

>> THE NEXT CASE IS SIMMONS --
TRENEKA SIMMONDS, ET AL. V.
CONNOR PERKINS.

>> WE WILL BE READY.

>> GOOD MORNING, MAY IT PLEASE
THE COURT, VICTOR WAITE ON
BEHALF OF B.E.A.R.R. 5 --
SIMMONDS.

A MATERNITY ACTION OR CHILD BORN
IN WEDLOCK, IF THE CHILD HAS TWO
LEGAL PARENTS.

IT IS THE PETITIONER'S POSITION
THAT THEY CANNOT.

>> NOT JUST ANY THIRD PARTY BUT
THE NATURAL, BIOLOGICAL FATHER
OF THE CHILD.

GET TO THE QUESTION WE ARE
TALKING ABOUT.

>> FOR COURT LAW, THE BIOLOGICAL
FATHER OF THE CHILD TAKES A
BACKSEAT TO THE LEGAL PARENT.

>> I UNDERSTAND BUT IT IS NOT
JUST ANYBODY.

WE ARE TALKING ABOUT THE
BIOLOGICAL FATHER OF THE CHILD.

>> IT IS CLEAR AND
NONDISCRIMINATORY.

FLORIDA STATUTE 732011 ALLOWS
ANY PERSON TO BRING PATERNITY
ACTIONS TO THE BIOLOGICAL PARENT
OF A CHILD.

AND THE CHILD DOESN'T HAVE TWO
LEGAL PARENTS.

THE CRUX OF THIS CASE IS THE
PETITION FOR PATERNITY HAS TWO
LEGAL PARENTS, TO TERMINATE THE
PARENTS RIGHTS.

>> WOULDN'T THERE BE, WE LOOK AT
742.11, NOT ESTABLISHED BY LAW,
PATERNITY.

THE BIOLOGICAL PARENT, NOBODY IS
DISPUTING -- NOW WE HAVE THE
ISSUE WHETHER THE PRESUMPTION
THAT THE LEGAL FATHER,
IRREBUTTABLE PRESUMPTION OR IS
IT A PRESUMPTION THAT CAN BE
REBUTTED?

ISN'T THAT WHAT THE FOURTH
DISTRICT REACH, IT IS NOT AN
IRREBUTTABLE PRESUMPTION, CAN BE

REBUTTED AND THE BIOLOGICAL PARENT, ESPECIALLY ACCORDING TO THE FINDINGS THE TRIAL COURT MADE HAD DONE ENOUGH TO REBUT THE PRESUMPTION SO HE CAN PROCEED TO ESTABLISH IN THE BEST INTERESTS OF THE CHILD TO BE THE FATHER WITH ALL THE OBLIGATIONS OF SUPPORT AND ABILITY TO HAVE SHARED CUSTODY OR VISITATION. WHETHER HE MADE ENOUGH STANDING TO GO UNDER THE STATUTE.

>> CORRECT, YOUR HONOR IS. THE ISSUE ISN'T WHETHER THE BIOLOGICAL FATHER HAS STANDING, DOES HE HAVE STANDING OVER THE OBJECTION OF THE HUSBAND, THE LEGAL PARENT?

AT THE TRIAL COURT, THE HUSBAND TESTIFIED THAT THIS IS MY CHILD. I SUPPORT HIS CHILD FROM DAY ONE.

>> YOU ARGUED THAT IN YOUR BRIEF BUT THE TRIAL COURT DID NOT AGREE WITH WHAT YOUR CLIENT HAD TO SAY.

THEY MADE FINDINGS OF FACT THAT IT WAS THE BIOLOGICAL FATHER, WHETHER YOU AGREE OR DIDN'T, AT THAT TIME, THAT WAS THE MAIN PERSON IN THE CHILD'S LIFE WITH HAVING SUPPORTED THE CHILD. YOUR CLIENT WAS NOT ON THE BIRTH CERTIFICATE AS THE FATHER.

ALTHOUGH I RESPECT WHAT YOU ARE SAYING, THE TRIAL COURT FOUND ADVERSELY TO THAT POSITION.

>> IF I MAY, THE TRIAL COURT, THAT IS GOING TO BE ON THE RECORD.

THE COURT CONSIDERED THE TESTIMONY THAT THE HUSBAND, THE COURT DIDN'T FIND THE HUSBAND WAS INCORRECT FOR SAYING THAT. WHAT THE COURT SAID IS WE HAVE A SITUATION INVOLVING THE CHILD'S LIFE.

IN THAT SITUATION THE COURT MUST GIVE PRECEDENCE TO THE LEGAL FATHER, MR. FERGUSON.

