

>> THE NEXT CASE ON THE COURT'S
AGENDA IS KAAA?

KAAA?

>> KAAA?

[LAUGHTER]

>> MARK NEUMAIER REPRESENTING
THE APPELLANT, KATHERINE KAAA IN
THIS CLAIM.

AS THE COURT HAS REVIEWED FROM
IT EXAMINATION, THIS CASE
PRESENTS AN ISOLATED ISSUE OF
LAW FOR DETERMINATION BY THE
COURT.

THE FACTS BELOW ARE BASICALLY
STIPULATED, THIS WAS THE
APPLICATION OF THE LAW TO THESE
FACTS AND THE PROPER STANDARD OF
REVIEW, THE PROPER APPLICATION
OF THE STATUTE THAT WERE
SQUARELY BEFORE THE COURT BELOW.

AS INDICATED, THE POLICY AND THE
CASE LAW IN THE FIRST DCA UNDER
THE STEVENS CASE HAS BEEN ONCE
MARITAL EFFORTS, FUNDS, LABOR
ARE USED TO CREATE A MARITAL
COMPONENT, ANY SUBSEQUENT
APPRECIATION OF THE ENTIRE ASSET
SHOULD BE PRORATED BETWEEN THE
NON-MARITAL COMPONENT AND THE
MARITAL COMPONENT.

SIDE ISSUES RELATING TO THE
STEVENS CASE ARE WHAT KIND OF
CONTRIBUTIONS CREATE MARITAL
ASSET.

THAT PARTICULAR CASE TALKS ABOUT
TAXES, PAYMENT OF TAXES.

THOSE SIDE ISSUES MAY OR MAY NOT BE RIPE FOR DETERMINATION, BUT THE BASIC QUESTION OF WHETHER PASSIVE APPRECIATION OF AN ASSET THAT HAS BECOME IN PART MARITAL ALREADY AND SUBSEQUENTLY APPRECIATES IS DISTRIBUTABLE AS MARITAL ASSET IS SQUARELY BEFORE THE COURT.

IN THE MITCHELL CASE, CITED BY THE SECOND DCA IN SUPPORT OF ITS RULING BELOW, IF YOU LOOK AT THAT CASE, THERE IS A FLAT STATEMENT WITHOUT EXPLANATION AS TO POLICY REASONS THAT CERTAIN MARITAL COMPONENT WAS CREATED BY THE PAYDOWN IN THE MORTGAGE, AND THAT IS THE AMOUNT THAT IS LIMITED, THAT THE DISTRIBUTION IS LIMITED TO.

WITHOUT REALLY GIVING ANY EXPLANATION, ANY CONSIDERATION OTHER THAN THE FACT THAT EARLIER IN THE DECISION THERE WAS A FINDING OR A RECITATION AT LEAST THAT ALL OF THE PASSIVE APPRECIATION IN THAT CASE WAS ATTRIBUTABLE TO THE GROWTH IN VALUE OF THE LAND ITSELF AS OPPOSED TO ANY RENOVATIONS. IT'S SUBMITTED THAT THIS WAS A RATHER CURSORY EXAMINATION OF THE ISSUE.

THEY DIDN'T REALLY LOOK AT THE QUESTION THAT'S IN FRONT OF THIS COURT, AND YET THAT CASE HAS

BEEN CITED IN CASE AFTER CASE IN THE SECOND DCA LEADING UP TO THIS CASE.

IT'S OUR POSITION THAT THE STATUTE CLEARLY REQUIRES THAT THE COURT DETERMINE A MARITAL COMPONENT AND THAT MARITAL COMPONENT IS DEFINED AS MARITAL ENHANCEMENT AND APPRECIATION. THE POSITION OF THE FORMER HUSBAND IN THIS CASE, THE APPELLEE, IS THAT THOSE TWO TERMS ARE SYNONYMOUS, APPRECIATION AND ENHANCEMENT. BUT CLEARLY, IF YOU LOOK AT THE STATUTE, IT IS APPRECIATION, IT IS ENHANCEMENT AND APPRECIATION. THEIR INTERPRETATION OF THIS STATUTE AND THE INTERPRETATION, I GUESS, OF THE SECOND DCA AND IN THE MITCHELL CASE IS THAT THE WORDS "AND APPRECIATION" HAVE NO MEANING.

ONCE THERE'S AN ENHANCEMENT, YOU IGNORE ANY APPRECIATION.

THAT ALL JUST STAYS AS NON-MARITAL.

>> WELL, ISN'T IT, I MEAN, I GUESS THEIR POSITION WOULD BE THE APPRECIATION -- SO YOU'RE SAYING THE ENHANCEMENT IN VALUE WAS THE CARPORT BEING PUT ON.

>> YES, YOUR HONOR.

>> APPRECIATION HAS A DIFFERENT MEANING UNDER THE LAW.

>> YES, YOUR HONOR.

>> AND IN ACCOUNTING, I WOULD ASSUME.

>> THAT'S OUR POSITION, YOUR HONOR.

IF THE COURT, IF THE STATUTE STOPPED WITH THE WORD "ENHANCEMENT," THEN IT MIGHT BE MORE DIFFICULT TO MAKE THE CASE THAT THE STEVENS APPROACH IS PREFERABLE AND COMPLIES WITH THE STATUTE.

BUT THE WORDS ARE THERE.

IT SAYS "ENHANCEMENT AND APPRECIATION."

IT MUST BE INTERPRETED THAT ALL THE WORDS IN THE STATUTE MEAN SOMETHING, AND THE STEVENS POLICY, THE STEVENS CASE LAW DOES RECOGNIZE AND PLACE A MEANING ON THAT WHICH IS REASONABLE AND, IN OUR POSITION, EQUITABLE.

PARTICULARLY ON THESE FACTS.

>> I MEAN, AS FAR AS WE MAY OR MAY NOT DECIDE THE ISSUE OF HOW IT'S DETERMINED AND YOU HAVE A SITUATION WHERE MAYBE THE MOST OF THE DOWN PAYMENT IS MADE BEFORE THE MARRIAGE AND THERE'S VERY MINIMAL MORTGAGE PAYMENTS, AND THEN THERE'S JUST A SPIKE IN THE REAL ESTATE MARKET WHICH, UNFORTUNATELY, WE DON'T HAVE TO PROBABLY WORRY ABOUT THIS ISSUE AS MUCH ANYMORE, BUT THAT MAY BE, THAT'S A VERY DIFFERENT

SITUATION THAN HERE WHERE YOU'VE GOT A 27-YEAR MARRIAGE, YOU'VE GOT ALL THE MORTGAGE PAYMENTS, TAXES, WHATEVER BEING PAID BY BOTH PARTIES THROUGHOUT THE DURATION.

SO HOW DOES THIS -- SO IT REALLY HAS TO BE A FACT BY FACTUAL DETERMINATION BY THE JUDGE AS TO WHAT EXTENT THE CONTRIBUTION OF MARITAL FUNDS HAD ON THE APPRECIATION OF THE NON-MARITAL ASSET.

>> YES, YOUR HONOR.

THIS WAS ALWAYS GOING TO BE AN INTENSELY FACT-SPECIFIC COMPUTATION.

>> DOES IT MATTER IF IT'S A MARITAL HOME VERSUS A RENTAL PROPERTY?

>> I WOULD SUBMIT THAT IT DOESN'T.

THERE'S NO DISTINCTION IN THE STATUTE FOR HOMESTEAD VERSUS NON-HOMESTEAD.

>> I GUESS I WAS JUST THINKING THAT THE WIFE LIVES IN THE HOME, SHE'S CONTRIBUTING EQUALLY, THE EXPECTATION WOULD BE THAT THE HOME IS THEIR HOME VERSUS SOMETHING THAT MIGHT BE, YOU KNOW, A VACATION HOME IN ANOTHER PLACE.

>> YES, YOUR HONOR.

