

>> THE LAST CASE ON THE DOCKET TODAY IS PLANNED PARENTHOOD VERSUS MMB PROPERTIES. WHENEVER YOU'RE READY.

>> GOOD MORNING, YOUR HONOR. MAY IT PLEASE THE COURT. I'M DON CHRISTOPHER, I'M HERE ON BEHALF OF THE PETITIONER IN THIS CASE, PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA. WE'RE HERE ON A CONFLICT JURISDICTION THAT THIS COURT FOUND, A CONFLICT BETWEEN THE FIFTH DISTRICT WHERE THIS CASE WAS DECIDED AND THE FOURTH AND THE THIRD DISTRICTS. I'M GOING TO RESERVE A MINUTE ON THE CONFLICT QUESTION AND LOOK HERE AT THE MERITS OF THE--

>> LET ME ASK YOU TO ADDRESS THE CONFLICT AT THE OUTSET.

>> YES, SIR.

>> OF WHAT, WHAT IS THE CONFLICT ISSUE HERE?

>> THE CONFLICT ISSUE IS WHETHER CHANGED CIRCUMSTANCES ARE NECESSARILY REQUIRED BEFORE A TRIAL COURT CAN REVIEW REVIEW A DECISION ON A TEMPORARY INJUNCTION. IN THIS CASE WE FILED A MOTION WITH THE TRIAL COURT. THE TRIAL OCCURRED DENIED IT. THE TRIAL COURT CONSIDERED THE EVIDENCE OR NOT. BUT THE CONSEQUENCE OF THAT WAS, THAT THE, IN THE FIFTH DISTRICT, WE HAD A THREE-JUDGE STATE PANEL THAT.

>> GET BACK TO WHAT THE DISTRICT COURT ACTUALLY SAID ABOUT THE CONFLICT ISSUE. THE DISTRICT COURT, MAKES A STATEMENT, A SHOWING OF CHANGED CIRCUMSTANCES, IS NECESSARY IN ORDER TO OBTAIN MODIFICATION OR DISSOLUTION OF AN INJUNCTION, CORRECT?

>> YES, YOUR HONOR.

>> THAT IS IN CONFLICT WITH SOMETHING THE THIRD DISTRICT SAID MAYBE SOME OTHER DISTRICT, MAY CHANGE. SO THOSE STATEMENTS ARE IN

THERE.

HERE IS MY QUESTION FOR YOU.
IS THAT AN ISSUE IN THIS CASE,
GIVEN THE FACT THAT THE DISTRICT
COURT SAID, OR, WAS IT AN ISSUE
IN THIS DECISION ISSUED BY THE
DISTRICT COURT, GIVEN THE FACT
THAT THE DISTRICT COURT SAID,
SAID THAT YOU HAD PRESENTED,
PLANNED PARENTHOOD THAT IS, HAD
PRESENTED NO ARGUMENT ON THE, TO
OVERTURN THE ORDER DENYING THE
MOTION TO DISSOLVE OR MODIFY THE
INJUNCTION?

>> WELL, THAT STATEMENT MAY BE
IN THE MERITS PANEL'S OPINION
BUT WE CERTAINLY IN OUR NOTICE,
NOTICE OF APPEAL ON OUR INITIAL
BRIEF, CHALLENGED THEM IN
TANDEM.

>> ARE YOU FAMILIAR WITH WHAT WE
CALL THE FOUR CORNERS RULE?

>> YES, YOUR HONOR.

>> OKAY.

DOESN'T THAT MEAN WHEN WE'RE
DETERMINING CONFLICT
JURISDICTION, WE HAVE TO LOOK
WITHIN THE FOUR CORNERS OF THE
OPINION THAT ACTUALLY HAS BEEN
ISSUED FOR WHICH REVIEW IS
SOUGHT?

AND IT IS, WHY AM I WRONG IN
THINKING THAT HERE IT IS
APPARENT THIS CONFLICT ISSUE WAS
NOT ACTUALLY AT ISSUE IN THIS
CASE, BASED ON WHAT THE DISTRICT
COURT SAID?

AT LEAST THE DISTRICT COURT
UNDERSTOOD THAT WASN'T AT ISSUE?
THAT WE LOOK AT THE OPINION WHY,
WOULDN'T WE JUST CONCLUDE
WHATEVER THEY SAID, ABOUT
CHANGED CIRCUMSTANCES, IS PURELY
DICTA?

>> BECAUSE I THINK WE HAVE TO
LOOK AT WHAT THEY DID AND WHAT
THEY DID IN THIS CASE IS WE HAVE
A DIRECT CONFLICT WITH--

>> WE DON'T IN DETERMINING OUR
JURISDICTION, DON'T WE LOOK
SIMPLY WHAT ONE DISTRICT COURT
SAYS IN AN OPINION AS OPPOSED TO
WHAT ANOTHER DISTRICT COURT OR
WHAT WE'VE SAID IN AN OPINION?

WE LOOK AT OPINIONS SIDE BY SIDE
AND WHICH DETERMINE WHETHER
THERE IS A HOLDING IN ONE, THAT
IS IN CONFLICT WITH A HOLDING IN
THE OTHER?

ISN'T THERE BASICALLY OUR
DETERMINATION OF JURISDICTION IN
CONFLICT IS?

WHETHER WE HAVE DUAL CONFLICT
WITHIN THE HOLDINGS?

WOULD YOU AGREE WITH THAT?

>> I WOULD AGREE WITH THAT, YES,
SIR.

>> HOW CAN THERE BE A HOLDING IN
THIS CASE ON THE ISSUE OF
WHETHER CHANGED CIRCUMSTANCES
HAVE TO BE SHOWN TO JUSTIFY
MODIFICATION OR DISSOLUTION OF
AN INJUNCTION WHEN THE DISTRICT
COURT HAS SAID TWICE, AM I SAID
TWICE, THAT YOU PRESENTED NO
ARGUMENT TO OVERTURN THE ORDER
THAT DENIED THE MOTION FOR
DISSOLUTION OR MODDEDIFICATION?

>> AGAIN, WE DID, PROVIDE
ARGUMENT TO OVERTURN THAT.

>> WELL YOU'RE DISAGREEING.

>> I DISAGREE WITH THE
CHARACTERIZATION--

>> YOU DISAGREE WITH THE
CHARACTERIZATION IN THE OPINION
BUT YOU CAN SEE THAT THAT, THAT
IS IN THE OPINION TWICE, RIGHT?

>> I SEE THAT THAT'S IN THE
OPINION TWICE.

I THINK THAT IS
MISCHARACTERIZATION OF THE
PANEL.

>> SHOW ME.

>> I SHOW THE PANEL IN KNOWLEDGE
IN FOOTNOTE THREE.

>> WHAT DO THEY ACKNOWLEDGE IN
FOOTNOTE THREE?

>> THEY ACKNOWLEDGE CONFLICT
WITH THE FOURTH AROUND THE
THIRD.

>> THEY SAID ON THAT DICTA THEY
WERE IN CONFLICT.

I WOULD ABSOLUTELY AGREE WITH
THAT BUT LET ME ASK YOU THIS.

I THINK BASED ON OUR FOUR
CORNERS RULE I'M HAVING A HARD
TIME UNDERSTANDING WHY IT MAKES
ANY DIFFERENCE WHETHER YOU

ACTUALLY MADE THE ARGUMENT, IF
THE COURT HAS SHADE, AND WE LOOK
AT THE OPINION, WE SEE.

THEY SAID THIS WASN'T ARGUED.
THEY SAY SOMETHING ABOUT AN
ISSUE THAT WASN'T ARGUE AD, THAT
IS DICTA WITHIN THE CONFINES OF
THAT OPINION.

