>> SUPREME COURT OF FLORIDA
IS NOW IN SESSION.
PLEASE BE SEATED.
>> NEXT CASE ON THE DOCKET, IS
D.H. ET. AL., VERSUS ADEPT
COMMUNITY SERVICES ET.AL.
>> PLEASE THE COURT.
>> YES, SIR.
>> MY NAME IS RICHARD FILSON.
WITH ALAN TALL LENFELD WE
REPRESENT THE CHILDREN.
D.H. AND L.H. THROUGH THEIR
GUARDIANS, RICHARD HARKINS.
I RESERVE FIVE MINUTES FOR
REBUTTAL.
WE'RE HERE TODAY SEEKING REVIEW
FROM THE SECOND DISTRICT.
THE COURT HELD, ESSENTIALLY THAT
WHERE A, AN ADULT WITH CAPACITY
DOES NOT EXIST, HAS KNOWLEDGE OF
A CHILD'S CAUSE OF ACTION, THE
CHILD'S CLAIM CAN BE BARRED
BEFORE IT CAN EVER BE COMMENCED.
THAT IS BASED ON RULE 1.210.
OF COURSE THE BERGER CASE WHICH
A LONG TIME AGO, BACK IN THE
'30s, HELD THAT, CAUSE OF
ACTION IS DOES NOT ACCRUE UNTIL
IT CAN BE COMMENCED AND
LOGICALLY, IN A CASE WITH A
CHILD THAT CAN NOT BRING AN
ACTION ON THEIR OWN BEHALF
UNLESS THEY HAVE A
REPRESENTATIVE OR LIKE
FIDUCIARY, THEY MUST RELY ON
SAID PERSON.
SAID PERSON ISN'T AWARE OF A
CAUSE OF ACTION, THEN LOGICALLY
AN ACTION CAN NEVER BE BROUGHT.
>> WHERE DOES IT SAY THAT IN THE
STATUTES ABOUT BEING AWARE?
>> IN A STATUTE
>> YES.
>> THERE IS NO STATUTE.
>> OKAY.
NOW, WE KNOW IN THE STATUTE OF
LIMITATIONS THERE ARE VARIOUS
PROVISIONS THAT DO REFER TO THE
DISCOVERY AS DISTINCT FROM OTHER
PROVISIONS THAT DO NOT, ISN'T

THAT CORRECT.
>> THAT IS CORRECT.
MEDICAL MALPRACTICE.
>> THIS PARTICULAR SIMPLE
NEGLIGENCE CLAIM IN THE STATUTE
THERE IS NO REFERENCE TO
DISCOVERY.
>> NO.
THE BERGER CASE PREDATED THE
STATUTE OF LIMITATIONS.
SO THIS IS A COMMON LAW
DOCTRINE.
>> LET ME ASK YOU THIS.
WHY WOULDN'T WE LOOK AT IT THIS
WAY?
THE LEGISLATURE HAS ADDRESSED
THIS ISSUE OF NON--- PROBLEMS
ASSOCIATED WITH THAT IN THE
TOLLING STATUTE.
THEY HAVE GOT A VERY CLEAR
PROVISION IN THE TOLLING STATUTE
THAT SAID THAT A STATUTE OF
LIMITATION IS TOLLED DURING THE
MINORITY OF THE PERSON WHO CAN
MAKE THE CLAIM.
WITH SOME EXCEPTIONS.
>> RIGHT.
>> THE EXCEPTIONS BEING, DURING
THE TIME THE PERIOD OF TIME, AT
WHICH A PARENT, GUARDIAN OR
GUARDIAN AD LITEM EXISTS, IF THE
PARENT, IF THERE IS ONE OF THOSE
THAT DOES NOT HAVE AN ADVERSE
INTEREST.
>> CORRECT.
>> OKAY.
I LOOK AT THIS, AND I LOOK AT
THIS CASE AND I SAY, IT LOOKS
LIKE HERE THERE IS A VERY CLEAR
PATH TO ANSWERING THE QUESTION
IN THIS CASE UNDER THE TOLLING
STATUTE.
THE LEGISLATURE HAD IN MIND HOW
THIS KIND OF SITUATION WOULD BE
DEALT WITH AND IT'S HERE AND
THEN, BUT THEN I SEE THAT, THAT
IS A PATH THAT REALLY HASN'T
BEEN FOLLOWED IN THE WAY THIS
CASE WAS ARGUED IN THE DISTRICT
COURT.

NOW, WHAT AM I MISSING?
>> ALL RIGHT.
LET ME, IT REQUIRES A TWO-PART
ANSWER, OKAY?
>> MAYBE THREE.
>> MAYBE THREE.
THE FIRST PART OF IT IS AS THIS
COURT NOTED IN HERNDON VERSUS
GRAHAM, THERE IS DIFFERENCE
BETWEEN A CRUEL TOLLING AND
EQUITABLE ESTOPPEL.
THEY'RE ALL THREE DIFFERENT
THINGS, CONCEPTS AND THEY HAVE
BEEN DEALT WITH DIFFERENTLY BY
THE COURT, IN DIFFERENT CONTEXTS
OVER THE YEARS.
THE BERGER DECISION, IN THIS
CASE LAW THAT WE'RE TALKING
ABOUT, WE HAVEN'T GOT TO IT YET,
BUT I UNDERSTAND THAT, AND I'M
TRYING TO ANSWER THE QUESTION,
DRAKE AND SAP, THAT TYPE OF CASE
LAW IS LOGICAL EXTENSION OF
BERGER.
YOU CAN'T BRING AN ACTION,
EXCUSE ME AN ACTION CAN'T ACCRUE
UNTIL IT IS COMMENCED.
>> WASN'T BERGER ABOUT THE
NON-EXISTENCE OF AN ENTITY THAT
COULD BE SUED?
>> YES.
IT SAYS BOTH WAYS.
IN OTHER WORDS, EITHER ENTITY
THAT DOESN'T EXIST OR AN ENTITY
TO SUE, RIGHT.
I AGREE WITH THAT YOUR HONOR.
IT HAS BEEN READ CONVERSELY.
SO YOU HAVE GOT THAT.
>> DOESN'T SAY ANYTHING ABOUT
KNOWLEDGE, DOES ISN'T.
>> NO, IT DOESN'T.
YOU READ THAT IN CONJUNCTION
WITH COURTS THAT HAVE READ THAT
IN CONJUNCTION WITH THE RULE
WHICH THIS COURT OBVIOUSLY
CREATED, 1.210.
A MINOR CAN'T BRING AN ACTION ON
HIS OWN BEHALF, ON HIS OWN.
HAS TO DO WITH A REPRESENTATIVE
OR LIKE FIDUCIARY AND THE COURTS

HAVE LOGICALLY, THIS HAS BEEN
THE COMMON LAW DOCTRINE UP UNTIL
ACTUALLY THIS OPINION WHICH OF
COURSE HAS-- THERE IS CONFLICT
WITH IT, WITH THE FOURTH
DISTRICT BUT MOVING BACK, THE
LAW HAS BEEN FOR YEARS, YOU
KNOW, I THINK DRAKE WAS DECIDED
IN '84, THAT CLEARLY A CAUSE OF
ACTION FOR A MINOR CHILD BECAUSE
OF 1.210, BERGER, NOT BECAUSE OF
THE STATUTE OF LIMITATIONS OF
THE LEGISLATURE OR THE TOLLING
STATUTE OR EQUITABLE ESTOPPEL OR
ANY OF THOSE OTHER THINGS WE'RE
GOING TO READ THIS LOGICALLY TO
SAY THIS, A CHILD CAN'T SUE.
WE KNOW THAT FROM THE RULE.
ONLY A REPRESENTATIVE CAN SUE.
WE'RE TALKING ABOUT A GUARDIAN
AD LITEM, OR WE'RE TALKING ABOUT
A NEXT FRIEND.
>> I THINK WHAT JUSTICE CANADY
IS SAYING THOUGH, THE STATUTE,
95.051 AS I'M SEEING THIS, H, IS
CLEAR THAT THIS IS A TOLLING
STATUTE, AND WAS THAT, WAS THAT
STATUTE ARGUED TO THE APPELLATE
COURT?
I MEAN I'M SEEING THEM SAY,
AFTER THEY TALK ABOUT KNEW OR
SHOULD HAVE KNOWN THEY TALK
ABOUT SOMEHOW THE GRANDPARENTS
COULD HAVE SUED AS NEXT FRIENDS.
I'M LOOKING AT THAT SAYING I
DON'T KNOW WHAT THEY'RE TALKING
ABOUT BECAUSE NEXT FRIENDS ARE
NOT IN THE STATUTE.
NEXT FRIENDS ARE SOMETHING,
SOMEONE ONCE THEY HAVE THE LEGAL
CAPACITY THEY BECOME PARENT AS
NEXT FRIENDS.
WAS THAT ARGUMENT THAT
95-POINT-NOT THE KNEW OR SHOULD
HAVE KNOWN, 95.051-H, PROVIDED
FOR TOLLING HERE ARGUED FOR THE
COURT AND SECOND DISTRICT.
>> AT MOTION OF SUMMARY JUDGMENT
AND MOTION FOR RECONSIDERATION,
THE SUMMARY JUDGMENT WAS

ENTERED, CAME FROM THE MOTION OF
RECONSIDERATION.
IT WAS DENIED.
THE MOTION OF SUMMARY JUDGMENT
TRIAL COUNSEL, IT IS IN THE
RECORD, MADE THE ARGUMENT THAT
THE ORDER CONFERRING APPOINTMENT
OF THE GUARDIAN AD LITEM PROGRAM
WASN'T SUFFICIENT--
>> DEPENDENCY CASE?
>> NO, NO, NO, NO.
IN THIS CASE, BUT I'M TALKING
ABOUT THE TRIAL COURT, NOT THE
SECOND DISTRICT.
>> BUT THE ORDER WITH RESPECT TO
THE GUARDIAN AD LITEM WAS IN THE
DEPENDENCY CASE?
>> CORRECT T WAS THE ORDER THAT
APPOINTED THE GUARDIAN AD LITEM.
>> OKAY.
SO IN THE SECOND DISTRICT THEY
MUST HAVE ARGUED SOMETHING LIKE
IT FOR THEM TO SAY THAT THE
GRANDPARENTS COULD HAVE SUED AS
NEXT FRIEND?
THE SECOND DISTRICT ADDRESSED
IT.
>> WHAT WE ARGUED IN THE TRIAL
COURT--
>> I'M TALKING ABOUT, THEY SAY
YOU WAIVED IT, YOU WAIVED THE
95.051-H ARGUMENT.
>> I THINK WHAT THEY WERE SAYING
IS, AND I THINK, IT IS IN THE
OPINION, THEY'RE NOT SAYING THAT
WE DIDN'T PRESERVE THAT ISSUE IN
THE TRIAL COURT.
THEY'RE SAYING IT WASN'T RAISED
IN THE BRIEFS BEFORE THE SECOND
DISTRICT.
>> YOU'RE AGREEING WITH THAT?
>> I'M AGREEING, AND I HATE TO
GIVE A CONVOLUTED ANSWER, BUT I
HAVE TO, AGREE IT WAS RAISED IN
THE TRIAL COURT.
AS THE SECOND DISTRICT THE
ARGUMENT MADE IN THE PREVIOUS
WAS NOT MADE IN THE ORDER .
I AGREE WITH THAT PART OF IT.
BUT WHAT WAS MADE WAS THE

GUARDIAN AD LITEM, JUST
UNDERSTAND THE CONTEXT OF THIS,
AS AT THE TIME THE BRIEFS WERE
SUBMITTED TO THE SECOND
DISTRICT, THE LAW OF THE LAND
CONCEDED BY PETITIONERS AND
RESPONDENTS AND BRIEF BY BOTH
WAS KNEW OR SHOULD HAVE KNOWN,
RELYING ON DRAKE AND SAP.
NOBODY DISAGREED WITH THAT.
NOBODY DISAGREED WITH THAT AT
THE TRIAL LEVEL.
THE SECOND DISTRICT BASICALLY
INDICATED BASED ON DAVIS VERSUS
MONAHAN YOU CAN'T RELY ON THOSE
CASES.
THE BRIEFS PREPARED BY THE
PARTIES RIGHT OR WRONG, THE
ARGUMENT ABOUT THE GUARD
WAS--
>> I HATE TO INTERRUPT YOU.
THE QUESTION HAS BEEN ASKED.
THIS BACKGROUND, WE KNOW THE
BACKGROUND.
>> OKAY.
>> BUT LET ME SEE IF I CAN
APPROACH IT THIS WAY.
THERE WAS AN ARGUMENT ABOUT THE
SCOPE OF THE AUTHORITY OF THE
GUARDIAN AD LITEM THAT WAS MADE
AT THE TRIAL COURT LEVEL.
>> YES.
>> BASICALLY THE ARGUMENT WAS
THAT THERE'S A GUARDIAN AD LITEM
BUT THAT GUARDIAN AD LITEM CAN
NOT BRING A SUIT ON THESE
CLAIMS.
>> CORRECT.
>> THAT WAS MADE IN THE TRIAL
COURT.
BUT THAT ARGUMENT WAS NOT MADE
IN THE APPELLATE COURT, ISN'T
THAT CORRECT?
>> WHAT WAS MADE IN THE
APPELLATE COURT--
>> I'M ASKING YOU WHETHER THAT
ARGUMENT WAS MADE IN THE APPLE
COURT?
>> NOT BASED ON THE ORDER,
CORRECT.

>> BASED ON THE ORDER OR BASED
ON ANYTHING ELSE.
>> THERE WAS ENLIGHTENED
ARGUMENT MADE BUT KNEW OR SHOULD
HAVE KNOWN GUARDIAN AD-LITEM
ARGUMENT.
>> HERE IS THE CURIOUS THING.
AN ARGUMENT IS MADE, WE DEAL
WITH FUNDAMENTAL ERROR.
PEOPLE COMING UP CLAIMING
FUNDAMENTAL ERROR.
TYPICALLY FUNDAMENTAL ERROR IS
WHERE NOBODY MADE AN ARGUMENT.
HERE THE ARGUMENT WAS MADE!
THE ARGUMENT WAS MADE IN THE
TRIAL COURT AND THEN FOR SOME
REASON IT WAS NOT MADE IN THE
APPELLATE COURT.
AND THAT, ISN'T THAT WHAT WE'RE
FACING HERE?
>> WHAT YOU'RE FACING HERE IS
THAT THE ARGUMENT WAS NOT MADE
IN THE BRIEF THAT WAS FILED WITH
THE SECOND DISTRICT BASED ON THE
ORDER.
WHAT WAS MADE WAS THAT THE
GUARDIAN AD LITEM WITHOUT
KNOWLEDGE WAS NOT A GUARDIAN
AD LITEM WHO COULD PROCEED.
>> MAYBE I-- I, THE GUARDIAN
AD LITEM ISSUE IS NOT WHAT I WAS
ASKING YOU ABOUT.
>> I'M SORRY.
>> THAT I WAS.
THE SECOND DISTRICT WITHOUT
SAYING IT WASN'T PRESERVED, THE
MAJORITY OPINION SAID THE
GRANDPARENTS WOULD HAVE SUED AS
NEXT FRIENDS.
OKAY.
FOR THEM TO ADDRESS THAT, NOT
THE GUARDIAN AD LITEM BUT THE
GRANDPARENTS COULD HAVE BEEN
NEXT FRIENDS, DID THEY JUST PULL
THAT OUT OF THE HAT TO SAY THAT
THE GRANDPARENTS COULD HAVE
SUED?
>> WE ARGUED IN THE TRIAL LEVEL
THAT, BEFORE THE SECOND
DISTRICT, THAT THE GRANDPARENTS

DID NOT HAVE THE CAPACITY TO
FILE SUIT SO THEY APPOINTED
PERMANENT GUARDIANS.
>> LET'S GO OVER, THE SECOND
DISTRICT REACHED THAT ARGUMENT.
>> RIGHT.
>> WHICH IS THE GRANDPARENTS
SHOULD HAVE BEEN THE PEOPLE TO
BRING THE CASE.
BUT WHAT I'M SAYING, AND THIS IS
A FRIENDLY QUESTION, IF YOU LOOK
AT SUBSECTION H, NEXT FRIEND
ISN'T IN THERE OF THEY HAVE TO
EITHER BE THE PARENT, THE
GUARDIAN, WHICH THEY WERE NOT
UNTIL THEY BECAME PERMANENT
GUARDIANS, OR A GUARDIAN
AD LITEM.
SO THIS IS HELPFUL TO YOU AS FAR
AS PRESERVATION, AS FAR AS THE
GRANDPARENTS STATUS.
>> RIGHT.
>> BUT-- I DON'T KNOW.
BUT I DO KNOW THIS.
I THINK THEY WERE TALKING ABOUT
THE RULE 1.210.
I DON'T THINK THEY WERE TALKING
ABOUT--
>> YOU DISAGREE WITH THAT,
CORRECT?
>> YES.
>> OKAY.
LET ME GET TO 1.210.
IT SAYS THAT, AND INFANT OR
INCOMPETENT PERSON CAN SUE
THROUGH A REPRESENTATIVE SUCH AS
A GUARDIAN.
OR IF THEY HAVE DO NOT HAVE A
REPRESENTATIVE SUCH AS A
GUARDIAN, ANYBODY ELSE'S NEXT OF
FRIEND, PROVIDED THAT, UNDER
THOSE CIRCUMSTANCES THE COURT
SHALL APPOINT A GUARDIAN
AD LITEM.
>> RIGHT.
>> THE RULE SPECIFICALLY SAYS IT
DOESN'T HAVE TO BE A GUARDIAN,
I'M HAVING A HARD TIME
UNDERSTANDING WHY YOU THINK THE
GRANDPARENTS WOULD NOT FIT UNDER

RULE 1.210 AS NEXT FRIENDS?
>> I CAN ABSOLUTELY ANSWER THAT
QUESTION DIRECTLY.
IT IS THIS.
>> THAT IS REFRESHING.
>> THE CONTEXT OF THIS IS
IMPORTANT.
THIS WAS A, THIS CASE ARISES
FROM ALLEGATIONS IN THE
COMPLAINT THAT WE INDICATE THAT
THE MOTHER WAS UNFIT TO CARE FOR
THE CHILDREN BECAUSE OF HER
MENTAL AND PHYSICAL LIMITATIONS
AND THEIR RISK OF HARM.
OKAY.
WHEN WAS ALL THE TIMING OF THIS
HAPPENING?
IT WAS HAPPENING IN THE
DEPENDENCY PROCEEDING.
THE RESPONDENTS TAKE THE
POSITION WHEN THEY WERE, WHEN
THE CHILDREN WERE REMOVED FROM
THE MOM, AND, BASICALLY
SHELTERED WITH THE GRANDPARENTS
AND THERE WAS A TEMPORARY ORDER,
AT THAT POINT THE STATUTE WAS
RUNNING.
WE'RE TAKING A POSITION, UNTIL
THEY HAD STATUS AS PERMANENT
GUARDIANS, IT DID NOT RUN AND
WE'RE FINE WITH THE STATUTE OF
LIMITATIONS.
THE REASON THEY COULD NOT BE,
THEY CAN'T HAVE AS THE SECOND
DISTRICT RECOGNIZED, YOU CAN'T
HAVE A REPRESENTATIVE OR NEXT
FRIEND WHO HAS CONFLICT OF
INTEREST.
THEY TOOK THE POSITION THAT
THERE IS A PARENT INVOLVED.
I MEAN, THAT EXISTS.
ALL THAT HAPPENED AT THAT POINT
IN TIME--
>> WHERE DOES IT SAY THAT IN THE
RULE?
IT SAYS ANYBODY, IF THERE IS NO
PROPER GUARDIAN OR SIMILAR
FIDUCIARY THEN ANYBODY CAN BE
NEXT OF FRIEND BUT THE
PROTECTIVE PART IS THE COURT HAS

TO APPOINT A GUARDIAN FOR THAT
CASE.
>> OKAY.
THE D.H., THE OPINION WE'RE HERE
ON, THE COURT CITES KINGSLEY
VERSUS KINGSLEY, MUST BE ADULT
OF REASONABLE INTEGRITY AND
INTERESTS WHO DOES NOT CONFLICT
WITH THE MINOR HE OR SHE
REPRESENTS THE HARKINS WERE
GRANDPARENTS.
THE MOTHER HAD NOT HAD PA
PERSONAL RIGHTS TERMINATED AT
THAT POINT.
THERE WAS DEPENDENCY PETITION
AND CHILDREN SHELTERED BUT NO
ADJUDICATION.
THE EFFECT OF THIS DECISION,
ALLOWS ANYBODY, NOT JUST THE
HARKINS, GRANDPARENTS, BUT
REQUIRES, FOSTER PARENTS,
GRANDPARENTS, SOCIAL SERVICE
AGENCIES, GUARDIAN AD LITEM,
PROGRAM, EVERYBODY, ESSENTIALLY
IN THE WORLD WHO KNOWS OF IT,
YOU KNOW--
>> IN, IT SEEMS LIKE THESE RULES
ARE FASHIONED TO GIVE THE MOST
PROTECTION FOR KIDS.
ANYBODY CAN BRING VIEW AND THE
GUARDIAN AD LITEM CAN BE
APPOINTED BUT IF THERE IS NOBODY
UNDER THE TOLLING PROVISION THAT
HAS PLENARY AUTHORITY FOR THE
GOODWILL OF THAT KID, WHO
DOESN'T HAVE A CONFLICT OF
INTEREST, THEN THE STATUTE'S
TOLLED.
IF THERE IS NOT A PARENT WITHOUT
A CONFLICT OR A GUARDIAN WITHOUT
A CONFLICT, OR AND I AGREE WITH
YOUR INTERPRETATION, A
GUARDIAN-APPOINTED PURSUANT TO
THIS RULE FOR THAT PARTICULAR
MATTER, THEN IT IS TOLLED.
IT WAS TOLLED IN THIS CASE I
WOULD THINK.
>> RIGHT.
>> THESE THINGS PROVIDE MAXIMUM
AVAILABILITY FOR ANYONE TO SUE,

BUT PROTECTION FOR IF THERE IS
NOBODY WITHOUT SPECIFIC FOCUS.
>> I WANT TO SAY SOMETHING
AGAIN.
I REALIZE THE GRANDPARENTS,
LISTEN, I'M A GRANDPARENT, IF
I'M LOOKING AT THIS AS A
COMPLETE STRANGER, I COULD SUE
DCF.
WHAT, THEY GOT AN ABUSE REPORT.
I COULD SUE THE GRANDPARENTS
BECAUSE THEY WERE KNOWING
SOMETHING WAS GOING ON.
I COULD SUE THE AGENCY.
BUT NONE OF THIS, CAN OCCUR
UNTIL AFTER THE DEPENDENCY IS
ADJUDICATED.
>> THAT'S RIGHT.
>> SO WHAT WE'VE GOT AGAIN THE
IMPLICATIONS OF THIS OPINION AS
SOMEBODY THAT HAS SEEN THIS
DEPENDENCY SYSTEM IN OPERATION
IS DEVASTATING.
IF SOMEBODY WHO WAS ACTING IN
THE DEPENDENCY CASE WAS
OBLIGATED TO BRING A NEGLIGENCE
CASE, BEFORE THEY, THE
DEPENDENCY CASE WAS FINISHED.
I'M JUST TRYING TO UNDERSTAND--
>> FLIES IN THE FACE OF CASES
LIKE TALLAHASSEE MEMORIAL
HOSPITAL WHERE, YOU'RE SAYING,
WELL, THE PARENTS DIDN'T HAVE A
CONFLICT OF INTEREST AND YOU'RE
TRYING TO MAKE DECISIONS FOR
THEM.
THIS COURT SAID OVER AND OVER
AGAIN, GRANDPARENTS DON'T HAVE
RIGHTS EQUAL TO A PARENT.
THIS LADY'S AND MOTHER'S
PARENTAL RIGHTS HAD NOT BEEN
TERMINATED.
NOTHING HAD HAPPENED.
THE PROBLEM WITH 1.210
APPLICATION THEY COULD BE NEXT
FRIENDS, THERE WAS A PARENT.
THERE WAS NO ADJUDICATION SHE
WAS A BAD-- ADJUDICATION.
THAT SHE WAS A BAD PARENT.
SHE WAS, THEY WERE TRYING TO

TAKE HER BABY AWAY, HER BABIES
AWAY, AND THE COURT HADN'T RULED
ON IT YET.
SO AT THE POINT THE DEPENDENCY
ORDER--
>> THE STRUGGLE I'M HAVING,
YOU'RE BASICALLY MAKING A POLICY
ARGUMENT WHY WE SHOULD REED
SOMETHING INTO THE STATUTE OF
LIMITATIONS WHEN THE EXACT
PROBLEM THAT YOU'RE TALKING
ABOUT, THERE WAS NO PARENT
WITHOUT A CONFLICT.
THERE WAS NO GUARDIAN UNTIL THE
PENDENCY WAS OVER, AND NO
GUARDIAN AD LITEM WAS TAKEN CARE
OF BIT TOLLING PROVISION.
THE TOLLING PROVISION TAKES CARE
OF IT.
DURING THE DEPENDENCY
PROCEEDING THIS IS TOLLED.
>> THAT IS THE CLEAR PATH I WAS
TALKING ABOUT.
>> SO THE STATUTE TAKES CARE OF
THE PROBLEM.
SO I'M--
>> BUT THE SECOND DISTRICT COURT
DID NOT HAVE THE BENEFIT OF AN
ARGUMENT WITH RESPECT TO THE
SCOPE OF THE GUARDIAN AD LITEM'S
AUTHORITY.
>> LET ME ANSWER IT THIS WAY.
A GUARDIAN AD LITEM IS NOT LIKE
A GENERAL.
GENERAL GUARDIAN REPRESENTS THE
CHILD FOR ALL PURPOSES.
A GUARDIAN AD LITEM REPRESENTS A
CHILD FOR SPECIFIC INTEREST.
>> I ABSOLUTELY AGREE.
100% RIGHT.
>> IF YOU DON'T KNOW WHY YOU'RE
A GUARDIAN AD LITEM, THEN YOU'RE
A, NOT A GUARDIAN AD LITEM.
>> I THINK WHAT YOU'RE SAYING IS
INDISPUTABLE.
HOWEVER, THAT WAS NOT SOMETHING
THAT WAS ARGUED TO THE SECOND
DISTRICT COURT, IS IT?
>> OH, YES IT IS.
IT WAS ARGUED THAT THE GUARDIAN

AD LITEM WAS NOT AWARE--
>> DID NOT HAVE KNOWLEDGE.
>> DID NOT HAVE KNOWLEDGE OF A
CAUSE OF ACTION.
>> THAT IS A DIFFERENT ISSUE
THAN THE SCOPE OF THE AUTHORITY
OF GUARDIAN AD LITEM.
YOU AGREE IN YOUR BRIEF.
>> I AGREE WITH THAT.
>> THAT IS WHY YOU ARGUE FOR THE
FUNDAMENTAL ERROR.
>> I'M BASICALLY SAYING IF A
GUARDIAN AD LITEM IS APPOINTED
TO REPRESENT SPECIAL INTERESTS
AND THE SPECIAL INTERESTS ARE TO
BRING A CAUSE OF ACTION, IF I'M
ARGUING IN MY BRIEF THAT THE
GUARDIAN AD LITEM DON'T KNOW OF
A CAUSE OF ACTION, THEN
OBVIOUSLY THEY'RE NOT A GUARDIAN
AD LITEM FOR ANY PURPOSE.
>> I STILL WANT TO UNDERSTAND
THIS.
YOU'RE WAY INTO YOUR REBUTTAL,
BUT I'M GOING BACK TO WHAT I
ASKED.
THE SECOND DISTRICT IN THE
SECOND, AFTER THEY SAY IT'S NOT
KNEW OR SHOULD HAVE KNOWN, WHICH
IS THE BASICALLY FOR THE
CONFLICT SHOULD HAVE KNOWN, FOR
SAKE OF ARGUMENT THE LAW AS
PARTIES PRESENTED IT, WAS THERE
AN ADULT CAPABLE OF BRINGING
SUIT?
THEY THEN TALK ABOUT NEXT
FRIEND.
>> RIGHT.
>> THEY TALK ABOUT THE RULE,
THEY SAY YOUR CLIENTS COULD--
THIS IS WHY TO ME THEY ARE
FALLING ON THEIR FACE BECAUSE
YOUR CLIENT TO COULD NOT HAVE
BEEN ASKED FRIENDS AND THE
STATUTE JUSTICE KENNEDY AND
JUSTICE LAWSON REFERRED TO DOES
NOT REFER TO NEXT FRIENDS EXCEPT
IF YOU READ IN CONJUNCTION WITH
THE RULES.
SEEMS LIKE THEY ADDRESS THE

MAJORITY OPINION THE AUTHORITY
OF THE GRANDPARENTS WHO BROUGHT
THE ACTION, DIDN'T SAY?
>> YES.
IN THE SECOND DCS, THEY DID.
>> 7 SECONDS LEFT FOR REBUTTAL.
>> WHENEVER YOU ARE READY.
>> MAY IT PLEASE THE COURT?
THOMASINA MORE ON BEHALF OF THE
GUARDIAN AD LITEM PROGRAM, THIS
QUESTION WAS LEFT OVER BY THE
SECOND DISTRICT COURT OF APPEAL,
WHETHER IT IS PURSUANT TO
CHAPTER 39, GUARDIAN AD LITEM
FOR THE PURPOSE OF EXTOLLING THE
STATUTE IN STATUTE 95 OF THE
FLORIDA STATUTE.
WE ASK THE COURT TO FIND THE
TERM IS LIMITING WORDS.
BASED ON THE BIDDING WORDS THE
GUARDIAN AD LITEM IS NOT A
GUARDIAN AD LITEM FOR PURPOSES
--
>> YOU SEE IN THE MAJORITY
OPINION, YOU WERE PARTY TO THE
LAWSUIT IN THE OPINION, THE
JUDGE TALKED ABOUT GUARDIAN AD
LITEM.
THE MAJORITY OPINION ONLY TALKS
ABOUT THE GRANDPARENTS HAVING
BROUGHT THIS CASE AS NEXT
FRIEND.
MY QUESTION FOR YOU IS THE
GUARDIAN AD LITEM, IN LIEU OF AN
ATTORNEY FOR THE CHILD, IS IN
THERE FROM THE BEGINNING AS A
PROGRAM.
WHEN THE GUARDIAN AD LITEM
PROGRAM SEES THAT THE CHILD HAS
BEEN ABUSED AND NEGLECTED WHICH
IS WHY THEY COME INTO THE
DEPENDENCY SYSTEM AND SAY
HYPOTHETICALLY, DURING THE
COURSE OF THAT DEPENDENCY CASE,
THAT THE CHILD IS INJURED IN AN
AUTOMOBILE ACCIDENT.
DOES THE GUARDIAN AD LITEM, ANY
OF THE LEGAL ISSUES AS TO
ADDITIONAL INJURY TO THE CHILD
OR THE CAUSE OF THE UNDERLYING

INJURY, IS THAT SOMETHING
ANYBODY IN THE DEPENDENCY ACTION
LOOKING TO SEE WHO THEY COULD
SUE ON BEHALF OF THE CHILD, DOES
THAT EVER COME UP?
>> IT HAS COME UP WITH A
GUARDIAN AD LITEM THAT HAD AN
ACCIDENT WHILE TRANSPORTING
CHILDREN.
>> THE CHILD HAVING THE
ACCIDENT.
>> THE CHILDREN WERE INJURED AND
THE GUARDIAN AD LITEM NOTIFIED
THE COURT AND ALL PARTIES THERE
WAS CAUSE OF ACTION AND
REQUESTED AN ATTORNEY FOR THE
CHILDREN IN THAT MATTER.
IT IS LIMITED BY STATUTE TO
APPEARING IN THE DEPENDENCY
PROCEEDINGS.
>> THE GUARDIAN AD LITEM SEES
THE CAUSE OF ABUSE OR NEGLECT IS
NOT JUST THE MOTHER BUT IT WAS
DCF SHOULD HAVE DONE SOMETHING
EARLIER OR THERE WERE OTHER
PARTIES THAT MIGHT HAVE CAUSED
INJURY TO THE CHILD.
DOES THE GUARDIAN AD LITEM
PROGRAM SEEK TO GET A LAWSUIT ON
BEHALF OF THE CHILD IN THE
COURSE OF DEPENDENCY ACTION?
>> WE DO NOT SOLICIT AN
ATTORNEY.
>> LOOKING FOR, UNLESS IT
HAPPENED IN THE GUARDIAN AD
LITEM'S CAR, ANY POSSIBLE CAUSES
OF ACTION TO SUE PEOPLE ON
BEHALF OF THE CHILD ON BEHALF OF
THEIR INJURIES.
>> WE HAVE LIMITED RESOURCES
ADVOCATE -- THE CASE KNOWS, BUT
WHETHER THE GUARDIAN AD LITEM IS
IN THE DEPENDENCY COURT TO
ANALYZE CAUSES OF ACTION OR HAS
THAT RESPONSIBILITY WOULD NOT
AFFECT ALTERING THE STATUTE OF
LIMITATIONS GIVEN THE TOLLING
PROVISIONS.
BECAUSE THE GUARDIAN AD LITEM IS
NOT APPOINTED IN THE MANNER

JUSTICE LAWSON WAS DISCUSSING
AND AS WE ARGUED IN OUR BRIEF,
THE STATUTE OF LIMITATIONS, THE
CLOCK WOULD NOT START.
>> YOU TAKE A POSITION ON THE
BASIS OF THE SECOND DISTRICT'S
RULING THAT THE GRANDPARENTS
NEXT FRIENDS COULD HAVE
INSTITUTED A SUIT DURING THE
COURSE OF DEPENDENCY ACTION?
>> WE DO NOT TAKE A POSITION BUT
WHETHER THE GRANDPARENTS COULD
HAVE INSTITUTED IT WOULD NOT
AFFECT THE TOLLING PROVISIONS.
THE TOLLING PROVISIONS ARE VERY
BROAD.
IS THE JUSTICE MENTIONED, TO
PROTECT THE CHILD TO THE EXTENT
POSSIBLE, THEY HAVE LIMITED IT
TO TWO POSSIBLE PEOPLE AND IT IS
IRRELEVANT TO THE TOLLING
PROVISION.
>> YOU WANT TO GIVE THE BROADEST
PROTECTION BECAUSE THE MINOR IS
NOT CAPABLE OF BRINGING ACTION
ON HIS OR HER BEHALF.
>> FOLLOWING THAT UP, WE ASK THE
COURT NOT ONLY TO LOOK AT
STATUTORY LIMITATIONS BUT THE
TERM GUARDIAN AD LITEM AS
LIMITING LANGUAGE, RECOGNIZED --
>> THE SUIT.
>> THE QUESTION IS WHAT SUIT ARE
THEY TALKING ABOUT?
YOUR POINT IS THE SUIT RELATED
TO THE MANNER AT ISSUE.
>> ABSOLUTELY.
THAT WOULD GIVE PROTECTION TO
CHAPTER 61, 744 AND IF -- IT
GIVES THE BROADEST PROTECTION IN
OUR VIEW TO FLORIDA'S CHILDREN
AND WE ASK THE COURT TO FIND
THAT.
>> THE CONCERN AS I UNDERSTAND
THE OPINION, ALL THEY WERE
SAYING WAS WE DIDN'T REACH THAT
ISSUE.
I COULD AGREE WITH YOU, BUT WHY
DO WE -- WHAT IS THERE TO
CORRECT?

THE ISSUE WAS RAVED.
>> THEY MADE THE FINDING THE
GUARDIAN AD LITEM.
>> THEY DIDN'T SAY ANYTHING
ABOUT WAIVER BUT THE
CONCURRENCE.
I AM HEARING YOU SAY THIS IS
INCORRECT THAT THE GRANDPARENTS
WHO WERE NOT THE GUARDIAN COULD
HAVE BROUGHT THE CASE AS NEXT
FRIEND IN THE MAJORITY OPINION.
>> SUBSECTION 8 OF THE MAJORITY
OPINION.
>> THAT IS NOT THEY WOULDN'T BE
OBLIGATED TO DO IT BECAUSE
OTHERWISE YOU WOULD HAVE ALL
THESE PEOPLE WITH THEIR FRIENDS
RUNNING AROUND.
>> ISN'T THAT EXACTLY WHY THE
TOLLING PROVISION EXISTS?
A PARENT WITH A CONFLICT OF
INTEREST WITHOUT GUARDIAN AD
LITEM BRING A SUIT, DISMISS IT,
IN A SITUATION THAT THANKFULLY
THE STATUTE, EVEN THOUGH THEY
COULD SUE IT WOULDN'T TOTAL THE
STATUTE.
SOMEONE ELSE COULD UNDO THAT AND
THE STATUTE OF LIMITATIONS WOULD
NOT BE PART OF IT.
>> THE OPINION ADDRESSED NEXT TO
FRIEND IN TERMS OF WHETHER THE
CAUSE OF ACTION ACCRUED AND
BECAUSE THERE WAS A CAUSE OF
ACTION THAT WAS MY
INTERPRETATION.
THEY TURN TO FOOTNOTE 5 OF THE
OPINION RECOGNIZING THAT THE
ARGUMENT WAS NOT MADE REGARDING
THE SCOPE OF THE GUARDIAN AD
LITEM'S AUTHORITY AND WHETHER
THEY WERE PLENARY AND NOT GOING
TO ADDRESS THAT PARTICULAR
ARGUMENT SO IF I MAY, THEY DID
MAKE A BROAD SWEEPING ARGUMENT
WHETHER THE GUARDIAN AD LITEM
PROGRAM COULD AFFECT TOLLING
WHICH IS WHY WE WANTED TO PURSUE
THE AMICUS BRIEF AND MAKE SURE
THE RULE WAS ADDRESSED, THANK

YOU VERY MUCH.
>> MAY IT PLEASE THE COURT,
ADEPT COMMUNITY SERVICES.
TO ANSWER A QUESTION YOU ASKED.
THE REASON WE ARGUED WHAT WE
ARGUED, WE WERE RESPONDING TO
WHAT WAS PUT FORTH, THE TOLLING
ISSUE WAS NOT RAISED.
>> I AM THINKING IF WE AGREE
WITH THE SECOND DISTRICT, THE
TWINS HAVE MALPRACTICE ACTION
AGAINST THEIR LAWYERS BECAUSE IT
SHOULD HAVE BEEN RAISED BUT AT
THE TIME, WHAT THEY SAID WAS
THAT THE -- WHICH IT HAVE BEEN
KNOWN WAS THE STANDARD.
THE ISSUE OF ADDRESSING THE NEW
OR SHOULD HAVE KNOWN WAS THE
PRIMARY ARGUMENT BEING
ADDRESSED.
ISN'T THAT CORRECT?
>> THAT IS CLOSE TO CORRECT,
THEY SHOULD HAVE KNOWN, WE
ARGUED AGAINST THE NEWER SHOULD
HAVE KNOWN STANDARD.
BOTH WERE WRONG.
>> ON BEHALF OF A MINOR IT GOES
BACK TO -- 95.051 WAS NODDING
ANYBODY'S BRIEF.
>> IT WAS NOT.
IT WAS ONLY NOMINALLY RAISED FOR
THE TRIAL COURT.
MR. FILSON THROUGHOUT THE WRONG
STATUTE, 39822, 3.822 IS WHAT HE
WAS TALKING ABOUT.
AND IT WAS WAY BEFORE THAT --
>> WE ARE TALKING ABOUT THE
MINOR CHILD.
HOW COULD SOMEBODY AT THE TIME,
THE LEGAL AUTHORITY TO REPRESENT
THE CHILD'S INTEREST, AND WAVE
SOMETHING, EVEN IF WE TAKE IT AT
THE APPELLATE LEVEL, ISN'T IT
STILL THAT THE SECOND DISTRICT
ADDRESSED THE ISSUE THAT THE
GRANDPARENTS HAVE THE AUTHORITY
TO SUE AT THE TIME THEY KNEW OR
SHOULD HAVE KNOWN OF THE
CHILDREN'S INJURIES, BECAUSE
THEY DON'T TALK ABOUT THE

STATUTE BUT THEY TALK ABOUT THE
RULE.
DO YOU AGREE THAT THE SECOND
DISTRICT ADDRESSED THAT, THE
GRANDPARENTS COULD HAVE SUED?
>> I DO AGREE WITH THAT AND I
KNOW THERE'S A DIFFERENT OPINION
OF THAT BUT I WANT TO TALK ABOUT
SOMETHING JUSTICE LAWSON RAISED
IN CONJUNCTION WITH THAT, THE
NEXT FRIEND COULD HAVE SETTLED
THE MATTER, THAT IS NOT TRUE.
THE GUARDIAN AD LITEM WOULD NOT
HAVE BEEN APPOINTED THERE.
IN FACT I HAVE ACTED AS A
GUARDIAN AD LITEM TO MAKE SURE
THE SETTLEMENT FUNDS ARE BEING
PROPERLY DISPERSED AND SPEND.
THERE ARE DIFFERENT REASONS
DARTY AND AD LITEMS ARE
APPOINTED AND NONE ISSUE PLENARY
POWERS TO THE GUARDIAN AD LITEM
BUT THE COURT ORDER IN THIS CASE
SUGGESTED THE POWERS GIVEN TO
THE GUARDIAN AD LITEM WERE NOT
WITH LIMITATION.
>> WHICH --
>> THE DEPENDENCY ORDER.
>> THE GUARDIAN AND ITEM PROGRAM
ON CHAPTER 39 TO REPRESENT
CHILDREN AS GUARDIANS AD LITEM
IS THE STATUTE SOMEBODY WAS
RELYING ON TO SAY THEY WOULD
HAVE AUTHORITY TO SUE ON BEHALF
OF THE CHILD AND SUE PEOPLE FOR
NEGLIGENCE.
>> KNOW.
MR. FILSON NOMINALLY RAISED IN
AN ARGUMENT ON SUMMARY ARGUMENT,
DIDN'T HAVE ANY ARGUMENT, HE
JUST SAID THE NAME OF THE
STATUTE.
WHAT I'M SUGGESTING IS THE
DEPENDENCY COURT PROCEEDING, THE
COURT WHICH APPOINTED THE
GUARDIAN OF LIGHT WAS NOT
LIMITING POWERS OF THE GUARDIAN
AD LITEM.
>> THAT WAS NOT REALLY A MATTER
THAT WAS ARGUED IN THE DISTRICT

COURT, WAS IT?
>> CORRECT, NONE OF THESE WERE.
>> WHY ARE WE TALKING ABOUT IT
HERE?
THE ISSUE COULD HAVE BEEN RAISED
BUT WAS WAIVED IN THE TRIAL
COURT, AND THE COUNTERARGUMENT
TO THAT, BUT ALL OF THIS COMES
DOWN TO AN ARGUMENT ABOUT THE
RIGHT ANSWER IN THE CASE BEING
ON THE BASIS THAT WAS NEVER
PRESENTED TO THE DISTRICT COURT.
WE ARE BEING ASKED TO REVERSE
THE DISTRICT COURT ON THE BASIS
OF AN ISSUE THAT WAS NEVER
PRESENTED TO THE DISTRICT.
>> I TOTALLY AGREE BUT THE ISSUE
BECOMES ONE OF POLICY.
AND IN THE BEST INTEREST OF THE
CHILDREN, THAT IS WHAT THE
GUARDIAN AT LIGHT HIM IS
APPOINTED TO.
>> BACK TO ADDRESSING THE
MERITS.
IT IS A MATTER OF WAIVER AND
THEREFORE WE WOULDN'T ADDRESS IT
AND YOU WOULD BE HAPPY WITH
THAT.
MY QUESTION TO YOU IS IT APPEARS
THERE IS A CONFLICT ON THE ISSUE
OF ON BEHALF OF A MINOR, THE
STANDARD SURVIVES BECAUSE THE
FOURTH DISTRICT SAYS IT DOES,
NOTWITHSTANDING THE DAVIS CASE.
IF THE CONFLICT EXISTS AN ISSUE
HAS BEEN PROPERLY RAISED,
THOUSANDS OF CHILDREN, WHAT RULE
OF LAW PREVENTS US FROM LOOKING
AT AN ISSUE THAT WAS BRIEFED
HERE BASED ON A CONFLICT THAT
DOES EXIST SO THAT WE HAVE
JURISDICTION TO PROTECT
SOMETHING THAT COULD RESULT IN
INJUSTICE TO THOUSANDS OF
CHILDREN WHO ARE CAUGHT, ABUSED
AND NEGLECTED IN THE DEPENDENCY
SYSTEM.
>> SEPARATION OF POWERS DOES
THAT.
WE HAVE STATUTE THAT SAYS WHAT

IT SAYS.
DURING THE TIME A GUARDIAN AD
LITEM EXISTS, THE STATUTE OF
LIMITATIONS IS NOT TOLD.
>> GOING BACK TO SECTOR 95, THE
GUARDIAN AD LITEM, YOU ASSUME
GUARDIAN AD LITEM MEANS CHAPTER
39, GUARDIAN AD LITEM BECAUSE
YOU LOOK AT THE FACT THAT AD
LITEM MEANS FOR THE ACTIONS OF
THIS WAS THERE FOR CHAPTER 39
NOT FOR BRINGING LAWSUITS ON
BEHALF OF THE MINOR CHILDREN.
>> THIS GUARDIAN AT LIGHT WAS
THERE TO ACT IN THE BEST
INTEREST OF THE CHILDREN AND
REVIEW DOCUMENTS AS WAS SAID IN
THE ORDER AND IF THAT MEANT
SOMETHING HAD TO BE REPORTED TO
THE COURT, COUNSEL FOR THE
GUARDIAN AD LITEM ALREADY
CONCEDED THAT THERE WAS THE
ABILITY TO DO THAT BUT IF SHE
HASN'T IT IS IN THE RECORD OF
THIS CASE THAT HAD THAT EXISTED
HAD THAT SITUATION EXISTED THE
GUARDIAN AD LITEM WOULD HAVE TO
DO SOMETHING ABOUT IT.
THE PROBLEM IS AT THE TRIAL
LEVEL AND SECOND DCA LEVEL, IT
WAS ADDRESSED IN THE FASHION OF
GUARDIAN ONLINE AND DIDN'T KNOW
THEY SHOULD HAVE DONE SOMETHING
ABOUT IT.
>> WHAT WOULD HAVE HAPPENED IF
THE GUARDIAN AD LITEM HAD KNOWN
IT, THEY WERE APPOINTED IN THE
DEPENDENCY CASE.
YOU AGREE WITH THAT.
IN THE DEPENDENCY CASE.
WHAT COULD THEY HAVE DONE THAT
WOULD HAVE NEGATED THE STATUTE?
WHAT COULD THE GUARDIAN OF LIGHT
HIM HAVE DONE THAT WOULD HAVE
NEGATED THE TOLLING OF THIS --
>> THEY COULD HAVE MADE A REPORT
TO THE COURT IN THE DEPENDENCY
PROCEEDING.
>> THE COURT WOULD HAVE
PRESUMABLY APPOINTED A GUARDIAN

AD LITEM FOR DIFFERENT CASE.
>> THE GUARDIAN AD LITEM IS
THERE TO MAKE SURE THE CHILD'S
PRESENT BEST INTERESTS ARE TAKEN
CARE OF.
TO GO WITH THE GRANDPARENTS,
THERE IS TEMPORARY SAFETY TO
MAKE SURE IT IS NOT TO LOOK AT
REASON THE CHILD CAME IN AND
EXPLORE WHAT POTENTIAL CAUSES OF
ACTION MIGHT EXIST WHICH IS AT
DCF, THE GRANDPARENTS, THE
MOTHER AND YOUR CLIENTS TO
REPORT ON WHAT MIGHT BE
RESPONSIBLE WHETHER THE CHILD IS
SAFE.
THERE IS 0 AUTHORITY IN CHAPTER
39 TO DO ANYTHING OF THE SORT.
>> THE LEGISLATURE MUST FOR SOME
REASON HAVE DECIDED WHEN
GUARDIAN AD LITEM EXISTS THE
STATUTE OF LIMITATIONS --
>> DO YOU KNOW WHEN THAT WAS
ENACTED?
IN 1990, 25 YEARS BEFORE THE
GUARDIAN AT LIGHT HIM PROGRAM
UNDER CHAPTER 39 WAS AND ACTED.
>> THERE IS OPPORTUNITY FOR
AMENDMENT TO THAT.
IT DOESN'T SAY GUARDIAN AD LITEM
WITH PLENARY POWERS.
>> ISN'T IT THE CASE, I DON'T
THINK WE ARE TALKING ABOUT IT
BUT SINCE WE ARE TALKING ABOUT
IT, ISN'T IT THE CASE THAT A
GUARDIAN AD LITEM IS A GUARDIAN
APPOINTED FOR A PARTICULAR CASE.
THAT IS PART OF THE DEFINITION
OF THE TERM.
THAT IS NOT SOMETHING --
>> TO OBSERVE THINGS THAT MIGHT
BE ADDRESSED.
>> 95051, YOU USED THE TERM, A
PLENARY GUARDIAN AD LITEM, ISN'T
THAT A OXYMORON?
>> I DON'T --
>> PERHAPS.
BUT WHY IS IT IN THE STATUTE?
>> YOU KNOW WHAT A PARENT IS AND
YOU AGREE THERE IS NO PARENT

THAT DID NOT HAVE CONFLICT OF
INTEREST, YOU KNOW WHAT A
GUARDIAN IS, ANYBODY YOU COULD
LOOSELY CALL A GUARDIAN AND IF
THAT WERE TRUE, THEY THEN SAID
GUARDIAN AD LITEM.
DOESN'T THAT SHOW THEY INTENDED
A GUARDIAN WITH PLENARY POWERS?
WE KNOW WHAT THAT IS, AN ACTUAL
GUARDIAN.
THEN THEY SAY GUARDIAN AD LITEM
WHICH IS A GUARDIAN FOR THE
SUIT.
WETSUIT COULD THEY BE TALKING
ABOUT?
>> THAT IS MY POINT.
WHAT WE WOULD SUGGEST IS IT IS
ONLY TOLD DURING THE TIME
GUARDIAN AD LITEM, THE SUIT FOR
WHICH IT IS TOLD HAS BEEN
APPOINTED WHICH MAKES NO SENSE.
>> WE ARE LOOKING AT THE BEST
INTERESTS.
>> IT IS NOT TOLD WHEN THERE IS
NO GUARDIAN AD LITEM WHEN THERE
IS A GUARDIAN AD LITEM.
>> WHAT YOU ARE SUGGESTING IS IF
WE HAVE A GUARDIAN AD LITEM
WHICH IS APPOINTED FOR A
SPECIFIC PURPOSE IN THIS CASE.
>> POLLING IS OVER.
>> THAT PURPOSE WOULD HAVE BEEN
TO BRING THE LAWSUIT THAT THE
NEXT FRIENDS BROUGHT.
>> THAT MAKE SENSE IN TERMS OF
POLICY, AND IF THERE'S PARENT
WITHOUT CONFLICT OF INTEREST,
PLENARY GUARDIAN WITH FULL
RESPONSIBILITY, IN THIS
PARTICULAR STUDENT.
>> IF A CLIENT, IF A CHILD,
GRANDPARENT COMES TO YOU AS AN
ATTORNEY, YOU SAY WHO ARE YOU?
I'M THE GRANDPARENT, THE GAO
PROGRAM, THE FIRST STEP IS TO
PETITION THE COURT FOR AUTHORITY
TO BRING THE CASE TO GET YOU
APPOINTED AS GUARDIAN AD LITEM
FOR THE PURPOSE OF A NEGLIGENCE
LAWSUIT.

ONCE PARENTS BECOME PERMANENT
GUARDIANS, IT IS NOT COGNIZANT
UNDER CHAPTER 39, THEY HAD THE
AUTHORITY IN SOMEBODY
AFFIRMATIVELY ON BEHALF OF THE
MINOR NEEDED TO GO TO THE COURT,
LOTS OF ADULTS THE CARE, WE ARE
NOT GOING TO HARM THE CHILD,
BROUGHT AS NEXT FRIENDS.
>> THE GRANDPARENTS AND THE
GUARDIAN AD LITEM ARE NOT
MUTUALLY EXCLUSIVE.
THEY COULD HAVE COEXISTED IN THE
SAME LAWSUIT.
WHAT THE DCA FOUND IS THEY KNEW
ABOUT THIS, AND DEMONSTRATE THEY
KNEW ABOUT IT EVEN BEFORE
CHILDREN WERE TAKEN OUT OF THE
HOME.
THE CHILDREN WERE BORN, LIVE
WITH THE PARENTS AND
GRANDPARENTS.
>> IF I WERE INDEPENDENT I COULD
HAVE SUED THE GRANDPARENTS
BECAUSE THE GRANDPARENTS KNEW
ABOUT IT AND FAILED TO PROTECT
THE CHILD.
>> BY BRINGING A LAWSUIT?
I DON'T THINK THEY WOULD QUALIFY
IN PROFESSIONAL LIABILITY CLAIM,
BUT THEY KNEW ABOUT THIS.
THAT IS FINDING BY THE DCA.
>> MAY IT PLEASE THE COURT.
MY NAME IS ALLISON HEIM AND I
RESPOND TO C. SUZANNE BECHARD
INC..
AND THE INTERPLAY BETWEEN THE
TOLLING STATUTE AND RULES OF
CIVIL PROCEDURE BEING INCLUDED
IN THE PROCEDURE NOT INCLUDED IN
THE TOLLING STATUTE.
THE TOLLING STATUTE'S PURPOSE IS
NOT TO REPRESENT THE GUARDIAN AD
LITEM TO BRING A LAWSUIT BUT
MERELY IS IN PLAY TO ENSURE THAT
A MINOR WHO HAS NO PARENT,
GUARDIAN OR GUARDIAN AT LIGHT
HIM HAS THE ABILITY TO HAVE
THEIR LIMITATIONS. GO TOLD.
THERE HAS TO BE SOMETHING

LOOKING OUT FOR THE BEST
INTEREST OF THE MINOR.
IN THIS CASE THE STATUTE IS
CLEAR, A CLEAR PATH TO THE
ANSWER.
IF THERE'S A PARENT, GUARDIAN OR
GUARDIAN AD LITEM WITHOUT
INTEREST ADVERSE TO THE MINORS
THERE IS NO TOLLING.
THAT IS WHAT WE HAVE.
THE GUARDIAN AD LITEM.
THE LEGISLATURE IN DRAFTING THE
TOLLING STATUTE COULD HAVE
LIMITED THE TERM GUARDIAN AD
LITEM AS THEY DID IN DIFFERENT
CHAPTERS.
>> YOU ARE MAKING A LEGAL
ARGUMENT, THE STATUTE,
DIFFERENTLY THAN THOSE OF US WHO
QUESTIONS YOUR COCOUNSEL DO.
IF I DISAGREE WITH YOUR
ARGUMENT, ARE YOU SUGGESTING WE
SHOULD REVERSE AND RE-MANNED
UNDER THE TOLLING STATUTE?
>> NOT AT ALL.
EVEN IF YOU FIND THE TERM
GUARDIAN AD LITEM CAN ONLY MEAN
A GUARDIAN BROUGHT PURSUANT TO
RULE 1.0 THE TWINS STILL HAD A
GUARDIAN AT ALL TIMES.
>> WHY WOULDN'T THERE BE AN
AVENUE FOR US TO REVERSE AND
REMAND SO THAT THIS SUIT COULD
GO FORWARD IF WE AGREE WITH THE
OTHER SIDE THAT THIS WAS TOLD AS
A MATTER OF LAW?
IT IS NOT THE GUARDIAN AD LITEM
SPOKEN ABOUT IN THIS STATUTE.
THE STATUTE OF LIMITATIONS WAS
TOLD, WHY SHOULDN'T WE CHANGE
COURSE?
>> IF THE STATUTE IS TOLD, THEN
IT WOULD REQUIRE REVERSAL.
>> GO AHEAD.
>> BASED ON THE PLAIN LANGUAGE
OF THE STATUTE, THERE IS NO
BASIS ON WHICH TO TOLL THIS
LIMITATION.
>> YOU ARE AGREEING THAT IF I
BELIEVE THE STATUTE OF

LIMITATIONS WAS TOLD IN THIS
CASE IF I DISAGREE WITH YOUR
LEGAL ARGUMENT AS TO WHAT THE
STATUTE MEANS, WE SHOULD REVERSE
AND ULTIMATELY THIS ACTION
SHOULD GO FORWARD.
>> IF THE STATUTE ACTED TO TOLL
IT, YES.
HOWEVER, THIS ACTION OR THIS
ISSUE WAS NOT BRIEFED BY THE
PARTIES.
>> YOU HAVE AN ARGUMENT ABOUT
PRESERVATION.
I THOUGHT I READ THAT.
>> NOT ONLY NOT A FUNDAMENTAL
ERROR IN THE TRIAL COURT BUT
WAVED BECAUSE THEY DIDN'T BRIEF
IT OR BRING IT BEFORE THE SECOND
DCA.
>> GO BACK TO THE SECOND
DISTRICT OPINION WHERE THEY TALK
ABOUT GRANDPARENTS BEING THE
NEXT FRIEND AND THE NEXT FRIEND
DESIGNATION ISN'T AN AMORPHOUS
GROUP OF PEOPLE THAT WANT TO BE
THE BEST FRIEND OF THE MINOR BUT
IT MIGHT BE IF THE MINOR HAD A
SEVERE ACCIDENT.
IT REFERS TO SOMETHING, SOMEONE
BRINGS IT AS A GUARDIAN'S NEXT
FRIEND OR PARENT'S NEXT FRIEND,
NOT THE SEPARATE DESIGNATION.
DO YOU AGREE WITH THAT?
>> I DON'T.
>> LOOK AT ALL THE CASES WHERE
IT SAYS JOHN SMITH'S NEXT FRIEND
OF SO AND SO, THE NEXT DOOR --
THE CHILD AT HEART.
>> THE NEXT FRIEND.
>> THE QUESTION GOING BACK TO
THE STATUTE, THE STATUTE,
SOMEONE SAID, DOESN'T REFERENCE
NEXT FRIEND.
AND WERE THEY THE GUARDIANS
UNTIL APPOINTED GUARDIANS BY THE
COURT?
>> THEY WERE TEMPORARY
GUARDIANS.
>> DID YOU READ THE ORDER IN THE
RECORD, THEY SHOULD BE PLACED IN

THE TEMPORARY CARE CUSTODY AND
CONTROL OF THE MATERNAL
GRANDPARENTS UNDER THE
SUPERVISION OF THE DEPARTMENT OF
CHILDREN AND FAMILIES.
THEY WERE NOT APPOINTED
GUARDIANS OF THE CHILD UNTIL
THEY BECAME THE PERMANENT
GUARDIANS, DID THEY HAVE THAT
GOING TO THE AUTHORITY TO ACT?
WAS THERE ANOTHER ORDER IN THE
DEPENDENCY COURT YOU ARE
REFERRING TO THAT MADE THEM
GUARDIANS?
>> THE ORDER IN THE DEPENDENCY
COURT YOU ARE REFERRING TO
DOESN'T SPECIFICALLY SAY THE
WORD GUARDIAN BUT LOGICALLY
LOOKING AT THEM HAVING THE BEST
INTEREST OF THE CHILD, CARING
FOR THE CHILD DURING THIS ENTIRE
PROCEEDING THEY WERE LOGICALLY
THE TEMPORARY GUARDIAN.
>> IF IT WASN'T THE
GRANDPARENTS, BUT SOMEONE ELSE
WHO FOSTERS CHILDREN, THEY HAVE
BEEN GIVEN TO A FOSTER PARENT
TEMPORARILY, THEY COULD HAVE
BROUGHT THIS ACTION.
>> THEY COULD HAVE, PURSUANT TO
THE RULE OF SILVER PROCEDURE.
>> THEY DIDN'T, WOULD IT NOT
HOLD THE STATUTE?
FOSTER PARENTS, ARE YOU SAYING
THEY COULD HARM THE LEGAL RIGHTS
OF THE CHILD BY NOT BRINGING AN
ACTION THEY MIGHT THINK EXISTED?
THAT IS THE PROBLEM.
IT IS NOT A QUESTION COULD
SOMEBODY HAVE TRIED TO BRING IT.
IF THEY ARE NOT IN THE AUTHORITY
OF GUARDIAN AT LIGHT OR PARENT
OR GUARDIAN, DO THEY, THE
TOLLING STATUTE NOT APPLY?
IT IS A DIFFERENT THING.
CAN YOU BRING IT BUT IF YOU
DON'T BRING IT, IS THE CHILD
HARMED BY THE STATUTE OF
LIMITATIONS?
>> ANY TIME THE STATUTE OF

LIMITATIONS IS APPLIED SOMEONE
IS HARMED BY NOT BEING ABLE TO
BRING THEIR SUITS BUT NOTHING IN
THE STATUTE OF LIMITATIONS
OBLIGATES A PARENT TO BRING
CAUSE OF ACTION.
THERE IS NO REQUIREMENT YOU MUST
BRING ONE.
THE STATUTE IS VERY CLEAR A
PARENT, GUARDIAN OR GUARDIAN AND
LINE THEM DOESN'T DESIGNATE --
>> YOU ARE NOT ARGUING THERE'S A
LINK, IS IT RELEVANT TO THE
TOLLING STATUTE.
PEOPLE CAN SUE AND EVEN IF THEY
DID, THE GUARDIAN AD LITEM IS
APPOINTED.
>> IF THEY DID --
>> OF THE NEIGHBORS SUED AND
THAT WE ARE COMING IN AS BEST OF
FRIENDS, PUT TO ME WHERE IN THE
TOLLING STATUTE WHERE IT IS?
>> THE PURPOSE OF THE STATUTE OF
LIMITATIONS IS A DEFENDANT IS
NOT SURPRISED BY A STALE CLAIM.
OF SOMEONE BRINGS THE CLAIM --
>> THAT PERSON COULD DISMISS THE
CLAIM AND SOMEBODY ELSE COULD
BRING IT LATER IN THE QUESTION
IS SOMEBODY ELSE BROUGHT IT.
WHERE IN THE TOLLING STATUTE
WITH THE CAUSE OF ACTION,
STATUTE OF LIMITATIONS BE TOLD
BECAUSE SOMEBODY WHO HAD
AUTHORITY --
>> I'M NOT SURE I UNDERSTAND THE
QUESTION.
THE TOLLING STATUTE IS VERY
CLEAR, IF A PARENT, GUARDIAN OR
GUARDIAN AD LITEM EXISTS, IF THE
LEGISLATURE WANTED TO NARROW
THAT.
>> NEXT TO FRIEND.
>> IN THE RULES OF PROCEDURE.
>> THE FACTORS ANNEXED A FRIEND
DOESN'T TELL THE STATUTE.
>> THE NEXT OF FRIEND IS
INCLUDED AS A PROCEDURAL ISSUE
AND CASE LAW DICTATES IF A CHILD
BRINGS A LAWSUIT ON BEHALF OF

THEMSELVES THAT IS NOT
PERMISSIBLE BUT IF THAT IS WHAT
HAPPENS THE COURT CAN APPOINT A
NEXT FRIEND.
THE TOLLING STATUTE IS SEPARATE
AND DOESN'T HAVE TO DO WITH
PROCEDURE OF WHO FILES ARE
OBLIGATED ANYONE TO FILE.
IT SIMPLY SAYS OF THE PARENT,
GUARDIAN OR GUARDIAN AD LITEM
EXISTS THIS IS NOT TOLD.
>> THIS IS WHERE WE GO BACK.
IF THEY DON'T EXIST, A PARENT
WITH ADVERSE INTEREST, THERE IS
NO GUARDIAN.
IF THERE IS NO GUARDIAN AD LITEM
AND THIS IS WHERE YOU SAY IT IS
CLEAR IT HAS TO REFER TO CHAPTER
39 EVEN THOUGH AT THE TIME THAT
PROGRAM DID NOT EXIST, THE
LEGISLATURE MUST HAVE MEANT A
PROGRAM THAT CAME INTO
EXISTENCE, THEY SHOULD BE THE
ONES TO ACT ON BEHALF OF THE
CHILD TO SEE WHAT LAWSUITS
EXIST, THAT IS PLAIN ON THE FACE
OF THE STATUTE.
>> IT IS BECAUSE AT THE TIME
WHEN THIS WAS ENACTED OR EVEN
BEFORE CHAPTER 39 ERROR
DIFFERENT TYPES OF GUARDIANS,
PROBATE GUARDIANS, DISSOLUTION
OF MARRIAGE.
WHAT THIS IS DOING, A BROAD
TERM.
>> SOMEONE APPOINTS GUARDIAN AD
LITEM.
IT IS SOMETHING ELSE THAT
HAPPENED, THE GUARDIAN AD LITEM
APPOINTED IN THE DISSOLUTION OF
MARRIAGE CASE, IS THAT WHAT THEY
WERE REFERRING TO IN THE TOLLING
STATUTE.
>> THEY USE THE BROAD TERM.
>> THE BROAD TERM HARMS THE
CHILD, DENIES ACCESS TO THE
COURT BY THE CHILD.
THE TERM, SO MANY FRIENDS OF
THIS CHILD, THE CHILD CAN LOSE
THEIR CAUSE OF ACTION BECAUSE NO

FRIEND OR GUARDIAN AD LITEM
SPECIFICALLY APPOINTED FOR THAT
LAWSUIT EXISTS.
>> KNOW, YOUR HONOR.
AS REPRESENTATIVE OF THE
GUARDIAN AD LITEM PROGRAM
POINTED OUT, IF THEY ARE AWARE
OF A CAUSE OF ACTION THEY CAN
BRING IT TO THE COURT'S
ATTENTION.
ALSO INVOLVED IN THE GUARDIAN AD
LITEM PROCESS IS MANDATORY
MONTHLY OR PERIODIC REPORTING.
IN THOSE REPORTS IT NOT ONLY HAS
TO DO WITH HOW THE RELATIONSHIP
WITH THE MOTHER OR FOSTER PARENT
OR RELATIVE HAS GOT TO DO WITH
HOW THE CHILD IS PROGRESSING
EDUCATIONALLY, MENTALLY AND
PHYSICALLY.
SO IF THERE'S SOMETHING THAT
HARMED THE CHILD IT WOULD BE IN
THE GUARDIAN AD LITEM REPORT AND
FOR THE REPRESENTATIVE THAT
WOULD BE COMMUNICATED TO THE
COURT AND THEY CAN REQUEST
SERVICES.
NOTHING IN THE TOLLING STATUTE
OBLIGATES THE GUARDIAN AT LIGHT
IN A DEPENDENCY CASE OR ANY
OTHER SCENARIO TO BRING THE
CAUSE OF ACTION.
>> OKAY.
THEY ARE NOT OBLIGATED BECAUSE
THEY ARE IN THE CHAPTER 39
PROCEEDING.
HOW CAN THAT OPERATE AS AN
ERADICATION OF THE CHILD'S
RIGHT?
I DON'T SEE, THAT IS FINE FOR
THE GUARDIAN AD LITEM WHO CAN'T
BE SUED FOR NOT DOING SOMETHING,
BUT HOW DOES THAT STATUTE
PROTECT THE CHILD?
>> THE STATUTE WORKS WITH RULES
OF PROCEDURE WHICH DELINEATES
HOW A CHILD CAN ACCESS THE
COURT.
THEY CAN DO THAT THROUGH A
GUARDIAN OR OTHER FIDUCIARY AND

IF THERE IS NOT A DULY APPOINTED
REPRESENTATIVE THE COURT CAN
APPOINT A NEXT FRIEND OR
GUARDIAN AD LITEM IN THAT SUIT.
IF THE GUARDIAN AD LITEM AND A
DEPENDENCY CASE REQUEST SERVICES
LIKE THEY DID AN ATTORNEY IN THE
CASE MENTIONED EARLIER, THAT
ATTORNEY CAN GO TO THE COURT,
INITIATE A SUIT AND ONCE THE
COURT GETS JURISDICTION THE
COURT CAN APPOINT THAT CHILD IN
THAT PARTICULAR SUIT A GUARDIAN
AD LITEM.
THE TOLLING STATUTE --
>> THAT IS A LONG SPECULATIVE
TREND FROM ONE GUARDIAN AD
LITEM, DOESN'T HAVE TO DO
ANYTHING FOR THE SUIT WHICH IS
WHAT GUARDIAN AD LITEM MEANS.
AND ARGUING THE SECOND DISTRICT.
>> IT WAS WAIVED.
>> I WILL GIVE YOU TWO MINUTES.
>> TO CORRECT ONE STATEMENT.
IT WAS ARGUED BEFORE THE TRIAL
COURT THE MOTION OF
RECONSIDERATION STATUTE 95.051
AND THE ORDERS REFERENCED WHAT
WAS CONTAINED IN MY BRIEF AND
THE RECORD 31-35, THE MOTION FOR
RECONSIDERATION WHICH RESULTED
IN SUMMARY JUDGMENT.
THAT, I WOULD SAY THE COURT
REPORTER WROTE DOWN THE STATUTE.
>> REVERSING ON THAT ISSUE OF
THAT FUNDAMENTAL ERROR.
AND AN ARGUMENT TO BE BY THE
SECOND DISTRICT REGARDING
CAPACITY OF THE A GUARDIAN AD
LITEM, AND ANY NATURE APPOINTED
ME FOR THE CHILDREN IN A
LAWSUIT.
AND THE ARGUMENT, THE SPECIFIC
ARGUMENT BEFORE THE TRIAL COURT.
>> THE PARENTS, GRANDPARENTS
WERE NOT PROPERLY-- BASIS
AND NOT REACH THE GUARDIAN AD
LITEM ISSUE AND LET THE DISTRICT
DECIDE THE TRIAL COURT AND MAKE
THAT ARGUMENT AND PRESERVE IT.

>> IT IS OUR POSITION UNTIL
GRANDPARENTS ARE APPOINTED
PERMANENT GUARDIANS THEY COULD
NEVER --
>> THAT WAS RAISED FOR THE
SECOND DISTRICT AND THAT THE
SECOND DISTRICT OPINION.
>> IT WAS ENSHRINED IN SAP AND
CONFIRMED --
>> TO REVERSE THAT APPROACH, THE
SHOULD HAVE KNOWN ARGUMENT.
>> THE LACK OF CAPACITY.
>> WE WOULD NOT HAVE TO.
>> OR THE THIRD BASIS THAT I
UNDERSTAND.
>> STRUGGLING TO UNDERSTAND WHAT
LEGAL BAR WOULD PROHIBIT THEM.
>> AND 1.210, THEY HAVE A
NATURAL MOTHER AT THAT TIME.
HER RIGHTS WERE NOT TERMINATED.
THERE WAS A PETITION FOR
DEPENDENCY.
>> WHAT RULE OF CIVIL PROCEDURE?
>> KINGSLEY VERSUS KINGSLEY.
>> THANK YOU FOR YOUR ARGUMENTS.