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Fla. Dept. Of Children & Families v. P.E.

SC09-169

>> LAST CASE ON THE COURT'S

AGENDA, FLORIDA DEPARTMENT OF

CHILDREN AND FAMILIES VERSUS

P.E.

AGAIN I WOULD ASK THE PARTIES

TO WATCH THEIR TIMES SO THAT WE

CAN KEEP THIS WITHIN SOME

REASONABLE TIME LIMITS.

>> YES, YOUR HONOR.

MERCEDES SCOPPETTA FOR THE

GUARDIAN AD LITEM PROGRAM.

MAY IT PLEASE THE COURT.

THE PROGRAM WOULD ASSERT THAT

ADOPTING THE FRAMEWORK OF THE

THIRD AND THE FIFTH DISTRICT

COURT OF APPEALS PROMOTES

PERMANENCY FOR CHILDREN.

>> SO WHAT WOULD HAVE HAPPENED

IN THIS CASE?

THAT IS, THE MOTHER, YOU KNOW,

THE MOTHER DOESN'T SHOW UP AT

THE ADJUDICATORY HEARING.

BY THE WAY NEITHER DID THE

GUARDIAN AD LITEM SHOW UP.

SHE WAS SICK.

SO, YOU KNOW, ANOTHER JUDGE OF
MIGHT HAVE JUST PUT THIS
HEARING OFF 30 DAYS AND THE
MOTHER AND GUARDIAN AD LITEM
COULD BE THERE.

BUT LET'S JUST SAY THERE IS NO
ONE CHALLENGING THE ACTUAL
ENTRY OF THE DEFAULT.

WHAT THEN WOULD HAVE HAPPENED
DIFFERENTLY UNDER YOUR SCENARIO
AT THE SEPTEMBER 21st, 2007
HEARING?

>> THAT WAS THE MOTION FOR --

>> AT THE OTHER HEARING OF THE
PERMANENCY HEARING, SEPTEMBER
25th HEARING, WHERE THE JUDGE
SAYS HE WAS HOLDING A
PERMANENCY HEARING AT WHICH
TIME THE GAL TESTIFIED?

>> IF I COULD GO BACKWARDS A
LITTLE BIT.

AT AUGUST 20th HEARING WHERE
THE MOTHER DIDN'T APPEAR THE
COURT COULD HAVE MOVED FORWARD
TO HEAR EVIDENCE BECAUSE THEY
WOULD HAVE BEEN TRIAL READY
THAT DAY.

EVIDENCE OF AT LEAST ONE GROUND
FOR TERMINATION OF PARENTAL
RIGHTS.

UNDER THE THIRD AND FIFTH
DISTRICT FRAMEWORK, THAT IS
WHAT WOULD HAVE HAPPENED.

BECAUSE THE GUARDIAN AD LITEM
HAD BEEN SICK OR I THOUGHT
INJURED OVER THE WEEKEND THEY
COULD HAVE ESSENTIALLY AS
SECONDARY ELEMENT COULD HAVE
BEEN LIKE CONTINUATION OF TRIAL
AND WOULD HAVE HELD IT.

IN CASE THE JUDGE WANTED TO
HOLD IT AT THE BEGINNING OF
PERMANENCY HEARING.

>> AND AT THAT TIME, DOES THE
MOTHER GET TO CONTEST BOTH THE
BEST INTERESTS AND THE GROUNDS
FOR TERMINATION?

>> THE MOTHER, I THINK IT'S
UNCLEAR IN THE RECORD, YOUR
HONOR.

>> WHAT I'M ASKING YOU AS
REPRESENTATIVE OF GUARDIAN AD
LITEM HOW IS THIS HELPFUL FOR
THE CHILD?

HOW IS AND WHAT'S THE MEANING
THEN OF A DEFAULT IF THE MOTHER

CAN COME RIGHT BACK UP AT ANY
TIME, ANY TIME IT'S RESET AND
THEN GO AHEAD AND CHALLENGE THE
BOTH GROUNDS?

>> I THINK WHAT HAPPENS IS,
UNDER THE THIRD AND FIFTH
DISTRICT FRAMEWORK, YOU WOULD,
THE TRIAL COURT, IF A PARENT
DIDN'T APPEAR AT EITHER
ADVISORY OR ADJUDICATORY
HEARING, THE TRIAL COURT WOULD
THEN MOVE FORWARD AND YOU WOULD
HEAR EVIDENCE OF A GROUND FOR
TERMINATION AND EVIDENCE OF
WHAT WOULD BE BEST INTEREST OF
THE CHILD.

>> IS THAT WHAT IS NORMALLY
DONE?
BECAUSE I DID NOT GET THE
IMPRESSION FROM THIS RECORD
THAT NORMALLY, WHEN THERE'S A
DEFAULT, OR, CONSENT BECAUSE OF
NON-APPEARANCE, THEY GO ON TO
TAKE THE EVIDENCE ABOUT THE
GROUNDS?

IS THAT WHAT'S DONE?

>> YOUR HONOR, IN THE THIRD AND
FIFTH DISTRICTS, I'M FROM

MIAMI, AND THAT IS UNDER S.S.,

WHAT IT HAS DONE IN EACH CASE.

>> ALL THAT WOULD HAVE HAPPENED

HERE, YOU WENT BACK AND GAVE ME

ANOTHER HEARING.

I'M SAYING AT THE SEPTEMBER

25th HEARING WHERE THERE WAS A

PERMANENCY HEARING --

>> CORRECT.

>> -- GAL TESTIFIED TO BEST

INTEREST --

>> YES.

>> -- GAL, SOMEONE ELSE COULD

HAVE TESTIFIED FOR STATUTORY

FOUNDATIONS?

>> CORRECT.

>> WHAT IS, FROM THE POINT OF

VIEW OF A GUARDIAN AD LITEM, IF

THE LEGISLATURE MEANT FOR THERE

TO BE A CONSENT BY DEFAULT OF

TERMINATION, WHICH TO ME MEANS

THAT THE FOUNDATIONS FOR

TERMINATION HAVE BEEN MET,

OTHERWISE, IT ALMOST MEANS

NOTHING, WHAT, WHAT'S THE

GUARDIAN AD LITEM'S INTEREST IN

WHETHER THIS ADDITIONAL REALLY

UNCONTESTED TESTIMONY IS PUT IN

THE RECORD?

>> WE WOULD DISAGREE THAT THE
LEGISLATURE MEANT THAT CONSENT
BY NON-APPEARANCE TO BE A
GROUND OR BE TANTAMOUNT TO A
GROUND FOR TERMINATION.

>> CONSENT TO TERMINATION.

>> EXCUSE ME.

>> SAYS CONTENT TO --

>> CONSENT FOR TERMINATION OF
PARENTAL RIGHTS.

I THINK --

>> IN THIS CASE WAS THE
GUARDIAN AD LITEM IS SUPPORTING
TERMINATION OR OPPOSING
TERMINATION?

>> YES.

RECOMMENDING TERMINATION OF
PARENTAL RIGHTS.

>> WELL, LET ME STEP BACK FROM
THIS.

THIS CASE STRIKES ME AS A VERY
ODD BECAUSE IT SEEMS LIKE THAT
WHEN I LOOK AT THE BRIEFS, I
SEE THE FOCUS OF THE DISCUSSION
IS ABOUT AN ISSUE WHICH IS NOT
AT ISSUE IN THIS CASE.

THE ISSUE OF THE IMPACT OF THE
CATEGORIZATION OF ONE OF THESE

TERMINATIONS BY CONSENT BECAUSE
OF FAILURE TO APPEAR ON A
SUBSEQUENT TERMINATION WITH
RESPECT TO A SIBLING.

SO MUCH OF THE BRIEF FOCUSES
ON, IS THIS VOLUNTARY OR
INVOLUNTARY AND IMPLICATION
THAT HAS FOR THOSE KINDS OF
CASES.

THAT HAS NOT GOING TO DO WITH
THE DISPOSITION OF THIS CASE.

THAT'S NOT AN ISSUE WE HAVE TO
DETERMINE IN THIS CASE.

NOW, YOU'RE HERE ARGUING FOR A
FRAMEWORK OTHER, YOU'RE
SUPPORTING TERMINATION BUT YOU'RE
SAYING THAT YOU WANT US TO
REVERSE?

>> YES, SIR.

>> AND SEND IT BACK BECAUSE THE
WRONG FRAMEWORK WAS --

>> IF I COULD FOR JUST A
MOMENT.

AT THE SECOND DISTRICT LEVEL,
WE DID ARGUE, IF YOU LOOK AT
THE BRIEFS FOR AFFIRMMENT.
BECAUSE WE DID RECOMMEND
TERMINATION OF PARENTAL RIGHTS.

>> YOU CHANGED YOUR POSITION

HERE.

>> WE REALLY DIDN'T CHANGE OUR POSITION.

TWO THINGS CHANGED THERE.

ONE THE SECOND DISTRICT ISSUED A OPINION WHETHER CONSENT BY NON-APPEARANCE IS VOLUNTARY OR INVOLUNTARY.

>> BUT AGAIN, THAT IS OF INTEREST BECAUSE OF THE IMPLICATIONS IT MIGHT HAVE FOR A SIBLING TERMINATION, RIGHT? THAT'S WHY YOU'RE CONCERNED ABOUT THAT?

>> YES. AND ALSO VOLUNTARY SURRENDERS, YOUR HONOR.

>> UNDERSTAND.

>> IT WOULD CHANGE THE FRAMEWORK FOR VOLUNTARY SURRENDERS.

>> BUT JUST GETTING BACK TO WHAT, HOW WE SHOULD HANDLE THIS CASE?

