

>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
PLEASE BE SEATED.

>> OKAY.
THE NEXT CASE ON THE DOCKET IS
JONES V. GOLDEN.

>> GOOD MORNING, YOUR HONORS,
MAY IT PLEASE THE COURT, ROBIN
HAZEL ON BEHALF OF THE
PETITIONER.

WE ARE HERE TODAY BECAUSE THE
FOURTH DISTRICT COURT OF APPEAL
IN DECIDING THIS CASE,
IMPROPERLY INTERPRETED SECTION
733.702 OF THE FLORIDA STATUTES.
IN SO DOING, THE COURT DISAGREED
WITH THREE OF THEIR SISTER
COURTS.

WITH THE FIRST DCA IN MORGAN
THAW VERSUS AN ZELL, THE SECOND
DCA IN LOUIE VERSUS ADAMS AND
THE FIFTH MOST RECENTLY IN
SUTTER V. MALONE.

>> ISN'T OUR STARTING POINT
REALLY THE U.S. SUPREME COURT
DECISION WHICH SORT OF-- I
MEAN, IT WAS A LANDMARK CASE
WHEN IT CAME OUT-- SAYING THAT
STATES CANNOT CUT OFF CREDITORS
IF THE ESTATE KNEW OR REASONABLY
SHOULD HAVE KNOWN THAT THE
CREDITOR WAS THERE, THAT IT'S A
DUE PROCESS VIOLATION?

ISN'T THAT WHERE WE BEGIN, AND
THEN THE QUESTION THEN COMES HOW
THESE STATUTES CAN BE APPLIED
WITH THAT BASE, BASE LAW.

>> YES, YOUR HONOR.
WE BEGIN WITH THE POLK DECISION,
BUT I THINK THE-- POPE
DECISION, BUT I THINK THE
LEGISLATURE ACKNOWLEDGED IT AND
THIS COURT ACKNOWLEDGED AS MUCH
IN MAY V. ILLINOIS.
IN 1989 THE LEGISLATURE AMENDED
THE STATUTE FOLLOWING POPE WHICH
SAID CREDITORS ARE ENTITLED TO
ACTUAL NOTICE.

THE STATUTE WAS AMENDED TO

INCLUDE IN THE EXTENSION PROVISION THAT A CREDITOR MAY SEEK AN EXTENSION BASED ON INSUFFICIENT NOTICE OF THE CLAIMS PERIOD.

>> BUT AGAIN, I MEAN, THAT'S A VERY SHORT PERIOD OF TIME, TOO, THAT EXTENDS PERIOD, RIGHT?

>> THE EXTENSION PERIOD, ACTUALLY, THE EXTENSION PERIOD ITSELF IS NOT SHORT.

YOU CAN FILE FOR AN EXTENSION AT ANY TIME WITHIN TWO YEARS OF THE DECEDENT'S DEATH.

THE STATUTE SAYS THAT WITHIN-- THAT A CREDITOR WHO WANTS TO FILE A CLAIM AGAINST AN ESTATE HAS TO FILE IT WITHIN 90 DAYS--

>> RIGHT.

>>-- OF PUBLICATION OF NOTICE OR WITHIN 30 DAYS IF THEY'RE SERVED WITH ACTUAL NOTICE.

IF THE CREDITOR DOES NOT FILE A CLAIM DURING THAT TIME PERIOD, THEN THE STATUTE PROVIDES THEY CAN REQUEST AN EXTENSION FROM THE COURT ASKING THE COURT TO EXTEND THE CLAIMS PERIOD, AND THEY HAVE THREE REASONS THEY CAN ASK FOR; FRAUD, 'S STOP EL OR INSUFFICIENT NOTICE OF THE CLAIMS PERIOD.

AGAIN, THE INSUFFICIENT NOTICE CAME AFTER THE POPE PROVISION. THE LEGISLATURE AMENDED THAT PUT ANYTHING THAT SAFEGUARD.

>> WHY ISN'T IT MORE REASONABLE TO INTERPRET THIS ENTIRE STRUCTURE WHEN, IN VIEW OF THE STATUTE OF REPOSE?

WHY DOESN'T THAT JUST REALLY CLEAN UP EVERYTHING, IS THAT THAT'S, THAT IS THE DROP DEAD CUTOFF POINT.

THEREAFTER THERE IS NO ACTION.

>> THAT IS THE DROP DEAD, CUTOFF POINT, BUT IT'S NOT REASONABLE TO INTERPRET SECTION 702 THAT WAY BECAUSE THE STATUTES, THE PLAIN LANGUAGE SAYS--

>> WELL, BUT ON THE PLAIN LANGUAGE--

>> YES.

>>-- WHAT IT SAYS, UM, I CAN'T READ THE WHOLE THING BECAUSE IT'S KIND OF LENGTHY, BUT THE CRITICAL PART THERE, IT SEEMS TO ME, WHERE IT TALKS ABOUT A DATE THAT IS THREE MONTHS AFTER THE TIME OF THE FIRST PUBLICATION OF THE NOTICE TO CREDITORS OR AS TO ANY CREDITOR REQUIRED TO BE SERVED WITH A COPY OF THE NOTICE TO CREDITORS, 30 DAYS AFTER SERVICE, AFTER THE DATE OF SERVICE ON THE CREDITOR.

IT SEEMS LIKE, TO ME, A REASONABLE WAY TO READ THAT IS THAT IF YOU ARE A CREDITOR REQUIRED TO BE SERVED WITH A NOTICE, THIS DOESN'T APPLY, THIS PROVISION OF .702 DOESN'T APPLY UNLESS YOU ARE SERVED, AND THEN IT KICKS IN 30 DAYS AFTER DATE OF SERVICE ON THE CREDITOR. WHY DOESN'T IT, WHY DOESN'T THAT MEAN EXACTLY THAT?

>> WELL, I, I DON'T THINK IT MEANS EXACTLY THAT FOR A FEW REASONS.

FIRST, IN THIS COURT ACKNOWLEDGED IN MAY V. ILLINOIS THAT THE LEGISLATURE WHEN IT AMENDED THE STATUTE BACK IN '84 AND INSERTED THE WORD "AFTER," THOSE ARE THE TRIGGERS IN THE STATUTE.

IF YOU'RE SERVED WITH NOTICE, THEN YOU'VE GOT 30 DAYS AFTER. OR IF YOU'RE A GENERAL CREDITOR, YOU'VE GOT THREE MONTHS AFTER NOTICE IS PUBLISHED.

IN THIS CASE, TO READ THAT PORTION OF THE SECTION-- THE QUESTION BECOMES HOW DO WE EVEN GET TO KNOW THAT YOU'RE A KNOWN OR REASONABLY ASCERTAINABLE CREDITOR?

THAT'S A WHY THE EXTENSION IS IMPORTANT.

