIS.

>> WHAT YOU'RE -- ON AN ONGOING BASIS.

>> WHAT YOUR -- WHAT I HEAR YOU SAYING IS ONCE THE TRIAL JUDGE GRANTS AN ADOPTION AND THAT BECOMES FINAL, THEN THE COURT DOES NOT HAVE CONTINUING JURISDICTION.

>> CORRECT.

>> TO SUPERVISE THE PARENT. THE ADOPTIVE PARENTS.

>> AND THAT'S A VERY IMPORTANT DISTINCTION FROM DISSOLUTION CASE WHICH IS WHY THUNATIONAL THAT THE TRIAL JUDGE WHO FRANKLY IS MORE FAMILIAR WITH DISSOLUTION CASES AND THE ANALOGY THAT HAS BEEN PROPOSED IS A BAD ONE.

>> THANK YOU ALL VERY MUCH.

A VERY DIFFICULT QUESTION. WE'LL TAKE THIS RESOLVE.

WE ARE GOING TO TAKE A 5-MINUTE RECESS BEFORE WE TAKE OUR LAST CASE.

>> ALL RISE.

COURT STANDS RECESSED.