I ACTUALLY MADE THE ARGUMENT AT THE DCA LEVEL THAT IT WOULD HAVE

ACTUALLY BEEN BETTER FOR THE WIFE IN THIS CASE IF THEY WEREN'T MARRIED BECAUSE UNDER CONSTRUCTIVE TRUST THEORY THERE ARE OTHER CASE LAW THAT WOULD SUPPORT HER IF THE COURT HAS FOUND THAT SHE HAD CONTRIBUTE TODAY THE PART PAYMENT, THE DOWN PAYMENT BEFORE THE MARRIAGE AND THAT SHE HAD AN EXPECTATION SHE WOULD HAVE AN INTEREST, SHE ACTUALLY WOULD HAVE BEEN BETTER OFF THAN GETTING MARRIED IN THE SECOND DCA WHERE SHE IS STRIPPED OF ANY RIGHTS TO ANY SUBSEQUENT APPRECIATION.

BUT, AGAIN --

>> I GUESS THEY DIDN'T BUY THAT ARGUMENT.

>> NO.

[LAUGHTER]

BUT, AGAIN, IT WAS SIMPLY TO SHOW THAT THERE IS NO POLICY REASON TO APPLY THE MITCHELL CASE SO AS TO STRIP ANY RIGHT TO ANY APPRECIATION IN THE MARITAL COMPONENT OF THE ASSET.

THE FACT THAT IT'S GOING TO BE FACT INTENSIVE, IF YOU LOOK AT DIFFERENT SCENARIOS, FOR INSTANCE, SUPPOSE IN THIS CASE THERE WAS A LUMP SUM PAYMENT. LET'S SUPPOSE ON THE DATE OF THE MARRIAGE IT WAS WORTH X, AND THERE WAS A BALLOON NOTE THAT WAS VALUED, THAT WAS TO BE PAID

FIVE YEARS LATER.

SO NOT UNTIL FIVE YEARS INTO THE MARRIAGE WAS THERE A CONTRIBUTION.

THEN I WOULD THINK YOU WOULD LOOK AT WHAT WAS THE FAIR MARKET VALUE THE DATE THE PAYMENT WAS ACTUALLY MADE IN THAT PARTICULAR CASE TO DETERMINE WHAT PERCENTAGE OF EQUITY WAS CREATED BY THE MARITAL PAYMENT.

WE DON'T NEED TO GET INTO THAT.

ALL WE NEED TO DO IS MAKE A DETERMINATION GENERALLY, IS THERE GOING TO BE SOME RIGHT ONCE THAT MARITAL ESTATE IS CREATED?

AND IF YOU CAN DO THE FACT FINDING OF VALUING IT, PRESENT THE EVIDENCE THAT THE PROPERTY WAS APPRAISED OR REFINANCED IN SOME OTHER MANNER YOU FIND THE EVIDENCE TO PROVE THE VALUE ON THE DATE WHEN THE MARITAL COMPONENT IS CREATED, IF YOU CAN PROVE THAT THERE IS SUBSEQUENT APPRECIATION SHOULD IT BE PRORATED BETWEEN THE PARTIES? AND THAT'S REALLY THE ISSUE WE HAVE BEFORE US.

>> IF YOU GET IT TO SUCH A BROAD PROPOSITION, I MEAN, THAT IN AND OF ITSELF COULD ALSO LEAD TO INEQUITIES, I MEAN, JUST AS IT'S BEEN HELD RIGHT NOW THAT IT'S INAPPROPRIATE THE WAY THAT IT'S

PRESENTED TO US TODAY, YOU TAKE THE REVERSE WITHOUT QUALIFICATION, THEN THAT ALSO CREATES INEQUALITY.

SO IT SEEMS TO ME YOU CAN'T JUST DO IT, YOU'RE GOING TO END UP WITH FIVE DIFFERENT DISTRICTS DOING IT DIFFERENT WAYS AND INDIVIDUALS NOT RECEIVING EQUAL PROTECTION UNDER THE LAW.

SO IT SEEMS TO ME THAT IT HAS TO BE QUALIFIED IN SOME FASHION.

>> YES, YOUR HONOR.

>> SO THAT CIRCUIT JUDGES WHERE YOU ARE DO IT THE SAME AS CIRCUIT JUDGES IN MIAMI SO WE HAVE UNIFORMITY.

THAT'S THE PURPOSE, ISN'T IT, OF THIS ENTIRE CIVIL CODE THAT WE HAVE WITH DOMESTIC RELATIONS?

>> YES, YOUR HONOR.

IT'S HOW YOU IMPLEMENT IT.

>> WELL, SURE, THAT BECOMES AN IMPORTANT PART.

>> AND OUR POSITION IS THE STEVENS CASE, THE STEVENS PROCEDURE OF LOOKING AT A PERCENTAGE OF EQUITY AND MULTIPLYING THAT PERCENTAGE, THE REASONABLE PRORATION BY THE SUBSEQUENT APPRECIATION OF THE PROPERTY, IT WOULD COVER BOTH SCENARIOS.

IF A PROPERTY COMES IN THAT IS ALMOST COMPLETELY PAID OFF AND THERE'S TOO LITTLE BITTY

PAYMENTS THAT CREATE A TINY PERCENTAGE OF MARITAL ESTATE OR A MARITAL ASSET OUT OF THAT NON-MARITAL ASSET, WHEN IT COMES TIME TO LOOK AT THE PASSIVE APPRECIATION, THE NON-OWNING SPOUSE IS GOING TO GET THAT TINY PERCENTAGE OF THE APPRECIATION WHEREAS IN OUR CASE WHEN 100% OR CLOSE TO 100% OF THE EQUITY IS CREATED BY MARITAL PAYMENTS, THAT PRORATION, THAT REASONABLE PRORATION WOULD BE APPLIED TO THE END.

SO IT'S OUR POSITION THAT THE STEVENS PROCEDURE, I GUESS YOU WOULD CALL IT, KIND OF COVERS BOTH ENDS.

IT MAY BE SUBJECT TO TWEAKING AGAIN.

THE STEVENS CASE TALKED ABOUT PAYMENT OF TAXES WHICH MOST OTHER JURISDICTIONS DEEM TO BE AND EVEN, I BELIEVE, THE SAME DISTRICT DEEMS TO BE CARRYING CHARGES IF IT DOESN'T CREATE EQUITY, THEN IT'S NOT GOING TO CREATE ANY MARITAL ASSET WHICH WOULD BE ENTITLED TO MARITAL APPRECIATION.

BUT, AGAIN, I DON'T KNOW THAT WE REALLY NEED TO COVER CARRYING CHARGES TODAY BECAUSE THE PRINCIPAL ITSELF IN THIS CASE WAS ALMOST ENTIRELY MARITAL. THE ACTUAL MORTGAGE USED THE

PURCHASE MONEY MORTGAGE WAS REPLACED WITH A MARITAL MORTGAGE.

SO THE ENTIRE PURCHASE PRICE OTHER THAN THE DOWN PAYMENT AND WHATEVER PRINCIPAL WAS CREATED BY SIX MONTHS OF MORTGAGE INSTALLMENTS ON A 30-YEAR MORTGAGE, ALL THE REST OF IT INCLUDING ALL THE CARRYING CHARGES, THE MORTGAGE PAYDOWN, THE RENOVATIONS, ALL WAS MARITAL.

SO FOR AN APPLICATION OF THE LAW TO BE MADE WITH RESULTS IN THE NON-OWNING SPOUSE RECEIVING NO BENEFIT OF ANY OF THE APPRECIATION OF THIS ASSET, THE MARITAL ASSET, TO OUR PERSPECTIVE IS INEQUITABLE.

>> WELL, ON THE ISSUE OF WHAT THE FORMULA WOULD BE, THERE'S A RECENT CASE OUT OF THE FIFTH DISTRICT, VERY RECENT, LEADER V. LEADER.

>> YES, YOUR HONOR.

>> THEY AGREE WITH STEVENS AS FAR AS THE UNDERLYING PROPOSITION, BUT -- AND I'M NOT, I WOULD DEFER TO OTHER PEOPLE ON ACCOUNTING, BUT HAVE, HAVE THEY APPLIED A DIFFERENT TEST THAN STEVENS?

>> THEY'VE APPLIED A DIFFERENT PROCEDURE FOR DETERMINING IT, AND I'VE LOOKED AT THAT CASE.