WE GET TO WHETHER OR NOT YOU ARE, BECAUSE ANYONE CAN CLAIM TO BE A KNOWN OR REASONABLY ASCERTAINABLE CREDITOR.

HOW DO WE GET TO THAT ASCERTATION?

THE STATUTE SAYS YOU FILE A MOTION.

>> SO UNDER YOUR ANALYSIS, WHAT HAPPENS IF THERE IS A CREDITOR, A KNOWN CREDITOR, AND FOR WHATEVER REASON THEY WERE NEVER SERVED AS THE STATUTE REQUIRES THEM TO BE SERVED?

WHAT HAPPENS THEN?

WHAT IF THAT KNOWN CREDITOR, WHAT-- WHEN CAN THEY FILE THEIR CLAIM?

>> THEY CAN FILE THEIR CLAIM AT ANY TIME WITHIN TWO YEARS OF THE DECEDENT'S DEATH PROVIDED THEY FILE A MOTION WITH THE COURT UNDER SUBSECTION THREE ASKING THE COURT TO EXTEND THE CLAIMS PERIOD BECAUSE THEY WERE GIVEN INSUFFICIENT NOTICE.

THEY WEREN'T GIVEN NOTICE.

>> BUT IF THEY DIDN'T HAVE NOTICE, YOU FILED-- YOU'RE SAYING THEY HAVE TO SIMULTANEOUSLY, WITH FILING THEIR CLAIM, FILE THIS EXTENSION REQUEST?

>> THEY HAVE TO NOTIFY THE COURT, THEY CAN DO IT EITHER BEFORE, ASKING THE COURT TO EXTEND THE CLAIMS PERIOD TO ALLOW THEM, OR SIMULTANEOUSLY. SIMULTANEOUSLY WOULD, OBVIOUSLY, BE OPTIMAL IN THE EVENT--

>> HOW CAN WE EXPECT A CREDITOR TO KNOW TO FILE A MOTION IF THE CREDITOR DOESN'T HAVE NOTICE TO BEGIN WITH?

THAT'S JUST, IT JUST SEEMS CIRCULAR HERE.

>> IT'S NOT QUITE CIRCULAR. THE MOTION PROVISION IS A SAFEGUARD FOR CREDITORS. GENERALLY, AND IN THIS-- IF WE

TAKE IT--

>>

>> HOW IS IT A SAFEGUARD IF THE CREDITOR IS UNAWARE?

>> IF THE CREDITOR IS UNAWARE, THEN THE ENTIRE STATUTE PROVIDES THEY ONLY HAVE TWO YEARS.

>> THAT'S WHAT THIS CASE IS ABOUT, IS THAT YOU DO HAVE TWO YEARS.

A CREDITOR WHO DOES NOT HAVE NOTICE CAN COME IN IN TWO YEARS. ISN'T THAT WHAT THIS CASE IS ALL ABOUT?

>> THAT'S THE RESPONDENT'S POSITION, BUT YOU HAVE TO FOLLOW THE STATUTORY PROCEDURE--

>> WHICH IS THEY MISFILED A MOTION, IS THAT WHAT YOU'RE SAYING?

EVEN THOUGH THEY HAD NO NOTICE, THAT'S THE WAY WE SHOULD READ THE STATUTE?

>> WELL, BECAUSE THE STATUTE SAYS THAT IF YOU AREN'T GIVEN SUFFICIENT NOTICE, YOU CAN FILE AN EXTENSION--

>> IT SAYS 30 DAYS AFTER THE DATE OF SERVICE ON THE CREDITOR.

>> RIGHT.

>> THAT'S SERVING THE CREDITOR SOMETHING.

>> WELL, THE CREDITOR CERTAINLY WAS SUBJECT TO THE GENERAL NOTICE THAT WAS PUBLISHED. THEY GOT THE GENERAL NOTICE THAT WAS PUBLISHED.

IN THIS CASE, THIS CREDITOR SAID THEY DIDN'T GET ACTUAL NOTICE.

IT'S OUR POSITION THAT THEY WEREN'T ENTITLED TO ACTUAL NOTICE IN THIS CASE.

BUT AS A GENERAL-- AND GENERALLY SPEAKING, ANY CREDITOR WHO IS NOT GIVEN NOTICE CERTAINLY HAS THE PUBLICATION NOTICE TO FALL BACK ON--

>> AND THAT'S WHAT YOU'RE REFERRING TO, THAT THE PUBLICATION WE PUT IN THE

BROWARD REVIEW, MIAMI REVIEW,
WHATEVER--

>> YES.

>> WELL, IF THAT SATISFIES THE
NOTICE, THAT VOIDS WHAT THE U.S.
SUPREME COURT--

>> NO.

I'M NOT SAYING THAT
SATISFIES THE NOTICE.
THAT GIVES GENERAL NOTICE TO
EVERYONE.

IF SOMEONE IS CLAIMING THEY'RE
ENTITLED TO ACTUAL NOTICE, THEN
ALL THEY HAVE TO DO IS LET THE
COURT KNOW THAT THEY'RE ENTITLED
TO ACTUAL NOTICE.

>> OKAY.

>> AND THIS, I GUESS ONE OF THE
EXAMPLES I CAN GIVE THE COURT IS
IF TWO PARTIES ARE ENGAGED IN
GENERAL LITIGATION AND A MOTION
WAS SET OR IF HEARING AND ONE
PARTY DIDN'T GET ACTUAL NOTICE
THAT THE HEARING-- SO THEY
DIDN'T SHOW UP, THE COURT RULED
AGAINST THEM, THE REMEDY FOR
THAT IS NOT TO SHOW UP AT COURT
FOR A SUBSEQUENT HEARING AND
PROCEED TO ARGUE THE PREVIOUS
MOTION JUST BECAUSE YOU DIDN'T
GET NOTICE.

NO, THE PROPER PROCEDURE WAS TO
LET THE COURT KNOW, CAN WE HAVE
A REHEARING, CAN I HAVE MY DAY
IN COURT ON THAT MOTIONING?

THAT'S ALL THIS STATUTE DOES.
IT SAYS IF YOU WERE ENTITLED TO
NOTICE AND FOR SOME REASON YOU
WERE NOT GIVEN NOTICE, ALL YOU
HAVE TO DO IS LET THE COURT
KNOW, AND THE COURT WILL REVIEW
THE CIRCUMSTANCES AND DECIDE
WHETHER YOU GET TO FILE
YOUR CLAIM.

THAT'S ALL THE STATUTE DOES
HERE.

AND TO READ IT ANY OTHER WAY
WOULD BE TO READ AN EXCEPTION
INTO THE NOTICE PROVISION WHERE
ONE JUST DOESN'T EXIST.

BECAUSE UNDER THE RESPONDENT'S INTERPRETATION AND THE FOURTH DCA'S INTERPRETATION OF THE CASE, A KNOWN OR REASONABLY ASCERTAINABLE CREDITOR NEVER HAS TO FILE A NOTICE FOR AN EXTENSION OF TIME FOR ANY REASON.