THE COURT GRANTS PETITION, TO
HAVE HIS RIGHT STRIPPED AWAY.
AND THE DUE PROCESS ISSUES.
>> THE TRIAL COURT CITED A CASE
THAT WAS NOW RECEDED BY THE
FOURTH DISTRICT ABOUT THE
PUTATIVE FATHER'S RIGHTS.
IF YOU AGREE WITH THE FOURTH
DISTRICT IS A REBUTTABLE
PRESUMPTION, IF IT WENT BACK, IT
WOULD BE INCUMBENT ON THE
BIOLOGICAL FATHER TO ESTABLISH
BETWEEN WHEN THIS LAWSUIT WAS
DISMISSED IN THE PRESENT, HE HAS
CONTINUED TO ACT IN THE CHILD'S
BEST INTERESTS AND TO SHOW YOUR
CLIENT WHO SAYS THEY ARE NOW
LIVING TOGETHER AND SUPPORTING,
YOU WOULD SHOW THE NEW EVIDENCE
THAT THE SITUATION IS IT IS THIS
FATHER WHO STEPPED UP TO THE
PLATE TO BE THE FATHER AND YOU
WOULD LOOK AT IT AS OF THE
PRESENCE TIME IF THE FOURTH
DISTRICT'S CASE WAS APPROVED.
>> SHIFTING THE BURDEN TO THE
LEGAL PAIRING.
AND 32013, A CHILD BORN IN
WEDLOCK, THE CHILD OF THE
HUSBAND, THE HUSBAND HAD LEGAL
RIGHTS.
>> THAT IS THE COMMON-LAW.
>> IF THERE IS A HUSBAND, IT IS
ON THE BIRTH CERTIFICATE.
THAT REFLECTS THE REALITY OF
COMMON-LAW.
>> THAT IS CORRECT.
BUT THE CAUSE IS PRESUMED THE
HUSBAND IS A LEGAL PARENTS, THE
BURDEN OF PROOF IS ON THE
BIOLOGICAL FATHER, NOT THE LEGAL
PARENT.
TO REQUIRE --
>> IF THERE ANYTHING IN THE LAW
THAT SAYS THE FATHER CAN NEVER
MAKE THAT BURDEN, IT IS
CONCLUSIVE.
>> IT IS NOT CONCLUSIVE.
AND THE SUPREME COURT, THE RIGHT
TO PICK WHICH BIOLOGICAL FATHER

AND LEGAL FATHER, INDICATED WE HAVE STANDING TO THE LEGAL FATHER.

>> THE LEGISLATURE, BY IMPLYING A CHILD BORN IN RED LOCK THAT IS WEDLOCK, THEY HAVE DONE THAT.

>> YOU ARE AN EXPERIENCED LAWYER AND UNDERSTAND THE PRESUMPTION FROM THE COMMON-LAW OCCURRED FOR A FEW REASONS BECAUSE THE LEGAL FATHER IN MANY SITUATIONS WAS TRYING TO DISAVOW PATERNITY. THERE WERE NO DNA TESTS BACK THEN.

THE MOTHER DID NOT WANT TO HAVE, QUOTE, ABBASID CHILD.

TO SAY IN 2018, WHEN DNA IS CONCLUSIVELY ESTABLISHED WHO IS THE FATHER, I DON'T KNOW IF I SAID THIS IN ANOTHER ORAL ARGUMENT TALKING ABOUT WRONGFUL DEATH BUT TWO MEN IN THIS BOY'S LIFE OR GIRL'S LIFE THAT WANT TO HAVE NOT ONLY CONTACTED BUT WANT TO SUPPORT THIS CHILD, WE COULD END UP WHERE NEITHER, THE LEGAL FATHER COULD SAY I'M LOOKING AWAY AND BIOLOGICAL FATHER COMING IN THEN.

THE RIGHT TO GET IN THE DOOR TO SAY THAT IT IS IN THIS CHILD'S BEST INTEREST, THAT I, NOT THE LEGAL FATHER IN THIS CASE, THAT THEY WERE NOT LIVING TOGETHER. AND A TRIAL COURT TO MAKE THOSE DETERMINATIONS FOR THE CHILD.

>> WE AGREE THE NOTION OF FAMILY IS CHANGING AND BECAUSE OF THAT THE PRESUMPTION OF PATERNITY CAN BE REBUTTED.

AND IN THIS STATE, CASE LAW, HAD TO SHOW THE BIOLOGICAL PARENT OF THE CHILD AND THE LEGAL PARENT IS UNFIT.

UNDER ABANDONMENT.

AND THE EVIDENTIARY HEARING OFTEN PAIRING.

ON THE CONTRARY CAME TO THE COURT, TESTIFIED IT WAS FROM THE TIME SHE WAS PREGNANT, HE

SUPPORTED HER.

AND HE CONTINUED TO SUPPORT THE MOTHER AND CHILD.

THE TRIAL COURT, AND THE CHILD -- THE TRIAL COURT, MISTER FERGUSON'S TESTIMONY HAS BEEN IN CHILD LIFE, TO BE INVOLVED IN CHILD LIFE BUT DESPITE THAT, ALSO ACKNOWLEDGED THE RESPONDENT, HAS TO DO WITH THE MOTHER OR FATHERS.