THIS SEEMED TO BE PRINCIPLES
THAT FOLLOW BY PURE LOGIC FROM
OUR FRAMEWORK OF ANALYSIS IN A
CONFLICT CASE.

BUT EVEN, EVEN IF, WE HAVE PUT
THAT ASIDE FOR A MOMENT, SHOW
ME, IN YOUR INITIAL BRIEF, IN
THE DISTRICT COURT, WHERE YOU
PRESENTED AN ARGUMENT THAT THE
ORDER, THE DENYING THE MOTION TO
DISSOLVE OR MODIFY THE
INJUNCTION SHOULD BE OVERTURNED,
INSOFAR IT PROHIBITED THE
PERFORMANCE OF SURGICAL
ABORTIONS?

WHERE IS THAT IN YOUR BRIEF?

I HAVE LOOKED AT IT.

I HAVE DONE WORD SEARCHES.

IT IS EASY TO DO THAT NOW.

YOU CAN KIND OF PLUG IT INTO THE
BOOK.

SHOW ME WHERE IT IS.

>> I APOLOGIZE I'M A LITTLE

CONFUSED BY THE QUESTION.

THAT WAS THE WHOLE ESSENCE OF
THE BRIEF, THAT THE TRIAL COURT
SIMPLY GOT IT WRONG.

>> WHERE DO YOU ARGUE IN THIS
BRIEF FOR, AND I'M NOT TALKING
ABOUT, WHERE YOU TALK ABOUT THE
EXISTENCE OF THE MOTION.

I'M TALKING ABOUT WHERE YOU
PRESENT THE DISTRICT COURT WITH
AN ARGUMENT.

BECAUSE BASICALLY, WHAT YOU'RE
SAYING HERE, IT IS THAT THE

DISTRICT COURT HAS
MISREPRESENTED OUR ARGUMENT.

THAT THEY HAVE TWICE
MISREPRESENTED WHAT YOU ACTUALLY
ARGUED, WHEN THEY SAID YOU MADE
NO ARGUMENT ABOUT THE ORDER
DENYING THE MOTION TO DISSOLVE
OR MODIFY THE INJUNCTION.

AND SO I'M ASKING YOU, WHERE IN
THE BRIEF YOU ACTUALLY MAKE A

SPECIFIC ARGUMENT THAT THAT
ORDER DENYING THE MOTION, TO
DISSOLVE OR MODIFY SHOULD BE
OVERTURNED?

>> IN THOSE WORDS, IT'S PROBABLY
NOT IN THERE BECAUSE AGAIN, THE
MOTION TO MODIFY WAS APPEALED IN
CONJUNCTION WITH THE ORIGINAL
TRIAL COURT ORDER.

AND THE TRIAL COURT ISSUED NO
ORDER OTHER THAN A STAMP DENIED
TYPE OF ORDER ON OUR MOTION
BECAUSE IT WOULD HAVE BEEN PURE
SPECULATION.

>> BUT WHATEVER THE CASES ARE
YOU BASICALLY CONCEDED YOU
DIDN'T MAKE AN ARGUMENT TO TURN
OVER THAT ORDER?

>> NO, YOUR HONOR, I'M NOT.

>> I'M ASKING WHERE IT IS.
IF YOU CAN'T POINT TO IT, I WILL
LET IT GO AND LET OTHERS HAVE A
CHANCE.

>> WELL, IF YOU'RE ASKING ME IN
SO MANY WORDS DID I SAY WE WANT
YOU TO OVERR TURN THE TRIAL
COURT ORDER FOR MODIFICATION?
NO.

>> WHEN IT COMES TO THE
APPELLATE PROCESS, WORDS,
ARGUMENTS MAKE A DIFFERENCE.
YOU HAVE TO ARGUE TO OVERTURN
SOMETHING.
YOU HAVE TO PRESENT A SPECIFIC
ARGUMENT TO OVERTURN IT.
IF YOU WANT IT OVERTURNED, ISN'T
THAT CORRECT?

>> THAT'S CORRECT AND WE MADE
THOSE ARGUMENTS AS TO WHY IT
SHOULD BE OVERTURNED MUCH WE
DIDN'T BIFURCATE THIS.
WE DIDN'T ATTACK ORIGINAL ORDER
ON THESE GROUNDS AND ATTACHING
MODIFICATION ON OTHER GROUNDS.
PART AND PARCEL OF THE SAME
THING.

>> MAYBE THAT IS PART OF THE
PROBLEM, THOSE ARE TWO DIFFERENT
REALLY, MOTIONS OF A DIFFERENT
CHARACTER.

ONE OF THEM IS NOT EVEN
APPEALABLE, AND OTHER ONE IS
APPEALABLE.

SO THIS ALL KIND OF GETS

AMALGAMATED OR HASHED UP.

OKAY.

I WILL LET YOU GO ON WITH YOUR ARGUMENT.

>> I AGREE THAT A MOTION TO DISSOLVE IS NOT APPEALABLE. AGAIN YOU SEE IN SOME OF THE CASE LAW WHERE SOME PARTIES ENGAGE IN GAMESMANSHIP.

>> BUT AWE SAY A MOTION, AND ORDER ON A MOTION TO DISSOLVE IS NOT APPEALABLE.

IT IS APPEALABLE.

>> ITS APPEALABLE, IF, IF THE ORIGINAL INJUNCTION WAS ISSUED EX-PARTEE BECAUSE IF THE ORIGINAL INJUNCTION WAS ISSUED EXPARTE YOU CAN COME BACK AT ANYTIME CHALLENGE THE INJUNCTION.

IF THE ORIGINAL INJUNCTION IS ISSUED PURSUANT TO A HEARING AS IT WAS IN THIS CASE WHAT THE CASE LAW SAYS YOU CAN'T FORGO YOUR RIGHT OF APPEAL.

YOU HAVE GOT TO APPEAL THAT ORIGINAL ORDER.

YOU CAN'T FOREGO YOUR RIGHT OF APPEAL, LATER, SIX MONTHS LATER, A YEAR LATER, SOMETHING LIKE THAT, FILE A MOTION TO DISSOLVE, IF YOU LOSE THAT MOTION, THAT MOTION IS NOT APPEALABLE.

WHAT I'M SAYING IS, IN THIS CASE THAT'S NOT THE CIRCUMSTANCE. THEY WERE, THEY WERE TOGETHER. IT IS ESSENTIALLY A MOTION FOR A REHEARING AND THAT'S WHAT THE THIRD SAYS THAT IS PROPER FOR THE COURT TO DO.

THAT THE COURT HAS DISCRETION TO HEAR THAT AND TO DECIDE IT.

WHAT THE FIFTH HAS SAID IS, THE TRIAL COURT HAS NO DISCRETION.

WHEN YOU GET THAT TYPE OF AN ORDER, ONCE YOU'VE ISSUED A TEMPORARY INJUNCTION, YOU DON'T EVEN HAVE TO CONSIDER IT.

IN FACT YOU CAN'T CONSIDER IT.

IT IS IMPROPER TO DO SO.

THAT IS WHAT WE'RE ARGUING IS THE CONFLICT HERE.

WE THINK THAT THAT'S THE RULE.

REGARDLESS OF HOW THE COURT

COMES ON THE CONFLICT QUESTION,
WHETHER IT SIDES WITH THE, THIRD
AND FOURTH OR WITH THE FIFTH,
FIRST AND SECOND, WE THINK ON
THIS RECORD THAT WE'RE ENTITLED
TO A REVERSAL AND THIS COURT IS
FREE, UNDER ITS JURISPRUDENCE TO
IGNORE THE CONFLICT QUESTION,
DECIDE THE CONFLICT QUESTION,
DECIDE BOTH THE CONFLICT
QUESTION AND THE MERITS
QUESTIONS.