IT JUST DOESN'T APPLY TO THEM. AND IF THIS LEGISLATURE WANTS TO WRITE THAT INTO THE LEGISLATION, THEY COULD HAVE DONE SO, AND THEY DIDN'T.

>> JUST THE FACTS OF THIS CASE, A LITTLE UNUSUAL. USUALLY WE THINK OF CREDITORS AS SOMEBODY THAT MIGHT BE OWED MONEY.

THIS WAS THE FORMER SPOUSE--

>> CORRECT.

>>-- OF THE DECEDENT?

>> YES, YOUR HONOR.

>> AND THE CLAIM WAS THERE WAS A MARITAL AGREEMENT AND THAT MONEY HAD NOT BEEN PAID?

>> THAT'S CORRECT.

THE INTERESTING THING--

>> I HOW IS THAT NOT A KNOWN OR REASONABLY ASCERTAINABLE CREDITOR?

>> BECAUSE-- THE RECORD ISN'T CLEAR, BUT I CAN JUST EXPLAIN, THAT'S A MARITAL SETTLEMENT AGREEMENT THAT DATED BACK TO 2002 OR 2003.

SO THE PERSONAL REPRESENTATIVE THOUGHT EVERYTHING WAS TAKEN CARE OF, EVERYTHING WAS SQUARED AWAY.

AND, IN FACT, IF I WOULD POINT OUT THE STATEMENT OF CLAIM THAT WAS FILED IN THIS CASE WAS JUST A ONE-PAGE STATEMENT OF CLAIM--

>> BUT, AGAIN, YOU HAD A WIFE THAT HERSELF HAD BECOME, NEEDED A GUARDIAN, RIGHT?

>> YES.

>> SO WE'VE GOT A SITUATION, CERTAINLY I GUESS REALIZE WE'RE LOOKING AT STATUTORY

CONSTRUCTION AND DUE PROCESS.
BUT IT SEEMS THAT UNDER THE
EQUITIES IT'S HARD TO
UNDERSTAND, AGAIN, WHEN YOU'RE
TALKING ABOUT SOMEONE READING
THE BROWARD REVIEW, HOW
KATHERINE OR HER GUARDIAN WOULD
BE-- DID THEY SAY, WAS THERE A
TESTIMONY THAT THEY KNEW THAT
THIS, THAT THE CLAIMS PERIOD WAS
ABOUT TO EXPIRE?

>> THERE WASN'T ANY--

>> I MEAN, IT DOESN'T MAKE ANY,
I MEAN, THAT'S CONSTRUCTIVE
NOTICE.

THAT'S NOT ACTUAL NOTICE,
CORRECT?

>> IT'S NOT ACTUAL NOTICE, AND
WE'RE NOT DENYING THAT-- IF
THEY WERE ENTITLED TO ACTUAL
NOTICE, AGAIN, THEY COULD HAVE
HAD THEIR CLAIM HEARD HAD THEY
FOLLOWED THE PROPER PROCEDURE BY
JUST ASKING--

>> BUT THIS GOES BACK, IT GOES
BACK TO IF THEY'RE REASONABLY
ASCERTAINABLE.

>> AND IN OUR POSITION, THEY
WERE NOT.

AND I'LL EXPLAIN WHY A LITTLE.
IT WASN'T BROUGHT OUT IN THE
PROBATE COURT, BUT IT WAS
MENTIONED IN THE RESPONDENT'S
BRIEF THAT WHAT THEY WERE
ALLEGING WAS FROM THIS MARITAL
SETTLEMENT AGREEMENT WAS SOME
STOCKS, AND THEY'RE CLAIMING THE
DECEDENT DISPOSED OF THAT
PROPERTY WHILE HE WAS ALIVE.

HOW DOES A PERSONAL
REPRESENTATIVE EVEN KNOW THIS
PROPERTY WAS DISPOSED OF BEFORE
AND NOT DISPOSED OF AS IN SHARED
WITH THE WIFE--

>> BUT THE ARGUMENT HAS TO BE
MADE--

>> IN THE--

>> WHEN IT COMES BACK.

>> CORRECT.

IF IT GOES--

>> THAT'S, AS I UNDERSTAND IT,
COMING OUT OF THE FOURTH
DISTRICT.

THEY STILL REQUIRE THAT HEARING
ON WHETHER THEY WERE KNOWN OR
REASONABLY ASCERTAINABLE FOR
THAT TO BE DETERMINED.

>> EXACTLY.

>> SO, I MEAN, THAT'S FOR
ANOTHER DAY.

>> AND ALSO THE ISSUE OF WHETHER
THE CLAIM IS, THERE'S ACTUAL A
VALID CLAIM.

>> EXACTLY.

THAT WOULD BE DETERMINED--

>> SO WE'RE NOT MAKING THAT
DECISION HERE.

>> NO, YOU'RE NOT MAKING THAT
DECISION HERE, YOUR HONOR.

I JUST WAS PROVIDING SOME
BACKGROUND INFORMATION.

AND THAT'S OUR POSITION, WE
SHOULDN'T EVEN GO BACK THERE FOR
THAT HEARING BECAUSE THE STATUTE
SET OUT A VERY SIMPLE PROCEDURE.
IF YOU LOOK AT THE CLAIM FILED
IN THIS CASE, IT NEVER SAID THE
CREDITOR WAS KNOWN OR REASONABLY
ASCERTAINABLE, IT JUST LISTED A
FEW DOCUMENTS THAT THE PARTIES
WERE INVOLVED IN INCLUDING THE
MARITAL SETTLEMENT AGREEMENT.

>> WE'RE NOT HERE EITHER ON THE
QUESTION OF THE SUFFICIENTTY--

>> NO.

>>-- OF THE CLAIM.

>> NO.

I'M USING THAT JUST TO EXPLAIN
THAT WHEN A PROBATE JUDGE IS
PRESENTED WITH SOMETHING LIKE
THAT, YOU LOOK AT THE DATE ON
THE STATEMENT OF CLAIM, YOU LOOK
AT THE DATES ON WHICH NOTICE TO
CREDITOR WAS PUBLISHED, WAS THIS
CLAIM IN THREE MONTHS?

NO, IT WAS NOT.

THEREFORE, IT'S UNTIMELY.

WAS THIS PERSON GIVEN ACTUAL
NOTICE?

YOU LOOK IN THE RECORD, NO, THEY

WERE NOT.

THE THIRD STEP, GO TO SUBSECTION THREE, IS THERE A PENDING EXTENSION?

NO, THERE IS NOT.