>> BORN INTO IN INTACT MARRIAGE, WHAT DOES THAT MEAN?

>> THE MARRIAGE PENDING, NO DISSOLUTION OF MARRIAGE PENDING. TEACHES THE PARTIES MARRIED, 2011.

AT TRIAL, THE PARTIES STATED WE CURRENTLY LIVE APART.

THE FATHER INDICATED ONCE HE IS DONE WITH SCHOOL, THE MOTHER AND THE CHILD.

THAT IS WHAT MR. FERGUSON INDICATED.

IT SHOULD BE NOTED THAT ONCE AGAIN TO ME, HAS TO SHOW NOT ONLY THE BIOLOGICAL FATHER OF THE CHILD THAT MR. FERGUSON IS UNFIT.

THE BEST INTEREST VERSION BETTER FOR THE CHILD THAN NOT.

AND A CHILD'S BEST INTEREST TO BE AWAY FROM A LEGAL PARENT WHO ESTABLISHED A RELATIONSHIP EVEN IF THAT PLACES THE CHILD AS THE BIOLOGICAL PARENT.

THE DNA CONTRIBUTOR --

>> TO SUPPORT THE FACT, A RELATIONSHIP WITH THE BIOLOGICAL FATHER.

LOOKED LIKE AT LEAST A SUMMER, THE CHILD LIVED WITH THE BIOLOGICAL FATHER, BIOLOGICAL FATHER WAS THERE WHEN THE CHILD WAS BORN, THE BIOLOGICAL FATHER PAID CHILD SUPPORT.

IT SEEMS TO ME THAT WHOLE STANDARD YOU JUST QUOTED IS APPLICABLE FOR THIS BIOLOGICAL FATHER.

>> HE NEVER PAID CHILD SUPPORT.
THE RESPONDENT AT THE TRIAL
TESTIFIED THERE'S A POINT THE
BILL RECEIVES.
THE RECORD ON APPEAL, THE
RESPONDED ATTEMPT TO PUT HIMSELF
ON CHILD SUPPORT BUT IN THAT
CASE IT WAS IN MASSACHUSETTS.
HE HAD NOT DONE THAT.
MR. FERGUSON, THE ONLY PARTY WHO
ENTERED THE TESTIMONY.
ON PAGE 10 HE INTRODUCED A
PICTURE OF HIM PLAYING WITH A
CHILD.
>> YOU ARE ARGUING FACTS, THE
OPINION SAYS, THIS IS WHAT THEY
SAY.
IT IS IN CONTESTANT - AND
APPELLANT, THE BIOLOGICAL
FATHER, THE CHILD WAS GIVEN THE
APPELLATE'S LAST NAME.
THEY ALLEGED THE MOTHER ARE
PRESENTED SHE WAS GETTING OR
DIVORCED AND THE TRIAL COURT
FOUND THAT WAS WHAT THE MOTHER
SAID.
HE ESTABLISHED HE SUPPORTED THE
CHILD.
YOU DISAGREE THAT IS IN THE
RECORD.
MOST IMPORTANTLY THE APPELLATE
HAD A STRONG PARENT-CHILD
RELATIONSHIP WITH THE CHILD AND
WAS COMMITTED TO CONTINUING THE
RELATIONSHIP.
AND THAT WAS IN THE RECORD.
UNDER THESE CIRCUMSTANCES THAT
IS NOT IN THE CHILD'S BEST
INTERESTS, YOUR CLIENT AND THE
OTHER ONE, THE CHILD'S BEST
INTEREST TO APPLY THE
PRESUMPTION OF LEGITIMACY OF THE
COST OF THE CHILD'S ESTABLISHED
RELATIONSHIP WITH THE FATHER, WE
NOW GO BACK IN THE TRIAL COURT
CONFERRED THE PROCEEDINGS, TO
GIVE YOU, THE FATHER HAS
REBUTTED THE PRESUMPTION HE
MIGHT ESTABLISH THIS AND PUT ON
ALL THE EVIDENCE AND CONVINCING

THE TRIAL COURT THAT WHAT WAS SAID BEFORE WAS INCORRECT, THE STATUS OF THE RECORD IN 3 YEARS IN BETWEEN THAT THIS CHILD HAS NOT SEEN HIS BIOLOGICAL FATHER, MAYBE BECAUSE FOR WHATEVER REASON, YOU HAVE THE RECORD TO GO ON BUT YOU ARE SAYING EVERYTHING THE FOURTH DISTRICT THAT IS WRONG BASED ON THE FACT THAT SHOULD HAVE BEEN FOUND.

>> I HAVE NO PROBLEM SAYING THE DCA WAS WRONG, THE SUPREME COURT -- IT IS PRESUMED A FIT PARENT ASKED -- ACT IN THE INTEREST OF THE CHILD, HOW CAN IT BE PRESUMED IT IS IN THE CHILD'S BEST INTEREST TO TEAR APART THAT LEGAL RELATIONSHIP. IT CAN, IT SIMPLY CAN'T BE. THAT IS WHY WE APPEAL.