IT SEEMS TO ME THAT, YOU KNOW, WE'VE GOT ALL THESE, MORE IS BEING DISCUSSED THAT HAS TO DO WITH THINGS OTHER THAN WHAT WE HAVE TO DECIDE TO DETERMINE

HOW THIS CHILD SHOULD BE DEALT
WITH, AND IT CONCERNS ME
SOMEWHAT THAT THE CHILD IN THIS
CASE IS BEING USED AS A TEST
CASE TO DEAL WITH ALL THESE
OTHER ISSUES THAT DON'T EFFECT
THIS CHILD, AND THE PERMANENCY
FOR THIS CHILD IS BEING DELAYED
SO YOU CAN BRING THIS UP HERE
AND GET US TO ISSUE AN ADVISORY
OPINION ON THESE OTHER
QUESTIONS.

>> YOUR HONOR, THE ISSUE OF
CONSENT BY NON-APPEARANCE IS A
VERY PROBLEMATIC ISSUE ACROSS
THE STATE.

THE SECOND AND THE FOURTH DCA
ADHERED TO A SIMILAR
FRAMEWORK --

>> YOU HAVEN'T ANSWERED WHAT
JUSTICE CANADY SAYS.

AND WE HAVE, THIS CASE WAS IN
THE SECOND DISTRICT FOR 15
MONTHS.

THE MOTHER HAS NOT CHALLENGED
IN THE SECOND DISTRICT OR HERE
THE FACT THAT SHE CAN NOT
PARTICIPATE IN THESE
PROCEEDINGS.

I MEAN SHE DID NOT GET TO SET
ASIDE THE DEFAULT AND THAT'S
NOT BEEN CHALLENGED.
SO, WHAT ABOUT ON BEHALF OF
THIS CHILD, WHO IS SPEAKING FOR
THIS CHILD? THAT THAT CHILD'S
ABILITY TO BE ADOPTED BY THE
FAMILY THAT THE CHILD HAS
BEEN DELAYED AND
UNDER THE SECOND DISTRICT'S
OPINION WILL BE DELAYED BECAUSE
THEY'RE SAYING LET IT GO BACK
FOR AN EVIDENTIARY HEARING
BECAUSE THE BEST INTERESTS WERE
DONE AT THE SEPTEMBER 25th
HEARING AS OPPOSED TO THE
AUGUST 20th HEARING?

>> WELL THE SECOND DISTRICT HAD
REMANDED IT FOR THAT.

IT IS TRUE, YOUR HONOR, WERE
THE COURT TO ADOPT THE FIFTH
DISTRICT AND THIRD DISTRICT
FRAMEWORK IT WOULD NEED TO
REVERSE THE ENTIRE ORDER.

>> BUT ISN'T THE GUARDIAN AD
LITEM'S JOB HERE TO BE ADVOCATE
FOR THIS CHILD?

>> YES, YOUR HONOR, WE ARE.

WE BELIEVE THAT --

>> HOW ARE YOU BEING AN ADVOCATE
FOR THIS CHILD?

>> WE BELIEVE A HEARING ON THE
MERITS WOULD GIVE THE CHILD THE
PERMANENCY SHE NEEDS.

>> I DON'T UNDERSTAND THAT.
HOW IS THIS CHILD AS OPPOSED
ANOTHER SIBLING, HOW IS THIS
CHILD EFFECTED IN POSITIVE WAY
IF THIS CASE WERE TO GO BACK
FOR A HEARING?

AGAIN, WOULD THE MOTHER GET TO
PARTICIPATE OR NOT?

>> THE MOTHER, IF SHE WERE
AVAILABLE, IF SHE WERE ABLE TO
BE FOUND, SHE WOULD GET TO
PARTICIPATE.

>> COULD THE OUT COMES BE
POTENTIALLY DIFFERENT?

>> EXCUSE ME.

>> COULD THE OUTCOME BE
POTENTIALLY DIFFERENT.

>> WELL THE CONSENT, YOUR
HONOR, WOULD STAND IF THAT WERE
-- BUT YES, CONSCIEVEABLY COULD
BE DIFFERENT IF THE MOTHER WERE
AVAILABLE TO COME IN.

>> IF THE OUTCOME CAN BE

DIFFERENT, YOU'RE SUPPORTING
TERMINATION, RIGHT?

>> WE ARE SUPPORTTING TERMINATION
OF THE MOTHER'S PARENTAL
RIGHTS.

>> YOU THINK THAT IS IN THE
BEST INTEREST OF THIS CHILD?

>> WE BELIEVE A DECISION ON THE
MERITS IS GENERALLY IN THE BEST
INTERESTS OF THE CHILD.

>> HOW CAN YOU POSSIBLY COME
AND ARGUE THERE OUGHT TO BE
ANOTHER EVIDENTIARY HEARING TO
SUBJECT A CHILD TO A DIFFERENT
OUTCOME?

>> I WOULD SAY, YOUR HONOR,
THAT THIS WAS NOT THE BEST CASE
FACTUALLY FOR THE SECOND
DISTRICT TO CERTIFY IT BUT IT
IS AN ISSUE ACROSS THE STATE.

>> HOW IN THE WORLD COULD THERE
EVEN BE A DIFFERENT OUTCOME IN
THIS CASE?

THE MOTHER ACTUALLY HAD A
HEARING ON WHETHER THE DEFAULT,
THE CONSENT DEFAULT WAS GOING
TO BE SET ASIDE.

THE JUDGE DENIED THAT.

IS THAT AN ISSUE HERE?

>> WELL THE CONSENT I THINK
SHOULD STAND.

>> IS THE JUDGE'S RULING
DENYING THE DEFAULT CONSENT, IS
THAT AN ISSUE HERE?

>> NO. I DON'T BELIEVE SO.

>> SO, NO MATTER WHERE WE ARE
IN THIS, THAT HAS TO STAND.
WHICH MEANS THAT THE MOTHER CAN
NOT COME IN NOW AND TRY TO
CONTEST TERMINATION.

>> WELL, SHE COULD CONCEIVABLY
CONTEST THE SECOND ELEMENT OF
TERMINATION, WHICH IS EVIDENCE
AS TO WHAT IS IN THE BEST
INTERESTS OF THE CHILD.

>> I CAN NOT BELIEVE THAT THE
GUARDIAN AD LITEM IN THIS CASE
IS ASSERTING THAT ON BEHALF OF
THIS CHILD.

>> YOUR HONOR, IT'S NOT THAT
WE'RE ASSERTING THAT ON
BEHALF, ASSERTING ON BEHALF OF THE
CHILD BECAUSE A DECISION ON THE
MERITS IS VALUABLE.

THE MOTHER --

>> YOU HAVE A DUTY, YOU HAVE A
DUTY TO THIS CHILD, DO YOU NOT?

>> YOUR HONOR, I BELIEVE I AM
FULFILLING THAT.

>> YOU BELIEVE THAT, THE
POSITION YOU ARE ADVOCATING IS
CONSISTENT WITH YOUR DUTY TO
ADVOCATE FOR THE INTEREST OF
THIS CHILD?

>> THIS CHILD DESERVES A
DECISION ON THE MERITS AND
DESERVED IT THEN AND WE BELIEVE
THAT IS THE BEST, IS IN THE
BEST INTEREST OF THIS CHILD.

>> WHEN YOU SAY DECISION ON THE
MERITS, DO YOU MEAN TO HAVE --

>> WAS EVIDENCE TAKEN AS TO A
GROUND FOR TERMINATION OF
PARENTAL RIGHTS?

>> YOUR HONOR, YES.

>> I THOUGHT YOU SAID THERE WAS
EVIDENCE TO SUPPORT THAT?

>> WELL THE CONSENT, THE
CONSENT, THE MOTHER DID NOT --

>> BUT IT IS YOUR POSITION
THERE IS EVIDENCE TO SUPPORT --

>> NO, I DIDN'T SAY THAT, YOUR
HONOR.

>> BUT YOU WOULDN'T BE
SUPPORTING THE TERMINATION

UNLESS YOU THOUGHT THERE WAS
EVIDENCE TO SUPPORT IT, WOULD
YOU?

>> WE BELIEVE THAT UNDER
EXISTING SECOND DISTRICT CASE
LAW, THAT CASE WAS AFFIRMABLE
IN RE, ADC.

THAT IS WHAT WE ARGUED AT
SECOND DISTRICT LEVEL.

>> WHY AREN'T YOU STILL ARGUING
THAT?

>> BECAUSE --

>> THE ONLY THING I CAN SEE THE
TRIAL COURT MAY HAVE DONE,
ACTUALLY, I DON'T SEE ANYTHING
THAT THE TRIAL COURT DID WRONG.

>> YOUR HONOR, THE, IF I COULD
JUST POINT THE COURT TO THE
STATUTE FOR A MOMENT.

801.3(D) IS CONSENT BY
NON-APPEARANCE STATUTE.

801.3(A).

FOLKS REQUIRED TO RECEIVE
NOTICE OF TERMINATION THAT
INCLUDES PARENTS AND ALSO
GRANDPARENTS AND GUARDIAN AD
LITEM.

IF YOU THEN LOOK AT THE SECTION
ON CONSENT BY NON-APPEARANCE,

IT TALKS ABOUT IF A PERSON,
THERE ARE TWO SENTENCES IN THAT
PROVISION.

AND IT SAYS, IF A PERSON DOES
NOT APPEAR AT THIS ADVISORY
HEARING, THEN THEY HAVE
CONSENTED TO TERMINATION OF
PARENTAL RIGHTS.

WE KNOW, UNDER 802.4 WHICH HAS
THE ELEMENTS OF TERMINATION OF
PARENTAL RIGHTS, THAT MEANS A
GROUND FOR TERMINATION, FACTS
SUPPORTING A GROUND FOR
TERMINATION.

EVIDENCE AS TO WHAT IS IN THE
BEST INTEREST AND OF COURSE
COUNSEL AND PROPER NOTICE.

>> SO ALL YOU'RE REALLY, IT
SEEMS TO ME, WHAT YOU'RE SAYING
TO US IS LOOK, WE NEED
FORMALITY OF PUTTING ON THE
RECORD THIS EVIDENCE SUPPORTS
WHATEVER GROUND FOR
TERMINATION, BUT, THE QUESTION
IS, THAT'S ONLY NECESSARY,
REALLY IF YOU'RE LOOKING DOWN
THE ROAD TO SOME OTHER SIBLING.
FOR THIS CHILD, IT COULD END

RIGHT HERE AND NOW?

>> NO, MA'AM.

I ALSO THINK THAT IT COMPLETELY

UPPED MINES WHAT THE

LEGISLATURE INTENDED TO BE A

VOLUNTARY SURRENDER.

IF WE LOOK AT THE 806.1(A),

THE VOLUNTARY SURRENDER

PROCEDURE, IT REQUIRES PARENTS

PRESENT IN COURT.

IT REQUIRES THEM COMING TO TALK

TO THE DEPARTMENT.

IT REQUIRES SIGNING A DOCUMENT

WITH WITNESSES.

IT REQUIRES A DISCUSSION ON THE

RECORD OF COLIQUY WITH THE

COURT AS TO VOLUNTARINESS AND

ET CETERA, AND I THINK THAT'S

VERY DIFFERENT THAN JUST

AVOIDING THE PROCEEDING.

>> IT IS TRUE THE SECOND

DISTRICT IN DISCUSSING THIS

KIND OF MELDED TOGETHER --.

>> YES, THEY DID.

>> -- THIS PROVISION AND THAT.

I UNDERSTAND THAT AND I

UNDERSTAND THAT THE CONCERN

THAT MIGHT BE PROBLEMATIC.

BUT INSOFAR AS THE RESULT IN

THIS CASE IT MAKES NO
DIFFERENCE ON THIS ISSUE
WHETHER THEY HAVE GOT TO GO
FORWARD WITH PROOF.

>> I CONCEDE, YOUR HONOR, WE,
IN THIS SET OF FACTS WE
RECOMMENDED TERMINATION AND WE
WANT TERMINATION FOR THIS
CHILD.

>> ISN'T THAT WHAT YOU WERE
FIRST ADVOCATING HERE THAT THIS
CASE SHOULD BE, INSTEAD OF A
NEW EVIDENTARY HEARING? ISN'T THERE
ENOUGH HERE, EVEN UNDER YOUR
THEORY TO AFFIRM IT ON
ALTERNATIVE GROUNDS?

I MEAN, THAT'S, BUT, WE NEED TO
HEAR FROM THE DEPARTMENT
BECAUSE THEY'RE ADVOCATING I
GUESS A DIFFICULT POSITION, TO
HEAR WHAT THEY HAVE TO SAY.

>> YOUR HONOR, MAY I JUST
FINISH MY DISCUSSION AS TO
801.3(D).

>> VERY SHORTLY.
YOU HAVE USED UP A SUBSTANTIAL
PORTION OF THE ENTIRE ARGUMENT.

>> I'M SORRY, I APOLOGIZE.

THAT PROVISION ITSELF
CONTEMPLATES THE FACT THAT
THERE WOULD BE, THAT THE TRIAL
COURT WOULD MOVE FORWARD TO THE
TRIAL ITSELF.

IF YOU LOOK AT IT, IF A
GRANDPARENT WERE NOT TO APPEAR,
SAYS IF A PERSON SERVED WITH
NOTICE UNDER THIS SECTION DOES
NOT APPEAR, THEY CONSENT TO
TERMINATION.

NOW IF A GRANDPARENT DOESN'T
APPEAR WHO IS REQUIRED TO GET
NOTICE, WE CLEARLY, THE TRIAL
WOULD MOVE FORWARD.

>> LET ME TAKE YOU TO RULE
8.510(A) WHICH HAS TO DO WITH
ADVISORY HEARINGS.

SUBSECTION THREE SAYS, IF A
PARENT SERVED WITH NOTICE FAILS
TO APPEAR AT THE ADVISORY
HEARING THE COURT SHALL ENTER
CONSENT TO TERMINATION OF
PARENTAL RIGHTS PETITION FOR A
PARENT WHO FAILED TO PERSONALLY
APPEAR.

OKAY, THAT GETS ENTERED BY THE
COURT FOR FAILURE TO APPEAR.

NEXT SUBSECTION SAYS, IF

ADMISSION OR CONSENT ENDED BY ALL PARENTS, I THINK IN CONTEXT YOU HAVE TO INCLUDE WHAT THEY HAVE JUST TALKED ABOUT, OR FOR A NAMED CHILD INCLUDED IN PETITION FOR TERMINATION OF PARENTAL RIGHTS AND THE COURT FINDS TERMINATION OF PARENTAL RIGHTS IS IN THE BEST INTEREST OF THE CHILD THE COURT WILL DISPOSITION ALTERNATIVES AS PROVIDED BY LAW.

IT DOES NOT CONTEMPLATE THERE AN ADJUDICATION OF OTHER GROUNDS.

THE WAY I READ IT.

>> IT CONTEMPLATES THE APPEARANCE OF THE PARENTS WHICH JUST NEGLECTING THE PROCEEDINGS IS VERY DIFFERENT.

I WOULD JUST END BY SAYING THIS COURT IN 2000 IN THE J.B. CASE ON PAGE 267 SAID VIRTUALLY THE SAME THING.

CONSENT BY DEFAULT IS ESSENTIAL TO ENSURE OBJECT OF PROCEEDING IS NOT BY PARENTS NEGLECT OF THE PROCEEDING.

ENABLES A TRIAL COURT TO BRING
TERMINATION OF PARENTAL RIGHTS
TO CONCLUSION EVEN IF THE
PARENT HAS CHOSEN NOT TO
PARTICIPATE.

>> ALL YOU'RE SAYING IF THE
JUDGE SAID, TELL US, GIVE US,
WHY HE WAS NEGLECTED OR,
WHATEVER EVIDENCE THERE IS OF
NEGLECT, THAT WOULD
HAVE BEEN THE END OF IT?

>> YES.

>> IN THE SAME HEARING WHERE
THE MOTHER WAS IN DEFAULT,
THAT'S WHAT YOU'RE ASKING US,
IS TO TAKE THAT TECHNICAL STEP
OF THE DEPARTMENT PUTTING ON
THE RECORD THE GROUNDS
FOR THE --

>> ISN'T THAT WAIVED IN THIS
CASE BECAUSE NO ONE OBJECTED
BELOW?

IF SOMEBODY, IN IF THE GAL
SAID, JUDGE YOU NEED TO DO
SOMETHING ELSE WE NEED TO GO
THROUGH THIS FORMALITY I DON'T
UNDERSTAND WHY IT HAS NOT, ITS
BEEN WAIVED BY NO PARTY HAVING
BROUGHT IT UP BELOW?

IT IS NOT JURISDICTIONAL.

>> I AGREE, YOUR HONOR, IN THIS
CASE THE GUARDIAN AD LITEM DID
NOT OBJECT TO THAT.

>> THEN WHY DO YOU COME UP
HERE, WHEN YOU HAVE NOT SOUGHT
TO HAVE THIS PROCESS WORK THIS
WAY THERE AND EXTEND THIS AND
DELAY THE PERMANENCY OF, FOR
THIS CHILD BY EXTENDING THESE
PROCEEDINGS?

>> YOUR HONOR, BECAUSE UNDER
EXISTING SECOND DISTRICT CASE
LAW, AT THE TIME THAT WASN'T
NECESSARY.

UNDER IN RE: A.D.C, THAT WASN'T
NECESSARY.

ONCE THEY ISSUED THE OPINION AS TO
VOLUNTARINESS AND ONCE WE GOT
HERE AND REVIEWING IT.

>> AS VOLUNTARINESS, WOULDN'T
YOU TAKE THE POSITION THAT IS
DICTA?

WHEN IT COMES TO MAKING
DETERMINATION ABOUT IMPACT OF
THAT IN A SUBSEQUENT CASE, THAT
IS NOT GOING TO BE
DETERMINATIVE OF HOW THAT ISSUE

IS GOING TO BE DECIDED

BECAUSE THAT WAS NOT AN ISSUE

THAT WAS ACTUALLY BEFORE THE

COURT?

>> THAT'S TRUE, YOUR HONOR.

BUT CERTAINLY BEFORE THIS COURT

THE INTERDISTRICT CONFLICT.

>> WELL, I MEAN I CAN SEE

THERE'S CONFLICT BUT THE

CONFLICT ISSUE SEEMS TO BE WHAT

YOU TALK ABOUT VERY LITTLE, AT

LEAST IN THE BRIEFS AND THE

FOCUS IS ALL ON THIS OTHER

THING, WHICH IS NOT

REALLY AN ISSUE IN THIS CASE.

>> WELL, WE BELIEVE THAT

BECAUSE THE SECOND DISTRICT

ISSUED THEIR OPINION CONCERNING

VOLUNTARINESS, AND REALLY THE

ONLY VOLUNTARY PROVISION IN THE

GROUNDS SECTION OF THE STATUTE,

THE VOLUNTARY SURRENDER.

AND THE VOLUNTARY SURRENDER IS

NOT ABOUT JUST NOT COMING, JUST

NOT SHOWING UP.

THE VOLUNTARY SURRENDER IS AN

AFFIRMATIVE ACT.

I THINK IF THE COURT WERE TO

AFFIRM THE OPINION OF THE

SECOND DISTRICT, THAT WE WOULD
BASICALLY ABROGATE THAT
AFFIRMATIVE ACT OF THE
VOLUNTARY SURRENDER.
WHAT VERY FEW PARENTS
REALISTICALLY, WHEN GIVEN THE
CHOICE WHETHER THEY HAVE TO
AFFIRMATIVELY COME IN BEFORE A
JUDGE AND THE DEPARTMENT AND
SIGN PAPERS AND, PUT THEIR
RELENDING WISHMENT OF RIGHTS ON
THE RECORD, ARE GOING TO CHOOSE
THAT OVER JUST NOT APPEARING.

>> THANK YOU VERY MUCH.

YOU HAVE WELL-USED YOUR
TIME.

WE'LL GIVE YOU SOME ADDITIONAL
TIME.

>> MAY IT PLEASE THE COURT,
COUNSEL, MY NAME IS KELLEY
SCHAEFFER.

I REPRESENT THE DEPARTMENT OF
CHILDREN AND FAMILIES IN THIS
CASE.

>> I ALSO GOT TO ASK THE
DEPARTMENT, I KNOW YOU HAVE A
LIMITED TIME, WHAT IS THE
EXCUSE FOR A CHILD

PLACED IN A SHELTER IN 2004 TO
STILL BE IN LIMBO FIVE YEARS
LATER? WHAT HAVE WE DONE TO
EXPEDITE REVIEW?
IN THE SECOND DISTRICT, THIS
APPEAL WAS FILED IN OCTOBER OF
2007.

IT WASN'T DECIDED UNTIL
DECEMBER OF 2008.

THERE IS NO RECORD TO DECIDE
THIS, THESE FACTS.

I MEAN, THERE IS NO RECORD TO
HAVE LOOKED AT.

WHAT IS THE DEPARTMENT, AND NOW
THEY'RE BRINGING THIS CASE UP
WHEN IT'S CLEAR THAT THIS HAS
BEEN WAIVED BY ANYBODY
COULD POSSIBLY HAVE AN INTEREST
IN THE MATTER BY NOT HAVING
RAISED IT BELOW?

WHY BRING THIS CASE TO THIS
COURT?

>> WELL, WE'RE CERTAINLY NOT
TRYING TO DELAY PERMANENCY FOR
THIS TRIAL.

>> CERTAINLY LOOKS LIKE --
ISN'T THAT HAPPEN?

EVERY MONTH THIS CASE IS BEFORE
THIS COURT SINCE THE SECOND

DISTRICT RULED IS, IS DELAYING
THE PERMANENCY OF THIS CHILD?

>> IT IS DELAYING PERMANENCY.

HOWEVER, WE ARE OF THE POSITION
THAT THE SECOND DISTRICT COURT
OF APPEAL IN THIS CASE
PARTIALLY GOT IT CORRECT IN
THEIR SAYING THAT AN ADDITIONAL
EVIDENCE AFTER A CONSENT BY
NON-APPEARANCE IS NOT REQUIRED.
WE THINK THEY GOT IT PARTIALLY
INCORRECT IN THE SENSE THAT
THEY REMANDED IT.

WE BELIEVE THAT IT SHOULD HAVE
BEEN AFFIRMED OUTRIGHT, BASED
ON THE FACT THAT THERE WAS
PROPER CONSENT BY
NON-APPEARANCE, THAT IS ALLOWED
BY THE STATUTE.

THERE WAS MANIFEST BEST
INTEREST TESTIMONY GIVEN BY THE
GUARDIAN AD LITEM AT A
SUBSEQUENT HEARING.

>> LET ME ASK YOU THIS.

IN PRACTICAL TERMS, IF YOU HAD
GONE ON PURSUANT TO THE SECOND
DISTRICT'S OPINION AND HAD,
WHAT KIND OF HEARING DID THEY

WANT YOU TO HAVE?

A HEARING TO PUT ON THE RECORD

WHAT THE BASIS FOR THE

TERMINATION WAS?

THIS WOULD HAVE BEEN OVER

SEVERAL MONTHS AGO, CORRECT?

>> THEY WANTED US TO GO BACK TO

HAVE TESTIMONY AS TO MANIFEST

BEST INTEREST BECAUSE THEY WERE

UNDER THE MISTAKEN BELIEF WAS

THAT TESTIMONY WAS NOT

CONSIDERED WHEN THE TRIAL COURT

ENTERED THEIR TERMINATION OF

PARENTAL RIGHTS.

>> ON THAT SITUATION, THAT'S

WHAT I DON'T UNDERSTAND.

IT SOUNDS LIKE THE SECOND

DISTRICT IS SAYING NOT ONLY

WOULD HAVE TO GO BACK AND REDO

THE GAL ON, BUT GIVE THE MOTHER

A CHANCE TO CONTEST IT?

SAYS FOR PARTIES TO PUT ON

EVIDENCE OF BEST INTEREST.

>> YES. WE WERE UNCLEAR

WHETHER OR NOT

THE CONSENT WOULD ACTUALLY

STILL REMAIN IN EFFECT.

AND WE DID FILE A MOTION FOR

CLARIFICATION WHICH WAS DENIED.

BUT IN DOING SO, IN REMANDING,
BECAUSE THE TPR ORDERED IS NOT
ENTERED UNTIL AFTER THE COURT
HEARS MANIFEST BEST INTEREST
TESTIMONY THE MOTHER WOULD --

>> DID THEY GIVE, HEAR THAT
TESTIMONY AT SEPTEMBER HEARING?

>> THEY DID. BUT THE DCA
DID NOT THINK THAT --

>> THAT IS NOT A CONFLICT
ISSUE.

THAT IS JUST SOME, THAT'S, SO
WHAT YOU'RE SAYING ON THE
MERITS THAT WHEN I CONSENT TO
TERMINATION, THERE IS NO REASON
TO ESTABLISH -- ALTERNATIVE,
THERE IS NOT A

BASIS FOR THE JUDGE TO NEED TO
INQUIRE AS TO ADDITIONAL
GROUNDS FOR TERMINATION?

>> ABSOLUTELY.

FOR THIS COURT TO REQUIRE
ADDITIONAL EVIDENCE WOULD
ESSENTIALLY RENDER THIS STATUTE
MEANINGLESS.

THE LANGUAGE IS PRETTY CLEAR.
THE COURT SHALL.

>> WHY SHOULD THE MOTHER BE

ABLE TO INSIST ON THE
DETERMINATION WITH RESPECT TO
BEST INTEREST EITHER?
IT SEEMS LIKE THAT HER CONSENT
BY VIRTUE OF HER FAILURE TO
APPEAR, IF IT IS GOING TO HAVE
ANY MEANING MEANS SHE IS OUT OF
IT, SHE'S DONE.

AND SHE SHOULD NOT BE ALLOWED
TO POP BACK UP AND OBJECT TO
ANY ASPECT OF THESE
PROCEEDINGS.

BECAUSE THAT, IF WE ALLOW HER
TO POP BACK UP IN THESE
PROCEEDINGS, AND OBJECT TO THIS
OR THAT, THEN, THE, THE CONSENT
IS REALLY RENDERED, IF NOT
ENTIRELY MEANINGLESS, IT
CERTAINLY RENDERED NOT VERY
MEANINGFUL.

SHE CAN EXTEND THESE
PROCEEDINGS AND THE WHOLE POINT
OF THIS IS TO TRY TO GET THIS
TO A POINT OF CONCLUSION
FOLLOWING DUE PROCESS AND
PROPER PROCEDURES BUT TO A
POINT OF CONCLUSION SO THE
CHILD CAN HAVE PERMANENCY.
RIGHT?

>> YES. YES.

ULTIMATELY THAT'S THE ULTIMATE
GOAL IN EVERYONE OF OUR CASES
BUT STATUTORILY IT REQUIRES A
GROUND TO BE PROVEN AND
MANIFEST BEST INTEREST --

>> BUT IF THERE IS NO ONE, IF
THERE'S NO ONE WHO IS IN A
POSITION TO OBJECT TO A FAILURE
ON THOSE POINTS, THERE
SHOULDN'T, THERE IS NOBODY TO
OBJECT.

THERE'S NO BASIS FOR
OVERTURNING THE JUDGMENT OF
TERMINATION, IS THERE?

>> NO.

>> WHEN THERE'S A WRITTEN
VOLUNTARY SURRENDER, IS THERE A
MANIFEST BEST HEARING
DETERMINATION BY THE TRIAL
JUDGE?

>> YES THERE IS.

>> SO THAT'S STILL REQUIRED.

>> YES, THERE IS.

THAT IS STILL REQUIRED.

>> WHO BROUGHT THE, WHO BROUGHT
THE CASE FROM THE TRIAL COURT
TO THE SECOND DISTRICT?

WHICH PARTY?

>> THE MOTHER.

>> AND DID THE MOTHER ARGUE,
SAID, THE DEFAULT SHOULD BE SET
ASIDE.

>> I BELIEVE SHE DID ARGUE
THAT.

>> THAT IS NOT EVEN ADDRESSED
IN THE SECOND DISTRICT OPINION?

>> NO.

>> WE'LL HEAR FROM THE MOTHER'S
ATTORNEY AND FIND OUT. I'M JUST --.

>> I GUESS MY ONLY REAL, ONE OF
THE ISSUES THAT COMES TO MY
MIND IS THAT WE HAVE A
STATUTORY SCHEME THAT IN FACT
SAYS, WHAT THE GROUNDS FOR
TERMINATION ARE.

AND NOT INCLUDED IN THOSE EIGHT
OR NINE GROUNDS IS CONSENT BY
NON-APPEARANCE.

I MEAN IT DOES TALK ABOUT
CONSENT COUPLED WITH FINDING OF
SURRENDER AND ALL THOSE KINDS
OF THINGS.

SO THAT'S WHY I'M TRYING TO
FIGURE OUT HERE WAS IT
NECESSARY AT THE TIME SHE DID
APPEAR, TO PUT THOSE EIGHT OR

NINE GROUNDS ON THE RECORD?

THAT IS HOW YOU TERMINATE

PARENTAL RIGHTS OR WHETHER OR

NOT YOU IMPLICITLY SAY THE

LEGISLATURE HAS ANOTHER GROUND

BY SAYING THAT THE MOTHER HAS

CONSENTED BY NOT APPEARING?

WHAT IS YOUR POSITION ON THAT?

>> MY POSITION IT IS VERY, IT

IS VERY AMBIGUOUS IN THE SENSE

THAT IT IS UNCLEAR ACCORDING TO

THE STATUTE WHETHER, IT JUST

SAYS THAT THEY ARE CONSENTING

TO THE TERMINATION OF PARENTAL

RIGHTS.

IT DOESN'T SAY THE ALLEGATIONS

IN THE PETITION.

DOESN'T SAY THE GROUNDS.

IT JUST SAYS THEY'RE

CONSENTING.

SO IN AN ABUNDANCE OF CAUTION

WE HAVE GONE ON

TO PRESENT MANIFEST BEST

INTEREST TESTIMONY.

IF THEY ARE CONSENTING TO THE

ALLEGATIONS --

>> IS THIS MANIFEST BEST INTEREST

A LITTLE DIFFERENT FROM THE

GROUNDS THAT ARE LAID OUT AS

GROUNDS FOR TERMINATION?

THAT'S THE PART THAT OF

INTEREST TO ME IS, DO YOU NEED

THAT GROUND FOR TERMINATION,

ONE OF THOSE THAT ARE IN

39.806, OR WHETHER OR NOT THE

STATUTE TALKING ABOUT CONSENT,

OR NON-APPEARANCE IS AN

ADDITIONAL GROUND?

>> I DON'T THAT IT IS A

GROUND -- ADDITIONAL GROUND AND

I THINK IF THE LEGISLATURE

WANTED IT THERE THEY WOULD HAVE

PUT IT THERE.

BUT I DON'T THINK, IF YOU HAVE

A CONSENT FOR NON-APPEARANCE

YOU DON'T THAT YOU HAVE TO

PROVIDE GROUNDS.

PARENT CONSENT TO TERMINATION

OF PARENTAL RIGHTS.

THEY'RE CONSENTING TO THE WHOLE

THING.

THEY'RE CONSENTING IT IS IN THE

CHILD'S BEST INTEREST --

>> YOU'RE ARGUMENT IS THAT IS

REALLY IS A GROUND?

>> I THINK IT WRAPS UP THE

WHOLE PROCEDURE IN A NICE NEAT

PACKAGE AND SAYS, HERE, THE
PARENT'S NOT PARTICIPATING.
THE PARENT HAD THE OPPORTUNITY.
THEY DID NOT, WERE NOT DENIED
DUE PROCESS BECAUSE THEY HAD
NOTICE AND AN OPPORTUNITY TO BE
HEARD AND THEY DIDN'T TAKE THAT
OPPORTUNITY.

THEREFORE, THE FUNDAMENTAL, THE
FOCUS SHIFTS FROM A PARENT'S
FUNDAMENTAL RIGHT TO PARENT AT
THAT POINT, WHEN THEY CHOOSE
NOT TO PARTICIPATE, IT THEN
SHIFTS TO A CHILD'S RIGHT TO
PERMANENCY.

>> THE WAY I SEE THIS ANYWAY AS
I NOW LOOK AT FOOTNOTE ONE OF
THE SECOND DISTRICT'S OPINION,
IF THE MOTHER WANTED TO THE
CONTEST THE PROCEDURE THAT WAS
GOING TO OCCUR AFTER THE
DEFAULT WAS ENTERED, WHICH THE
MOWER NEEDED TO BE AT THAT
HEARING AND ATTEMPT TO
PARTICIPATE TO SAY THIS IS WHAT
SHOULD HAPPEN.

I DON'T UNDERSTAND HOW THEY,
THE SECOND DISTRICT FOUND THAT

THE MOTHER WAS STILL ABLE TO
RAISE THAT POINT ON APPEAL AND
CALL THAT FUNDAMENTAL ERROR.
I MEAN, COUNSEL AND THE MOTHER
MADE A DECISION NOT TO BE AT
THAT HEARING, WHERE, AT THAT
POINT BEST INTERESTS WERE BEING
DETERMINED, CORRECT?

>> YES.

THAT'S WHY WE ARE ASKING TO
BASICALLY AFFIRM THE TRIAL
COURT'S ORDER BECAUSE WE DON'T
FEEL THE TRIAL COURT DID
ANYTHING WRONG.

>> YOU WANT US TO QUASH THE
SECOND DCA'S OPINION, SAY THEY
GOT RIGHT ON THIS CONFLICT
ISSUE, RIGHT?

>> YES.

>> THE CONFLICT ISSUE.
BUT GOT IT WRONG ON THE REMAND
WITH RESPECT TO BEST INTEREST?

>> YES.

>> BUT COULDN'T WE ALSO SAY
THAT THE MOTHER WAIVED ANY
ISSUE BY NOT APPEARING AT THAT
HEARING ON, THE SECOND HEARING,
AND HOW MUCH MORE OF A BURDEN
IS IT FOR THE DEPARTMENT WHEN

THEY'RE PUTTING ON BEST
INTEREST TO ALSO PUT ON
EVIDENCE OF ONE OR MORE OF THE
GROUNDS?

ISN'T IT AGAIN IN MANY CASES,
OF THIS NATURE IT IS GOING TO
BE THE SAME EVIDENCE?

>> AND SOMETIMES IT IS.

IF IT IS A SIMPLE CASE WHERE
YOU HAVE A SITUATION WHERE
INCARCERATED PARENT WHERE YOU
HAVE TO DO IS ADMIT A CERTIFIED
CONVICTION IT IS NOT THAT BAD.
IF YOU'RE DEALING WITH A CASE
OF A SHAKEN BABY OR SOMETHING
REQUIRE EXTENSIVE TESTIMONY,
EXPERT WITNESSES A LOT OF TIME
AND LOT OF RESOURCES IT IS A
LITTLE BIT DIFFERENT.

>> IS THAT HOW IT IS HAPPENING
WITH ALL OTHER COURTS, THE
PARENT DOESN'T APPEAR THEY'RE
STILL HAVING FULL-BLOWN
HEARINGS ON GROUNDS FOR
TERMTATION OR ARE THEY JUST
GOING THROUGH THE MOTIONS?

>> I BELIEVE IN THE THIRD AND
FIFTH THEY'RE PRESENTING AN

EVIDENTIARY HEARING, BASICALLY
AN EMPTY CHAIR TRIAL.

>> NOBODY GETS TO APPEAL THAT?
DOES ANYONE GET TO APPEAL THAT?
>> AND NO ONE PUTS ON CONTRARY
EVIDENCE IF THE PARENT ISN'T
THERE.

>> YES.

>> WELL, THANK YOU, VERY MUCH,
ALSO.

I THINK WE NEED TO HEAR FROM
THE RESPONDENT NOW.

>> MAY IT PLEASE THE COURT.

MY NAME IS LORENA KILEEY.

I'M HERE ON BEHALF OF THE
MOTHER.

>> DID YOU REPRESENT THE MOTHER
IN THE TRIAL COURT?

>> NO, MA'AM.

>> AGAIN YOU TRY TO LOOK AT,
YOU WANT TO GET LOFTY
PRINCIPLES OF LAW AND YOU WANT
TO UNDERSTAND HOW IT APPLIES IN
A REAL-LIFE SITUATION.

WHAT I DON'T UNDERSTAND ON THE
AUGUST 20th HEARING THE MOTHER
DIDN'T APPEAR BUT THE ATTORNEY
FOR THE MOTHER APPEARED.

AT THAT POINT THE GUARDIAN AD

LITEM WASN'T PRESENT.

WHY DIDN'T THE ATTORNEY FOR THE
MOTHER SAY, I'D LIKE TO YOU
KNOW, MY CLIENT'S NOT HERE BUT
I KNOW SHE WANTS TO PARTICIPATE
OR I HAVEN'T BEEN ABLE TO GET
AHOLD OF HER.

SINCE YOU'RE NOT GOING TO GO
AHEAD NOW, CAN'T WE JUST, YOU
KNOW, HAVE THIS IN SEPTEMBER?
IT JUST, SEEMS TO ME THAT IF
THAT HAD HAPPENED, THIS WOULD
ALSO NOT, THIS CASE WOULD NOT
HAVE GOTTEN OFF ON THIS TRACK.
WOULD YOU, AGAIN, WOULD YOU
AGREE WITH THAT?

>> ABSOLUTELY.

YOU KNOW, I HANDLED AT THE
SECOND DISTRICT.

I GOT THE RECORD THAT I GOT.

YOU KNOW, THERE'S NOTHING I CAN
DO ABOUT THAT.

I CAN'T EXPLAIN WHY THAT
HAPPENED.

>> WHY SHOULD WE MAKE BAD LAW
ON THIS?

THE OTHER PART IS, THE ATTORNEY
WAS FULLY AROUND WHEN SEPTEMBER

25th CAME ALONG AND IF THE
ATTORNEY OR THE MOTHER AT THAT
POINT WANTED TO MAKE AN ATTEMPT
TO CONTEST IT, SHOULDN'T THEY
HAVE HAD APPEAR AT THAT HEARING
AND ATTEMPT TO BE HEARD?

>> I THINK THE BEST THING THAT
COULD HAVE HAPPENED WOULD HAVE
BEEN EXACTLY THAT AND IT DIDN'T
HAPPEN AND WHEN, IN MY BRIEF IN
THE SECOND DISTRICT I DID RAISE
THE ISSUE ABOUT THE
INSUFFICIENCY OF NOTICE.

I DID RAISE ISSUES WHETHER THE
MOTION TO VACATE SHOULD HAVE
BEEN SET ASIDE.

THE LAST ARGUMENT I MADE, YOU
KNOW, IN THE OTHER DISTRICTS
THEY'RE DOING THIS.

>> AFTERTHOUGHT FOR YOU?

>> IT WASN'T AN AFTERTHOUGHT.
IT WAS MY THIRD ARGUMENT.

SO I RAISED THE ISSUE.

I'M THE ONE WHO STARTED THIS
WHOLE FIASCO.

>> YOU RAISED IT INITIALLY
ALTHOUGH IT DOESN'T APPEAR IN
THE WRITTEN OPINION YOU WERE
ACTUALLY DOING WHAT I THINK

WOULD MAKE SENSE, MAYBE THE
DEFAULT SHOULD HAVE BEEN SET
ASIDE.

>> EXACTLY.

>> BUT THAT'S NOT IN THE
OPINION.

>> THAT WAS MY PRIMARY ARGUMENT
BEFORE THE SECOND DISTRICT.

I AS MY THIRD ARGUMENT, I
USUALLY ONLY HAVE TWO
ARGUMENTS, AS MY THIRD
ARGUMENT I SAID OTHER
DISTRICTS WERE DOING SOMETHING
DIFFERENT WHICH HELPED MY
CLIENT THE MOTHER.

>> THE OTHER DISTRICTS IF THERE
IS A DEFAULT ENTERED IT IS NOT
SET ASIDE, ARE THEY ALLOWING
THE PARENT THEN IT PARTICIPATE
IN THE SUBSEQUENT, AND AGAIN,
MANY TIMES AS IS MENTIONED,
THEY WOULD BE GOING AHEAD RIGHT
AT THAT SAME HEARING WHERE THE
PARENT DOESN'T SHOW UP.

BUT IF IT IS RESET ARE THEY
ALLOWING THE PARENT THEN TO,
JUSTICE CANADY, SO ELOQUENTLY
SAID, POP BACK INTO CONTEST A

GROUND FOR DETERMINATION AND
BEST INTEREST?

>> I DON'T KNOW BECAUSE I DON'T
DO THE TRIAL WORK.

ALL I CAN TELL FROM THE
OPINIONS IS LOOKS AS THOUGH
WHAT THOSE COURTS ARE DOING IS
ALLOWING THE ATTORNEY WHO IS
THERE FOR THE PARENT TO RAISE
OBJECTIONS, CROSS-EXAMINE, JUST
TO MAKE SURE, TO CONVINCING THE
TRIAL COURT THAT THEY'RE
ACTUALLY IS AN INVOLUNTARY
GROUND FOR TERMINATION.

>> BUT YOU ARE NOT, I WOULD BE
MUCH MORE CONCERNED FOR, YOU
KNOW, IN TERMS OF THE PROCESS
IF YOU WERE RAISING SOME
ADDITIONAL CONSTITUTIONAL
BASIS.

I APPRECIATE SO FAR YOUR CANDOR
ON ALL OF THIS.

IT MAKES ME FEEL MUCH BETTER
ABOUT YOUR ADVOCACY FRANKLY
BECAUSE I WAS CONCERNED WHAT
HAD HAPPENED AT THE TRIAL
COURT.

BUT IF YOU WERE MAKING A DUE
PROCESS ARGUMENT OR

CONSTITUTIONAL ARGUMENT WHAT
THE LEGISLATURE INTENDED IS
EVEN IF THERE WOULD BE THIS
CONSENT THAT THEY STILL
INTENDED FOR THE PARENT TO
CONTINUE TO BE ABLE TO
PARTICIPATE BECAUSE DUE PROCESS
REQUIRED IT, I FEEL, WELL,
THAT'S A GOOD ARGUMENT.

BUT ARE WE DOING THIS BASED ON
STATUTORY CONSTRUCTION AS
OPPOSED TO WHAT'S GOOD OR
WHAT'S CONSTITUTIONAL?

>> I THINK IT'S BOTH.

I THINK THE STATUTE, THE
INTERPLAY BETWEEN THESE TWO
STATUTORY PROVISIONS IS
INTERESTING IN WHAT IS NOT
INCLUDED.

AND WHAT IS NOT INCLUDED IS ANY
REFERENCE AT ALL IN 806.1 WHICH
SETS FORTH THE GROUNDS FOR
TERMINATION, IT NEVER
REFERENCES THE STATUTE THAT
DEALS WITH THE FAILURE TO
APPEAR.

>> DON'T YOU THINK NORMALLY
THAT WE KNOW WHAT A DEFAULT

MEANS?

AND A DEFAULT USUALLY, YOU
DON'T USUALLY NEED TO BE THAT
CLEAR AND SAY, ALTHOUGH THE
LEGISLATURE, YOU KNOW MAYBE HE
SHOULD, AND BY THE WAY, ALSO
THEY HAVE DEFAULTED, YOU DON'T
HAVE TO PROVE THIS PROVISION
BUT THESE OTHER GROUNDS.

BUT ISN'T THAT WHAT IS, YOU
KNOW, LOGICALLY KNOW WHAT
DEFAULTS MEAN, THAT IT MEANS
YOU DON'T HAVE TO GO AHEAD AND
PROVE ANY OF THOSE GROUND?

>> I THINK IF THE STATUTE WAS
WRITTEN THE WAY HOW YOU'RE
SUGGESTING WHERE IT JUST SAID,
PARAGRAPH 1-A, YOU KNOW,
THERE'S A DEFAULT.

BUT PARAGRAPH 1-A, THERE'S IT
IS VERY DETAILED SPECIFIC
PROVISION.

>> I AGREE WITH THE SECOND
DISTRICT MAYBE YOU DON'T EQUATE
THOSE TWO.

THIS ISSUE OF WHETHER IT'S
VOLUNTARY OR INVOLUNTARY HAS
SOME SIGNIFICANCE FOR SIBLINGS.

BUT FOR OUR PURPOSES, I DON'T

CARE WHAT YOU CALL IT, THE
ISSUE FOR ME IS, I DON'T KNOW
WHY THE DEPARTMENT WOULD SOMEWHERE
TO BE REQUIRED TO GO THROUGH
THE SAME EVIDENCE THAT THEY
WOULD GO THROUGH IF THE PARENT
HAD APPEARED TO PROVE
TERMINATION.

AND THAT'S WHAT, I THINK THAT'S
WHERE THE DEPARTMENT, THEY'RE
SAYING WE'RE CALLING IT
VOLUNTARY.

YOU SAY NO, GOT TO CALL IT
INVOLUNTARY.

FROM THE PARENTS POINT OF VIEW,
OTHER SIBLINGS, ARE BETTER
OFF FOR THIS MOTHER IF IT IS
CALLED VOLUNTARY, THEY CAN'T
USE THIS TERMINATION IF THE
MOTHER HAS ANOTHER CHILD.

>> FOR THAT PURPOSE, SHE WOULD
BE BETTER OFF.

BUT TO MAKE SURE THAT THE FIRST
TERMINATION IS PROPERLY
ENTERED, IT WOULD BE NICE IF
THERE WAS SOME ACTUAL EVIDENCE
PRESENTED AS TO THE GROUNDS
ALLEGED IN THE PETITION.

>> LET ME ASK YOU WHAT YOU

THINK 39.701 -- 39.8013 (D)

MEANS?

WHAT IS THE CONSEQUENCE OF

THAT?

WHEN IT SAYS TO FAILURE TO

PERSONALLY APPEAR SHALL

CONSTITUTE CONSENT FOR

TERMINATION OF PARENTAL RIGHTS?

WHAT DOES THAT MEAN?

IS THAT KIND OF AN ASIDE HERE?

ALMOST LIKE BECAUSE IT IS NOT

MENTIONED IN THE SUBSEQUENT

SECTION OF THE STATUTE WE'RE

NOT GOING TO TREAT IT LIKE IT'S

IN THE STATUTE?

THE LEGISLATURE MEANT SOMETHING

BY THAT?

>> YOUR QUESTION, I THINK IS A

GREAT QUESTION BECAUSE, WE HAVE

ALL STRUGGLED WITH HOW DOES

THIS PROVISION FIT IN WITH 806

WHICH SETS FORTH THE GROUND?

AND THAT'S WHY I THINK THERE'S

SO MUCH THERE IS AMBIGUITY.

WE'RE NOT REALLY SURE WHAT THIS

3(D), HOW THAT FITS WITH 806.

>> SEEMS TO ME IT IS YOUR

OBLIGATION TO COME UP WITH A

PLAUSIBLE EXPLANATION OF WHAT
IT MEANS THAT DOES NOT CONSTITUTE,
ESSENTIALLY READING IT OUT OF
THE STATUTE.

>> TO ME THE WAY HOW I ANALYZED
IT IN THE BRIEF WAS, OKAY,
WE'RE TALKING ABOUT A VERY
SPECIFIC FAILURE TO APPEAR, A
REFERENCE, 801.3(D).

I TURNED TO 806.

I LOOKED AT 806(1), SETS THE
GROUND.

(A) DEALS WITH THE VOLUNTARY
DETERMINATION IS VERY SPECIFIC.
IT DEALS WITH A WRITTEN
SURRENDER AND TALKS ABOUT THE
REQUIREMENTS.

>> I CONCEDE THAT IS TALKING
ABOUT A DIFFERENT THING.
IT TALKS ABOUT SOMETHING WHERE
SOMEBODY COMES IN AND SIGNS A
WRITTEN, AS HAS AN EXECUTED
WRITTEN SURRENDER.

THAT'S NOT WHAT THIS EARLIER
SECTION IS TALKING ABOUT.

THOSE ARE CLEARLY DISTINCT
PROVISIONS.

>> RIGHT.

>> THAT DOESN'T MEAN THE
EARLIER PROVISION DOESN'T
EXIST.

>> AND I AGREE BUT TO ME
BECAUSE THIS IS THE 806 IS THE
ONE THAT SETS FORTH THE GROUNDS
FOR TERMINATION-.

>> I UNDERSTAND THAT.
GO BACK TO ME TO TELL ME WHAT
IT MEANS.

YOU HAVE TO, THE CONSENT FOR
TERMINATION OF PARENTAL RIGHTS
MEANS SOMETHING.

WHAT IS THE CONSEQUENCE OF THAT
CONSENT FOR TERMINATION OF
PARENTAL RIGHTS WHICH THE
LEGISLATURE HAS PROVIDED FOR IN
THIS SECTION?

>> WHAT IT MEANS TO ME IS THAT,
IT'S.

>> TRY TO TELL ME WHAT YOU
BELIEVE CAN BE REASONABLY
UNDERSTOOD TO MEAN BASED ON THE
TEXT OR CONTEXT.

I'M NOT INTERESTED IN
AUTOBIOGRAPHICAL COMMENT.

>> SURE.

>> I'M INTERESTED IN WHAT IT
SAYS.

>> WHAT IT SAYS IT CONSTITUTES

A CONSENT FOR TERMINATION OF
PARENTAL RIGHTS.

BUT THEN IN THE NEXT STEP IS,

IS THAT A GROUND?

WHICH IS DISTINCT FROM --

>> DON'T NEED A GROUND, IF YOU

PLED A COMPLAINT, AND YOU PLED

FOUR ALTERNATIVE GROUNDS FOR A

COMPLAINT IN A CIVIL CASE, THE

DEFENDANT DOESN'T SHOW UP,

THERE'S A DEFAULT.

THERE'S A DEFAULT AS TO THE

PETITION WHICH ALLEGED ALL

THOSE GROUNDS.

IT CAN'T BE CONTESTED.

THAT'S THE WHOLE IDEA IN CIVIL

LAW OF DEFAULT.

AND SO, I AM, THAT'S WHERE,

THIS IDEA WHERE DOES IT FIT

INTO THE GROUNDS, I WOULD THINK

THE LEGISLATURE WOULD HAVE, YOU

KNOW, A LOGICAL EXPLANATION IS,

THEY DIDN'T NEED TO WORRY ABOUT

THE GROUNDS.

NOW MANIFEST BEST INTEREST

BECAUSE IT IS IN DIFFERENT, I

THINK IT IS IN A DIFFERENT

STATUTE, NO ONE SEEMS, EVERYONE
SEEMS TO AGREE THAT DOES STILL
NEED TO BE ESTABLISHED.

BUT THAT'S, TO ME, A LOGICAL
EXPLANATION.

I WOULDN'T WANT TO END UP
CALLING IT VOLUNTARY OR
INVOLUNTARY.

THIS IS A CONSENT AT THE
TERMINATION BY THE MOTHER IF
THE NOTICE WAS PROPER, WHICH,
YOU KNOW, AT THIS POINT WE'RE
NOT CONTESTING ANY FURTHER.

>> RIGHT.

AND THAT IS THE INTERPRETATION
THAT HAS BEEN DONE I THINK BY
THE SECOND DISTRICT.

>> NO, BECAUSE THE SECOND
DISTRICT, THEY SORT OF TRIED TO
PUT IT UNDER THAT FIRST PART
ABOUT VOLUNTARY SURRENDER AND I
THINK THAT'S WHAT THE GAL WAS
FEELING LIKE THAT WAS SORT OF,
SORT OF AN AFRONT TO VOLUNTARY
SURRENDER BECAUSE IT CAN'T BE,
YOU KNOW, IT'S NOT THE SAME,
DOESN'T HAVE THE SAME
IMPLICATION.

SO MAYBE THIS ONE IS

INVOLUNTARY BECAUSE IT FITS
UNDER THE GROUNDS THAT THE
PETITION LAID OUT BUT WE DON'T
HAVE TO MAKE THAT DETERMINATION
IN THIS CASE, WHETHER IT'S
VOLUNTARY OR INVOLUNTARY
BECAUSE THERE IS NO OTHER
SIBLING INVOLVED.

AND THAT'S, YOU KNOW, THAT
WOULD BE THE ONLY REASON IT
WOULD BECOME, IN MY VIEW,
SIGNIFICANT.

>> WELL LET'S ASK IT ANOTHER
WAY THEN.

WHAT WOULD, WHAT IS THE PURPOSE
TO BE SERVED BY HAVING THE
DEPARTMENT PUT ON THE RECORD
ONE OF THESE GROUNDS FOR
TERMINATION, ONCE THE MOTHER IS
NO LONGER THERE?

SHE DIDN'T COME.

SO SHE'S NOT THERE TO
PARTICIPATE.

SO WHAT PURPOSE WOULD BE SERVED
IN GOING THROUGH THE MOTIONS AS
IT WERE?

>> THE WAY, HOW I HAVE LOOKED AT
IT, IT ADDS ADDITIONAL

PROCEDURAL STEP, TO MAKE SURE
THAT THE TRIAL JUDGE KNOWS THAT
THERE ACTUALLY WAS EVIDENCE TO
SUPPORT THE TERMINATION.

BECAUSE THIS IS A VERY
IMPORTANT RIGHT THAT'S AT STAKE
AND I DON'T THINK THAT THE A
TERMINATION SHOULD BE ENTERED
SOLELY JUST BECAUSE A PARENT
DIDN'T APPEAR.

IT JUST GIVES THE ADDED STEP,
THE DUE PROCESS.

IT DOESN'T TAKE MUCH TIME.

THE DEPARTMENT'S ALREADY THERE.

THE DEPARTMENT'S ALREADY IN THE
POSITION, SUPPOSEDLY,

PRESUMABLY, TO PRESENT THAT
EVIDENCE.

THAT EVIDENCE CAN BE PRESENTED SO

THE TRIAL JUDGE

IS CONVINCED --

>> LET'S SAY IT IS A GOOD IDEA,

OKAY?

LET'S JUST SAY IT'S A GOOD

IDEA.

THE QUESTION I HAVE HERE IS

THAT BECAUSE THE MOTHER DIDN'T

COME IN THIS CASE TO OBJECT TO

THE ADDITIONAL STEPS BEING

TAKEN, WHY SHOULD THIS CASE,
YOU KNOW, GO BACK FOR A NEW
HEARING ON BOTH TERMINATION AND
BEST INTERESTS?

AT WHICH NOW

THE MOTHER WOULD HAVE AN
OPPORTUNITY TO PARTICIPATE IN,
AND OBVIOUSLY THE FACTS ARE
GOING TO HAVE CHANGED, MAYBE
TO, MIGHT BE TO, IS THAT,
THAT'S WHAT THE SECOND DISTRICT
OPINION SAYS, IT GOES BACK FOR
BOTH PARTIES TO BE ABLE TO PUT
ON EVIDENCE OF BEST INTEREST?

IS IT THE MOTHER'S POSITION
THAT SHOULD HAPPEN AND THE
MOTHER SHOULD BE ABLE TO
PARTICIPATE IN ADVOCATING THAT
THIS PERMANENCY WITH FAMILY
THAT THE CHILD HAS BEEN IN,
SHOULD NOT BE THE OUTCOME FOR
THIS CHILD?

>> I THINK THAT IT IS CORRECT,
BECAUSE OF THE RECORD SORT OF
BEING MESSED UP, IT'S HARD TO
TELL, YOU KNOW, WHEN THE
MANIFEST BEST INTEREST
TESTIMONY ACTUALLY TOOK PLACE.

I MEAN YOU CAN TELL WHEN IT
TOOK PLACE BUT YOU CAN'T
CORRELATE THAT TO THE ORDER ON
TERMINATION.

>> BUT IF IT GOES BACK, ARE YOU
SAYING, IT GOES BACK AND THE
MOTHER GETS TO PARTICIPATE,
DOES THE MOTHER GET TO PUT ON
EVIDENCE THAT CONTRADICTS BOTH
THE TERMINATION AND, IF WE
AGREE WITH THE OTHER COURTS,
AND THE BEST INTERESTS?

>> I THINK YES.

>> BUT THAT'S WHAT, I DON'T
UNDERSTAND WHY, WHEN THE
DEFAULT AGAINST HER HAS NEVER
BEEN SET ASIDE, IT WAS, IT WAS,
THE TRIAL JUDGE DENIED IT, THE
SECOND DISTRICT CERTAINLY
DIDN'T SET THAT ASPECT OF THE
CASE ASIDE.

SO WHY SHOULD THE MOTHER, WHY
IS IT THAT CONSENT BY
NON-APPEARANCE STILL GOOD IN
THIS PROCEEDING?

>> I THINK WHAT, YOU KNOW, WHY,
WHY THERE WAS THE REVERSAL ON
THAT ISSUE IS A VERY NARROW
POINT.

SO THAT, IT'S NOT THAT UNCOMMON
FOR PARTIES TO STILL SHOW UP AT
HEARINGS AFTER THINGS
HAPPENED.

>> THE SHOWING UP AT HEARING IS
A DIFFERENT THING FROM
PARTICIPATING IN A HEARING.

>> SURE.

>> SHE GAVE UP HER RIGHT TO
PARTICIPATE IT SEEMS IT ME, AT
THE VERY LEAST, TERMINATION BY
CONSENT MEANS YOU ARE NO LONGER
ABLE TO PARTICIPATE.

I MEAN TO ME, THAT HAS TO BE AT
LEAST THE MINIMUM THAT THAT
REQUIRES.

AND SO, WHY IN THE WORLD DOES
SHE HAVE ANY RIGHT AT ALL TO DO
ANYTHING, EVEN IF IT DOES, HAS
TO GO BACK?

>> THE SECOND DISTRICT DIDN'T
REALLY ADDRESS THE ISSUE OF
WHETHER SHE GOT TO PARTICIPATE
OR NOT.

>> BUT IT'S YOUR POSITION SHE
WOULD NOT ONLY BE ABLE TO
PARTICIPATE, BUT THEN IF SHE
DIDN'T LIKE THE RESULT OF THAT,

ANOTHER ORDER OF TERMINATION,
THEN SHE COULD APPEAL THAT AND
WOULD BE ABLE TO COME IN AND,
YOU KNOW, RAISE WHATEVER, AND
HERE WE GO AGAIN.

WHAT I'M STILL STRUGGLING WITH,
IS HOW ALL OF THAT CAN BE
SQUARED WITH THAT LANGUAGE THAT
I WANTED YOU TO TELL ME WHAT IT
MEANT, AND THAT THE OTHERS HERE
HAVE, ON THE PANEL HAVE ALSO
REFERRED TO ABOUT THE FAILURE
TO PERSONALLY APPEAR BEING
CONSTITUTING A CONCEPT FOR
TERMINATION OF PARENTAL RIGHTS.
BECAUSE IT SEEMS LIKE YOU CAN
NOT, YOU CAN NOT SQUARE THAT
LANGUAGE WITH THE KIND OF
SCENARIO YOU THINK SHOULD TAKE
PLACE.

BECAUSE IF SOMEONE'S CONSENTED,
WHO ARE THEY TO SHOW UP AND
COMPLAIN ABOUT THE TERMINATION?

>> HONESTLY, YOU KNOW, THAT IS
A POSITION THAT LOOKING AT
THE STATUTORY LANGUAGE, IF
YOU'RE GOING TO LOOK AT (3)D
AS BEING A GROUND FOR
TERMINATION OF PARENTAL

RIGHTS AND DON'T HAVE TO LOOK
AT THE STATUTE AND 806 WHICH DEALS
SPECIFICALLY WITH THE GROUNDS,
THEN I WOULD HAVE COMPLETELY
AGREED WITH YOU.

BUT IF YOU'RE LOOKING AT IT AS
THOUGH (3)D NEEDS TO BE
SQUARED WITH 806 GROUNDS, AND
IT HAS TO BE ONE OF
THE GROUNDS, YOU HAVE GIVEN NO
EXPLANATION THAT I CAN, MAYBE I
MISSED IT.

>> OKAY.

>> BUT YOU HAVE GIVEN NO
EXPLANATION WHAT THAT LANGUAGE
ACTUALLY MEANS THAT WOULD HAVE
ANY KIND OF REAL WORLD
CONSEQUENCE.

>> WELL I WHAT I BELIEVE THERE
IS A GAP IN 806.

THERE IS A GAP AND WHAT SHOULD
BE IN 806 --

>> SO THE LEGISLATURE FORGOT TO
MAKE A REFERENCE BACK TO THIS
IN 806?

>> I THINK TO BE CLEAR SO
EVERYONE WOULD UNDERSTAND WHAT
IT WAS WE'RE SUPPOSED TO DO IN

THESE SITUATIONS, IF THERE WAS
AN ADDITIONAL GROUND LISTED.

>> BASICALLY YOU'RE SAYING
THIS, OKAY, I DON'T WANT TO
MISREPRESENT WHAT YOU'RE
SAYING, BUT, IT SEEMS LIKE
YOU'RE SAYING THIS IS
ESSENTIALLY BECAUSE OF THE
CONTEXT IN WHICH IT APPEARS
THIS IS NO MORE THAN INK BLOT,
REALLY HAS NO MEANING?

>> NO, THAT'S NOT WHAT I'M
SAYING.

>> WHAT IS THE MEAN?

>> I'M SAYING THE CONSENT SET
FORTH IN (3)D DOES NOT EQUATE
TO THE --

>> I UNDERSTAND WHAT IT DOESN'T
DO.

WHAT DOES IT DO?

>> MAY I FINISH?

>> SURE.

>> IT DOESN'T FIT IN WITH
801.1-A DEALING WITH WRITTEN
SURRENDERS.
THEREFORE IT HAS TO FIT IN WITH
ONE OF AT OTHER GROUNDS IN 806.
ALL THE OTHER GROUNDS IN 806
ARE INVOLUNTARY GROUND.

>> I GUESS MAYBE, I'M GOING TO
LOOK VERY CAREFULLY AT THIS,
BECAUSE I RESPECT YOU ARE FAR
MORE FAMILIAR WITH THIS. I
GUESS I'M NOT SURE I ACCEPT THE
FACT THAT THEY, IN TERMS OF
READING THEM, THAT YOU'VE GOT
TO READ THE STATUTE THAT SAYS
THERE IS CONSENT TO TERMINATION
ENTIRE MATERIA.

AS OPPOSED TO GROUNDS, BY THEM
NOT APPEARING THAT GROUNDS,
THAT STATUTE, THEY HAVE
CONSENTED TO THE GROUNDS SET
FORTH IN THE PETITION FOR
TERMINATION.

NOW WE GO ONTO THE OTHER
STATUTE THAT DEALS WITH BEST
INTEREST.

ISN'T THAT A MORE LOGICAL WAY
TO READ THOSE TWO TOGETHER?

>> THE PROBLEM THOUGH IS THAT
(3)D DOESN'T SAY, IT SAYS,
SHALL, EXCUSE ME, SHALL CONSTITUTE
CONSENT FOR TERMINATION
OF PARENTAL RIGHTS.

IT DOESN'T DEAL WITH THE
ALLEGATIONS IN THE PETITION.

>> IT DOESN'T NEED TO BECAUSE

IT IS A DEFAULT.

WE GO --, YOU KNOW. AND --

>> I CAN UNDERSTAND WHY YOU'RE

SAYING (3)D COULD BE SEPARATE.

>> YOU HAVE OFFERED NO

EXPLANATION OF WHAT THIS MEANS.

YOU SAID WHAT IT DOESN'T MEAN.

BUT I CAN NOT TELL, MAYBE,

AGAIN, FORGIVE ME IF I MISSED

IT, BUT YOU HAVE NOT SAID WHAT,

WHAT THIS MEANS IN ANY WAY THAT

WOULD GIVE IT AN IMPACT IN THE

REAL WORLD.

SO THE LEGISLATURE SAID

SOMETHING THERE.

WE'RE GOING TO, BECAUSE WE'RE,

IT IS CONFUSING WE DISREGARD

IT, SEEMINGLY?

>> NO. AND I'M NOT SAYING THAT.

WHAT I'M SAYING (3)-D, TRYING

TO MAKE IT SQUARE INTO 806.

TO ME THOSE ARE THE GROUNDS OF

TERMINATION OF PARENTAL RIGHTS.

IF IT DOESN'T FIT INTO 1-A THE

ONLY VOLUNTARY GROUND THEN IT

MUST BE A INVOLUNTARY GROUND.

BECAUSE --

>> WHAT HAS THAT GOT TO DO WITH

YOUR CLIENTS CASE?

>> THE REASON IT, WE DID NOT
SEEK REVIEW HERE, THE REASON,
IF YOU AGREE WITH ME, SHE WOULD
HAVE THE OPPORTUNITY TO GO BACK
AND HAVE A EVIDENTIARY HEARING.

>> WHY SHOULD SHE HAVE AN
OPPORTUNITY?

SHE HAD, DIDN'T SHE ARGUE
ALREADY ABOUT WANTING TO SET IT
ASIDE?

>> YES.

>> THE TRIAL JUDGE SAID NO.

>> YES.

>> YOU DID NOT COME, THIS IS
CONSENT.

WHY IN THE WORLD WOULD WE GIVE
HER ANOTHER OPPORTUNITY TO COME
INTO COURT?

>> AND ONLY REASON WOULD BE
BASED UPON STATUTORY
CONSTRUCTION.

WHAT IS THE RIGHT THING TO DO.

AND IF YOU AGREED WITH THE
THIRD AND THE FIFTH DISTRICTS
THE WAY THEY CONSTRUE THE
STATUTE --

>> BUT EVEN THE WAY THEY

CONSTRUE THE STATUTE DOES NOT
REQUIRE YOUR CLIENT TO
PARTICIPATE.

>> BUT THE THIRD AND THE FIFTH
DISTRICTS ALLOW COUNSEL TO BE
THERE AND TO --

>> AND WASN'T COUNSEL THERE AT
THIS HEARING?

AT THE ORIGINAL HEARING, THE
AUGUST 20th HEARING, DIDN'T HER
ATTORNEY SHOW UP?

HE WAS THERE, HE OR SHE.

THE ATTORNEY FOR YOUR CLIENT
WAS AT THE AUGUST 20th HEARING,
WHICH IS THE ONE WHERE SHE DID
NOT SHOW UP, WHICH RESULTED IN
THE CONSENT FOR TERMINATION.

>> YOU ARE CORRECT.

>> OKAY.

>> I MEAN, I BELIEVE, WE

UNDERSTAND ALL OF YOUR
ARGUMENTS.

AND I WANT TO THANK ALL OF YOU
FOR YOUR, YOU HAVE HAD MORE
THAN YOUR TIME ALREADY.

AND SO --

>> [INAUDIBLE]

>> THE COURT WILL NOW BE IN
RECESS.

THANK YOU VERY MUCH.

>> PLEASE RISE.

SUPREME COURT IS NOW ADJOURNED.