THE STATUTE PLAINLY SAYS YOUR CLAIM IS BARRED, AND THAT'S ALL THAT HAPPENED HERE--

>> AND THE CREDITOR CANNOT OPEN THEIR MOUTH TO SAY I WAS A KNOWN CREDITOR, THEY KNEW AT ALL TIMES, AND THERE'S EVIDENCE OF IT, AND HERE'S WHERE IT WILL BE. SO IT'S-- WE ARE NOW JUST INTO THE PAPER, AND WHOEVER A CREDITOR IS CANNOT SPEAK UP AND SAY I WAS A KNOWN OR REASONABLY ASCERTAINABLE CREDITOR AND SHOULD-- AND WAS ENTITLED, NOT SHOULD HAVE, I WAS ENTITLED AS A MATTER OF LAW TO ACTUAL NOTICE ACCORDING TO THE UNITED STATES SUPREME COURT.

>> YES.

THEY CAN ABSOLUTELY SAY THAT IF THEY FOLLOW THE--

>> OKAY.

WELL, SO, I MEAN, YOU'RE DESCRIBING A PAPER WORLD THAT NOBODY CAN OPEN THEIR MOUTH TO EXPLAIN OR DESCRIBE ANYTHING.

>> NO, NOT AT ALL, YOUR HONOR. WHAT I'M SAYING IS IN THIS CASE I JUST WENT THROUGH THE ANALYSIS THE COURT WOULD DO, AND THEN THEY WOULD OPEN THEIR MOUTH TO SAY POPE ENTITLED ME TO ACTUAL NOTICE WOULD BE IN A NOTICE OF EXTENSION BECAUSE THAT IS WHAT THE STATUTE CALLS FOR.

IF YOU'RE OUTSIDE OF THESE CLAIMS PERIOD, YOU FILE THE MOTION.

>> I'M REALLY HAVING DIFFICULTY. WHAT YOU'RE DOING-- WHEN I FIRST STARTED PRACTICING LAW WAS BEFORE THIS U.S. SUPREME COURT OPINION.

AND LAWYERS AND ESTATES WERE SAFE.

THEY COULD DO THEIR PUBLISHING,
AND YOU'RE HOME FREE.
YOU'VE GIVEN NOTICE TO
CREDITORS, THAT'S IT.
BUT THE U.S. SUPREME COURT HAS
DRIVEN A STAKE THROUGH THAT
HEART AND SAID YOU HAVE TO GET
ACTUAL NOTICE.

>> AND--

>> AND I DON'T THINK STATES CAN
PLAY THESE GAMES LIKE THIS WITH
THOSE CLAIMS.

>> AND I DON'T THINK THE STATUTE
IS PLAYING GAMES BECAUSE THE
STATUTE ALLOWS YOU ANYTIME
WITHIN TWO YEARS TO JUST SIMPLY
COME AND SAY, HEY, I WASN'T
GIVEN NOTICE, AND HERE'S MY
MOTION FOR EXTENSION.

>> WELL, THAT'S WHAT YOU'RE
SAYING.

I HAVE TO FILE SOME KIND OF
MOTION ASKING PERMISSION WHEN
THE STATUTE GIVES YOU A PERIOD
OF TWO YEARS.

THIS-- YOU AGREE THAT THIS WAS
FILED WITHIN THE TWO-YEAR REPOSE
PERIOD.

>> THE STATEMENT OF CLAIM WAS
FILED WITHIN--

>> OKAY.

IT'S JUST THE MOTION.

>> CORRECT.

>> A MOTION, THAT'S WHAT YOU'RE
SAYING.

>> THE MOTION WAS NOT, AND THEY
DIDN'T ASK THE COURT FOR
PERMISSION TO FILE IT WHEN THEY
WERE OUT OF TIME.

AGAIN, IT'S NOT THIS CREDITOR IS
A KNOWN OR REASONABLY
ASCERTAINABLE, THIS CREDITOR
CLAIMS TO BE.

AND THAT'S THE PROBLEM.

>> BUT THAT EXACTLY SAYS IF THE
TRIAL COURT CLAIMS IT WAS, THEN
THE APPELLANT'S CLAIM WAS
TIMELY.

SO THAT IS YOUR ARGUMENT IF WE
AGREE WITH THE FOURTH DISTRICT

WHEN THIS GOES BACK, THAT THEY WERE NOT A KNOWN OR REASONABLY ASCERTAINABLE CREDITOR, RIGHT? >> AND THAT'S WHY THEY WERE NOT GIVEN NOTICE.

BUT IN ORDER TO AGAIN GET THAT HEARING TO DETERMINE, BECAUSE THEY WERE FILED OUTSIDE OF THE THREE MONTH PUBLICATION PERIOD AND BECAUSE THEY WERE NOT GIVEN ACTUAL NOTICE, THEY SHOULD HAVE PETITIONED THE COURT.

THIS WAS A SIMPLE CASE OF FILING A MOTION, LETTING THE COURT KNOW I THINK I'M ENTITLED TO NOTICE, I WAS NOT GIVEN NOTICE, PLEASE ALLOW ME TO FILE MY CLAIM NOW. THAT IS ALL THEY HAD TO DO, THAT'S ALL THE STATUTE REQUIRES, AND IN MAY V. ILLINOIS THIS COURT ACKNOWLEDGED THAT PROCEDURE.

INTERESTINGLY, IF THE FORTY DCA'S INTERPRETATION IS AFFIRMED BY THIS COURT OR IF THE COURT FOLLOWS IT, ESSENTIALLY THE CLAIM MADE WAS ALSO TIMELY.

BECAUSE THAT WAS THE CLAIM FILED WITHIN TWO OR EIGHT YEARS OF THE DECEDENT'S DEATH BY SOMEONE CLAIMING TO BE A CREDITOR WHO WAS NOT GIVEN ACTUAL NOTICE. AND IN THIS, THIS COURT IN MAY SAID THAT WAS NOT ENOUGH.

IT'S NOT ENOUGH JUST TO FILE YOUR CLAIM ANYTIME WITHIN TWO YEARS OF A DECEDENT'S DEATH. AND SO BECAUSE OF THAT, WE ARE ASKING THIS COURT TO REVERSE THE FOURTH DCA'S DECISION, BECAUSE THIS CREDITOR DIDN'T FOLLOW THE SIMPLE PROCEDURE SET FORTH BY THE STATUTE.

THEY DIDN'T FILE A MOTION ASKING FOR PERMISSION TO FILE THEIR CLAIM BASED ON INSUFFICIENT-- >> A PREREQUISITE TO GOING OFF DOWN THAT ROUTE--

>> YES.

>>-- IS IT HAS TO BE A CLAIM

THAT WAS NOT TIMELY FILED AS PROVIDED IN .702.

>> YES.

>> AND I'M STILL STRUGGLING TO SEE WHERE THIS IS COVERED BY WHAT IS SAID THERE IN SUBSECTION ONE OF .702.