>> DIDN'T THE DISTRICT ACCEPT THE TRIAL JUDGE'S FINDINGS?

>> THE TRIAL JUDGE DISMISSED THE CASE AS PERJURE US.

>> BEST INTEREST, WHAT FINDING TO THE TRIAL JUDGE MAKE?

>> BOTH PARTIES RESPONDED, INVOLVED WITH THE CHILD'S LIFE. BASED ON THAT --

>> BEST INTEREST IN THE TRIAL COURT AT ALL, WAS THEIR BEST INTEREST FINDING?

>> THE TRANSCRIPT IN FRONT OF ME, THE TRIAL COURT DID MAKE -- THEY SAID THE WORD BEST INTERESTS IN REGARDS TO WHAT THE TESTIMONY PROVED. AND IN THE FATHER'S TESTIMONY. AT NO POINT IN TIME, THEY DON'T MENTION IT. THEY ACT LIKE HE DOESN'T EXIST. HIS RIGHTS TO PRIVACY ARE BEING APPLIED. NO ONE IS TAKING HIM INTO ACCOUNT.

>> IF ULTIMATELY DOWN THE ROAD, A TRIAL COURT SAYS NOT ONLY THE RESPONDENT HAS A RIGHT TO BE A FATHER BUT YOUR CLIENT DOES NOT.

YOUR CLIENT MAY HAVE
CONSTITUTIONAL ARGUMENTS AT THAT
POINT, WHY WOULD THAT BAR US
FROM TREATING THIS AS A
REBUTTABLE PRESUMPTION AND
ALLOWING AS WE DID IN KENDRICK
TO GO FORWARD?

THERE IS PRECEDENT THAT
BIOLOGICAL FATHER CAN BRING THIS
KIND OF ACTION.

>> NOTHING STOPS IT.

>> YOUR ARGUMENT STANDING AT
THIS POINT AND I DON'T SEE HOW.

>> WHAT I AM SAYING IS THE
RESPONDENT HAD HIS DAY IN COURT.
THERE WAS AN EVIDENTIARY
HEARING.

>> THE TRIAL COURT SAID THE LAW
DOESN'T ALLOW ME TO DO WHAT I
SHOULD BE ABLE TO DO AND THE DCA
SAID IT DOES, WE CONFLICT WITH
OTHER CASES.

>> THE TRIAL COURT SAID THAT
BECAUSE THE TRIAL COURT ALSO
NOTED HIS TESTIMONY, HE WAS
INVOLVED IN CHILD'S LIFE AND
WISHES TO BE INVOLVED IN THE
CHILD'S LIFE AND HE TESTIFIED
EVEN IF HE DIVORCED THE MOTHER
HE WILL BE INVOLVED IN THE
CHILD'S LIFE.

THE STATE MADE A LEGAL
DISTINCTION BETWEEN BEING A
FATHER AND THE BIOLOGICAL
FATHER.

THAT IS SOMETHING THE SUPREME
COURT, IN THE UNITED STATES
SUPREME COURT, STATES HAVE A
RIGHT TO DO.

THE COURT STATED, QUOTE, WHEN A
CHILD IS BORN INTO AN EXTENT
MARITAL FAMILY, A UNIQUE
OPPORTUNITY, THE HUSBAND OF THE
MARRIAGE, IT IS NOT
UNCONSTITUTIONAL TO GIVE
PREFERENCE TO THE LATTER.

THAT IS WHAT FLORIDA DOES.

I AGREE WITH THE COURT THAT WHEN
YOU HAVE AN ABSENTEE FATHER, THE
PRESUMPTION IS REBUTTED.