THOSE ARE ALL BEFORE THE COURT.
THOSE ARE ALL CHOICES THAT YOU
HAVE.

IF YOU LOOK AT THIS CASE, FIRST
OFF, I THINK YOU HAVE TO LOOK AT
THE WORDS OF THIS DECLARATION.
I KNOW WHEN I FIRST GOT THIS
CASE I NEVER IMAGINED WE WOULD
BE HERE TWO YEARS LATER, JUST
BEING PRELIMINARY INJUNCTION
STAGE.

I LOOKED AT THIS, IT WAS FAIRLY
CLEAR TO ME, PLANNED PARENTHOOD
IS NOT OPERATING AN OUTPATIENT
SURGICAL CENTER.
AND, YET, THE MERITS PANEL FOUND
THAT IT WAS.

AND, THAT AGAIN, THAT'S
CONTRARY, IT IS OUTCOME
DETERMINATIVE.

THAT IS CONTRARY TO WHAT THE
STATE PANEL OF THE FIFTH
DISTRICT DECIDED IN THIS CASE.
AND THE MERITS PANEL ALSO
DECIDED, AND AGAIN WHAT'S
CRITICAL TO US IN THIS CASE
ADMITTEDLY IT'S A TEMPORARY
INJUNCTION.

THAT IS ALL IT IS.

THERE HASN'T BEEN A FINAL
HEARING.

WHATEVER THE FIFTH DISTRICT SAYS
OF THIS CASE IT WILL BE THE LAW
OF THIS CASE.

WHAT THE TRIAL COURT DID WAS, IT
FOUND, EVEN IF YOU'RE AN
OUTPATIENT SURGICAL CENTER,
THERE IS AN EXCEPTION HERE IF
WHAT YOU'RE DOING IS INCIDENTAL
AND ANCILLARY TO A PHYSICIAN'S
PRACTICE OF MEDICINE.

WELL THE TRIAL COURT FOUND, THIS

IS NOT A PHYSICIAN'S PRACTICE OF
MEDICINE.

AND IT DID SO BASED ON THREE
FINDINGS.

NONE OF WHICH ARE SUPPORTED BY
THE RECORD.

IF YOU LOOK CLOSELY AT THE
RECORD.

THE FIRST FINDING WAS, THAT
PLANNED PARENTHOOD IS A 501(C)3
TAX-EXEMPT NON-PROFIT
ORGANIZATION.

THAT MEANS IT COULD NOT BE A
PHYSICIAN'S PRACTICE.

WELL PHYSICIAN'S PRACTICE IN ALL
KINDS OF SETTINGS TODAY AND IN
FACT MOST PHYSICIANS TODAY ARE
EMPLOYED BY HOSPITALS YET THEY,
THEY CONTINUE TO HAVE A
PHYSICIAN'S PRACTICE.

THE SECOND FINDING THAT THE IT
THE TRIAL COURT SAID WAS THAT
JANET TOSH, DIRECTOR OF PLANNED
PARENTHOOD AT THE TIME AND
AUTHORED AN AFFIDAVIT SUBMITTED
BEFORE THE HEARING AND WHO
TESTIFIED AT HEARING TESTIFIED
THAT THEY ONLY RECENTLY HIRED A
PHYSICIAN AS A MEDICAL DIRECTOR.
IF YOU LOOK BACK AT MISS TOSH'S
TESTIMONY THAT IS NOT WHAT SHE
SAID.

SHE HAVE SEVERAL DOCTORS ON
STAFF ONE OF WHOM WAS GOING FULL
TIME WITH US.

BEFORE THAT HE WAS SPLITTING
TIME WITH THE PLANNED PARENTHOOD
IN JACKSONVILLE AS OPPOSED TO
ONE IN ORLANDO AND SAID HE HAS
GONE FULL TIME WITH US.

AGAIN THAT WAS A FINDING THE
TRIAL COURT MADE THAT THIS IS
NOT A PHYSICIAN'S PRACTICE
BECAUSE YOU ONLY RECENTLY HIRED
THE MEDICAL DIRECTOR, ERRONEOUS
FINDING.

AND THIRD THE TRIAL COURT FOUND
THAT PLANNED PARENTHOOD IS
HEAVILY INVOLVED WITH
EDUCATIONAL--

>> JUST TO MAKE SURE I
UNDERSTAND THIS CORRECTLY, AT
THE TIME THAT ALL OF THIS
COMPLAINT AND INJUNCTIVE RELIEF

AND ALL THIS TOOK PLACE, HAD THE PLANNED PARENTHOOD OFFICE OR CLINIC OR CENTER OR WHATEVER YOU WANT TO CALL IT, HAD NOT REALLY OPENED YET OR HAD IT, OR HAD IT? >> IT HAD JUST OPENED.

I THINK IT WAS A MATTER OF WEEKS BEFORE.

IT HAD NOT KEY BUGABOO IN THIS CASE IS ABORTIONS.

IT HAD NOT PERFORMED ANY ABORTIONS AT THAT POINT.

>> AND WAS THE MEDICAL PERSON YOU'RE TALKING ABOUT A PART OF THE, PART OF NOT FACULTY A PART OF THE PLANNED PARENTHOOD AT THAT POINT?

>> SHE WAS PRACTICING IN THAT LOCATION, YES, YOUR HONOR. THERE WERE OTHER DOCTORS ON CONTRACT.

THEY WEREN'T FULL TIME WITH PLANNED PARENTHOOD.

THEY WERE PRACTICING AT THAT LOCATION AND IF YOU LOOK AT THE AFFIDAVIT OF THE DOCTOR THAT WAS FILED AGAIN SUBSEQUENT TO THE HEARING SHE SETS FORTH THERE HER PRACTICE IN THE CLINIC WITH PLANNED PARENTHOOD WAS NO DIFFERENT THAN HOW SHE PRACTICED WHEN SHE WAS IN PRIVATE PRACTICE BEFORE.

BASICALLY SHE SUPERVISED PHYSICIANS ASSISTANTS AND NURSES AND SO FORTH.

SHE WAS ALWAYS AVAILABLE TO ANSWER QUESTIONS.

>> THIS IS AN AFFIDAVIT AFTER THE FACT.

IT WAS NOT A PART OF THE ORIGINAL INJUNCTION HEARING.

>> CORRECT.

YES, MA'AM.

>> LET ME MAKE SURE I UNDERSTAND THE WAY THIS IS FLOWING.

YOU HAD THE HEARING.

YOU GOT THE ORDER.

AND THEN YOU FILED SUPPLEMENTAL MATERIALS.

IN THE APPEAL, DID YOU ARGUE THAT THE TRIAL COURT SHOULD HAVE CONSIDERED ALL OF THESE, ALL OF THIS INFORMATION INCLUDING THE

SUPPLEMENTAL INFORMATION AND
THAT YOU WERE ENTITLED TO
PRESENT THAT?

>> YES, YOUR HONOR.

>> WAS THAT PRESENTED TO THE
FIFTH DISTRICT BELOW?

>> THAT WAS ARGUED IN OUR
INITIAL BRIEF.

>> ALL RIGHT.

>> NOW THESE THREE FINDINGS OF
THE TRIAL COURT, THE FIFTH
DISTRICT MERITS PANEL DID NOT
DISCUSS THEM AT ALL OTHER THAN
TO SAY--

>> I'M SORRY, WHAT WAS THE THIRD
FINDING?

THAT YOU TAKE ISSUE WITH?

>> EXCUSE ME, THANK YOU, YOUR
HONOR.

THE THIRD FINDING WAS THAT
PLANNED PARENTHOOD IS ENGAGED IN
VARIOUS EDUCATIONAL ADVOCACY AND
COMMUNITY OUTREACH ACTIVITIES IN
FURTHERANCE OF ITS MISSION AS A
NON-PROFIT CORPORATION.