BECAUSE WHEN IT SAYS "AS TO ANY CREDIT OR REQUIRED TO BE SERVED WITH A COPY OF THE NOTICE TO CREDITORS, 30 DAYS AFTER DATE OF THE SERVICE ON THE CREDITOR," THERE WAS NO SERVICE ON THE CREDITOR, SO IT JUST, IT NEVER GETS TRIGGERED.

I'M STRUGGLING WITH THAT. HELP ME.

>> AND THE WAY, THE WAY TO EXPLAIN THAT WOULD BE AGAIN GOING BACK TO THE MAY DECISION. IN THE MAY DECISION, AGAIN, THERE WAS NO ACTUAL NOTICE TO THAT CREDITOR, AND THIS COURT SAID, I'M SORRY, YOUR CLAIM IS UNTIMELY.

SO, AND THE COURT SAID IF THAT PORTION DOESN'T GET TRIGGERED, THEN IT DOESN'T APPLY IN THE CASE BECAUSE YOU HAVE TO FILE THE EXTENSION ASKING THE COURT TO CONSIDER THE CLAIM BECAUSE YOU WERE NEVER GIVEN NOTICE. SO I DON'T THINK THAT, AGAIN, THE LEGISLATIVE INTENT WAS TO BE VERY CLEAR.

THEY SET UP THESE PARAMETERS. IF YOU FALL OUTSIDE OF THEM OR IF YOU WEREN'T GIVEN NOTICE, YOU FILE FOR THE EXTENSION.

BE NOT, YOUR CLAIM IS BARRED.

>> ON THAT MAY CASE THAT YOU'VE JUST BEEN REFERRING TO--

>> YES.

>>-- THAT CAME UP AS A CERTIFIED QUESTION FROM THE 11TH CIRCUIT.

>> CORRECT.

>> SO WE WEREN'T ASKED TO LOOK AT THE FACTS AND APPLY THEM, WOULD YOU AGREE WITH THAT?

THERE'S A SPECIFIC CERTIFIED QUESTION IN THAT CASE.

>> THERE WAS A SHORT CONCURRING OPINION WHERE IT SAYS PART C, WHICH DEALT WITH THE ACTUAL FACTS, THAT THE COURT WASN'T REQUIRED TO.

BUT THIS COURT, IN GENERAL, DID ADDRESS IT AND SAID THEY DIDN'T THINK THE CERTIFIED QUESTION FROM THE 11TH CUT LIMITS THE WAY THEY SHOULD HANDLE THE CASE, AND THEREFORE, THIS COURT LOOKED AT EVERYTHING, INCLUDING THE FACTS IN MAY N PART C OF THAT DECISION.

AND IN DOING SO, IT DETERMINED THAT CLAIM WAS UP TIMELY AND, THEREFORE, SET UP THE RULE YOU CAN'T JUST FILE A CLAIM AT ANY TIME WITHIN TWO YEARS.

THERE ARE THESE SPECIFIC STATUTORY TRIGGERS BY THE LEGISLATURE IN INSERTING THE WORD "AFTER" WHEN IT AMENDED THE STATUTE IN '84, THAT IT'S GOT TO BE EITHER AFTER OF THE PUBLICATION NOTICE OR AFTER YOU'RE SERVED.

AND IF YOU'RE NOT SERVED, WE GO TO SUBPART THREE WHICH SAYS FILING AN EXTENSION LETTING US KNOW YOU SHOULD HAVE BEEN SERVED AND WEREN'T, AND THEREFORE, YOUR CLAIM WOULD NOW BE CONSIDERED BY THE COURT.

THE RESPONDENT IN THIS CASE DID NOT DO THAT, AND FOR THAT REASON, WE ASK THIS COURT TO AFFIRM D VERSE THE FOURTH DCA.

IF THERE ARE NO OTHER QUESTIONS, I'LL RESERVE THE REST OF MY TIME FOR REBUTTAL.

>> THANK YOU.

COUNSELOR?

>> GOOD MORNING.

MAY IT PLEASE THE COURT, WILLIAM GLASKO ON BEHALF OF EDWARD I. GOLDEN AS A CURATOR OF THE ESTATE OF KATHERINE JONES.

BEFORE I BEGIN, I'D LIKE TO ADDRESS THE MAY V. ILLINOIS CASE BECAUSE--

>> IF YOU COULD MAKE SURE TO SPEAK IN YOUR MIC.

>> SURE.

I THINK THE MAY V. ILLINOIS CASE IS BEING MISCHARACTERIZED. THERE WERE, ESSENTIALLY, TWO CLAIMS IN THE MAY V. ILLINOIS CASE.

ONE WAS THE ACTION WHICH WAS DEEMED TO BE AKIN TO A CLAIM, AND THE OTHER WAS AN ACTUAL CLAIM THAT WAS FILED MORE THAN TWO YEARS AFTER THE DECEDENT'S DEATH.

AND WHAT THE COURT SAID WAS THAT BECAUSE THE STATUTE SAYS "FILED AFTER NOTICE," THAT THE, THE CAUSE OF ACTION THAT WAS AKIN TO A CLAIM WHICH WAS FILED BEFORE NOTICE COULD NOT STAND BECAUSE IT WAS NOT FILED AFTER, AND THE CREDITOR'S CLAIM-- WHICH WAS FILED AFTER THE TWO-YEAR STATUTE OF REPOSE-- COULD NOT STAND BECAUSE IT'S AN ABSOLUTE BAR. AND THAT IS WHY THE MAY V. ILLINOIS CASE DOES NOT APPLY HERE.

THAT CASE ONLY SEPARATES 702 FROM 710 AS A STATUTE OF REPOSE. AND I THINK TO ANALYZE WHAT HAPPENED WITH THESE THREE CASES THAT ARE IN CONFLICT WITH MY FOURTH DCA CASE --

[INAUDIBLE]

ARE ALL IN CONFLICT.

TULSA PROFESSIONAL COLLECTIONS SERVICES V. POPE CAME OUT, AND THAT CASE RECOGNIZED PROPERTY RIGHTS ASSOCIATED WITH CREDITORS' CLAIMS AND ESTATES. AND THAT CASE SAID THE UNITED STATES SUPREME COURT SAID KNOWN OR REASONABLY ASCERTAINABLE CREDITORS ARE ABSOLUTELY ENTITLED TO ACTUAL NOTICE. NOT PUBLICATION NOTICE, BUT

ACTUAL NOTICE.

SO IN RESPONDING TO THIS 1988 UNITED STATES SUPREME COURT POPE CASE, THIS COURT VIEWED FLORIDA LEGISLATURE, WITH THE HELP OF THE FLORIDA BAR, BEGAN ENACTING A WHOLE BUNCH OF RULES AND STATUTES TO CONFORM TO THIS REQUIREMENT AND TO MAKE SURE THAT THESE NOPE OR REASONABLY ASCERTAINABLE CREDITORS DID, IN FACT, GET THE NOTICE TO WHICH THEY WERE ENTITLED.