THE PRESUMPTION IS REBUTTED
AFTER SHOWING HARM.
THERE IS AN EVIDENTIARY HEARING,
HE HAD HIS DAY IN COURT TO SHOW
MR. FERGUSON DIDN'T DO THAT.
HE NEVER DID THAT.
MR. FERGUSON CAME TO COURT AND
TESTIFIED TO THE COURT.
>> FINDINGS MADE BY THE TRIAL
COURT WERE NOT DISTURBED.
YOU ARE ARGUING AS IF THERE WERE
NO FINDINGS THE NO CLIENT WAS
COMPLETELY ABSENT AT THIS CHILD
AT BIRTH AND THE MOTHER WOULDN'T
EVEN PUT HIS NAME ON THE BIRTH
CERTIFICATE.
AND OTHER THINGS RELATED.
>> HE WAS AT WORK BECAUSE PEOPLE
HAVE TO WORK.
BUT THE PICTURE OF HIM PLAYING
WITH THE CHILD, HE TESTIFIED, I
WAS THERE, PICKED HER UP FROM
THE HOSPITAL.
>> YOU ARE INTO YOUR REBUTTAL
TIME.
YOU ARE WELCOME TO CONTINUE.
>> I WILL RESERVE FOR REBUTTAL.
OR SMACK
>> MAY IT PLEASE THE COURT,
B.E.A.R.R. FOR -- NANCY HASS,
THE FACTS WERE SET FORTH BY THE
TRIAL COURT WHO FOUND MR.
FERGUSON'S TESTIMONY WAS NOT
ADEQUATE TO PROVE HE FORMED A
RELATIONSHIP WITH THIS CHILD.
IT WAS CLEAR TO THE TRIAL COURT
THAT MR. PERKINS HAD PROVEN HE
WAS INVOLVED WITH THE CHILD FROM
THE CHILD'S BIRTH, CONTRIBUTED
FINANCIAL SUPPORT AS WELL, NOT
ONLY WANTED TO FORGE A
RELATIONSHIP WITH THE CHILD BUT
HAD SHOWN BY SUBSTANTIAL
EVIDENCE THAT HE HAD FORGED SUCH
A RELATIONSHIP.
THE LAW IS VERY IMPORTANT.
NOTE THAT THE CASES AT ISSUE
HERE, GMC VERSUS SG AND JOHNSON
VERSUS RUBY, ALL CASES THAT
PREDATE THE DISTRICT COURT OF

APPEALS CASE OF J TJ VERSUS AN H
AND ER.

WHICH IS THE CASE THAT
ESTABLISHED THE TRIAL COURT AS
AN EVIDENTIARY HEARING TO
DETERMINE WHETHER THE BIRTH
FATHER HAS STANDING TO MOVE
FORWARD AND IN THIS CASE THAT IS
WHAT THE TRIAL COURT DID AT
WHICH HEARING I BELIEVE THE
TRIAL COURT RECOGNIZED THAT IT
COULD NOT FOR WHATEVER REASON
PROCEED AND GRANT MR. PERKINS
THOSE RIGHTS.

>> WHAT IS THE STANDARD YOU LOOK
AT TO DETERMINE IF THEY HAVE A
RIGHT TO SUCCEED?

IT SEEMS TO ME WHAT YOUR
OPPONENT HAS BEEN ARGUING IS
UNLESS YOU CAN SHOW THAT THE
HUSBAND OF THE MARRIAGE, THE
FATHER MARRIED TO THE MOTHER IS
UNFIT OR IS NOT INVOLVED, UNLESS
YOU CAN SHOW THAT YOU CAN'T MOVE
FORWARD.

>> THAT IS NOT THE LAW IN THIS
STATE AND THAT HAS BEEN CLEARLY
SET FORTH NOT ONLY BY THIS
COURT'S CASE WHICH JUSTICE
LAWSON MENTIONED WHICH IS THE
KENDRICK CASE FROM 1980, EVEN
THE KENDRICK CASE AS FAR AS
EVERHART SAYS THERE HAS BEEN A
MANIFESTED SUBSTANTIAL CONCERN
FOR THE WELFARE OF AN
ILLEGITIMATE CHILD, AND BEFORE
THE BIRTH FATHER MAY BE ACCORDED
STANDING, WE HAVE TO DETERMINE
WHETHER HE HAS STANDING BY
VIRTUE OF HIS INVOLVEMENT AND WE
NEED TO MOVE FORWARD IN HISTORY
AND AS WE LOOK AT THE COURT'S
DECISION, THE OPINION IN THE
CASE OF DMT, IT HARKENS BACK TO
THE UNITED STATES SUPREME COURT
IN BLAIR AND THE OTHER UNITED
STATES SUPREME COURT CASES THAT
CLEARLY ESTABLISH A BIOLOGICAL
FATHER DOES NOT LOSE HIS
PARENTAL RIGHTS AND CAN'T BE

PREVENTED IS ACTING AS A FATHER AND HAS A RIGHT TO MOVE FORWARD.
>> THAT IS IN THE SITUATION, YOU AGREE WITH THE MICHAEL CASE WHICH HAS TO BE REVISITED BY THE SUPREME COURT, COULD HAVE TAKEN BIOLOGICAL FATHERS OF AN INTACT MARRIAGE AND THEY HAVE NO DUE PROCESS RIGHT TO ESTABLISH A RELATIONSHIP WITH THE CHILD. IS THAT CORRECT?

>> THAT IS CORRECT.

>> WE GO BACK TO THIS.

ASSUMING WE AGREE WITH THE FOURTH DISTRICT THAT IT WAS ENOUGH TO REBUT THE PRESUMPTION GOES BACK TO THE TRIAL COURT. DOES IT HAVE TO BE WHEN THE TRIAL COURT'S ORDER WAS ENTERED WHICH WAS IN 2016, ALMOST TWO YEARS AGO, SITUATIONS CHANGE, DOES YOUR CLIENT HAVE TO COME BACK IN THE CHILD'S BEST INTEREST FOR HIM TO BE ESTABLISHED AS LEGAL FATHER AND THE LEGAL FATHER RIGHTS DISESTABLISHED.