TO ME IT'S KIND OF AN
ACCELERATED PRORATION BECAUSE
THEY START WITH WHAT'S THE
PRINCIPAL BALANCE OF THE
MORTGAGE.

AND THEN UNLIKE THE SECOND DCA
OR THE STEVENS CASE, THEY DON'T
TAKE PRINCIPAL REDUCTION AND USE
THE PRINCIPAL REDUCTION TO
CREATE THE PRORATION.

THEY ACTUALLY USE PAYMENTS,
PRINCIPAL AND INTEREST, AND
DEDUCT THAT AGAINST THE
PRINCIPAL.

SO IT'S LIKE AN ACCELERATED
INCREASE IN THE, IN THE MARITAL
PORTION OF THE ASSET AS BEST I
CAN TELL.

>> BASICALLY, SO THE LEADER
DECISION WOULD BE MORE FAVORABLE
TO THE SPOUSE THAT'S CLAIMING
PART OF IT'S A MARITAL ASSET, IS
THAT WHAT YOU'RE --

>> I WOULD READ IT THAT WAY.

>> AGAIN, SO THERE IS ALREADY A
DIFFERENCE.

ARE THERE ANY OTHER FORMULAS
THAT THE OTHER DISTRICT COURTS
HAVE USED THAT VARY FROM
STEVENS?

>> THE OTHER FORMULA IS JUST AS
BAD ON THE OTHER SIDE WHICH IS
ONCE YOU PROVE ANY MARITAL
COMPONENT, THEN ALL OF THE
APPRECIATION BECOMES MARITAL AND
SUBJECT TO DISTRIBUTION.

WHICH AS JUSTICE LEWIS
INDICATED, IF MOST OF THE
EQUITY, YOU KNOW, IF THERE'S
THAT LITTLE TINY PAYMENT, THEN
WHY IS THERE A POLICY REASON TO
JUSTIFY --

>> WHICH COURT, WHICH COURT IS
THAT FROM?

>> IF I COULD, YOUR HONOR, THAT
WAS ACTUALLY CITED IN THE
MITCHELL CASE.

THAT WAS WHAT THEY WERE SO MAD
AT, I THINK, IN THE MITCHELL
CASE.

THE WIFE THERE WAS PUSHING THAT
CASE LAW FROM SIZEMORE WHICH IS
FIFTH DCA AT THAT TIME.

OF COURSE, NOW WE KNOW FIFTH
DCA'S CHANGED ITS APPROACH.

>> DID YOU READ THE FOURTH
DISTRICT COURT OF APPEALS
POSITION?

>> YES, YOUR HONOR.

>> THEY ADDRESS THE CONCERNS YOU
ARE RAISING ABOUT HOW STEVENS
PROVIDES A FAST AND, HARD AND
FAST RULE THAT JUST BECAUSE
THERE'S A MARRIAGE THAT --

[INAUDIBLE]

AUTOMATICALLY ENTITLED TO
ENHANCEMENT.

AND THEY HAVE DEDICATED SOME
FACTORS THAT PERHAPS SHOULD BE
LOOKED AT --

[INAUDIBLE]

>> YES, YOUR HONOR.

AND I BELIEVE THAT, I WOULD KIND OF DISAGREE ALTHOUGH IT'S HARD TO DISAGREE WITH A FORCE THIS STRICT IN INTERPRETING ITS OWN DECISIONS, BUT I DIDN'T READ STEVENS AS SETTING FORTH A HARD AND FAST RULE.

THEY SAID GENERALLY YOU SHOULD DO THE FOLLOWING.

BUT IT'S ALWAYS SUBJECT TO CONSIDERATION OF THE OTHER FACTORS.

>> WHAT DOES FACTORS LIKE THE LENGTH OF THE MARRIAGE, WHETHER MARITAL LABOR, MONEY OR BOTH WERE USED TO ENHANCE THE VALUE OF THIS PROPERTY, AND THEY MENTION ANY OTHER EQUITABLE FACTORS.

>> YEAH.

>> GIVING TRIAL JUDGES SOME DISCRETION IN DECIDING WHETHER OR NOT -- BECAUSE SOMEONE COULD GET MARRIED AND TWO WEEKS LATER THERE'S A DIVORCE AND UNDER THE STEVENS CASE IT SEEMS LIKE HE OR SHE IS ENTITLED TO A PASSIVE ENHANCEMENT.

>> RIGHT.

IT COULD ALSO BE THAT UNDER THE STEVENS CASE THE PARTIES GET MARRIED, THERE'S A PURCHASE IMMEDIATELY BEFORE THE MARRIAGE LIKE IN OUR CASE, AND THERE ARE HUGE INTEREST-ONLY PAYMENTS THROUGHOUT THE COURSE OF THE

MARRIAGE WHERE THE PROPERTY
SKYROCKETS IN VALUE.
AND YET THERE'S NO PRINCIPAL
PAYDOWN.
SO THERE ARE DIFFERENT SCENARIOS
WHERE THE COURT CAN USE
EQUITABLE CONSIDERATIONS, AND I
DON'T READ STEVENS AS HAVING A
HARD AND FAST RULE.

I SAID MY UNDERSTANDING IS AND
MY ARGUMENT IS IT'S REASONABLE
PRORATION.

SO YOU START WITH SOME
PERCENTAGE, YOU DETERMINE FIRST
OFF, WAS THERE A MARITAL ASSET
COMPONENT OF THIS ASSET DUE TO
THE CONTRIBUTION OF MARITAL
EFFORTS OR FUNDS?
FROM THAT TIME PERIOD, WAS THERE
SUBSEQUENT APPRECIATION?
IF THERE IS, THEN YOU NEED TO
APPORTION THAT IN SOME WAY.

>> DO YOU AGREE THAT STEVENS HAS
A HARD AND FAST RULE THAT
PROVIDES FOR ENTITLEMENT?

>> YES.

I WOULD SAY THAT IF -- UNLESS
THERE'S UNUSUAL EQUITABLE
REASONS NOT TO.

>> THE FOURTH AND THE FIFTH DO
NOT HAVE AN ENTITLEMENT --
[INAUDIBLE]

THERE'S SOME DISCRETION AMONG
THE COURTS.

>> I BELIEVE THAT THE LEADER
CASE KIND OF FOR THE FIRST TIME

INDICATES THERE'S AN ENTITLEMENT
BECAUSE THEY DID REVERSE, IF I'M
NOT MISTAKEN.

>> [INAUDIBLE]

>> THAT'S WHERE IT ALL COMES
DOWN TO, YES, YOUR HONOR.

>> SO THERE'S A DIFFERENCE
BETWEEN GIVING DISCRETION ON HOW
TO COMPUTE THIS ACCORDING TO THE
STATUTE.

>> YES.

>> AND WE COULD SIT HERE AND
PROBABLY AMONGST US COME UP WITH
A LOT OF DIFFERENT FORMULAS AND
A LOT OF DIFFERENT WAYS, AS YOU
INDICATED, THE SITUATION OF
BALLOON PAYMENT, REFINANCING,
ALL KIND OF FACTUAL
CIRCUMSTANCES WHICH MAY ENTER
INTO AN APPROPRIATE COMPUTATION
UNDER THE STATUTE.

>> YES, YOUR HONOR.

>> BUT THEN IT'S AN ENTIRELY
DIFFERENT THING TO SAY WE'RE
GOING TO ACTUALLY AWARD WHAT THE
STATUTE PROVIDES OR NOT AND GIVE
DIFFERENT CONSIDERATIONS AS TO
WHETHER THAT PARTICULAR AWARD'S
GOING TO OCCUR OR NOT.

I'M SUGGESTING THAT --

[INAUDIBLE]

FACTORS THAT IT DETERMINES AS
THEY LOOK AT THE POSITIONAL
THINGS TO DECIDE WHETHER OR NOT
YOU'RE GOING TO AWARD THIS TO
THE SPOUSE MAY BE FACTORS NOT

CONSIDERED WITHIN THE STATUTE
AND, THEREFORE, FOUND
INAPPROPRIATE.

>> I BELIEVE, YOUR HONOR, THAT
THE -- IF YOU LOOK AT THE
FACTORS CITED IN THE RAFINELLO
CASE, THEY ARE THE SAME FACTORS
IN SECTION 1 OF THE STATUTE
WHICH IS YOU GENERALLY START
WITH AN EQUAL DISTRIBUTION.
BUT IT'S BASED ON -- UNLESS
THERE IS JUSTIFICATION FOR AN
UNEQUAL DISTRIBUTION BASED ON
ALL RELEVANT FACTORS.
THAT'S WHERE I READ THIS COMING
IN.

WE NEED TO KNOW WHERE WE
START --

>> YOU START, THOUGH, THAT THIS
WAS A NON-MARITAL ASSET.

>> YES.

AND THEN YOU HAVE BY DEFINITION
IF THERE WAS A MARITAL COMPONENT
TO THE CONDITION OF EQUITY IN
THE PROPERTY, CERTAINLY, THEN
THE ASSET BECOMES IN PART
MARITAL.

>> SO ISN'T -- SO CONCEPTUALLY
HERE WE'VE GOT TWO DISTINCT
STEPS.

ONE, YOU'VE GOT TO DETERMINE THE
VALUE OF THE ASSET AND THE
AMOUNT OF APPRECIATION THAT
WOULD BE PUT IN THAT CATEGORY.

>> YES.

>> THAT'S STEP ONE.

SECOND STEP IS TO DECIDE HOW THAT'S GOING TO BE DIVIDED BETWEEN THE PARTIES, AND THE DIFFERENT FACTORS COME INTO PLAY IN THOSE TWO DIFFERENT STEPS, IS THAT CORRECT?

>> YES.

AS THERE ALWAYS WOULD BE.

LET'S SUPPOSE THAT THE COURT HAS A STEVENS CASE, A FINAL JUDGMENT IN FRONT OF IT.

THERE HAS BEEN CREATED MARITAL ASSET OUT OF A NON-MARITAL ASSET, THERE HAS BEEN AN AWARD OF A PORTION OF THE PRORATED APPRECIATION IN VALUE, SO WE'RE STARTING OFF WITH THE STEVENS CASE.

BUT THE COURT CAN SAY, BUT I'M GOING TO GIVE AN UNEQUAL DISTRIBUTION BECAUSE THERE'S A BUSINESS OVER HERE OR BECAUSE OF ANY OF THESE OTHER REASONS.

SO THE FINAL AWARD IS ALWAYS SUBJECT TO THIS MODIFICATION.

IT'S NOT THIS APPRECIATED ASSET IS GOING TO HAVE ITS VALUE MODIFIED UNLESS THAT'S THE ONLY ASSET.

THEN, YEAH.

BUT MY POSITION IS THE STATUTE PERMITS THE COURT AND REQUIRES THE COURT TO AT LEAST CONSIDER DOING THAT ANYTIME THERE'S A REQUEST FOR AN UNEQUAL DISTRIBUTION ANYWAY.

>> YOU'RE WELL INTO YOUR
REBUTTAL.

YOU HAVE ABOUT A MINUTE LEFT IF
YOU WANT TO SAVE ANY TIME.

>> VERY WELL, YOUR HONOR.

JUST VERY QUICKLY WHAT I WOULD
SAY IS THE PROBLEM WITH KAAA AND
THE STEVENS CASE, THIS IS A HARD
AND FLAT RULE.

NO APPRECIATION IS
DISTRIBUTABLE.
PERIOD.

JUST THE PAYDOWN IN PRINCIPAL.
SO WHERE WE ARE RIGHT NOW THE
REASON WE NEED REVERSAL IS WE'RE
AT THE WRONG END OF THE
SPECTRUM.

THANK YOU.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, I'M
ELLEN WARE, I REPRESENT JOSEPH
KAAA, AND FIRST OF ALL I WANT TO
MAKE SURE THAT IT'S CLEAR THAT
OUR POSITION IS, MY POSITION IS
THAT THE EQUITIES DO FAVOR THE
RESULT REACHED BY THE SECOND
DISTRICT AND BY THE STATUTE.
THEY FAVOR THE APPLICATION OF
THE PLAIN LANGUAGE OF THE
STATUTE TO THE FACTS IN EACH
CASE.

AND SO I DON'T WANT TO SAY, OH,
BUT WE NEED TO DO IT ANYWAY.

I WANT TO SAY IN THIS PARTICULAR
CASE I THINK IT IS EQUITABLE,
AND I CAN GO THROUGH THE REASONS

IT WAS ALTHOUGH THE EQUITIES
WEREN'T TRIED BECAUSE THERE WAS
NO PRAYER FOR EQUAL
DISTRIBUTION, AND THAT'S WHEN
THE EQUITIES COME IN WHEN YOU'RE
ASKING AROUND AN UNEQUAL
DISTRIBUTION BASED ON EQUITABLE
PRINCIPLES.

>> [INAUDIBLE]

>> IT COMPLIES WITH THE STATUTE
BECAUSE THE STATUTE PROVIDES FOR
A MARITAL -- EXCUSE ME.

THE STATUTE REQUIRES THAT
MARITAL ASSETS AND LIABILITIES
WILL INCLUDE THE ENHANCEMENT IN
VALUE AND APPRECIATION OF AN
ASSET RESULTING FROM MARITAL
EFFORTS OR MONIES.

AND THIS IS REALLY IMPORTANT
BECAUSE IF YOU READ THE STEVENS
CASE, YOU'LL NOTE THAT THE
STEVENS COURT SAYS WE HAVE TO
FIGURE OUT WHAT TO DO WITH THE
APPRECIATION RESULTING FROM
MARKET FORCES.

NOT THE APPRECIATION RESULTING
FROM MARITAL EFFORTS AND
ENHANCEMENT, BUT RESULTING FROM
MARKET FORCES.

>> WELL, LET ME ASK YOU THIS; IF
A PROPERTY IS MORTGAGED, ISN'T
IT A PREREQUISITE TO ENJOIN THE
APPRECIATION OF THE VALUE OF THE
PROPERTY, THAT THE MORTGAGE ON
THE PROPERTY BE PAID?

AND SO ISN'T IN A VERY REAL

SENSE IT TRUE THAT YOU CAN'T ENJOY THE APPRECIATION UNLESS THE MORTGAGE IS PAID? AND IF MARITAL ASSETS ARE USED TO PAY THE MORTGAGE, DOESN'T THAT MEAN THAT THAT APPRECIATION HAS RESULTED FROM THE USE OF THE CONTRIBUTION OF MARITAL FUNDS? >> AND THE ANSWER IS SORT OF YES AND SORT OF NO.

I MEAN, OBVIOUSLY, IF YOU HAVE A PROPERTY AND IT HAS A MORTGAGE, IT ALSO HAS TAXES, YOU ALSO HAVE TO PAY FOR INSURANCE.

THERE ARE A NUMBER OF THINGS YOU HAVE TO PAY FOR IF YOU HAVE A PIECE OF REAL PROPERTY, AND IF IT HAS A MORTGAGE, THE MORTGAGE IS ONE OF THEM.

AND THIS IS AN ARGUMENT THAT HAS BEEN ATTEMPTED OCCASIONALLY, THIS BUT-FOR, YOU KNOW, EVERYTHING YOU PAY FOR IN THIS HOUSE ENABLES YOU TO KEEP THIS HOUSE.

YOU HAVE TO PAY YOUR MORTGAGE, YOU HAVE TO PAY YOUR TAXES.

THE TAXES ARGUMENT HAS BEEN SPECIFICALLY REJECTED BY JUST ABOUT EVERY COURT BECAUSE IT DOESN'T ENHANCE THE VALUE.

THE MORTGAGE, WHAT HAS BEEN DONE BY THE SECOND AND BY THE THIRD AND BY THE FOURTH IN MOST OF THEIR CASES AND IN EVERY DISTRICT IN AT LEAST SOME CASES,

I MEAN, EVERY DISTRICT HAS DONE WHAT THE SECOND HAS DONE WHICH IS AN APPLICATION OF THE PLAIN LANGUAGE OF THE STATUTE, EVERY DISTRICT HAS DONE IT IN AT LEAST ONE CASE, MANY OF THEM IN MORE.

>> WELL, I -- BUT, WE'RE HERE BECAUSE THERE'S A CONFLICT.

AND YOU IN YOUR ANSWER TO WHAT JUSTICE CANADY SAYS, YOU WERE USING WHETHER THERE'S BEEN AN ENHANCEMENT IN VALUE.

WOULD YOU AGREE THAT THERE IS, IF THE LEGISLATURE DIDN'T INTEND FOR PASSIVE APPRECIATION TO ALSO BE INCLUDED IN MARITAL ASSETS, THAT THEY WOULD HAVE, THEY COULD HAVE STOPPED WITH ENHANCEMENT IN VALUE?

SO MY QUESTION TO YOU IS, WHAT IS THE DIFFERENCE FROM YOUR POINT OF VIEW IN WHAT YOU'RE TRYING TO ARGUE BETWEEN WHAT THE LEGISLATURE MEANT BY ENHANCEMENT IN VALUE AND SEPARATE FROM APPRECIATION OF NON-MARITAL ASSETS?

>> YES.

THERE IS A DIFFERENCE.

AND IF THE LEGISLATURE HAD WANTED TO INCLUDE PASSIVE APPRECIATION, THEY WOULD HAVE NEEDED TO SAY SOMETHING ABOUT THE APPRECIATION RESULTING FROM THE MARKET.

THEY LIMITED IT TO --

>> NO, NO.

WHAT I'M ASKING YOU IS WHAT'S,
THEN, THE DIFFERENCE?

HOW IS, WHERE -- WHAT WOULD BE
AN EXAMPLE OF APPRECIATION OF
MARITAL ASSETS DIFFERENT FROM
ENHANCEMENT OF VALUE?

>> AND WE HAVE IT IN THIS CASE,
AND WE HAVE IT IN LOTS OF CASES.
YOU ENHANCE THE VALUE OF YOUR
HOME BY INVESTING \$10,000 IN AN
DECISION, AND WHEN YOU --
ADDITION, AND WHEN YOU INVEST IN
IT, YOU ENHANCE THE VALUE BY
\$10,000.

THAT \$10,000 THEN APPRECIATES.
WHEN YOU GET TO THE END OF THE
CASE LIKE IN THIS CASE, THE
PARTIES ADDED A ROOM ON TO THE
PROPERTY.

YOU KNOW, THERE WASN'T TESTIMONY
ABOUT HOW MUCH IT COST THEM OR
WHAT THE VALUE WAS AT THE TIME,
BUT, OBVIOUSLY, THE PROPERTY HAD
INCREASED IN VALUE
SUBSTANTIALLY, AND THE AMOUNT
THAT WAS DETERMINED TO BE
MARITAL WAS THE VALUE OF THAT
PROPERTY AT THE TIME OF THE
DISSOLUTION.

SO SAY, YOU KNOW, IF YOU'RE, IF
YOU INVEST IN, YOU KNOW, ADDING
A ROOM ON TO YOUR HOUSE AND AT
THE TIME YOU ADD THE ROOM ON TO
THE HOUSE YOU, YOU KNOW, PAY
\$10,000 FOR IT, AND, YOU KNOW,

IT'S WORTH \$100 A SQUARE FOOT,
IF THERE'S APPRECIATION OF THE
PROPERTY SO THAT BY THE TIME YOU
GET DIVORCED IT IS WORTH \$200 A
SQUARE FOOT, YOU GET ALL THAT
APPRECIATION FOR THAT ADDITION
THAT YOU MADE.

YOU ENHANCED IT, YOU GET THE
APPRECIATION ON THAT
ENHANCEMENT.

BUT WHAT YOU DON'T GET IS -- AND
I WANT TO GET BACK TO JUSTICE
CANADY'S QUESTION BECAUSE, YOU
KNOW, PAYING THE MORTGAGE DOWN
IS KIND OF AN ODD THING.

IF YOU'RE LIVING IN THE THING,
YOU KNOW, THE LAW IN FLORIDA IN
FAMILY LAW CASES IS, YOU KNOW,
AFTER YOU'RE DIVORCED IF YOU ARE
ENTITLED TO EXCLUSIVE USE AND
OCCUPANCY OF THE HOUSE, YOU MAY
OR MAY NOT DEPENDING ON THE
CASES AND THERE'S A WHOLE LINE
OF CASES STARTING WITH KELLY,
BUT YOU MAY OR MAY NOT BE
REQUIRED TO PAY THE REASONABLE
RENTAL VALUE OF THAT HOUSE
BECAUSE, YOU KNOW, YOU'RE LIVING
IN IT TOGETHER AND SO FORTH.

THE MARRIAGE IS GETTING A
BENEFIT FROM LIVING IN THIS
HOUSE.

YOU KNOW, YOU, MR. KAAA, FOR
INSTANCE, COULD HAVE RENTED THIS
HOUSE OUT.

THE TESTIMONY WAS THAT BY THE

TIME THEY GOT DIVORCED ANYWAY,
THE REASONABLE RENTAL VALUE OF
THE HOUSE WAS PROBABLY FAR
GREATER THAN WHAT THE PARTIES
WERE PAYING IN MORTGAGE.

SO, YOU KNOW, THE MARRIAGE, IT
WOULD NOT BE AN UNREASONABLE
APPLICATION OF THE LAW TO SAY,
YOU KNOW, HEY, IF YOU PAY DOWN
THIS MORTGAGE, YOU'RE JUST
GETTING SOMETHING FOR IT.
YOU'RE GETTING THE ABILITY TO
LIVE IN THIS HOUSE.

>> BUT THE WAY YOU SEEM TO ARGUE
THIS IT SEEMS TO BE THAT THIS IS
AN EASY THING WHEN YOU ADD ON AN
ADDITION TO THE HOUSE WHETHER
IT'S A ROOM OR A CARPORT OR
WHATEVER.

YOU KNOW, YOU END UP, IN MY
ESTIMATION, WITH A DIFFERENT
STRUCTURE WHICH MEANS THAT THE
VALUE OF THE HOUSE REALLY
CHANGES A LOT MORE THAN JUST THE
VALUE OF THAT ONE ADDITION.

AND SO TO ME IT'S VERY, IT'S
MUCH MORE DIFFICULT THAN WHAT
YOU'RE SAYING AS TO LOOK AT THAT
ONE ADDITION AND SEE WHAT THAT
ADDITION'S VALUE IS AS OPPOSED
TO HOW THE ENTIRE STRUCTURE HAS
BEEN ENHANCED BY THAT VALUE.

>> AND I THINK, YOU KNOW, THE
TESTIMONY HERE BY THE REAL
ESTATE APPRAISER WAS THE AMOUNT
BY WHICH THAT, THAT ADDITION HAD

ENHANCED THE VALUE OF THE HOME.
AND I THINK HOWEVER -- YOU KNOW,
I WOULD AGREE WITH YOU THAT IF
THE VALUE OF THE HOME WERE
ENHANCED MORE THAN JUST BY THE
SQUARE FOOTAGE, YOU KNOW, THAT
WOULD BE SOMETHING THAT SHOULD
BE INCLUDED AS MARITAL.

I'M JUST USED THAT AS AN EXAMPLE
FOR HOW YOU CAN INVEST IN THE
HOME, THE MARRIAGE CAN INVEST IN
THE HOME, ENHANCE THE VALUE OF
THE HOME, AND THEN YOU HAVE THE
APPRECIATION ON THAT
ENHANCEMENT.

>> SO YOUR POSITION IS THAT
CONTRIBUTION TO OR EXPENDITURE
THEREON THAT MORTGAGE PAYMENTS
WHETHER YOU DO PRINCIPAL AND
INTEREST, OR INTEREST-ONLY, OR
PRINCIPAL SHOULD NOT, HAS -- IS
NOT PART OF WHAT CAUSES THE
APPRECIATION OF THE NON-MARITAL
ASSET AND THAT THAT'S CLEAR FROM
THE LANGUAGE OF THE STATUTE?

>> I THINK THE SECOND DISTRICT
HAS SAID THAT IF YOU PAY DOWN
THE MORTGAGE, ESSENTIALLY, YOU
KNOW, CONTRIBUTING TO THIS
NON-MARITAL LIABILITY, THAT THAT
PAYDOWN OF THE MORTGAGE IS AN
ENHANCEMENT OF THE PROPERTY.
THAT'S THE WAY THEY'VE LOOKED AT
IT.

I DON'T THINK THAT'S AN
UNREASONABLE APPLICATION OF THE

LAW.

>> ENHANCEMENT OR APPRECIATION
OF THE ASSET?

>> THAT IS, THEY HAVE CALLED IT
ENHANCEMENT.

IT IS ESSENTIALLY A MARITAL
PAYMENT OF A NON-MARITAL
LIABILITY.

>> BUT ALL THEY ATTRIBUTE, THEN,
IS JUST WHATEVER YOU ACTUALLY
PAID.

THEY DON'T ATTRIBUTE ANYTHING
EITHER TO ENHANCED VALUE OR
APPRECIATION.

THAT'S WHY WE'RE HERE.

>> THAT IS CORRECT.

>> BUT IT'S DIFFICULT FOR ME TO
UNDERSTAND HOW YOU CAN EVEN GET
TO A POINT OF SEPARATING ALL OF
THIS.

I MEAN, IF THE YOU HAVE THE
MARITAL ASSET -- NON-MARITAL
ASSET.

BUT, HE HAD IT, WHAT, FOR SIX
MONTHS PRIOR TO THE MARRIAGE.

SO FOR 27 YEARS WHAT THEY
COLLECTIVELY HAD WAS PAID TO PAY
THE MORTGAGE, TO DO THE
ENHANCEMENT, TO KEEP UP THE
PROPERTY, DO ALL OF THIS.

AND IT JUST -- HOW IN THE WORLD,
WHAT KIND OF FORMULA CAN YOU
EVEN COME UP WITH THAT SEPARATES
ALL OF THAT?

I MEAN, DO YOU, CAN YOU START
WITH, OKAY, THE PERCENTAGE OF

THE MORTGAGE THAT WAS PAID PRIOR TO THE MARRIAGE AND THEN THE PERCENTAGE OF THE MORTGAGE THAT'S PAID AFTERWARDS AND SO CAN THAT BE WHAT IT BECOMES THE MARITAL ASSET INCLUDING THAT PERCENTAGE BEING WHAT DEPRECIATION IS ALSO?

I MEAN, I JUST -- IT IS -- I'M HAVING A REAL STRUGGLE HERE WITH HOW YOU'RE GOING TO SEPARATE ALL OF THIS, ESPECIALLY WHEN YOU HAVE A LONG-TERM MARRIAGE AND A SHORT TERM OF HAVING THE PROPERTY THAT IS REALLY NON-MARITAL.

>> AND A COUPLE THINGS I WANT TO TALK ABOUT WITH THIS PARTICULAR CASE BUT, YES, YOU KNOW, THE STATUTE HAS NO FORMULA IN IT. IT HAS NO SUGGESTION THAT THERE SHOULD BE A FORMULA IN IT. THE STATUTE SAYS SIMPLY THE ENHANCEMENT APPRECIATION RESULTING FROM MARITAL EFFORTS AND ENHANCEMENT.

AND IF YOU LOOK AT STEVENS, THEY'RE TALKING ABOUT WHAT TO DO ABOUT THE APPRECIATION RESULTING FROM MARKET FORCES.

THE LANGUAGE IN STEVENS MAKES CLEAR THAT THE STATUTE IS NOT BEING APPLIED THERE.

>> BUT, YOU KNOW, IF YOU TAKE THE SCENARIO THAT THE PERSON WHO PURCHASED THIS PROPERTY DID NOT

HAVE THE MONEY TO PAY THIS MORTGAGE ON ITS OWN, HOW IN THE WORLD DO YOU SEPARATE THEN THE EFFORT THAT POTE PARTIES PUT INTO IT TO KEEP IT?

THERE WOULD HAVE BEEN NO APPRECIATION, MARKET OR OTHERWISE, IF THE MORTGAGE COULD NOT BE PAID.

ISN'T THAT TRUE?

>> RIGHT.

AND I THINK ONE OF THE THINGS THAT MAKES HOMES DIFFERENT THAN ANOTHER ASSET THAT MAYBE HAS A DEBT ON IT OR SOMETHING IS THAT ANOTHER ALTERNATIVE WAS ALWAYS FOR MR. KAAA WHO TESTIFIED THAT HE PURCHASED THIS HOME AS AN INVESTMENT, HE COULD HAVE RENTED IT OUT AND, IN FACT, THERE'S SOME CASES WHERE THEY TALK ABOUT HOW -- AND I WISH I COULD REMEMBER THE NAME OFF THE TOP OF MY HEAD, AND I CAN'T -- BUT THERE ARE CASES WHERE COURTS HAVE FOUND YOU HAVE A PROPERTY, YOU RENT IT OUT, YOU USE THAT INCOME FROM THE RENTAL TO PAY FOR THE HOME, AND IT STAYS NON-MARITAL.

>> THE HOUSE WAS FINANCED MULTIPLE TIMES.

WAS SHE -- SHE WAS NEVER ON THE TITLE FOR THE HOUSE.

WAS SHE EVER ON THE MORTGAGE?

>> THE TESTIMONY FROM MR. KAAA

WAS SHE WAS NEVER ON ANY NOTES.
I ASSUME SHE HAD TO SIGN THE
MORTGAGE SO MOST MORTGAGE
COMPANIES WILL MAKE HER SIGN SO
THEY CAN FORECLOSE IF THEY ARE
FORCED TO.

>> WHAT DO YOU MEAN SHE WAS ON
THE NOTE?

I MEAN, YOU SAID SOMETHING --

>> I DON'T BELIEVE --

>> -- MORTGAGE COMPANY WOULD
REQUIRE HER TO BE ON IT.

>> AS I UNDERSTAND IT, AND I'M
NOT A REAL ESTATE LAWYER, THIS
COMES UP IN FAMILY LAW CASES ALL
THE TIME IF THERE IS A MARRIED
COUPLE AND ONE OF THEM TAKES
OUT -- PARTICULARLY ON A
HOMESTEAD PROPERTY -- TAKES OUT
A MORTGAGE WITH A NOTE --

>> WAS THIS HOMESTEADED?

THIS WAS A HOMESTEADED PROPERTY?

>> I'M ASSUMING IT WAS.

I DON'T THINK THERE WAS
TESTIMONY ABOUT THAT ONE WAY OR
THE OTHER.

BUT SHE DID NOT SIGN ON THE
NOTE, SHE DIDN'T HAVE ANY
LIABILITY ON IT.

AND, YOU KNOW, MR. KAAA COULD
HAVE RENTED THIS PROPERTY OUT --

>> BUT HE DIDN'T RENT IT OUT,
AND HE DIDN'T SEGREGATE THE
PAYMENTS.

AGAIN, THE FACTS HERE ARE, I
GUESS, YOU KNOW, AGAIN WE HAVE

TO MAKE SURE WE LOOK AT A RULE FOR ALL CASES, BUT IS THIS CORRECT THAT HE PURCHASED THE HOME FOR \$36,500, BUT ALL HE HAD AT THE TIME OF CLOSING WAS \$2,000 DOWN, THAT'S CORRECT?

>> RIGHT.

WHICH WAS A LITTLE MORE THAN 5%. THAT'S NOT AN UNUSUAL AMOUNT.

>> WELL, OKAY.

AND THEN THERE WAS ALSO, SHE TESTIFIED SHE ACTUALLY CONTRIBUTED \$500 TO THAT AMOUNT.

>> HER TESTIMONY WAS EQUIVOCAL. SHE HAD SAID ONE THING IN DEPOSITION, ANOTHER THING IN TRIAL.

HE TESTIFIED NO, AND THERE WAS NO FINDING BY THE COURT.

>> AND THEN NO QUESTION THE REMAINDER OF THE PURCHASE PRICE WAS FINANCED WITH THE MORTGAGE, CORRECT?

>> RIGHT.

>> AND DURING THE TIME THE MORTGAGE WAS PAID BY MARITAL FUNDS.

>> CORRECT.

>> HE COULD HAVE CHOSEN, JUST LIKE YOU SAY, SOMEONE DECIDES THEY WANT TO KEEP AN INVESTMENT PROPERTY SEPARATE, HE COULD HAVE DECIDED TO SAY, LISTEN, I'VE GOT, I'M GOING TO BE PUTTING THIS OUT OF A SEPARATE ACCOUNT. THIS IS AN INVESTMENT PROPERTY

FOR ME.

I MEAN, HE COULD HAVE MADE THAT CLEAR IN THIS MARITAL, THAT IF HE WANTED TO KEEP SOMETHING AS INVESTMENT PROPERTY, BUT HE DIDN'T.

MARITAL FUNDS FOR THE WHOLE 27-YEAR MARRIAGE WERE USED SO THAT BY THE END OF THE TIME THE REMAINING BALANCE WAS ONLY \$12,000, AND THE HOUSE HAD GONE UP TO \$225,000.

>> RIGHT.

AND --

>> IT JUST SEEMS LIKE THIS IS SORT OF A BAIT AND SWITCH HERE AS FAR AS WHAT THE PARTY'S EXPECTATIONS WOULD HAVE BEEN.

>> WELL, THE TESTIMONY WAS VERY CLEAR THAT THE EXPECTATION WAS HE WAS KEEPING THIS IN A SEPARATE NAME.

HE HAD BEEN MARRIED BEFORE, HE HAD TWO SONS.

THERE WAS NO QUESTION THAT THIS WAS SOMETHING HE HAD PURCHASED FOR AN INVESTMENT THAT HE HAD INTENDED TO, YOU KNOW, KEEP IT FOR HIMSELF WHICH IS WHY HE TITLED IT SEPARATELY.

YOU KNOW, THE GENERAL PUBLIC BELIEVES YOU KEEP SOMETHING TITLED SEPARATELY, IT REMAINS YOUR SEPARATE PROPERTY.

>> WELL, THEN HE SHOULD HAVE PAID FOR IT SEPARATELY.

>> WELL, YOU KNOW, IF THE LAW BECOMES -- THE LAW IN THE SECOND DISTRICT IS CLEAR, EVERY CASE IS CLEAR, YOU KNOW, FROM THE INCEPTION OF THE STATUTE IN THE LATE 1980s THROUGH TODAY, THE LAW IN THE SECOND DISTRICT IS CLEAR THAT, YOU KNOW, IF YOU HAVE A NON-MARITAL ASSET, YOU PAY DOWN THE MORTGAGE, THAT DOESN'T MAKE A PORTION OF WHAT THE MARKET DOES TO YOUR PROPERTY MARITAL.

IF THAT CHANGES, PERHAPS PEOPLE WILL ACT DIFFERENTLY, AND ONE OF THE THINGS I RAISE IN MY BRIEF IS THE POSSIBILITY THAT THAT WILL CAUSE PEOPLE TO ACT DIFFERENTLY IN TERMS OF YOU HAVE A SEPARATE ASSET, YOU HAVE A SEPARATE NON-MARITAL ASSET, YOU RENT IT OUT, AND YOU USE THAT MONEY TO PAY FOR IT.

MR. KAAA HAD A SMALL AMOUNT OF STOCK, MAYBE HE COULD HAVE USED THAT TO PAY IT IF THAT HAD BEEN THE LAW.

HE COULD HAVE RENTED IT OUT, THAT WAS AN ALTERNATIVE. BUT THAT WOULD HAVE LEFT MRS. KAAA PAYING PROBABLY MORE IN RENT IF THE PARTIES HAD RENTED THAN SHE HAD TO CONTRIBUTE AS A MARRIED COUPLE AS THEY HAD TO CONTRIBUTE TO THE MORTGAGE.

IT WOULD HAVE LEFT HER WITHOUT ANY EQUITY IN THE HOME BECAUSE, YOU KNOW, AT THE CONCLUSION OF THIS SHE HAD SOME \$36,000.

I MEAN, THERE WAS \$36,000 IN MARITAL FUNDS, AND HE RECEIVED HALF OF THAT.

YOU KNOW, IF THE LAW WERE DIFFERENT AND HE HAD KEPT THAT HOME SEPARATE, PAID FOR IT SEPARATELY, I MEAN, IT HAS A VALUE, THAT RENTAL.

>> BUT FOR 27 YEARS SHE ENDED UP WITH \$18,000?

>> FOR 27 YEARS --

>> AND HE ENDS UP WITH AN ASSET WORTH \$225,000.

>> WHICH LEADS ME TO ANOTHER QUESTION -- WHICH IS NOT TODAY.

TODAY, LET'S FACE IT, THAT ASSET'S NOT WORTH --

>> ACCORDING TO WHAT WE HAVE IN THE RECORD.

>> I UNDERSTAND.

THAT LEADS ME TO THIS ISSUE WHICH IS IF THE LAW BECOMES THAT WHEN YOU, IF THE LAW BECOMES IN THE STATE OF FLORIDA THAT BY PURCHASING A HOME BEFORE -- IF SOMEONE PURCHASES A HOME BEFORE THE MARRIAGE, YOU MARRY THAT PERSON, OKAY?

THEY'VE CHOSEN THAT HOME, THEY PUT THEIR DEPOSIT DOWN, THEY'RE PAYING THE MORTGAGE, THEY MARRY YOU, YOU MARRY THEM, THE MARKET

DROPS, AND THERE IS

DEPRECIATION.

ARE WE GOING TO SADDLE THE NEW

SPOUSE WITH THE DEPRECIATION

BECAUSE WE ALSO WANT TO GIVE

THEM THE APPRECIATION?

>> [INAUDIBLE]

>> RIGHT.

IT ONLY ADDRESSES APPRECIATION

ARE.

BUT WHEN WE'RE TALKING ABOUT THE

EQUITIES, I THINK THAT SORT OF

POINTS UP THAT THE STATUTE IS

NOT MEANT TO GIVE THE NEW SPOUSE

NECESSARILY THE WISDOM OF THE

SPOUSE WHO'S MADE THE PURCHASE

BECAUSE THEY THINK IT'S A GOOD

INVESTMENT.

THIS GUY, YOU KNOW, HE -- THE

ONLY REASON, AND I THINK IT'S

IMPORTANT TO THINK ABOUT THE

EQUITIES IN THIS CASE BECAUSE

EQUITIES ARE DIFFERENT IN EVERY

CASE.

EQUITIES ARE VERY FACT-SPECIFIC.

I THINK IT'S VERY DIFFICULT TO

COME UP WITH A RULE WHERE YOU

CAN SAY IT'S PERFECT IN EVERY

CASE.

AND THE SIMPLE RULE THAT HAS

BEEN, YOU KNOW, THAT APPEARS TO

ME TO BE MANDATED BY THE STATUTE

HAS BEEN APPLIED BY THE SECOND,

HAS BEEN APPLIED BY EVERY

DISTRICT IN ONE OR MORE CASES, I

THINK, MAKES IT SIMPLER AND

EASIER WHEN YOU START THINKING ABOUT THE EQUITIES.

YOU THINK, WHY DO YOU SAY THIS PERSON, MALE OR FEMALE, COMES INTO THE MARRIAGE WITH SOMETHING THAT THEY CHOSE.

THEY CHOSE IT BECAUSE THEY THOUGHT IT WAS A GOOD INVESTMENT.

URNS OUT THE MARKET GOES UP OR THE MARKET GOES DOWN.

AND THEY GET THAT BENEFIT OR DETRIMENT.

I MEAN, YOU KNOW, IF THERE'S DEPRECIATION, THEY'RE GOING TO BE STUCK WITH IT, RIGHT?

I MEAN, RIGHT NOW YOU COME INTO A MARRIAGE WITH PROPERTY, IF THE MARKET KEEPS GOING DOWN, DOWN, DOWN --

>> BUT THIS WAS THE MARITAL RESIDENCE FOR 27 YEARS, RIGHT?

>> RIGHT.

>> AND HE ACQUIRED THE PROPERTY SIX MONTHS BEFORE THEY WERE MARRIED, RIGHT?

>> RIGHT.

>> AND HE PUT \$2,000 DOWN.

>> UH-HUH.

>> SO, AND THERE WERE SEVERAL MORTGAGES DURING THE MARRIAGE WHICH ENHANCED THE VALUE OF THE PROPERTY, I WOULD ASSUME.

>> SHE, YEAH, SHE SIGNED ON THE NOTE.

I MEAN, SHE SIGNED ON THE -- I

DON'T THINK SHE SIGNED ON THE
NOTE.

>> SHE HAD TO SIGN ON THE
MORTGAGE.

>> PROBABLY.
RIGHT.

>> SO WAS THAT NOT PART AND
PARCEL OF THE ENHANCEMENT OF THE
VALUE OF THE HOUSE?

>> IT, THE EVIDENCE WAS AND I
THINK THE CASE LAW THAT APPLIES
THE STATUTE THIS WAY MAKES CLEAR
THAT, YOU KNOW, THERE'S A
DIFFERENCE BETWEEN APPRECIATION
CAUSED BY THE MARKET AND
APPRECIATION CAUSED BY THE
PARTIES.

AND I JUST WANT -- I DON'T WANT
TO LEAVE HERE WITHOUT SAYING
SOMETHING.

NO UNEQUAL DISTRIBUTION WAS
RAISED AT TRIAL IN THIS CASE, SO
THERE WASN'T A WHOLE LOT OF
INFORMATION PUT ON ABOUT THE
EQUITIES.

BUT IF YOU LOOK AT THE FACTS,
YOU WILL SEE THAT THE EQUITIES
IN THIS CASE EVEN SUGGEST THIS
IS NOT THE UNREASONABLE RESULT
THAT MANY PEOPLE SEEM TO THINK
IT IS.

>> WHAT ARE THE EQUITIES THAT
YOU'RE TALKING ABOUT?

>> THIS MAN WAS A LITTLE OVER
30, AND SHE WAS IN HER EARLY
20s WHEN THEY MARRIED.

THE REASON HE CAME IN WITH A
LITTLE SOMETHING WAS BECAUSE HE
WAS A LITTLE BIT OLDER.

THAT'S THE ONLY REASON.

THESE ARE PEOPLE OF MODEST
MEANS.

HE'S A MEAT CUTTER.

>> THEY HAD FOUR CHILDREN.

>> RIGHT.

>> TOGETHER.

>> RIGHT.

>> WHO, I ASSUME, ALL GREW UP IN
THIS HOUSE?

>> YES.

AND HE'S A MEAT CUTTER, SHE
WORKS AT THE SCHOOL SYSTEM,
SHE'S DEVELOPING RETIREMENT.

HE COMES OUT OF THIS MARRIAGE,
NOW HE'S 62, HE'S IN POOR
HEALTH.

THE RECORD REFLECTS AS, AGAIN,
WE DIDN'T PUT ON AN EQUITABLE
CASE.

THE LAW IN THE SECOND WAS CLEAR.
BUT HE CAME OUT OF THIS MARRIAGE
IN VERY POOR HEALTH WITH
STROKES.

HE HAS LITTLE TO NO -- I DON'T
EVEN KNOW IF HE'S WORKING AT
THIS POINT, BUT LITTLE TO NO
WORKING LIFE LEFT.

SHE IS CONTINUING TO DEVELOP HER
RETIREMENT BECAUSE SHE'S
SIGNIFICANTLY YOUNGER THAN HE
IS.

THESE ARE PEOPLE OF VERY MODEST

MEANS, AND AS I -- THE EQUITIES ARE DIFFERENT IN EVERY CASE, THE EQUITIES ARE VERY FACT-SPECIFIC.

>> BUT THAT, THOSE KIND OF FACTORS MAY WELL PLAY IN TO HOW THE MARITAL ASSETS WOULD BE DIVIDED, BUT I DON'T SEE WHAT THAT HAS TO DO AT ALL WITH DETERMINING THE VALUE OF THE MARITAL ASSETS.

>> AND I WOULD AGREE.

I THINK THE STATUTE IS VERY CLEAR.

THERE ARE CASES IN EVERY DISTRICT THAT INTERPRET IT THE WAY THE SECOND HAS --

>> AND CASES THAT GO THE OTHER WAY TOO.

>> BUT NOT IN -- IN THE THIRD, FOR INSTANCE, THE CASES ARE CONSISTENT.

MOST OF THE DISTRICTS AT SOME POINT OR OTHER CITE BACK TO STRALEY WHICH IS THE CASE CITED BY MITCHELL, THE THIRD CITES IT, I THINK THE FIFTH HAS CITED IT, AND THE STATUTE ITSELF IS CLEAR, AND THE STATUTE DOES GIVE THE COURT THE OPPORTUNITY AS THE EQUITIES REQUIRE TO ADJUST IT BASED ON THE FACTORS LISTED AT THE BEGINNING PART OF THE STATUTE.

THE EQUAL, UNEQUAL DISTRIBUTION.

THANK YOU.

>> ALL RIGHT.

REBUTTAL?

>> YOUR HONOR, IF I HAVE PART OF THAT MINUTE LEFT, JUST THREE THINGS.

IF YOU CONSIDER IT THIS WAY, WHAT OTHER ASSET IF YOU COME INTO A MARRIAGE AND ONE PARTY OWNS A NON-MARITAL ASSET, YOU INVEST ALL THE CONSIDERATION TO PAY FOR THAT INTO THE NON-MARITAL ASSET, WHY -- AND YET THE PARTY THAT CAME IN WITH LITTLE OR NO EQUITY ENDS UP WITH ALL THE APPRECIATION?

IF IT WASN'T FOR A PARCEL OF REAL ESTATE IN THE SECOND DCA, THERE'S NO OTHER ASSET IN FLORIDA THAT THAT LAW WOULD APPLY TO.

SO THIS IS, WHY WOULD YOU TREAT REAL ESTATE IN THE SECOND DCA DIFFERENTLY?

YOU MAKE ALL THIS INVESTMENT, AND YET THERE'S A CAP, A BAR TO ANY CONSIDERATION OF THE APPRECIATION IN VALUE.

IF THIS WAS A BANK ACCOUNT AND WE PUT \$50,000 INTO IT AND IN 20 YEARS IT BECAME WORTH \$300,000, WHY BECAUSE IT'S A HOUSE INSTEAD OF A BANK ACCOUNT SHOULD THE APPRECIATION BE CONSIDERED DIFFERENTLY?

THERE'S REALLY NO POLICY REASON. SECOND, STRALEY.

AGAIN, THE STEVENS CASE TALKS

VERY BRIEFLY ABOUT YOU'RE
LIMITED TO THE --
>> COULD YOU TELL ME ABOUT THOSE
BANKS ACCOUNTS THAT GO UP FROM
50,000 TO 300 --

[LAUGHTER]

>> I ONCE HAD A CLIENT WHO HAD
380,000 IN AN IRA.

I SAID, NO, IT'S NOT AN IRA.

SHE SAID, YES.

I LOOKED, GOOD INVESTMENTS.
MITCHELL WITH A VERY SHORT,
NONPOLICY STATEMENT ABOUT
LIMITATION RELIED ON STRALEY
WHICH WAS A SHARPLY-DIVIDED
OPINION WITH MANY DISSENTING
OPINIONS WHICH WERE KIND OF LIKE
IN OUR FAVOR, MORE LIKE STEVENS.
SO EVEN IN THE SECOND DCA WHEN
THEY CONCURRED THESE ISSUES
STRUGGLED WITH THE POLICY.
AND FINALLY, JUST THE FACTS
ABOUT THE HUSBAND'S HEALTH AND
SO FORTH.

THAT'S REALLY FOR THIS TRIAL
COURT TO DETERMINE WHEN WE GO
BACK ON FEES.

IT'S NOT BEFORE THE COURT.

>> THANK YOU VERY MUCH.
THANK YOU BOTH FOR YOUR
ARGUMENTS HERE TODAY.

THE COURT WILL NOW TAKE ITS
MORNING RECESS FOR TEN MINUTES.

>> PLEASE RISE.