AND POPE SAID THAT ENTITLEMENT IS UNDER THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION.

SO OUR LEGISLATORS SET INTO MOTION MAKING SURE THAT WOULD HAPPEN, AND THERE WERE A NUMBER OF LAWS THAT WERE SET OUT.

THE AM MISS CURIAE BRIEF FILED IN THIS CASE BY THE REAL PROPERTY PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR HAS A FOOTNOTE THAT NICELY SETS OUT SOME OF THE LAWS ENACTED IN RESPONSE TO POPE.

ONE OF THEM WAS IN 2001 THE LEGISLATURE ENACTED 713.2121, AND THAT STATUTE SETS FORTH THE REQUIREMENTS FOR NOTICE, AND IT SEPARATES VERY NICELY PUBLICATION-- WHICH IS FOR UNKNOWN CREDITORS IN SECTIONS ONE AND TWO-- FROM ACTUAL NOTICE, WHICH IS REQUIRED FOR KNOWN OR REASONABLY ASCERTAINABLE CREDITORS IN SUBSECTION THREE.

THEN--

>> LET ME ASK YOU A QUESTION.

>> YES, MA'AM.

>> WHAT WOULD HAPPEN IF THERE'S A KNOWN OR REASONABLY ASCERTAINABLE CREDITOR WHO IS NOT GIVEN ACTUAL NOTICE, BUT FOR SOME REASON WE HAVE IN THE RECORD THAT THEY KNEW OF THE PUBLICATION.

I HOW WOULD YOU HANDLE THAT KIND OF SITUATION?

WOULD THEY STILL BE ENTITLED TO THE TWO YEARS TO FILE THEIR CLAIM?

>> YES, MA'AM.

AND THE REASON IS, THE REASON IS THIS.

FIRST OF ALL, IT'S AN ABSOLUTE REQUIREMENT.

IT'S AN ABSOLUTE REQUIREMENT UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION. THAT'S NUMBER ONE.

BUT NUMBER TWO--

>> BECAUSE, I MEAN, UNDER THOSE CIRCUMSTANCES DON'T THEY HAVE ACTUAL NOTICE?

>> NO, HERE'S WHY.

WELL, AND I'LL GET INTO IT A LITTLE BIT MORE IN JUST A SECOND, BUT THE REASON IS BECAUSE LET'S SAY THAT THERE'S A LAWSUIT THAT'S FILED, AND I'M ENTITLED TO PERSONAL SERVICE.

A PROCESS SERVER IS SUPPOSED TO COME AND SERVE ME, AND THEN I'LL HAVE 20 DAYS TO RESPOND.

IF I HAVE KNOWLEDGE THAT THIS ACTION HAS COMMENCED, I'M UNDER NO OBLIGATION TO FILE A RESPONSE UNTIL I HAVE THE NOTICE THAT I'M REQUIRED UNDER DUE PROCESS.

I HEAR ABOUT IT FROM SOMEONE ELSE, AND I SEE SOMEBODY ELSE'S SERVICE, I GET NOTICE IN THE MAIL.

I HAVEN'T HAD ACTUAL SERVICE OF PROCESS, BUT SOMEBODY SENDS ME PROCESS IN THE MAIL AND SAYS THIS CASE OPENED AGAINST YOU, AND YOU HAVE 20 DAYS TO RESPOND. I HAVE KNOWLEDGE OF IT, BUT I'M NOT REQUIRED UNDER DUE PROCESS TO RESPOND WITHIN 20 DAYS OF THAT RECEIPT.

I WOULD SUBMIT IT'S THE SAME IF I SEE A PUBLICATION IN A NEWSPAPER, I CAN SAY I DON'T HAVE MY ACTUAL NOTICE YET.

AND THE FLORIDA STATE-- EXCUSE ME, THE UNITED STATES SUPREME COURT AND THE CONSTITUTION REQUIRE THAT I GET IT.

THE LAW SAYS I AM UNDER NO OBLIGATION UNDER THE TWO-YEAR STATUTE OF REPOSE.

THE OTHER TWO RULES THAT CAME OUT IN RESPONSE TO POPE WERE IN 2002, 5.240.

THE LEGISLATURE AMENDED THE NOTICE OF ADMINISTRATION, AND THEY ADDED 5.241 WHICH WAS THE NOTICE TO CREDITORS.

AND IN DOING THIS, THEY SEPARATED OUT GENERAL ADMINISTRATION NOTICE BY PUBLICATION VERSUS ACTUAL NOTICE THAT'S REQUIRED TO A KNOWN OR REASONABLY ASCERTAINABLE CREDITOR.

BUT FOR SOME REASON ALL OF THESE CASES THAT ARE IN CONFLICT WITH GOLDEN VERY JONES ARE CITING TO THIS 1989 AMENDMENT THAT SAYS THAT AN EXTENSION OF THE 733.702 LIMITATION PERIOD CAN BE HAD ON THE GROUNDS OF INSUFFICIENT NOTICE.

WELL, I WOULD SUBMIT THAT THERE'S WAYS TO DO THAT THAT ARE CONSTITUTIONAL.

THE 733.2121 SETS OUT THE REQUIREMENT FOR NOTICE TO UNKNOWN CREDITORS.

UNKNOWN CREDITORS.

MY CREDITOR, WE SUBMIT, WAS KNOWN.

BETWEEN UNKNOWN CREDITOR.

ALL THEY GET IS PUBLICATION.

73.2121 SAYS WHAT HAS TO BE IN THAT PUBLICATION.

IT HAS TO BE PUBLISHED IN A NEWSPAPER IN THE SAME COUNTY WHERE THE ADMINISTRATION IS TAKING PLACE.

IT HAS TO BE PUBLISHED FOR TWO CONSECUTIVE WEEKS.

IT HAS TO HAVE THE NAME OF THE DECEDENT, AND THE NAME AND

ADDRESS OF THE PERSONAL REPRESENTATIVE AND THEIR ATTORNEY.

IF I'M AN UNKNOWN CERT, I AM BOUND BY THE TWO-YEAR STATUTE OF REPOSE.

IT'S SELF-EXECUTING.

THE DECEDENT PASSES, TWO YEARS LATER NOBODY CAN FILE ANYTHING WHETHER I'M KNOWN OR UNKNOWN, BUT IF I'M AN UNKNOWN CREDITOR, I AM BOUND ONLY BY THE PUBLICATION PERIOD.

IF IT'S DONE AND FIVE MONTHS LATER I LEARN OF IT, I CAN COME INTO THE COURT AND SAY, JUDGE, UNDER THIS LANGUAGE THAT ALL OF THESE COURTS ARE GLOMMING ONTO FOR SOME REASON AND IT DOESN'T APPLY TO THESE CASES, I CAN COME INTO THE COURT AND SAY, JUDGE, I'M AN UNKNOWN CREDITOR AND I NEED AN EXTENSION OF TIME TO FILE MY CLAIM, AND HERE'S WHY.