>> AN INTERESTING POINT.

AN IMPORTANT POINT.

WE AGREE WITH THE FOURTH DISTRICT WE DON'T HAVE TO REACH THAT BUT I AM INTERESTED TO KNOW IT DOESN'T SEEM YET THAT LEGAL FATHER'S PATERNITY HAS BEEN DISESTABLISHED.

WOULD YOU AGREE?

>> IF MR. FERGUSON WANTS A RELATIONSHIP WITH THE CHILD I DON'T SEE WHY HE WOULD HAVE TO BE DISESTABLISHED.

IF HE IS STILL IN AN INTACT MARRIAGE AND THAT IS THE CASE WE HAVE SO MANY FAMILIES, BLENDED FAMILIES WHERE YOU HAVE PEOPLE

--

>> WE HAVE TO DO THIS IN THE CONTEXT OF THE FLORIDA STATUTE. LET'S ASSUME THIS CHILD NEEDED SUPPORT AND NEITHER THE LEGAL FATHER WAS ABSENT, THE

BIOLOGICAL FATHER HASN'T BEEN ESTABLISHED, AND SHE GOES ON MEDICAID THROUGH DOR, THEY WILL LOOK FOR SOMEBODY, THEY ARE GOING TO LOOK FOR THE LEGAL FATHER.

THE QUESTION REALLY IS, THIS IS NOT FOR US TO DECIDE.

IT CAN BE UNDER THE LAW RIGHT NOW UNLESS YOU CAN POINT TO A STATUTE THAT THERE CAN BE TWO LEGAL FATHERS WITH A RIGHT TO HAVE CONTACT WITH THE CHILD AND AN OBLIGATION TO SUPPORT, OR CAN THEY?

>> IF INDEED MR. PERKINS IS ESTABLISHED AS BIOLOGICAL FATHER WITH RIGHTS TO THIS CHILD AND THE TRIAL COURT SAYS WE WILL PUT A PARENTING PLAN IN PLACE AND AWARD CHILD SUPPORT, MR. PERKINS HAS A LEGAL OBLIGATION.

>> DOESN'T MR. FERGUSON'S RIGHTS HAVE TO BE DISESTABLISHED? THIS CHILD, MAYBE THEY ARE GETTING SO MUCH LOVE OR MAYBE THEY ARE GETTING NONE?

THIS 5-YEAR-OLD GIRL WHO IS IN THE MIDDLE OF THIS, THE QUESTION IS WHAT IF IN THE 3 YEARS SINCE OR TWO YEARS SINCE, MR. FERGUSON HAS MOVED TO BOSTON, GOTTEN BACK WITH THE MOTHER AND AN INTACT MARRIAGE AND THEY ARE TOGETHER, WHERE DOES YOUR CLIENT COME IN?

>> I DON'T THINK MR. FERGUSON'S LEGAL RIGHTS HAVE TO BE DISESTABLISHED.

A PARENTING PLAN AND TIMESHARING SCHEDULE AND CHILD SUPPORT OBLIGATIONS CAN ESTABLISH -- WE DO THAT ALL THE TIME IN PATERNITY CASES OR DISSOLUTION OF MARRIAGE CASES.

>> MAYBE THAT IS FOR ANOTHER DAY.

>> THE POINT YOU MAKE IS AN IMPORTANT POINT, IN THREE YEARS THAT HAS ENSUED SINCE THE ORIGINAL ORDER WAS PUT IN PLACE

AND THAT IS AN IMPORTANT POINT.

>> CAN I JUST CLARIFY WHAT YOU HAVE BEEN SAYING?

IS IT YOUR POSITION THE CHILD CAN HAVE TWO LEGAL FATHERS?

>> IT IS MY POSITION THAT THE CHILD CAN HAVE A BIOLOGICAL BIRTH FATHER AND THE CHILD CAN HAVE A FATHER BY VIRTUE OF MISS SIMMONDS'S MARRIAGE.

>> THREE LEGAL PARENTS.

>> THREE LEGAL PARENTS NOW.

IF THERE WAS DISSOLUTION OF THE MARRIAGE WE KNOW MR. FERGUSON COULD SEEK TO ESTABLISH THE PATERNITY OF HE WISHED TO DO SO AT THE TIME AND THAT WOULD LEAVE MR. PERKINS AND THE BIRTH MOTHER.

I DON'T BELIEVE THIS CREATES AN ISSUE.

WE DON'T HAVE DISSOLUTION OF MARRIAGE CASES, PEOPLE WHO GET DIVORCED AND STEPPARENTS.

>> YOU ESTABLISHED MR. PERKINS AS THE FATHER AND THE CHILD CONTINUES TO LIVE WITH MR. FERGUSON AND MISS SIMMONDS AND THIS MARRIAGE GOES ON FOREVER AND AT SOME POINT MR. FERGUSON AND MR. PERKINS DIE, IS THE CHILD THEN ENTITLED TO BE A PART OF THE STATE, EACH OF THEM?