SO THEREFORE THE TRIAL COURT
SAID IT COULDN'T BE A
PHYSICIAN'S PRACTICE.

NOW THE TESTIMONY WAS CONTRARY
TO THAT BOTH AT THE AFFIDAVIT
SUBMITTED BEFORE THE HEARING BY
MISS TOSH AND MISS TOSH'S
TESTIMONY AT THE HEARING, IN
FACT THIS LOCAL PLANNED
PARENTHOOD AGENCY IS AFFILIATED
WITH NATIONAL PLANNED PARENTHOOD
AND NATIONAL PLANNED PARENTHOOD
DOES ALL THESE VARIOUS
ACTIVITIES, EDUCATIONAL
COMMUNITY OUTREACH SO FORTH.
LOCAL PAYS DUES TO THE NATIONAL
BUT GETS NO MON-- MONEY FROM
THE NATIONAL AND THE LOCAL
AGENCY FOCUSED PROVIDING HEALTH
CARE.

THESE THREE FINDINGS ALL THE
MERITS PANEL DID WAS ADDRESS
THOSE.

IT SAID THE TRIAL COURT'S
FINDINGS OF PETITIONER NOT BEING
A PHYSICIAN'S PRACTICE WERE
SUPPORTED BY SUBSTANTIAL
COMPETENT EVIDENCE.
THAT'S ALL IT SAID.

DIDN'T WEIGH THAT AND THAT'S A FINDING WE'RE GOING TO BE SADDLED WITH IN THIS CASE GOING FORWARD AND BASICALLY, THAT FINDINGS BASED ON ERRONEOUS CONSTRUCTIONS OF THE EVIDENCE AND THOSE THREE CONCLUSIONS OF THE TRIAL COURT DO NOT IN ANY WAY PROVIDE SUBSTANTIAL COMPETENT EVIDENCE THAT THIS WAS NOT A PHYSICIAN'S PRACTICE. WHETHER YOU LOOK AT, JUST THE EVIDENCE THAT WAS PRESENTED AT THE HEARING AND BEFORE THE HEARING, WHETHER YOU INCLUDE THE EVIDENCE THAT WE PRESENTED AFTERWARD.

>> GOING BACK TO WHAT JUSTICE LEWIS SAID, IT WASN'T AFTER THE NOTICE OF APPEAL. YOU MADE YOUR ATTEMPT TO CORRECT WHAT THE JUDGE DID, EITHER BY HIM RECONSIDERING, AND NARROWING THE INJUNCTION, OAR, MODIFYING IT.

COLLECTIVELY THOSE WERE APPEALED WITH THOSE AFFIDAVITS AND IS THERE-- THE ARGUMENT THAT THE FIFTH DISTRICT SAYS, WELL, WE CAN'T LOOK AT THOSE AFFIDAVITS BECAUSE IT WASN'T BEFORE THE TRIAL COURT, IS WHERE DOES THAT COME FROM IN TERMS OF THE LAW OF WHAT'S THE RECORD ON APPEAL?

>> BECAUSE, BECAUSE THE FIFTH DISTRICT SAID THAT UNDER ITS RULE, A MOTION TO DISSOLVE OR MODIFY AN INJUNCTION, UNLESS YOU SHOW FIRST CHANGED CIRCUMSTANCES AS PREREQUISITE YOU CAN'T PRESENT ANY EVIDENCE, REGARDLESS WHAT THE EVIDENCE IS AND THE ONLY CHANGED CIRCUMSTANCE ARE THOSE THE TRIAL COURT PRECLUDED US FROM DOING THINGS THAT WERE NEVER ASKED FOR AND DONE AT THE HEARING.

>> AT THE SONOGRAM?

>> INCLUDED BUT NOT LIMITED TO LANGUAGE THE TRIAL COURT THROUGH INTO THE INJUNCTION. WE GOT REALLY FROM THE FIFTH DISTRICT IN THE MERIT PANEL, BUT -- >> THAT IS THE BASIS

OF YOUR MOTION TO MODIFY OR
DISSOLVE THE INJUNCTION?
>> THOSE WERE AMONG THE
THINGS, YES, YOUR HONOR.
>> YOU USED UP ALL YOUR TIME
BUT OBVIOUSLY WE HELP YOU WITH
THAT SO I WILL GIVE YOU A FEW
MINUTES LATER ON FOR REBUTTAL.
WELL, GOOD MORNING OR
AFTERNOON, RIGHT ON A CUT
LINE.

DENNIS O'CONNOR, M MB
PROPERTIES THE RESPONDENT.
MAY IT PLEASE THE COURT.
YOU ARE ABSOLUTELY WHAT IS
BEING SOUGHT HERE IS NOTHING
MORE THAN AN ADVISORY OPINION,
AT NO TIME DID THEY CHALLENGE
THE ORDER DENYING THE MOTION
TO MODIFY OR DISSOLVE THE
TEMPORARY RESTRAINING ORDER.
>> THIS IS THE PROBLEM, 30
DAYS GOES BY AND YOU END UP
WHERE YOU DON'T APPEAL THE
TEMPORARY INJUNCTION, BUT
AFTER SEEING THIS QUARTER
WHICH HAS CERTAIN STATEMENTS
OF FACT, WHETHER IT IS RIGHT
OR WRONG, AND THE JUDGE'S
ATTENTION, THE PROBLEM WAS
THEY CALL THE MOTION FOR
MODIFICATION OR DISSOLUTION
AND PUT THAT IN ONE MOTION
WITH THESE AFFIDAVITS, THE
JUDGE SUMMARILY DENIES
EVERYTHING, THEY ARE
APPEALING IN ONE PROCEEDING
AND THAT TO ME MAKES IT
EFFICIENT AS FAR AS THE TRIAL
COURT OR THE APPELLATE COURT
TO RECTIFY OR REVERSE.
I UNDERSTAND THERE IS A
QUESTION WHETHER ONE WOULD BE
APPEALABLE SEPARATELY OR
MOTION TO DISSOLVE, AND IT
BOOTS IT OUT, LOOKING AT THE
AFFIDAVITS.
>> IT PROMULGATES APPELLATE
RULES FOR A REASON AND A
PURPOSE.
THEY HAVE SOME SYSTEM OR ORDER
BY TRIAL COURTS, FOR
RESTRAINING ORDERS, MODIFYING
-- >> THEY APPEAL THIS WITH

ONE NOTICE.

IT DIDN'T HAPPEN IF THE APPELLATE COURT HAD BEEN STUCK AFTER THEY AFFIRMED THE INJUNCTION WITH 60 DAYS OR DID NOTHING 60 DAYS LATER WITH ANOTHER MOTION, WE HAVE A DIFFERENT SITUATION.

THEY ARE GOING TO BRING IT TO THE TRIAL COURT'S ATTENTION, AT THE EARLIEST OPPORTUNITY TO CORRECT IT.

>> CAN I COMMENT BRIEFLY ON THE PREMISE THAT ANY OF THE FINDINGS WERE INCORRECT.

I WOULD SUGGEST JUDGE JORDAN CONDUCT A TWO OUR EVIDENTIARY HEARING OR TESTIMONY OF FOUR WITNESSES.

HE ASSESSED THE Demeanor, CREDIBILITY AND QUALITY OF THEIR TESTIMONY AND MADE FACTUAL FINDINGS WHICH CANNOT BE ASSAILED.

>> ACCEPTING THAT I WILL ACCEPT THAT, THAT IS A JUDGMENT.

DID YOUR OPPOSITION SAY IN THEIR BRIEFS OR ARGUMENTS IN THE FIFTH DISTRICT THAT THE TRIAL COURT MADE A MISTAKE, WAS IN ERROR, WAS WRONG, BECAUSE IT DID NOT CONSIDER THE MATTERS THEY HAD PRESENTED BY WAY OF AFFIDAVIT OR MATERIALS IN SUPPLEMENTAL FILING.

>> MY INTERPRETATION OF BOTH OF THE BRIEFS WERE THE ARGUMENTS WERE ADDRESSED TO THE MERITS.

>> BUT DID THEY ARGUE THE TRIAL COURT SHOULD HAVE USED THIS INFORMATION IN COMING TO A FINAL DECISION?

>> I DON'T THINK THEY DID. I COULD STAND CORRECTED.

>> IN THE INITIAL BRIEF, REFER TO THE AFFIDAVITS THE STATE PANEL RELIED ON.

>> THEY REFER TO THE STATE PANEL DID CONSIDER THE AFFIDAVITS.

>> THEY DID NOT IN THEIR

INITIAL BRIEF CONTINUOUSLY
REFER TO THE AFFIDAVITS FILED
AFTER?

>> THERE IS REFERENCE TO THE
FINDINGS.

>> ONLY ON YOUR ANSWER BRIEF
YOU REFERRED TO CHANGED
CIRCUMSTANCE, THAT YOU RESPOND
TO THAT.

>> THAT IS THE INTERPRETATION
OF IT.

>> CHANGED CIRCUMSTANCES WOULD
NOT HAVE BEEN GRANTED IN
MOTION TO MODIFY.

>> THIS IS WHAT IS HAPPENING
BUT NOT SAYING THIS WAS DONE
DELIBERATELY.

WE HAVE NOTICED THE HEARING
THAT TAKES TWO HOURS,
WITNESSES ARE CALLED, THE
PETITIONER CALLS A WITNESS
WHO IS NOT A MEDICAL DOCTOR
AND CALL A WITNESS NAMED
MARTHA HANEY, JUSTICE PERRY
MIGHT RECOGNIZE THE NAME SHE
WAS, THE SAME PERSON, A CPA
AND WE, TWO PHYSICIANS, WHEN
IS THE AGGRIEVED PARTY,
CARDIOLOGIST AND FAMILY
PRACTITIONER WHO PRACTICED
OBSTETRICS, DOES OBSTETRICAL
PROCEDURES.

THIS IS WHAT THEY ARE GOING TO
DO.

THEY LOSE.

WITHIN 5 DAYS, AND THE VERY
WITNESSES, THEY WAIT IN THE
WEEDS, WEIGHT TO SEE WHAT
HAPPENS, THEY LOSE AND
SUPPOSED TO CONSIDER FOUR
AFFIDAVITS INCLUDING ONE FROM
THE WITNESS.

I CAN'T CROSS-EXAMINE.

>> YOU MAY BE RIGHT AT THE END
IS A BUT THAT IS A DIFFERENT
ISSUE AS TO WHETHER THEY
ARGUED THAT MATERIAL SHOULD
BE CONSIDERED AS PART OF THE
FINAL DECISION WHETHER TO
IMPOSE THIS TEMPORARY
INJUNCTION, TOTALLY DIFFERENT
ISSUE.

>> THEY NEVER ARGUED CHANGED
CIRCUMSTANCES OR ADVANCED THAT

OR THOUGHT ABOUT IT.

>> YOU ARE SAYING THEY LOSE
BECAUSE OF THAT.

>> WHAT COURT IS GOING TO
CONSIDER THE OPINION OF A
LAWYER?

WHAT COURT WILL CONSIDER THE
OPINION OF GENERAL CONTRACTOR
INTERPRETING A REGULATORY
SCHEME?

HERE IS WHAT SHE SAID IN HER
AFFIDAVIT, IF THE COURT IS
INCLINED TO CONSIDER IT, IN MY
OPINION SURGICAL ABORTIONS ARE
NOT ABORTIONS, SUBSEQUENTLY,
PLANNED PARENTHOOD ABANDONED
THAT POSITION BUT WHAT DID SHE
NOT SAY?

SHE DID NOT SAY SURGICAL
ABORTIONS ARE INCIDENTAL AND
ANCILLARY TO THE PRACTICE OF
PLANNED PARENTHOOD.

SHE DIDN'T.

THAT SILENCE IS DEAFENING.
IF THE COURT IS INCLINED --

>> LET ME ASK YOU THIS.

I RECALL IN THE RECORD
SOMEPLACE THAT THERE WAS THE
AFFIDAVIT OR TESTIMONY THESE
ABORTIONS WHETHER YOU
CONSIDER THEM SURGICAL OR
WHATEVER, ONLY CONSTITUTES
ABOUT 1% OF WHAT IS BEING
PROVIDED AT THAT FACILITY.
THAT PERTINENT TO THIS ISSUE?

>> IT IS VERY PERTINENT TO
WHETHER SURGICAL ABORTIONS
WOULD BE INCIDENTAL.

>> IF THERE IS 100% OF
SOMETHING GOING ON AT THIS
CENTER, AND ABORTIONS
CONSTITUTE 1% OF IT, SAME
STANDARD.

>> HERE IS WHAT JUDGE JORDAN
HEARD ON THAT.

THE TESTIMONY CAME FROM MISS
TOSH, BURDENED WITH A DEGREE
IN POLITICAL SCIENCE.

>> LET ME ASK YOU THIS BEFORE
YOU GO FURTHER.

WAS ANYTHING PRESENTED THAT
THAT IS NOT TRUE?

>> YES.

BY INFERENCE OR DIRECTLY.

MRS. HANEY, HERE IS WHAT MRS. HANEY SAID, SHE IS A CPA. SHE IS TREASURER, SHE SAID SHE COULD NOT QUANTIFY TO WHAT EXTENT ABORTIONS COMPRISE THE OPERATIONS OF PLANNED PARENTHOOD.

SHE COULDN'T QUANTIFY THAT. >> AFTER THEY GET ALL THE PERMITS AND ABOUT TO START OPERATIONS, THEY ARE A PLACE THAT PLANNED PARENTHOOD FOR THE MOST PART UNTIL RECENTLY WAS MAINLY FOR LOW INCOME PEOPLE TO DO CANCER SCREENINGS, BREAST SCREENINGS, FAMILY-PLANNING, THOSE PROCEDURES, THE ABORTION THEY STATED WAS ANCILLARY TO THEIR OTHER PRACTICE.

AND TWO YEARS DOWN THE ROAD. WE HAVE TWO YEARS WHERE THE STATE PANEL HAD ISSUED THIS SO PLANNED PARENTHOOD OPERATING THEIR, AND THAT WENT ON AFTER THE MERITS PANEL.

IF THERE IS ANY REVERSAL, ISN'T THE QUESTION NOW SHOULDN'T IT BE GOING -- FINAL INJUNCTION WHETHER THEY OPERATE OR NOT, WE HAVE A DIFFERENT STATUS QUO, REAL EVIDENCE AS TO WHETHER THEY ARE MAINLY AN ABORTION CLINIC. WHICH IS FULL-SERVICE HEALTH CENTER FOR WOMEN DEALING WITH MULTITUDE OF FEMALE ISSUES.

>> IT IS SENT TO THE TRIAL COURT TO HAVE HEARINGS AFTER SOME DISCOVERY -- >> THOSE AFFIDAVITS, THEIR ARGUMENT WOULD BE WHEN THEY SAW THE AFFIDAVITS, TO HEAR THOSE AFFIDAVITS.

>> THE COURT IS INCLINED TO ASSESS THESE ISSUES AND ACCEPT THE INCLINATION, TO GET TO THE MERITS OF THIS, WHAT YOU ALSO SAID IN RESPONSE TO THE CROSS-EXAMINATION, AND SURGICAL ABORTIONS ARE CENTRAL TO THE OPERATIONS OF PLANNED PARENTHOOD.

AND CREATE SUBSTANTIAL BURDEN

TO PERFORM ABORTIONS AND THE
NUMBERS PERSON TESTIFIED IF
SURGICAL ABORTIONS, AND
WHATEVER THEY WOULD DO, IT
WOULD COST \$720,000 A MONTH.
IF IT IS SO ANCILLARY, WHY
APPLY FOR A PERMIT ON THE
AGENCY WITH HEALTHCARE
ADMINISTRATION?

THE JUDGE MADE A FACTUAL
DETERMINATION BASED ON ALL THE
EVIDENCE AND MISS TOSH WAS
IMPEACHED, SHE TRIED TO
TESTIFY.

THE FIRST QUESTION ON
CROSS-EXAMINATION HAD TO DO
WITH A WAIVER WITH RESTRICTED
-- WITHIN A DIFFERENT
HOSPITAL.

STANDING UP ON REDIRECT
EXAMINATION, WHAT IS THAT?
THERE WAS THIS PAUSE, NEVER
FORGET THIS, THE JUDGE SAID
ANSWER THE QUESTION, IT IS
EASY, A DIFFERENT HOSPITAL.
BOTH OF THE KIND OF THINGS, WE
VEST TRIAL JUDGES WITH THIS,
YOU CAN'T ASSAIL FACTUAL
FINDINGS AND THOSE FACTUAL
FINDINGS WERE TAKEN BY JUDGE
LAWSON IN A CAREFUL AND
REASONED ANALYSIS, DETERMINE
THIS COVENANT APPLIES AND
CANNOT PERFORM SURGICAL
ABORTIONS, THEY KNEW THAT
GOING IN.

THEY BRAZENLY WENT AHEAD,
SUBMITTED A ZONING PETITION
WHEN THEY BOUGHT THIS PROPERTY
WHERE THEY ASK PERMISSION TO
DO WHAT?

PERFORM OUTPATIENT SURGICAL
PROCEDURES.

THE PRECISE LANGUAGE THAT IS
PROHIBITED IN THE RESTRICTION.
THAT IS WHAT THEY ASKED TO DO
AND WHAT THE JUDGE HEARD.

>> YOU DON'T THINK THE
RESTRICTIVE COVENANT USES THE
LANGUAGE, OUTPATIENT SURGICAL
CENTER.

>> JUST HEAR ME OUT.

YOU DON'T BELIEVE THERE IS A
DIFFERENCE BETWEEN AN

OUTPATIENT SURGICAL CENTER,
AND THE FACILITY, AND
OUTPATIENT PROCEDURES, DOES
NOT DO COMPLETELY OUTPATIENT
SURGICAL PROCEDURES.
>> NOT THE WHOLE THING DONE IN
THE FACILITY.
MEAN THE SAME THING THE
RESTRICTIVE COVENANTS IS WHICH
IS OUTPATIENT CENTER?
>> CENTER IS DEFINED BY
WEBSTER'S DICTIONARY -- >>
YOU ARE SAYING IT DOESN'T
MATTER IF A FACILITY DOES ONE
EVERY YEAR VERSUS ONE EVERY
DAY, OUTPATIENT SURGICAL --
>> OF THE ACTIVITY IS SURGERY,
PLANNED PARENTHOOD FINALLY
ACKNOWLEDGES IT IS FOR BID AND
UNDER THESE RESTRICTIONS.
>> AN ISSUE WITH REGARD TO
OUTPATIENT SURGICAL CENTER AS
OPPOSED TO A PHYSICIAN'S
OFFICE BY WHICH OR THROUGH
WHICH YOU MAY CONDUCT
ANCILLARY SURGICAL
PROCEDURES.
>> UNDER THE COVENANT, IS THAT
NOT AN ISSUE IN THIS CASE?
>> THE COURT FOUND THIS
FACILITY IS NOT A PHYSICIAN --
>> IS THAT AN ISSUE IN THIS
CASE?
>> THE ISSUE IS WHETHER OR NOT
THE PERFORMANCE OF SURGICAL
ABORTIONS, WHETHER THAT IS
SURGERY.
>> NOT WHETHER IT IS A
PHYSICIAN'S OFFICE THROUGH
WHICH THAT IS PERFORMED.
THAT IS MY POINT.
NOT THE ULTIMATE PROCEDURE BUT
WHETHER IT IS ATTACHED TO A
PHYSICIAN'S PRACTICE.
>> AS OPPOSED -- WE CONSIDER
AMBULATORY, ACNE, THAT IS
DIFFERENT, THIS IS A BUILDING
-- >> MY QUESTION IS, WAS
THERE AND ISSUE OR WAS THIS
SOMETHING I MADE UP OUT OF
THESE ARGUMENTS, AND SURGICAL
CENTER AND PHYSICIAN'S OFFICE
THAT ALSO PROVIDES THAT
SERVICE?

>> I DON'T THINK THAT WAS CLOSELY SCRUTINIZED. WHETHER OR NOT THIS WAS A PHYSICIAN'S PRACTICE, PRACTICE OF MEDICINE.

THAT WAS LITIGATED AND IF SO, WHETHER OR NOT PERFORMANCE OF OUTPATIENT SURGICAL ABORTIONS WOULD BE INCIDENTAL OR ANCILLARY TO THAT PRACTICE.

>> THAT IS WHAT I WAS TRYING TO ASK.

THERE WAS AN ISSUE, IF WE ARE GOING TO DO THIS IS IN YOUR POSITION THAT THE LAW OR THE FACTS WOULD ALLOW THESE PROCEDURES IF IT IS A PHYSICIAN'S OFFICE THROUGH WHICH THE CONJUNCTION WHERE THE PHYSICIAN DOES SOME OF THIS.

>> IT IS PROHIBITED UNLESS THE PERFORMANCE OF THESE PROCEDURES IS INCIDENTAL OR ANCILLARY.

IT IS NOT THE PRIMARY FOCUS.

>> THERE COULD BE A PHYSICIAN THAT WOULD DO A FEW THINGS. THAT WOULDN'T BE A PROBLEM.

>> THAT DISCUSSION HAS NEVER BEEN HAD.

YOU CAN HAVE AN ORTHOPEDIC SURGEON WHO COULD HAVE ON THE BOTTOM FLOOR OF HIS OFFICE AND OUTPATIENT SURGICAL PROCEDURE FACILITY WHERE HE DOES KNEES AND SCOPES.

>> ANCILLARY TO HIS PRACTICE. THAT WOULD BE ALLOWED OR NOT ALLOWED?

>> UNDER THAT VERY NARROW SCENARIO I WOULD THINK IT WOULD BE ALLOWED.

>> TALKING ABORTIONS ALWAYS RAISES OTHER ISSUES ON BOTH SIDES.

THE STRICT COVENANT THAT WENT IN WAS APPARENTLY BECAUSE THE DEVELOPER DIDN'T WANT THE CENTER COMPETING WITH THE HOSPITAL ACROSS THE STREET.

>> THE RECORD I BELIEVE ESTABLISHED THE PURPOSE FOR THE COVENANT WAS TO CONTROL

THE USE AND ENVIRONMENT OF
PROPERTY.

>> THEREFORE THE ENVIRONMENT,
ANY PARKING SPACES SOMEONE
GOT, WE DON'T KNOW.

>> THERE -- THE WORD
COMPETITION IS NOWHERE IN THIS
RECORD.

>> IT GOES BACK TO THE
INJUNCTION, THE COURT FOUND IT
IS NOT A PHYSICIAN'S PRACTICE.
THEY HAD A 501 C-3 TAX-EXEMPT
NONPROFIT ORGANIZATION.

IS THAT CORRECT AS A MATTER OF
LAW THAT ARE 501 C-3
TAX-EXEMPT NONPROFIT CANNOT
BE A PRACTICE?

>> I ASK THAT QUESTION, I HAVE
GONE ONLINE, I WAS INQUIRING
TO MAKE SURE -- I INJECTED
THAT -- >> THAT IS NOT A
CORRECT FINDING.

THIS COURT ALSO SAID
ADDITIONALLY MANY OF PLANNED
PARENTHOOD'S SERVICES FALL
BEYOND THE PRACTICE, HEAVILY
INVOLVED, EDUCATIONAL ADVOCACY
OUTREACH.

WHAT I UNDERSTAND IS THE
NATIONAL IS HEAVILY INVOLVED,
NO EVIDENCE THAT THIS
AFFILIATE THAT IS PRIMARILY
THERE TO BE AN OFFICE TO
PROVIDE HEALTH SERVICES FOR
WOMEN WAS HEAVILY INVOLVED
WITH THE EDUCATIONAL ADVOCACY
AND OUTREACH.

>> NOT SURE ABOUT THE
ADJECTIVE BUT THERE IS
TESTIMONY ABOUT ADVOCACY
OUTREACH AND OTHER
MODALITIES.

>> YOU ARE SAYING THIS --
LISTENED TO THE EVIDENCE AND
IT WAS EVALUATED BY
WITNESSES.

HE SAYS HEAVILY INVOLVED.
SOMETHING I AM LOOKING AT THIS
INJUNCTION AND NO ONE IS
MENTIONING IT, ANOTHER PART OF
THE RESTRICTIVE COVENANT THAT
HAS TO DO WITH OBNOXIOUS
ACTIVITIES, THE JUDGE TAKES
THE EVIDENCE ONE OF THE

DOCTORS SAYS, TALKED ABOUT
PROTESTERS BEING THERE.
THE JUDGE FIND THE YOU DON'T
HAVE SUBSTANTIAL LIKELIHOOD OF
PROVING IT IS OBNOXIOUS OR
FORMING, WE COMPLETELY
UNDERSTAND WHATEVER WE DO THAT
ALTHOUGH THE SUBJECT IS
ABORTION THE JUDGE DID NOT
FIND THAT THE ATTEMPTS YOUR
CLIENTS PUT SAID THERE WERE
BOMB SCARES OR PROTESTERS, A
BASIS FOR GRANTING AN
INJUNCTION.

>> THIS IS WHY HE SAID THAT.
THERE WERE ONLY TWO EPISODES
AS PICKETERS WERE OUT EVERY
DAY BUT ONLY IN TWO OCCASIONS
WAS THE PARKING LOT SHRUNK.

>> THE FINAL INJUNCTION HAS A
WHOLE RECORD IN.

>> THE FINAL POINT ABOUT
CHARACTERIZATION IS NOT A
TRADITIONAL MEDICAL PRACTICE
ALSO EVIDENCE DOCTOR MORRIS
WAS NOT AN EMPLOYEE AT THE
TIME.

HE WROTE A CIRCUIT AND AGREED
WHEN I ASKED THE QUESTION
ABOUT DOCTOR MORRIS WENT
JACKSONVILLE TO TAMPA STREET,
HERE TO THERE, ESSENTIALLY AN
ADMINISTRATOR, MEDICAL DOCTOR
BUT SHE WROTE THOSE WORDS IN
THIS RECORD, SHE RODE THE
CIRCUIT, SHE WAS A CIRCUIT
RIDING DOCTOR WITH
ADMINISTRATIVE DUTIES WHO
SUBSEQUENTLY WAS HIRED
FULL-TIME, WHATEVER THAT
MEANS.

WE LOVE THE OPPORTUNITY TO
CONDUCT SOME DISCOVERY TO KNOW
THEY ARE DOING SONOGRAM SO WE
COULD HAVE ADDED THAT TO OUR
LAWSUIT.

WE DIDN'T KNOW THEY WERE DOING
THESE PROCEDURES.

WE WOULD WELCOME THE
OPPORTUNITY WITH STAY IN
PLACE, THE INJUNCTION IN
PLACE TO ENGAGE IN SOME
DISCOVERY AND IN 6 MONTHS
JUDGE JORDAN FORECASTED LET'S

GET THIS TO A FINAL HEARING
AND RESOLVE THIS MATTER.
>> IT COULD GO AWAY IN THE
MEANTIME.
THE PRELIMINARY INJUNCTION
COULD GO AWAY IN THE MEANTIME.
>> IT SHOULD BE IN PLACE UNTIL
THE FINAL HEARING.
THE INJUNCTION.
>> THE STATE OF THE INJUNCTION
TO GO AWAY.
>> THIS DAY SHOULD BE LIFTED,
THE INJUNCTION SHOULD BE
ENFORCED, PERFORMANCE OF
SURGICAL ABORTIONS NEEDS TO
STOP UNTIL SUCH TIME AS THE
TRIAL COURT WHOEVER THE JUDGE
HAPPENS TO BE JUDGE JORDAN IN
ORANGE COUNTY, FILING THESE
MOTIONS YOU CAN APPEAL MOTION
TO -- WE HAVE TO GO BACK AND
HAVE A FINAL HEARING, HAVE AN
OPPORTUNITY TO VET THE THINGS
THAT IN THE AFFIDAVITS, THIS
1%, WE WOULD LIKE TO TALK
ABOUT THAT.
>> THANK YOU VERY MUCH.
>> TO ADDRESS THE POINT, THERE
IS NOTHING THAT PRECLUDES THE
PLAINTIFF IN THIS CASE FROM
CONDUCTING ANY DISCOVERY,
HAVING HEARINGS, DOING
ANYTHING UNDER THE APPELLATE
RULES, INTERLOCUTORY APPEAL,
FREE TO DO ANYTHING AT ONCE
OTHER THAN ENTER A FILE
BINDING ORDER.
>> TO A FINAL INJUNCTIVE
HEARING.
>> THE TRIAL COURT CANNOT
ISSUE A FINAL ORDER UNTIL THE
INTERLOCUTOR TORI APPEAL IS
RESOLVED.
COMMON THINGS LIKE DISCOVERY,
THERE IS NO PROHIBITION ON
THAT.
>> CAN I ASK A CLARIFYING
MOTION TO DISSOLVE OR MODIFY,
WHAT WAS THE SPECIFIC
MODIFICATION YOU WERE ASKING
FOR IN THAT MOTION?
>> SPECIFIC MODIFICATION WAS
TO DO AWAY WITH THE ENTIRE
INJUNCTION.

WE DIDN'T THINK IT WAS
SUPPORTED UNDER THE DEED
RESTRICTION THEY HAD HERE.
>> IT WITH FOR DISSOLUTION.
>> DISSOLUTION, RIGHT.
>> THE OTHER PART OF IT ABOUT
THE SONOGRAM AND WHATEVER THE
TERM WAS.
>> WE DID ARGUE ALL THOSE
POINTS IN THE MOTION FOR
RECONSIDERATION BECAUSE OUR
UNDERSTANDING WAS YOU GOT TO
GIVE THE TRIAL COURT A CHANCE
TO CORRECT ANY ERRORS MADE IN
THE FIRST INSTANCE.
THAT IS A BASIC TENET OF THE
JUDICIAL ECONOMY AND WE
CERTAINLY DID IN THIS CASE.
I DON'T THINK WE WITHHELD ANY
ISSUES OR ANYTHING ELSE >>
WHAT IS YOUR UNDERSTANDING OF
THE TERM SURGICAL CENTER?
>> IT IS ESSENTIALLY LIKE A
HOSPITAL IN A STANDALONE
PLACE.
THIS DEED RESTRICTION WAS BACK
IN THE 80S AND MEDICINE HAS
CHANGED IN THE LAST 30 YEARS.
HOSPITALS WERE CONCERNED.
LOOK AT THIS DEED RESTRICTION,
THERE IS OUTPATIENT SURGICAL
CENTER, IMAGING CENTER AND
EMERGENCY MEDICAL CENTER, THEY
DIDN'T WANT SOMEBODY IN THE
PRIVATE SECTOR GOING OUT AND
SETTING UP A COMPETING
EMERGENCY ROOM THAT MIGHT DRAW
PATIENTS AWAY, AND DIAGNOSTIC
IMAGING CENTER AND ALL THE
CAPITAL EXPENSES, TO SET UP A
COMPETING SURGICAL SUITE.
WHAT THIS RESTRICTION SAID,
THERE IS AN EXCEPTION.
IT TALKED ABOUT ACTIVITIES
DEFINING ACTIVITIES AS IN A
SMALL GRANULAR SENSE THE
PERFORMANCE OF ABORTION IS AN
ACTIVITY, IF IT IS SURGICAL
WHICH THE TRIAL COURT FOUND,
YOU HAVE SURGICAL CENTER HERE.
>> DO YOU AGREE IT IS A
SURGICAL PROCEDURE?
DO YOU AGREE WITH THAT?
>> ME PERSONALLY?

>> AS REPRESENTATIVE -- >>
PLANNED PARENTHOOD TAKES A
DIFFERENT VIEW OF THAT, AND WE
ARE NOT CONTENDING IT IS A
SURGICAL PROCEDURE, WHETHER IT
IS A SURGICAL PROCEDURE OR NOT
IS NOT OUTCOME DETERMINATIVE
IN THIS APPEAL.

>> THEIR ARGUMENT IF YOU READ
THESE COVENANTS TOGETHER, IF
IT WAS JUST, WOULDN'T NEED
THE FIRST ONE IF THE SECOND
ONE WAS ANCILLARY TO THE
PRACTICE IT IS ALL
ENCOMPASSING.

HOW DO THE TWO GO TOGETHER?

>> ANCILLARY IS AN EXCEPTION
TO THE DEVELOPERS RIGHT TO
RESTRICT THIS ACTIVITY.

>> OF THE ORTHOPEDIC SURGEON
HAD SOMETHING DOWN 20 OR 30
YEARS AGO, AND MOST WAS AN
ORTHOPEDIC SURGERY, IT WAS IN
PLACE.

>> IT WOULD BE FREE TO
PRACTICE WHAT THEY WANT TO
PRACTICE.

TAKE THE EXAMPLE OF A PLASTIC
SURGEON WHO MAY SET UP HIS OWN
SURGICAL SUITE NEXT TO HIS
OFFICE AND HE SEES PATIENTS
AND TREATS THEM, THE OTHER
HALF OF THE DAY HE DOES
SURGERY IN HIS OFFICE.
THAT WOULD BE ANCILLARY AND
INCIDENTAL.

>> IT WOULDN'T BE A SURGICAL
CENTER.

>> A SURGICAL CENTER IS
SOMEWHERE DIFFERENT PHYSICIANS
CAN GO AND YOU CAN RENT SPACE
ON A LOW-COST BASIS, PATIENTS
COME TO THE OUTPATIENT
SURGICAL CENTER RATHER THAN
GOING TO THE HOSPITAL ER, IT
SAVES YOU A LOT OF MONEY AND
IT IS NOT THE DOCTOR'S OFFICE
WHERE HE OPERATES.

ONE OF THE RED HERRINGS RAISED
THIS MORNING WAS THE ZONING
APPLICATION SUBMITTED TO THE
CITY OF KISSIMMEE, PLANNED
PARENTHOOD HAS NEVER HAD A
SURGICAL SUITE, THEY DON'T

HAVE ONE NOW.
ALL THEY WERE DOING WAS ASKING
THE CITY OF KISSIMMEE IF IN
THE FUTURE WE WANTED TO BUILD
A SURGICAL SUITE DOES THE
ZONING PROHIBIT THAT AS
MISTER HARVARD TESTIFIED
AFTER THE HEARING, THEY
CHECKED THE DEED RESTRICTION
FROM FLORIDA HOSPITAL, AND
BEND ABORTIONS ON THIS
PROPERTY, THEY GOT THAT DEED
RESTRICTION REMOVED, IT
SEEMED OBVIOUS THEY WOULD NOT
BE WITHIN IT.

>> IF THE DEED RESTRICTION WAS
THE PROPERTY AND RUNNING WITH
THE LAND HOW COULD THE OUTSIDE
ENTITY LIKE IF THE HOSPITAL
ACROSS THE STREET OSCEOLA SAID
IT IS OKAY FOR PLANNED
PARENTHOOD TO BE THERE HOW
DOES THAT AFFECT THE ABILITY
TO ENFORCE IT?

>> THEY COULDN'T ENFORCE IT AT
THAT POINT.

>> IF THE HOSPITAL SAID IT WAS
OKAY?

>> YES.

AS I READ THE COVENANT THE
DEVELOPER AND HOSPITAL IS A
SUCCESSOR TO THE DEVELOPER
HAVE A RIGHT TO WAIVE IT.
IT IS SOMEWHAT UNIQUE.
AND MOST SITUATIONS EVERYONE
IS FAMILIAR WITH RESIDENTIAL
COVENANTS WHERE YOU CAN'T HAVE
A BASKETBALL GO OVER THE GYM
OR PARK JUNK CARS IN YOUR
YARD AND SO FORTH.

THERE IS ALSO COMMERCIAL
COVENANTS.

MOST OF THE COMMERCIAL
COVENANTS RISE OUT OF SHOPPING
CENTERS WHERE THEY SAY THERE
CAN ONLY BE ONE BARBERSHOP
HERE.

IF YOU OPEN A BARBERSHOP YOU
DON'T HAVE TO WORRY ABOUT THE
LANDLORD PUTTING A BARBERSHOP
5 DOORS DOWN COMPETING WITH
YOU.

THIS CASE IS DIFFERENT.

THIS IS AN OFFICE PARK THAT

WAS DESIGNED EXCLUSIVELY FOR
PHYSICIANS OFFICES ADJACENT TO
THE HOSPITAL IN KISSIMMEE.
THIS COVENANT WAS PUT INTO
PROTECT THE HOSPITAL SO THIS
WOULD BE PHYSICIAN PRACTICE.
>> YOU DON'T CHALLENGE THIS IS
A COVENANT RUNNING WITH THE
LAND.

>> NO BUT I DO, IF YOU LOOK AT
THE CASE LAW, THE RESIDENTIAL
CASE LAW YOU CAN HAVE WAIVER
OF COVENANT BY CONDUCT.

MY READING OF THE CASES IN
COMMERCIAL COVENANTS IS YOU
CANNOT WAVE THEM BY CONDUCT.
IN THIS CASE IF YOU LOOK AT
THE FACTS THIS COVENANT WAS
EFFECTIVELY WAIVED UNTIL
PLANNED PARENTHOOD CAME IN,
THERE WAS AN OB/GYN PRACTICE
IN THE SAME STRUCTURE, AND IT
HAD A MAMMOGRAPHY WING WHICH
IS AGAIN DIAGNOSTIC IMAGING.
IF YOU READ THE COVENANT AS
BROADLY AS INCLUDED.

>> YOU HAVE REACHED OUR TIME
LIMIT COVENANT BY THREE
MINUTES.

THE COURT IS IN RECESS UNTIL
TOMORROW.

>> ALL RISE.