IT DOESN'T COMPLY WITH THE STATUTE, I DIDN'T SEE IT.

IT'S INSUFFICIENT NOTICE.

IT'S NOT ABSENT NOTICE, IT'S INSUFFICIENT.

THEY MISSPELLED THE NAME OF THE DECEDENT.

I DIDN'T KNOW THAT THIS WAS MY DEBTOR, I DIDN'T KNOW I HAD A CLAIM AGAINST THIS PERSON.

THEY MISSPELLED HIS NAME.

THERE WAS NOTICE UNDER THE RULE.

THE NOTICE BEGAN TO TOLL WHEN THE PUBLICATION WAS DONE, BUT I FOUND OUT SIX MONTHS LATER BECAUSE THEY MISSPELLED THIS MAN'S NAME.

THAT IS A CONSTITUTIONALLY APPLICABLE WAY THAT THIS STATUTE, THIS LANGUAGE, THIS INSUFFICIENT NOTICE CAN BE USED IN THE STATUTE.

NOW, I WOULD SUBMIT--

>> COULD YOU COME IN AND REQUEST AN EXTENSION IF THERE WAS NOTHING WRONG WITH THE NOTICE?

>> I THINK THAT IF YOU WERE AN UNKNOWN CREDITOR--

>> YEAH.

I'M TALKING ABOUT-- YOU'RE TALKING ABOUT AN UNKNOWN CREDITOR SITUATION.

>> YES, MA'AM.

THINK YOU WOULD HAVE TO SHOW THE DEFICIENCY.

IN OTHER WORDS, THE NOTICE EXISTS, AND I WOULD THEN HAVE TO COME IN AND MOVE FOR THAT EXTENSION.

THE COURT WOULD SAY, WELL, WHAT WAS INSUFFICIENT ABOUT THIS NOTICE, AND I WOULD THEN HAVE TO SHOW--

>> SO IF THERE IS NOTHING INSUFFICIENT, THEN YOU'RE OUT OF COURT.

>> RIGHT.

AND TO MAKE THAT POINT, I THINK WHAT I'VE DRAWN AS A CONCLUSION IS THIS: ALL CREDITORS ARE SUBJECT TO THE TWO-YEAR STATUTE OF REPOSE IN 733.710.

UNKNOWN CREDITORS CAN ALSO HAVE THEIR TIME SHORTENED WITH PUBLICATION UNDER 733.702.

IF A PERSONAL REPRESENTATIVE OPENED AN ESTATE AND NEVER PUBLISHED NOTICE TO CREDITORS, THEN THAT UNKNOWN CREDITOR COULD ONLY BE BOUND BY THE TWO-YEAR STATUTE OF REPOSE IN 733.710. I WOULD, I WOULD SUGGEST THAT THE CORRECT READING OF THIS STATUTE IS THAT THAT IS WHAT APPLIES TO TO AN UNKNOWN CREDITOR.

WHAT APPLIES TO A KNOWN CREDITOR IS IF THIS CREDITOR DOESN'T GET THE NOTICE TO WHICH HE IS ENTITLED BY THE UNITED STATES CONSTITUTION, THAT HIS TWO-YEAR STATUTE OF REPOSE CANNOT, THEREBY, BE SHORTENED BECAUSE THERE IS NO LIMITATION PERIOD THAT APPLIES TO HIM.

>> IS YOUR POSITION HERE

DIFFERENT IN ANY WAY FROM THE
BRIEF FILED BY THE REAL PROPERTY
AND PROBATE TRUST LAW SECTION--

>> I THINK WE'RE ALIGNED.

I THINK WE'RE ALIGNED, SIR.
AND WHEN I LOOK AT THE LOGIC OF
THESE THREE CASES IN CONFLICT,
RUBY AND CODER, THEY MAKE THE
CASE THAT UNDERSCORES HOW
THEY'RE MISAPPLYING THIS
INSUFFICIENT LANGUAGE TO THE
FACTS OF THIS CAN CASE AND
DEPRIVING THESE KNOWN CREDITORS
OF ACTUAL NOTICE IN VIOLATION OF
THEIR DUE PROCESS RIGHTS.

THE MORGENTHAU COURT--

>> WHAT YOU JUST SAID IS IF THE
ESTATE IS OPENED AND NO NOTICE
IS GIVEN TO KNOWN OR UNKNOWN
CREDITORS, EVERYONE IS BOUND--
CAN FILE WITHIN THE TWO YEARS?

>> YES, MA'AM.

>> AND WITH OR WITHOUT ANY KIND
OF NOTICE OR REQUEST OF THE
COURT, THAT KIND OF THING.

>> YES, MA'AM.

PUBLICATION-- I'M SORRY.

>> GO ON.

>> PUBLICATION COULD SERVE TO
SHORTEN THE TWO-YEAR STATUTE OF
REPOSE, BUT ONLY FOR UNKNOWN
CREDITORS, AND ACTUAL NOTICE
COULD SERVE TO SHORTEN THE
TWO-YEAR STATUTE OF REPOSE, BUT
ONLY FOR KNOWN CREDITORS.

>> OKAY.

>> SO THE MORGAN THAW COURT
WHICH IS, EXCUSE ME, 628 AT 631,
THEY SAY IN 1989 THE LEGISLATURE
ADDED INSUFFICIENT NOTICE AS A
BASIS FOR EXTENSION, AND THROUGH
THIS AMENDMENT THEY ACKNOWLEDGE
THAT THE LEGISLATURE WAS
RESPONDING TO TULSA V. POPE.
AND THEY GO ON TO SAY BECAUSE
THERE WAS NO MOTION FOR
EXTENSION FILED, THE CLAIM COULD
TO NOT GO FORWARD.

THE RUBY CASE WHICH IS 77.73882,
AND THIS CITATION IS AT 883,

THEY SAY THIS-- AND LISTEN TO THIS SORT OF DISCONNECT OF CAUSE AND EFFECT.

THEY SAY BECAUSE THE CREDITOR WAS NOT SERVED WITH A COPY OF THE NOTICE TO CREDITORS, MR. LUBY WAS REQUIRED TO FILE HIS CLAIM IN THE PROBATE PROCEEDING WITHIN THE THREE MONTH WINDOW FOLLOWING PUBLICATION.

SOMEHOW THEY'VE SAID BECAUSE WE DIDN'T GIVE YOU THE NOTICE TO WHICH YOU ARE REQUIRED UNDER THE IS UNITED STATES CONSTITUTION, YOU ARE NOW SOMEHOW BOUND BY THIS OTHER, SEPARATE, OTHER LIMITATION PERIOD THAT HAS NOTHING TO DO WITH YOU.