>> I DON'T SEE WHY THAT WOULD BE AGAINST PUBLIC POLICY.

CHILDREN CAN BENEFIT AND MR. FERGUSON COULD OF COURSE CRAFT A DOCUMENT WHICH UPON HIS DEATH HE MAY SEEK TO LEAVE HIS ESTATE TO OTHER PEOPLE.

I DON'T THINK THAT CREATES A PROBLEM.

THE PROBLEM INITIALLY CREATED BY THE WHOLE LEGITIMACY QUESTION WAS THE STATE DIDN'T WANT TO BE LEFT WITH CHILDREN BORN IN DASTARDLY WHO DIDN'T HAVE THE SUPPORT AND THE SUPPORT FELL TO THE STATE.

THAT WAS THE PROBLEM.

>> WOULDN'T YOU AGREE THERE IS ALSO INTEREST HERE RELATED TO THE INTACT MARRIAGE AND THE INTEGRITY OF THE INTACT MARRIAGE AND HAVING A STRANGER TO THE INTACT MARRIAGE COMING IN AND SAYING THAT'S MY CHILD.

IT WAS BORN IN THIS MARRIAGE BUT THAT IS MY CHILD.

I'M NOT SAYING YOU CAN'T DO THAT BUT THE WAY THIS IS STRUCTURED WOULD APPROPRIATELY TAKE INTO ACCOUNT THE INTERESTS AND PRESERVATION OF THE INTACT MARRIAGE AND AVOIDING UNNECESSARY DISRUPTION.

>> THERE WAS A CASE I CITED THE TALKED ABOUT THAT AND THERE HAS BEEN AN EXTRAMARITAL AFFAIR.

THERE HAS ARTIE BEEN A DISRUPTION TO THE MARRIAGE. WHETHER THIS MARRIAGE SURVIVES OR DOES NOT SURVIVE WILL HAVE NOTHING TO DO WITH MR. PERKINS AND THE FACT THAT THIS IS HIS CHILD AND HE WANTS TO FORM A RELATIONSHIP WITH THIS CHILD AND BE A STRUGGLE TO THE CHILD AND ANY APPLICABLE LAW, DMT IS DISRUPTIVE IN THIS CASE.

WE HAVE A BIRTH MOTHER AND THE BIOLOGICAL MOTHER AND EVEN OF THOSE FAMILIES --

>> ANYWHERE IN THIS CASE THIS IS NOT THE WAY THE CASE WAS BRIEFED.

YOUR ARGUMENT WAS I'M ALLOWED TO BRING THE ACTION THAT I DID AND IF YOU FIND THE STATUTE DOESN'T LET ME I AM MAKING AN EQUAL PROTECTION ARGUMENT.

THAT IS THE CASE BEFORE US.

>> BASED UPON --

>> WOULD YOU AGREE THAT BASED ON THE COMMON-LAW PRESUMPTION, IT WAS ESTABLISHED BY LAW IN THIS CASE?

>> I BELIEVE --

>> CHAPTER 747.011 ALLOWS AN ACTION TO BE BROUGHT TO

DETERMINE PATERNITY WHEN
PATERNITY HAS NOT BEEN
ESTABLISHED BY LAW?

>> MY TAKE ON THE STATUTE, THE
LANGUAGE OF 742.001 IS
CONVOLUTED BASED ON THE STATUS
OF THE LAW BECAUSE EVEN THAT
STATUTE TALKS ABOUT DETERMINING
PATERNITY WHERE PATERNITY WAS
NOT ESTABLISHED BY LAW SO THE
QUESTION BECOMES IS THE FACT THE
CHILD IS BORN INTO AN INTACT
MARRIAGE DOES THAT IMPACT
PATERNITY BY LAW?

>> YOU DISAGREE THAT IT DOES.

>> I AGREE THAT IT DOES BUT I
WOULD POINT OUT WE HAVE THE
LEGAL FATHER AND BIOLOGICAL OR
BIRTH FATHER AND THE LEGAL
FATHER DOESN'T HAVE TO HAVE
CONTRIBUTED ANY DNA TO THE CHILD
BUT THAT SHOULD NOT DIVEST UNDER
ALL THE STANDARDS WE HAVE UNDER
J TJ OR DMD, THE VALIDITY TO
COME AND ESTABLISH --

>> WHAT DOES HE DO IT UNDER?

I DON'T AGREE THAT STATUTE
DOESN'T ALLOW IT BUT IF IT IS
NOT UNDER THAT STATUTE ETERNITY
HAS BEEN ESTABLISHED UNDER WHAT
LEGAL MECHANISM DOES THAT CASE
GET BROUGHT?

>> THE CASE WAS BROUGHT UNDER
742.001.

>> THE FOURTH DISTRICT ASSUMED
IT SHOULD BE, NO ONE ARGUED,
DECLARES OR JUDGMENT ACTION.

>> THERE IS EQUAL PROTECTION
ARGUMENT BUT I WOULD ALSO ARGUE
THERE'S AN ARGUMENT BECAUSE THE
PROBLEM YOU PUT FORTH IS A
REALISTIC PROBLEM.

IF MR. PERKINS HAD ESTABLISHED
HE LOVED THIS CHILD AND WAS
CONTRIBUTING TO THE SUPPORT,
WHAT HAPPENS IF DURING THE
COURSE OF LITIGATION THE MOTHER
HAS SAID I'M NOT LETTING YOU SEE
THE CHILD ANYMORE.

NO RIGHTS TO THE CHILD, DON'T

CARE WHAT THE FOURTH DCA SAID, YOU ARE IN A POSITION WHERE YOU ARE BARRED BECAUSE YOU CAN'T ESTABLISH THOSE THINGS, BECOMES A SUBJECTIVE STANDARD.

WHAT HAPPENS TO PARTIES WHO COME TO MY OFFICE WHO SAY I WANT A RELATIONSHIP WITH THIS CHILD BUT THE MOTHER WON'T LET ME, AND IF I TELEPHONED HER SHE WOULD GET IT INJUNCTION.

>> THE FAMILY LAW SECTION TO THE LEGISLATURE AND ADDRESS IT BECAUSE A LOT OF WHAT YOU ARE TALKING AS POLICY DECISION THAT NEEDS TO BE ADDRESSED BY THE LEGISLATURE.

>> IT IS VERY PERTINENT BUT UNDER THIS CASE UNDER SMITH MRS. LANDERS, MR. PERKINS HAS SHOWN HE HAD A RELATIONSHIP WITH THIS CHILD, IS A LOVING AND SUPPORTIVE PARENTS, CONTRIBUTED FINANCIALLY, ALL THE RESPECT TO MR. VICTOR WAITE, IT IS NOT SUPPORTED, HIS INVOLVEMENT IN A STYLE THAT'S LIFE.

WE DO NOT BELIEVE BY VIRTUE OF THAT MARRIAGE THAT THAT SHOULD DEPRIVE MR. PERKINS OF HIS RIGHTS TO FORM A RELATIONSHIP WITH THIS CHILD AND WE BELIEVE ALL THE APPLICABLE LAW FROM THIS COURT AND IN ADDITION, MICHAEL H WAS SUPERSEDED BY STATUTE IN CALIFORNIA WHICH HAS LAWS IN PLACE TO DEAL WITH THIS VERY ISSUE.

EVEN THE STATUS OF THE UNITED STATES SUPREME COURT CASES, I THINK, GIVE PAUSE IN TERMS OF WHERE WE ARE IN FLORIDA IN RECOGNIZING BASED ON DNA EVIDENCE AND PUBLIC POLICY THE BIRTH FATHER'S HAVE THE RIGHT TO FORM RELATIONSHIPS AND PARTICIPATE IN THE REARING OF THEIR CHILDREN SO WE WOULD REQUEST THIS HONORABLE COURT AFFIRMED THE DECISION.

>> ONE MINUTE AND 16 SECONDS.
>> THE CASE LAWS, J TJ, THERE IS NO EVIDENCE OF THE CHILD AT ALL. ASKING THIS COURT.
>> ABOUT TWO LEGAL PARENTS.
>> FLORIDA LAW ALLOWS TWO MOTHERS IN THE STATUTE BUT THIS COURT FOUND THE CONSTITUTIONAL PRINCIPLES REQUIRE THE LEGAL MOTIVE.
HOW IS THAT ABOUT ONE PARENT?
>> WHEN THE CASE WAS BROUGHT AT THE TRIAL COURT, BASED ON THIS, YOU CAN HAVE TWO LEGAL MOMS AND I AGREE, TWO LEGAL MOMS, TWO LEGAL DADS AND YOU CAN'T HAVE THREE PARENTS.
YOU ONLY HAVE TWO PARENTS.
>> YOU DISAGREE WITH THE FACT THAT BY ESTABLISHING MR. PERKINS'S PATERNITY AND BECOMING A LEADER FATHER, IT DOES ESTABLISHES MR. FERGUSON AS THE FATHER?
>> YES IT DOES, IT WHOLEHEARTEDLY DOES AND IF IT HAPPENS THEY ARE GOING DOWN SLOWLY, SETTING A PRECEDENT WHERE ANY TIME, A FAMILY COULD HAVE A THIRD-PARTY SAY I AM THE BIOLOGICAL PARENT OF THE CHILD AND YOU CAN HAVE A SITUATION WHERE MARRIED COUPLES WHO NEVER HAD AN AFFAIR ARE SUBJECT TO PATERNITY ACTIONS.
AT ONE POINT IN TIME THE FAMILY SAYS WE DON'T HAVE TO WORRY ABOUT THAT.
THANK YOU.
>> COURT IS IN RECESS.