AND THEN THE SODER COURT WENT ON TO REALLY CRYSTALLIZE THIS INCORRECT, WHAT I BELIEVE TO BE AN INCORRECT LOGIC IN THE SODER COURT WHICH IS 486 AND THIS CITATION IS AT 68ED, SUBSECTION THREE, AND WE'RE TALKING ABOUT THIS INSUFFICIENT NOTICE EXTENSION, SUBSECTION THREE EXPRESSLY PROVIDES THAT A PROBATE COURT MAY GRANT A PETITION TO EXTEND TIME IN WHICH TO FILE A CLAIM WHERE THERE IS INSUFFICIENT NOTICE OF THE CLAIMS PERIOD.

WE BELIEVE THAT THE LEGISLATURE HAS DETERMINED THAT WHERE A PERSONAL REPRESENTATIVE HAS FAILED TO SERVE A COPY OF THE NOTICE ON THE CREDITOR WHO WAS KNOWN OR REASONABLY ASCERTAINABLE, THAT CREDITOR'S REMEDY IS TO PETITION THE PROBATE COURT FOR AN EXTENSION OF TIME.

WELL, IF YOU FOLLOW THIS THROUGH TO ITS LOGICAL CONCLUSION, WHAT YOU END UP WITH IS A KNOWN CREDITOR WHO FILES A CLAIM AFTER THE THREE MONTH PUBLICATION PERIOD BUT BEFORE THE TWO-YEAR

STATUTE OF REPOSE.
THE CLAIM IS FILED.
THE PERSONAL REPRESENTATIVE
NOW FILES A MOTION TO STRIKE
THAT CLAIM.
THE PERSONAL REPRESENTATIVE AND
THE CREDITOR GO TO COURT, AND
THE JUDGE SAYS, WELL, CREDITOR,
YOU DID NOT FILE A MOTION FOR
EXTENSION, IS SO YOUR CLAIM IS
TERMINATED.
AND THAT'S WHAT HAPPENED IN ALL
OF THESE THREE CONFLICTING
CASES.
THE CREDITOR, DESPITE THE FACT
THAT HE WAS KNOWN AND DESPITE
THE FACT THAT HE DID NOT GET
ACTUAL NOTICE, THE CLAIM WAS
TERMINATED.
BUT IF YOU LOOK AT THE POPE
DECISION, THE UNITED STATES
SUPREME COURT IN 1988 SAID THIS,
AND IT DOESN'T GET ANY PLAY IN
ANY OF THESE CASES.
485 U.S. 478, AND THE CITATION
IS AT 491.
THE UNITED STATES SUPREME COURT
SAID IF APPELLANT'S IDENTIFY WAS
NOPE OR REASONABLY
ASCERTAINABLE, THEN TERMINATION
OF APPELLANT'S CLAIM WITHOUT
ACTUAL NOTICE VIOLATED DUE
PROCESS.
THAT'S IT.
THERE IS NOTHING ELSE.
SO I WOULD SUBMIT TO YOU THAT
THE PROPER PROCEDURE IS THAT A
CREDITOR FILES A CLAIM.
IF IT'S OUTSIDE OF THREE MONTHS
AND INSIDE OF TWO YEARS, THE
PERSONAL REPRESENTATIVE FILES A
MOTION TO STRIKE THAT CLAIM.
IT GOES TO THE COURT, AND THE
CREDITOR SAYS TO THE DEFENSE, I
AM KNOWN OR REASONABLY
ASCERTAINABLE, AND I NEVER GOT
MY NOTICE.
IF THE COURT FINDS YOU ARE NOT
KNOWN OR REASONABLY
ASCERTAINABLE, YOU'RE LATE.

IF THEY FIND YOU ARE, YOU'RE ON TIME.

AND THAT'S WHAT THE FOURTH DISTRICT COURT OF APPEAL HAS SAID.

IF THE COURT HAS NO MORE QUESTIONS, I'D ASK THE COURT AFFIRM THE FOURTH DCA'S OPINION.

>> THANK YOU.

REBUTTAL?

>> AS THE RESPONDENT JUST SAID IN HIS CLOSING, THE READING-- INTERPRETATION OF THE FOURTH DCA OF THE STATUTE AND HIS POSITION IN THIS CASE IS HOW HE WOULD LIKE THE PROCEDURE TO BE, BUT THAT'S NOT WHAT THE STATUTE SAYS.

THE PLAIN LANGUAGE OF THE STATUTE DOES NOT REQUIRE THE COURT TO HOLD A HEARING TO DETERMINE WHETHER OR NOT SOMEBODY'S REASONABLY ASCERTAINABLE UNLESS THEY FILE A MOTION ALLEGING THAT THEY DID NOT GET SUFFICIENT NOTICE OF THE CLAIMS PERIOD.

IN FACT, COUNSEL NOTED AT PAGE 32 OF THE TRANSCRIPT IN THE HEARING BEFORE THE PROBATE JUDGE, HE SAID WHAT THESE COURTS NEED, JUDGE-- AND THIS IS ADDRESSING MORGENTHAU AND THE PLAIN LANGUAGE OF THE STATUTE-- HE SAYS WHAT THE STATUTE NEEDS, JUDGE, IS NOT A PROVISION THAT SAYS YOU CAN FILE FOR AN EXTENSION.

IT NEEDS TO SAY YOU CAN FILE FOR A HEARING TO DETERMINE WHETHER OR NOT YOU'RE ASCERTAINABLE, WHICH IS THE ARGUMENT HE JUST MADE.

THE PROBLEM IS THAT'S WHAT THE RESPONDENT WOULD LIKE THE STATUTE TO SAY, THAT'S NOT WHAT THE STATUTE ACTUALLY SAYS.

>> WELL, IF IT DOESN'T SAY IT, THEN ISN'T IT UNCONSTITUTIONAL?

>> NO.

BECAUSE, AGAIN, YOU HAVE THAT SAFEGUARD.

ALL YOU HAVE TO DO TO GET YOUR CONSTITUTIONAL PROTECTIONS, YOUR HONOR, IS TO LET THE COURT KNOW I SHOULD HAVE GOTTEN NOTICE.

I DIDN'T GET NOTICE, THEREFORE, I SHOULD BE HEARD.

AND THAT'S HOW YOU GET TO YOUR HEARING.

AND IN ALL OF THE CASES SINCE POPE AND SINCE MAY, THE COURTS GOT TO THE HEARING AS TO WHETHER OR NOT SOMEONE WAS A KNOWN OR REASONABLY ASCERTAINABLE CREDITOR VIA A MOTION FOR EXTENSION OF TIME.

AND THAT IS WHAT WE SUBMIT SHOULD HAVE BEEN DONE HERE.

AND I SEE I'M RUNNING OUT OF TIME, SO IF THERE ARE NO OTHER QUESTIONS, AGAIN, I ASK THE COURT TO REVERSE THE DECISION OF THE FOURTH DCA AND REINSTATE THE PROBATE JUDGE'S FINAL JUDGMENT.

>> THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU.