

WE NOW TURN TO THE SECOND CASE
ON OUR DOCKET, D.M. VERSUS
M.D..

>> MAY IT PLEASE THE COURT.
GOOD MORNING, YOUR HONOR'S.
MY NAME IS MICHAEL BROWNLEE.
>> COULD YOU SPEAK UP A LITTLE
BIT?

>> MY NAME IS MICHAEL BROWNLEE
AND I'M ON BEHALF OF THE
APPELLATE, D.M. WHO ARE
REFERRED TO AS MOTHER AND I
WOULD LIKE TO RESERVE 5 MINUTES
FOR REBUTTAL PLEASE.
YOUR HONOR'S, THE ISSUE IN THIS
CASE IS WHETHER FLORIDA COURTS
ARE REQUIRED TO APPLY THE PLAIN
MEANING OF FLORIDA STATUTES,
THE ANSWER TO THAT QUESTION IS
A VERY EASY YES BUT HERE WE
ARE.

AND THE FACT THAT THIS CASE HAS
PROGRESSED AS FAR AS IT HAS AND
WE ARE ALL THE WAY APPEAR
UNDERScores THE NEED FOR THIS
COURT TO SET A CLEAR MESSAGE TO
COURTS IN THIS STATE THAT WHEN
LEGISLATURE SAYS SOMETHING IT
MEANS IT.

AND I THINK IF THIS COURT IS
NOT INCLINED TO DO THAT, THE
LEGISLATURE MAY WANT TO HEED
THE ADVICE OF JUSTICE SCALIA IN
ONE OF HIS DISSENTS WHEN HE
SAID PERHAPS LEGISLATURE SAID
START ENDING EVERY STATUTORY
PROVISION WITH SOMETHING TO THE
EFFECT THAT THIS TIME WE REALLY
MEAN IT.

>> MAY I ASK YOU A QUESTION
REGARDING THE STATUTORY
PROVISION AT ISSUE?
THE TRIAL COURT ENTERED THE
ORDER DENYING TERMINATION OF
PARENTAL RIGHTS CITED FLORIDA
STATUTE 39806.
THE PETITION AT ISSUE HERE IS
UNDER 630894, CORRECT?
>> CORRECT.
>> FOR PURPOSES OF THE

ARGUMENT, IS IT YOUR POSITION THAT UNDER 680895 WHICH TALKS ABOUT DISMISSAL OF A PETITION, WHICH THEORETICALLY SHOULD HAVE BEEN A DISMISSAL OF THE PETITION, BUT IS IT YOUR POSITION THAT IT IS REVERSIBLE ERROR BECAUSE THE ORDER DID NOT INCLUDE WRITTEN FINDINGS AND SUPPORT OF THE PETITION? DENYING THE PETITION?

>> ABSOLUTELY.

>> YOUR POSITION IS REVERSIBLE ERROR.

>> YES.

>> YOU WANT THIS COURT TO WRITE A OPINION THAT SAYS TO BRIGHT LINE RULE, IF THE STATUTE REQUIRES WRITTEN FINDINGS IT HAS TO BE PER SE REVERSIBLE ERROR.

>> I DO.

THAT IS APPROPRIATE.

>> LET ME ASK YOU THIS.

WITH THAT APPLY IN THE CASE WHERE THE PARENTING QUESTION WAS SENTENCED TO LIFE IN PRISON?

>> YES.

>> WHY WOULD THAT MAKE SENSE? TO HAVE A PER SE ERROR RULE AND CIRCUMSTANCES LIKE THAT WHERE IT SEEMS TO BE THERE IS ONLY ONE CONCLUSION THAT COULD BE REACHED?

UNDER THAT PARTICULAR STATUTORY PROVISION?

>> FIRST OF ALL THEY WOULD HAVE TO BE BEST INTEREST FINDING BUT ASSUMING THAT WAS DONE PROPERLY I THINK IT IS BECAUSE THE LEGISLATURE RARELY REQUIRES WRITTEN FINDINGS AND THAT MEANS SOMETHING SPECIAL, THE LEGISLATURE SAYS WHAT IT MEANS THAT THE COURTS ARE DUTY-BOUND TO APPLY IT.

>> LEGISLATURE HAS THE STATUTE ABOUT BOTTOMLESS ERROR WHICH IS A BROAD STATUTE, WOULD YOU

AGREE?

>> I AGREE.

>> BACK TO A THRESHOLD QUESTION ABOUT JURISDICTION.

A QUESTION ABOUT THREE CASES, FARLEY AND CALL WELL IF I'M READING MY HANDWRITING CORRECTLY.

IN ANY OF THOSE CASES IS THERE ANY MENTION OF HARMLESS ERROR ANALYSIS?

>> THE BEST WOULD BE CALDWELL. THEY DON'T USE THE PHRASE HARMLESS ERROR BUT THERE'S A CLEAR INDICATION THAT THEY ARE UNWILLING TO LOOK AT WHETHER THE ISSUE WAS EQUITABLE DISTRIBUTION AND THERE IS LACK OF WRITTEN FINDINGS, THE FINDINGS THAT NEED TO BE MADE UNDER THE STATUTE.

>> THERE IS NO MENTION OF HARMLESS ERA, SUGGESTION THE COURT CONSIDERED, NO EXPRESS SUGGESTION THE COURT CONSIDERED WHETHER HARMLESS ERROR ANALYSIS WAS APPLICABLE OR NOT.

>> I DISAGREE, YOUR HONOR. IN THAT CASE, THEY SAID THERE IS FAILURE TO MAKE THE WRITTEN FACTUAL FINDINGS AND THEN THERE IS A LINE THAT SAYS WHETHER OR NOT DISTRIBUTION WAS EQUAL OR UNEQUAL THE FAILURE TO MAKE THOSE WRITTEN FINDINGS IS REVERSIBLE ERROR.

>> WHAT DOES IT EVER USE THE TERM PER SE REVERSIBLE? NO MENTION OF HARMLESS ERROR AND NO MENTION OF THE CATEGORY OF PER SE REVERSIBLE?

>> I THINK IF EQUITABLE DISTRIBUTION IS AT ISSUE IN THE CASE THE COURT IS SAYING WE ARE UNWILLING EVEN TO ASSESS WHETHER THE DISTRIBUTION WAS EQUAL OR UNEQUAL.

>> THE REASONS THEY MIGHT DECIDE THAT THEY WANT TO SEND IT BACK.

OUR JURISDICTIONS DEPEND ON EXPRESS AND DIRECT CONFLICT AND I AM STRUGGLING TO FIND THAT. I DON'T DISAGREE IN THIS CASE THERE IS A PROBLEM WITH THE WAY THIS IS HANDLED AND I STRUGGLE TO SEE HOW THE ERROR COULD BE HARMLESS, BUT THAT IS THE ACADEMIC QUESTION FOR ME IF WE DON'T HAVE JURISDICTION AND I'M STRUGGLING TO SEE WHY WE HAVE JURISDICTION WHEN NONE OF THESE CONFLICT CASES SAY ANYTHING ABOUT HARMLESS ERROR OR ANYTHING ABOUT PER SE REVERSIBLE.

>> SOME OF THEM DO.

LET ME ADDRESS THOSE.

I SEE THIS AS A PROCEDURAL QUESTION.

IN THE SAME SENSE, LET'S SAY THE ISSUE BEFORE THE COURT WAS APPROPRIATE STANDARD ON SUMMARY JUDGMENT AND ONE DISTRICT COURT OF APPEALS SAID SELF-SERVING AFFIDAVITS CANNOT BE USED TO DEFEAT SUMMARY JUDGMENT AND ANOTHER DISTRICT COURT SAID THEY CAN.

WE WOULDN'T CARE WHAT THE FACTS ARE IN THOSE CASES, WOULDN'T MATTER IF THE SUMMARY JUDGMENT DISPUTE WITH A HOMEOWNERS ASSOCIATION ISSUE IN ONE CASE AND THE PI CASE IN THE OTHER. WE ARE TALKING ABOUT PURELY LEGAL ISSUE THAT IS PROCEDURAL. OF FACTUAL FINDINGS ARE NOT MADE, WHAT HAPPENS?

>> ON THE QUESTION OF HARMLESS ERROR, WE KNOW SOMETIMES COURTS DON'T CONSIDER WHETHER AN ERROR IS HARMLESS OR NOT.

>> THAT WOULD BE IN CONTRAVENTION OF HARMLESS ERROR STATUTE.

>> WE KNOW FOR A FACT IT IS NOT BROUGHT UP AND NOT MENTIONED, CAN'T WE?

>> IF IT IS NOT BROUGHT UP OR

MENTIONS, BECAUSE THE COURT IS OBLIGATED TO CONSIDER HARMLESS ERROR IN ANY CASE AND IS NOT PERMITTED TO REVERSE UNLESS THERE IS HARMFUL ERROR, WE HAVE TO ASSUME THEY MADE A FINDING THAT IT IS NOT HARMLESS.

I CAN GIVE YOU AN EASIER PATH. THE JS DEPARTMENT OF CHILDREN AND FAMILIES AGAINST JS, THAT ONE IS CLOSE AS WE CAN GET FACTUALLY.

THE PARENTAL RIGHTS CASE, IT VERY CLEARLY SAYS FAILURE TO MAKE FACTUAL FINDINGS, TERMINATION OF PARENTAL RIGHTS PROCEEDINGS CONSTITUTES REVERSIBLE ERROR.

>> I THOUGHT YOUR INITIAL POSITION WAS THE HARMLESS ERROR STATUTE DIDN'T APPLY HERE AND IT WAS PER SE REVERSIBLE REGARDLESS AND I THOUGHT I HEARD YOU NOW SAYING THE COURT DOES HAVE THE OBLIGATION TO APPLY THE HARMLESS ERROR STATUTE.

>> ACCORDING TO THE LANGUAGE OF THE HARMLESS ERROR STATUTE EVERY COURT IS SUPPOSED TO ONLY REVERSE IF THERE IS HARMFUL ERROR.

>> ARE YOU NOT TAKING THE POSITION THAT IT IS PER SE REVERSIBLE ERROR.

>> IT IS THE POSITION THE LEGISLATURE IS SAYING CERTAIN FACTUAL FINDINGS NEED TO BE MADE IN WRITING REGARDLESS OF WHETHER HARMLESS ERROR WAS EXPLICITLY DISCUSSED OR MENTIONED, IT HAS TO BE PRESUMPTIVELY HARMFUL. THE LEGISLATURE DOESN'T DO IT.

>> THE CASE, THE OBVIOUS HYPOTHETICAL OF WHERE THE JUDGE CHECKS EVERY BOX WHICH OBVIOUSLY DIDN'T HAPPEN HERE, FAR FROM IT BUT IMAGINE THE CASE WHERE THE JUDGE DOES

EVERYTHING THE JUDGE IS
SUPPOSED TO DO SUBSTANTIVELY
BUT DOESN'T REDUCE IT TO
WRITING YOU WOULD SAY THAT
NEEDS TO BE REVERSED.
WHAT AUTHORITY DOES THE
LEGISLATURE HAVE TO SAY A JUDGE
NEEDS TO DO SOMETHING IN
WRITING AS OPPOSED TO MAKING
CERTAIN FINDINGS?

>> FROM THE SEPARATION OF
POWERS STANDPOINT?

>> THE LEGISLATURE SAY IT HAS
TO BE IN WRITING OF THE JUDGE
HAS TO WRITE THREE EACH
ELEMENT?

>> I SUPPOSE HE COULD.
THAT MIGHT LEAD TO SOME
INFRINGEMENT, BUT I HAVE NOT
CONSIDERED THAT.
IT DOESN'T SEEM TO BE AN ISSUE
IN THE CASE.

THE LEGISLATURE DOES DO THAT
AND AT LEAST TO MY KNOWLEDGE
HASN'T BEEN CHALLENGED.
IF LEGISLATURE SAYS SOMETHING
IN THE STATUTE THEY ARE
DUTY-BOUND TO FOLLOW IT.
I KNOW THE RESULT MIGHT BE
ABSURD.

I COULD ENVISION JUSTICE
KENNEDY, THAT IS A GOOD
EXAMPLE.

YOU SEE IT A LOT OF TIMES IN
SENTENCING CASES WHERE THERE IS
A SENTENCING ERROR THAT WAS
MADE AND IT WON'T AFFECT THE
OUTCOME OF THE SENTENCE BUT
THEY ARE REMANDED FOR AN ORDER
THAT COMPLIES WITH THE LAW.
AND I BELIEVE --

>> IF THE DECISION OF THE COURT
WITHOUT WRITTEN FINDINGS HAD
BEEN TO TERMINATE PARENTAL
RIGHTS IN THE FATHER BECAUSE
SAY JUSTICE KENNEDY'S EXAMPLE
IT WAS A LIFE SENTENCE, AND
THERE WAS AN APPEAL FROM THAT
AND ORAL FINDINGS THAT
OBVIOUSLY THIS IS A LIFE

SENTENCE SO THERE IS NO QUESTION THIS FATHER WILL BE GONE FOR THE ENTIRETY OF THE CHILD'S LIFE, YOU ARE SUGGESTING YOUR CLIENT, THEN THE MOTHER IN THAT CASE WOULD NEED TO WAIT FOR AN APPEAL, A REVERSAL AND A NEW HEARING OR WRITTEN FINDINGS --

>> THE PROPER RESULT IN THAT CASE, THE APPELLATE COURT RETAINING JURISDICTION, REMAND FOR A WRITTEN FINDING THAT COMPLIES WITH THE ORAL PRONOUNCEMENT.

>> WE SHOULD FOLLOW THE STATUTES, WHY NOT FOLLOW HARMLESS ERROR STATUTE?

>> WHEN THE LEGISLATURE EXPLAINS EXPLICITLY HOW A TRIAL COURT IS SUPPOSED TO EXERCISE

--

>> WHEN WE TALK ABOUT AN APPEAL ARE THOSE RELATED?

AREN'T WE SUPPOSED TO CONSIDER RELATED STATUTES TOGETHER? THEY REQUIRED FINDINGS BUT ALSO SAID WE SHOULD APPLY HARMLESS ERROR STANDARD OF APPEAL.

>> I UNDERSTAND BUT IF THE LEGISLATURE IS IN A VERY SMALL SUBSET OF STATUTES GOING OUT OF ITS WAY TO SAY WE WANT WRITTEN FINDINGS IN THE ORDER OR IN THE FINAL JUDGMENT, IT CAN'T BE HARMLESS WHEN YOU DON'T HAVE THOSE.

>> TO THE CONFLICT ISSUE. IN JS, THE STATUTE IN JS, SECTION 3806, THAT DOES NOT REQUIRE FINDINGS, CORRECT?

>> CORRECT, NOT AS FAR AS I KNOW.

>> NOTHING IN THERE SAYS HERE IN THIS STATUTE YOU HAVE TO MAKE SPECIFIC WRITTEN FINDINGS.

>> IT JUST SAYS IT ALL TERMINATION PARENTAL RIGHTS CASES THERE HAS TO BE WRITTEN FINDINGS.

>> THAT IS A CASELAW DETERMINATION, NOT IN THE STATUTE ITSELF.
SO WITH REGARD TO THAT THERE IS NO STATUTORY -- THERE ISN'T A STATUTORY COMPANION TO THE SPECIFIC FINDINGS THE LEGISLATURE HAS WRITTEN WITH REGARD TO CHAPTER 63.
>> WHEN I GET UP ON REBUTTAL IF I CAN LOOK THROUGH MY NOTES I'M NOT CERTAIN THAT IS THE CASE. THERE MIGHT BE A PROVISION IN A DIFFERENT PART OF 39 IT MAKES THAT REQUIREMENT BUT I DON'T WANT TO SAY THAT.
>> IT IS A VERY COMMON TERMINATION APPRAISAL RIGHTS CASES TO HAVE WRITTEN FINDINGS BUT WITH REGARD TO THE FINDINGS FOR INCARCERATION THERE'S NOTHING REQUIRING ANY SPECIFIC FINDINGS, CORRECT?
>> I DON'T KNOW IF THE LANGUAGE IN THE PROVISION I'M THINKING OF SPEAKS BROADLY ENOUGH TO ENCOMPASS ANY SCENARIO UNDER THE STATUTE.
>> FEEL FREE TO LOOK AT IT IN REBUTTAL TIME.
WITH REGARD TO ALIMONY, SOME OF THE CASES REGARDING ALIMONY, THEY ALIMONY STATUTE DOES NOT STATE WRITTEN FINDINGS, DOES IT?
>> I BELIEVE IT DOES.
>> 61.08 SUBSECTION 2.
DETERMINING TOWARD ALIMONY OR MAINTENANCE THE COURT SHALL FIRST MAKE A SPECIFIC FACTUAL DETERMINATION AS TO WHETHER EITHER PARTY HAS, AND IF THE COURT FINDS, THEY NEED TO GO THROUGH THE FACTORS.
NOTHING SAYING SPECIFIC WRITTEN FINDING.
CASE LAW HAS SAID THAT BUT IT IS NOT IN THE STATUTE.
ASSUMING I AM RIGHT IN READING 39806 AND THE ALIMONY STATUTE,

HOW DO WE DEAL WITH CONFLICT
WHERE IN THE ONE HAND THERE IS
LEGISLATIVE REQUIREMENT HERE
BUT THERE DOESN'T SEEM TO BE
SPECIFIC LEGISLATIVE
REQUIREMENT WITH REGARD TO
OTHER STATUTE?

>> YOU COULD STILL HAVE A BASIS
FOR CONFLICT.

THE MANDATE IS STRONGER IF IT
IS A STATUTE.

THAT IS OUR CONCERN HERE.

THE LAW BINDING ON THE COURT
BASED ON COMMON LAW OR STATUTE
IS THERE IS THIS REQUIREMENT.

>> IF WE ARE READING DIFFERENT
STATUTES DIFFERENT WAYS HOW
DOES THAT CREATE CONFLICT IF IT
IS NOT THE SAME STATUTE.

>> I TAKE YOUR POINT.

I WOULD LIKE TO POINT YOU TO
MILO VERSUS MILO WHICH WE CITE
IN OUR REPLY BRIEF, THAT CASE
HAS A SPECIFIC -- THERE IS
EXPLICIT HARMLESS ERROR
FINDING.

IF YOU WILL BEAR WITH ME.
MILO VERSUS MILO, THE SECOND
DCA REVERSED BECAUSE TRIAL
COURT FAILED TO MAKE THE
STATUTORILY REQUIRED ALIMONY
FINDINGS A FACT IN THE FINAL
JUDGMENT.

THE COURT REFUSED TO AFFIRM
BASED ON THAT BECAUSE FAILURE
TO MAKE SUCH FINDING FORCES AND
APPELLATE COURT TO MAKE
FINDINGS OF FACT THAT SHOULD
HAVE BEEN MADE BY THE TRIAL
COURT.

THAT IS 718, SECOND, 343.
WHICH ALSO MAKES ME WONDER HOW
TO CHALLENGE YOUR READING.

>> PLEASE CHALLENGE IT.

>> MILO IS SAYING THERE IS
STATUTORY REQUIREMENT.

>> WITH REGARD TO 39?

>> THAT IS ALIMONY.

>> I READ THROUGH THE ALIMONY
STATUTE.

LET ME KNOW IF I'M READING A
DIFFERENT ERA CHANGED IN SOME
WAY BUT I READ YOU --

>> A MISQUOTE FROM THE SECOND
--

>> MY QUESTION TO YOU, BY CASE
LAW WE SAID THERE NEEDS TO BE
FINDINGS ON EACH OF THE ALIMONY
FACTORS BUT THE STATUTE DOESN'T
SEEM TO HAVE IT.

DOES THAT MATTER FOR OUR
JURISDICTIONAL -- THAT IS THE
PREMISE OF MY QUESTION IS WHAT
I'M ASKING YOU.

WE GRAFTED ON DIFFERENT
READINGS OF DIFFERENT STATUTES,
HOW CAN WE FIND A CONFLICT IN
READING THIS STATUTE OR THE WAY
THE FIRST DCA READ THE STATUTE.

>> THAT IS FAIR.

I WOULD CONCEDE YOU PROBABLY
CAN.

IT IS DEPENDENT ON IT BEING
ROOTED IN STATUTE.

>> ALL RIGHT, YOU ARE INTO YOUR
REBUTTAL TIME.

YOU MAY CONTINUE.

GIVE IT AN EXTRA MINUTE SINCE
WE HELP YOU CONSUME SOME OF IT.

>> GOOD MORNING.

MY NAME IS ELIZABETH HARRISON
ON BEHALF OF THE FATHER.

I WOULD LIKE TO START WITH THE
CONVERSATION WE HAVE BEEN
HAVING ABOUT WHETHER THERE IS
CONFLICT JURISDICTION HERE.

THE STATUTES, THE MOTHER'S
ALLEGED CONFLICT, WHAT I TAKE
AS THREE DIFFERENT AREAS, THE
FIRST BEING THE ONE WE HAVE
BEEN TALKING ABOUT,
SPECIFICALLY WITH RESPECT TO
THE WRITTEN FINDINGS.

AND I WOULD SUGGEST THAT THERE
IS NOT CONFLICT JURISDICTION
BECAUSE WHAT THE MOTHER IS
ASKING US TO DO IS TO LOOK AT
AREAS THAT DEAL WITH FAMILY
LAW, EQUITY, WE HAVE ALL OF
WHICH CASES DON'T MAKE THAT PER

SE BRIGHT LINE FINDING, THAT IF YOU DON'T HAVE FINDINGS OF FACT IT IS AUTOMATICALLY REVERSIBLE ERROR AND WHAT THE FIFTH DISTRICT HERE DID WAS EXPRESSLY APPLIED HARMLESS ERROR ANALYSIS AND THOSE, THE CASES, THEY MAY NOT USE THE WORDS HARMLESS ERROR BUT THEY TALK ABOUT HAMPERED REVIEW.

THEY TALK ABOUT INABILITY TO UNDERSTAND THE RATIONALE OF THE TRIAL COURT IN MAKING THE DECISIONS.

>> HOW CAN IN THIS CASE, HOW CAN THE APPELLATE COURT HAVE PROPERLY HAD APPELLATE REVIEW WHEN THEY MADE NO FINDINGS OF FACT?

DO YOU CONCEDE THERE ARE NO FINDINGS OF FACT IN THIS ORDER?

>> I CONCEDE THAT IT WAS NOT DONE AS IT SHOULD HAVE BEEN DONE BUT I WOULD SAY THIS.

>> IT IS DONE UNDER THE PROPER STATUTE AND IT SHOULD HAVE BEEN A DISMISSAL, NOT A DENIAL AND THE STATUTE IS CLEAR, THE ORDER MUST INCLUDE WRITTEN FINDINGS IN SUPPORT OF THE DISMISSAL INCLUDING FINDINGS WITH THE CRITERIA IN SUBSECTION FOREVER COLLECTING A CLAIM OF ABANDONMENT.

THERE ARE NO FINDINGS OF FACT BUT HOW CAN THE APPELLATE COURT MAKE HARMLESS ERROR ANALYSIS WHEN THERE ARE NO FINDINGS OF FACT WAS ARE THEY SUPPOSED TO MAKE FINDINGS OF FACT IN THE APPELLATE COURT?

>> ABSOLUTELY NOT.

I AGREE THERE ARE A GREAT NUMBER OF PROBLEMS WITH THE ORDER.

I SUGGEST WHAT THE COURT DID, WHEN YOU LOOK AT SUBSECTION 4 BE THE STATUTE SAYS THE CHILD HAS BEEN ABANDONED WHEN. THE STATUTORY LANGUAGE IS

DIFFERENT, IT WOULD BE
SUBSECTION A.

THE STATUTE SAYS THE CHILD HAS
BEEN ABANDONED AND THE TRIAL
COURT SAYING THERE IS NO
ABANDONMENT, WHAT THE FIFTH
DISTRICT DID IS DO A REVIEW AND
DETERMINE BASED ON AN IMPORTANT
COMPONENT HEAR THE TRIAL COURT
MADE A FINDING WITH RESPECT,
THE TRIAL COURT SAYS I REVIEW
THE EVIDENCE AND COULD ABILITY
OF THE WITNESSES.

THAT DIRECTS THE FIFTH DISTRICT
REVIEW OF WHAT IT COULD DO.

>> THE TRIAL COURT SPECIFICALLY
RESERVED ITS RULING AFTER
CONCLUDING THE HEARING AND
TAKING TESTIMONY AND SHE MADE
NO FINDINGS OF FACT.

THE APPELLATE COURT HAD A
REVIEW OF THE RECORD AND THE
TESTIMONY BUT THE TRIAL COURT
DIDN'T MAKE ANY DETERMINATION
REGARDING THAT.

>> I AGREE BUT THE QUESTION
BECOMES THE FIFTH DISTRICT
PROHIBITED FROM DOING HARMLESS
ERROR ANALYSIS AND DETERMINED
BASED ON LIMITED COMPONENTS
ALLEGED IN THE PETITION.

>> THE QUESTION WOULD BE
WHETHER YOU DEMONSTRATED ANY
ERROR FAILING TO MAKE FINDINGS
WAS HARMLESS AND THAT IS THE
QUESTION THE FIFTH DISTRICT
WOULD HAVE.

A HARMLESS ERROR TEST.

>> I COULDN'T HEAR ALL OF YOUR
QUESTION.

>> IF THE ERROR WAS PRESERVED
BY MOTION FOR REHEARING, IN
ORDER TO PREVAIL ON APPEAL YOU
WOULD HAVE TO DEMONSTRATE THE
ERROR OF FAILING TO MAKE
FINDINGS WHICH CLEARLY WAS AN
ERROR IN THE PRESERVE WAS
HARMLESS.

THAT WOULD BE YOUR BURDEN,
CORRECT?

>> CORRECT.

>> I AM STRUGGLING TO SEE HOW YOU COULD MEET THAT BURDEN WHEN YOU CAN'T EVEN TELL FROM WHAT THE TRIAL JUDGE SAYS ABOUT THE STATUTE, FORGET THERE WERE NO FINDINGS, THAT IS A DIFFERENT PROBLEMS THAT WOULD BE HARD TO OVERCOME BUT WHAT IS YOUR ARGUMENT THAT THE APPELLATE COURT COULD DETERMINE, THE TRIAL JUDGE CORRECTLY DECIDED THIS CASE?

THAT THE ERROR WAS HARMLESS?

>> BEYOND A REASONABLE DOUBT.

>> THE STATUTE REQUIRES CLEAR AND CONVINCING -- THE STATUTE SAYS BY CLEAR AND CONVINCING EVIDENCE, IT WOULD BE HARMED, AND THE CONTINUING TERM OF INCARCERATION FOR THE MAJORITY

--

>> TALKING ABOUT YOUR BURDEN ON APPEAL FOR HARMLESS ERROR.

>> PRECISELY WHAT THE 50 STRICT DID IS LOOK AT THE RECORD AND DETERMINE --

>> THERE WAS A LOT OF EVIDENCE THAT IT WOULD BE IN THE BEST INTEREST TO TERMINATE PARENTAL RIGHTS.

THERE WAS EVIDENCE THAT THE FATHER WOULD HAVE NO MEANINGFUL ACCESS, NO REASONABLE POSSIBILITY OF NEEDING TO ACCESS THESE CHILDREN DURING THEIR ENTIRE MINORITY BECAUSE THE PROBATIONARY TERM THAT WOULD PROHIBIT HIM FROM POSSIBLY SEEING THEM BUT IT IS A RESTRICTED ENVIRONMENT. PLENTY OF EVIDENCE WOULD HAVE FAVORED A FINDING IN THE OTHER MANNER AND THERE ARE NO FINDINGS.

AND THE STATUTORY FRAMEWORK, AND WE CAN TELL THE TRIAL JUDGE MADE A CORRECT DECISION, NOT THAT THERE WAS EVIDENCE THAT COULD SUPPORT A DECISION BUT

THE TRIAL COURT CONSIDERED THE EVIDENCE ACCORDING TO THE PROPER STANDARD AND MAY FINDINGS IN HIS HEAD THAT WOULD -- HOW CAN YOU POSSIBLY SHOW THAT?

>> I WOULD DISAGREE THAT THE EVIDENCE WITH HOLY.

>> THERE WAS EVIDENCE, THE PROBATION OFFICER'S APPROVAL.

>> THE FATHER TESTIFIED, THE PROVISION OFFICER NUMBER ONE, BUT IT WAS UNCLEAR ALSO WHETHER OR NOT IT WAS PERMISSIBLE.

>> I DON'T RECALL THE TESTIMONY --

>> THAT WAS LITIGATED IN THE 11TH CIRCUIT FOUND IT WAS ACCEPTABLE CONDITION.

>> AND IT WAS.

I DON'T RECALL, I WOULD REDIRECT THE FATHER TESTIFIED IT WOULD NOT BE PERMISSIBLE. MY RECOLLECTION IS IF HE WERE TO REQUEST IT EVEN IF IT WAS UNDER SUPERVISED SITUATION WHERE THE FATHER IS UNDER SUPERVISED VISITATION I DON'T THINK THAT AMOUNTS TO INABILITY TO HAVE CONTACT WITH THE CHILDREN AND IN MANY CIRCUMSTANCES THERE ARE PARENT HAVING SUPERVISED VISITATION WITH THEIR CHILDREN AND THEIR RIGHTS ARE NOT BEING TERMINATED.

I JUST EVEN IF IT WERE SUPERVISED VISITATION THERE WAS AN ONGOING CONTACT WITH THE CHILDREN.

>> YOU DO RECOGNIZE THIS IS A CASE THAT IS IN A GRAY AREA. DIFFERENT TRIAL JUDGES COULD GO DIFFERENT WAYS BASED ON THE CIRCUMSTANCES.

PUTTING ASIDE THE JURISDICTIONAL QUESTION, WE HAVE NO REASON TO BELIEVE THE TRIAL JUDGE USED THE CORRECT STATUTORY STANDARD, HOW COULD

YOU SAID -- STRUGGLING TO UNDERSTAND THAT THAT IS HARMLESS UNDER THE STANDARD, THE VERY HIGH STANDARD THAT THE COURT HAS ADOPTED FOR HARMLESS ERROR ANALYSIS IN CIVIL CASES LIKE THIS.

AND

>> THE JURISDICTIONAL QUESTION, IT TELLS US THE JURISDICTIONAL QUESTION --

>> AS YOU MIGHT WELL KNOW FROM WHAT I SAID BEFORE I AM SYMPATHETIC ON THE JURISDICTIONAL QUESTION AND I VOTED TO NOT TAKE THE CASE FOR THE MOMENT, JUST ON THE MERITS HERE, I AM STRUGGLING TO SEE WHAT REASONING YOU CAN GET TO THE CONCLUSION THAT THIS PARTICULAR CASE, THE ERROR WAS HARMLESS.

OTHER THAN SOMETHING LIKE WE WOULD HAVE DONE THE SAME THING, THAT CAN'T BE THE STANDARD. THAT IS NOT WHAT HARMLESS ERROR ANALYSIS MEANS.

>> WHEN THE DISTRICT COURT SAYS OUR REVIEW IS NOT HAMPERED, THAT LEAVES US IN A DIFFICULT POSITION TO SAY IT REALLY IS HAMPERED.

THE DISCRIMINATION WHICH THE DISTRICT COURT, HAVING HAD FIRST BITE OF THIS, WOULD MAKE THE DETERMINATION THAT IT IS NOT HAMPERED BY THIS, WE TAKE A LOOK AT THIS WITHIN THE FUNCTION OF THAT COURT TO DETERMINE THAT THEY ARE ABLE TO LOOK AT THIS AND SAY WE DON'T FIND THIS TO BE HARMFUL.

THAT IS WHERE WE ARE LEFT, ALLOWING THEM TO MAKE THE FIRST ADDITIONAL DETERMINATION BASED ON THE RECORD BEFORE THEN.

>> DETERMINATION OF LAW, CORRECT?

>> HARMLESS ERROR?

YES, SIR.

>> WE ARE IN POSITION TO MAKE THAT --

>> I DON'T DISAGREE WITH THAT BUT THE POSITION OF DETERMINING AT THIS POINT IN ESSENCE GIVES THE MOTHER A SECOND OPPORTUNITY TO ARGUE THAT HARMLESS ERROR. I CAN'T QUESTION, WITHOUT GOING TO THAT.

AND PREPARING FOR THESE CASES, I GO BACK TO HOW DO WE ESTABLISH WHAT WAS ANNOUNCED DIFFERENT WE FROM SOME OTHER DCA OR OTHER STANDING --

>> LET ME ASK ABOUT FARLEY CALL WOULD, THE CRITICAL CASES IN TERMS OF JURISDICTION AND THOSE ARE UNDER THE DISSOLUTION OF MARRIAGE STATUTE, CORRECT? THOSE CASES IRRESPECTIVE OF WHAT THE STATUTE SAYS EXPRESSLY SAY ON THEIR FACE THAT WRITTEN FINDINGS ARE REQUIRED AS A MATTER OF LAW.

>> IF THEY DO.

>> THEY EXPRESSLY SAY THERE WERE NO WRITTEN FINDINGS. THE FIFTH DISTRICT THAT THERE ARE NO WRITTEN FINDINGS, THEY ARE REQUIRED AS A MATTER OF LAW THAT SAYS IT ON THE FACE OF THE OPINION AND YET THEY ARE AFFIRMING.

IS IT THAT DIRECT CONFLICT? IT IS BASED ON THE WORDS SAID IN THE OPINION.

THE DISSOLUTION CASES MAY BE WRONG BUT YOU WOULD HAVE TO LOOK BEHIND THE OPINION TO SHOW WRITTEN FINDINGS ARE NOT REQUIRED.

>> THERE IS MORE TO THOSE CASES THAN JUST THOSE NUGGETS.

>> IF THERE'S A CONFLICT AS TO THAT ISSUE, I KNOW THREE CASES THAT SAY WRITTEN FINDINGS ARE REQUIRED AND BECAUSE THERE ARE NO WRITTEN FINDINGS IT IS REVERSIBLE AND I HAVE ONE CASE THAT SAYS WRITTEN FINDINGS ARE

REQUIRED BUT WE WILL AFFIRM
THOSE ARE WHAT THE CASE IS
EXPRESSLY SAY, THAT IS THE
ISSUE AND THAT SEEMS LIKE A
DIRECT CONFLICT.

>> WAS KENNEDY AMONG THE LISTS
YOU MENTIONED?

>> KNOW.

>> CALDWELL.

>> FARLEY AND CALL WOULD.

>> IF I PULL THAT LANGUAGE OUT,
EXCUSE THE CONTEXT BECAUSE
THOSE CASES SAY WE ARE NOT ABLE
TO DETERMINE WHAT THE COURT'S
RATIONALE WAS, WE CAN'T
DETERMINE WHETHER THERE WAS
EQUAL DISTRIBUTION.

>> HOW CAN WE DO IT IN THIS
CASE?

THE TRIAL COURT'S ORDER DOES
NOT INCLUDE WRITTEN FINDINGS AS
REQUIRED BY THE STATUTE BUT
FAILURE TO MAKE REQUIRED
FINDINGS CONSTITUTE HARMLESS
ERROR.

THEY ARE POLAR OPPOSITES IN
TERMS OF RULE OF LAW.

ONE SAYS IF IT IS REQUIRED AND
YOU DON'T HAVE IT IS ERROR AND
THIS ONE SAYS IT IS HARMLESS
ERROR.

>> I THINK WHAT ONE IS SAYING
IT IS A PER SE REVERSIBLE ERROR
AND I AM NOT FAMILIAR WITH ANY
CASE LAW THAT SAYS FAILURE TO
MAKE THOSE FINDINGS UNDER
CHAPTER 61 IS PER SE REVERSIBLE
ERROR.

THOSE ARE OPERATIVE WORDS.

>> WHEN YOU ARE TALKING ABOUT
CONFLICT OF ISSUES, THE SAME
ISSUE OF LAW, DOES IT MATTER
WHEN ANALYZING THE ISSUE OF LAW
OF WHAT THESE FINDINGS PERTAIN
TO SUBSTANTIVELY, AND DIFFERENT
CHAPTERS OF THE FLORIDA STATUTE
ACCORDING TO WHAT SUBJECT
MATTER IT IS OR DOES IT HAVE TO
BE THE SAME ISSUE OF LAW, DOES
IT NEED TO ARISE FROM THE SAME

SUBJECT MATTER?

>> IT HAS THE SAME SUBJECT MATTER BECAUSE THEN WE ARE BACK TO THE SITUATION JUSTICE LUCK WAS SPEAKING OF OF TAKING ONE STATUTE AND THE LAW THAT PERTAINS TO THE STATUTE AND APPLYING IT TO ANOTHER STATUTE WITH A DIFFERENT CONTEXT AND WE MERGED APPLES AND ORANGES WITH PRONOUNS WHEN DEALING WITH ONE STATUTE WITH SPECIFIC REQUIREMENTS, IN CHAPTER 61, EQUITY PLAYS A ROLE IN DECISION-MAKING.

>> FINDINGS OF FACT REQUIRED BY LAW, IS REVERSIBLE ERROR PERIOD, THAT IS WHAT IT SAYS. FAILURE TO MAKE INCLUDING FINDINGS OF FACT REQUIRED BY LAW IS REVERSIBLE ERROR, DIRECTLY CONTRARY TO WHAT THE FIFTH DCA SAID IN THIS CASE, ISN'T IT?

ON THE BROADER ISSUE OF WHEN FINDINGS OF FACT ARE REQUIRED BY LAW IS IT REVERSIBLE ERROR TO NOT INCLUDE?

>> THE OPERATIVE WORD IS PER SE.

WE KNOW WE NEED TO APPLY HARMLESS ERROR ANALYSIS SO IN THE ABSENCE OF THAT I DON'T KNOW CONFLICT JURISDICTION --

>> THAT'S NOT WHAT THEY SAID.

>> THEY DON'T SAY IT IS PER SE REVERSIBLE.

THEY SAY IT IS REVERSIBLE.

I DON'T KNOW WE HAVE A CONFLICT WHEN THE FIFTH DISTRICT SAID THIS IS NEVER PER SE -- THEY SAID IT IS NEVER REVERSIBLE, THEN YES.

THEY ADD THAT COMPONENT OF HARMLESS ERROR BECAUSE THAT IS WHAT STATUTE REQUIRES THEM TO DO, TO ANALYZE ERROR UNDER THE HARMLESS ERROR STATUTE.

>> THE ANSWER TO THE JUSTICE'S QUESTION IS THE SAME ANSWER YOU

GAVE JUSTICE PAULSON WHICH IS THE STATEMENT HE'S READING FROM IN THE CONTEXT OF A DIFFERENT STATUTE, DIFFERENT SUBSTANTIVE AREA.

IF YOU TAKE THE QUESTION OF LAW TO SUFFICIENT LEVEL OF ABSTRACTION YOU ARE UNDERMINING WHAT THE CONFLICT ANALYSIS SHOULD BE.

LET ME ASK AS FAR AS APPLYING HARMLESS ERROR, THE REASON WE SHOULD DO THAT, THE HARMLESS ERROR STATUTE 59041.

IS THAT -- IF WE ARE SAYING LET'S APPLY HARMLESS ERROR AS THE REASON WE GO THROUGH THAT ANALYSIS BECAUSE OF THE HARMLESS ERROR STATUTE 59041? I'M READING THE STATUTE AND IT IS NOT OBVIOUS IN THIS CONTEXT HOW IT APPLIES BECAUSE IT TALKS ABOUT HARMLESS ERROR WHERE THERE IS MISDIRECTION OF THE JURY, IMPROPER ADMISSION A REJECTION OF EVIDENCE NOT THE ISSUE.

A MATTER OF PLEADING NOT THE ISSUE AND BEFORE WE GET TO THE STATUTE, WOULD WE FIRST SAY THIS REQUIREMENT OF WRITTEN FINDING IS A MATTER OF PROCEDURE AS THE TERM IS USED IN THE STATUTE BEFORE WE GET TO THE HARMLESS ERROR ANALYSIS ITSELF AND ASKING HARMLESS ERROR QUESTION, WOULD WE FIRST HAVE TO CONCLUDE THIS IS A MATTER OF PROCEDURE?

>> YOU HAVE TO FIND FAILURE TO COMPLY WITH THAT PORTION OF STATUTE FITS INTO THE LANGUAGE OF THE STATUTE UNDER 59.

>> UNDER THE WORD PROCEDURE. SO IS THE ORIGIN OF THAT BEING STATUTORY AS OPPOSED TO A COURT RULE.

IS THAT A PROBLEM?

>> I SUPPOSE IT MIGHT BE. I DON'T KNOW IF THIS IS

HELPFUL, BUT WE ARE APPLYING THE HARMLESS ERROR ANALYSIS AND FAILURE TO MAKE FINDINGS IN A STATUTORY CONTEXTS AND IN LIGHT OF THAT I DON'T SEE WHERE WE ARE FORECLOSED FROM DOING THAT IN THIS STATUTORY COMPLEX. IF IN FACT WE ARE TALKING ABOUT THIS, 61 IS ALLOWING HARMLESS ERROR ANALYSIS TO MAKE FINDINGS.

WE KNOW FROM CASES I CITED IN MY BRIEF, WITH FAILURE TO MAKE FINDINGS IN 61.

IF THAT HAPPENS IN STATUTORY COMPLEX, BY ANALOGY WE TAKE WHERE IT IS COMING FROM FROM PROCEDURE LANGUAGE OF CHAPTER 50, CHAPTER 59.

ANY QUESTIONS, I WILL SIT DOWN.
>> JUSTICE LUCK.

I AM 11/2 FOR TWO.

IN CALL WOULD, THEY ARE QUOTING A CREDIBLE DISTRIBUTION STATUTE.

>> THAT'S WHY WE DIDN'T USE EQUITABLE DISTRIBUTION.

CHAPTER 39 WITH ALIMONY.

EQUITABLE DISTRIBUTION SAYS WRITTEN FINDINGS.

>> THAT IS CALLWOULD.

SECTION 39.811 SUBSECTION 4, POWERS OF DISPOSITION, THE 2015 VERSION AND THE LAST -- COURT MAKE SPECIFIC FINDINGS BASED ON EVIDENCE WITH THE REMAINING PARENT TO THE CHILD, THE COURT MAY ORDER.

>> MAKES SPECIFIC FINDINGS IN IT.

>> SOUNDS TO ME LIKE THAT IS A PREREQUISITE TO MAKING THE ORDER BUT NOT AS EXPLICIT AS YOU LIKE.

>> NOT THE SAME LANGUAGE WE HAVE IN OTHER WORDS.

>> ANOTHER DECK I BRING TO THE COURT'S ATTENTION, CAN'T LOSE SIGHT OF THE FACT THE FIFTH DCA, HARMLESS ERROR CASE THEY

RELIED ON IS ALIMONY CASE.
CLEARLY THE FIFTH IN THE
DECISION THOUGHT OF IT AS
PROCEDURAL MATTER AND DIDN'T
THINK IT WAS APPLES AND ORANGES
OTHERWISE THEY WOULD NOT BE
CITING AN ALIMONY CASE, THAT IS
IMPORTANT FOR THE COURT TO
DECLINE JURISDICTION.
THAT WAS THE BASIS FOR THE
HARMLESS ERROR ANALYSIS.
IT IS COMPLICATED BUT I THINK
THAT MUST MEAN SOMETHING.
>> THE PROBLEM I'M HAVING
UNDERSTANDING THE
JURISDICTIONAL ARGUMENT, IT
REQUIRES SOME OF THE CONFLICT
CASES, WE EQUATE THE
IDENTIFICATION OF ERROR WITH
IDENTIFICATION OF PER SE ERROR
AND THOSE ARE DIFFERENT
CATEGORIES IN THE LAW AND WHEN
THE COURT SAYS THIS IS AN ERROR
THAT IS REVERSIBLE, THAT IS NOT
THE EQUIVALENT OF SAYING IT IS
PER SE REVERSIBLE ERROR.
WHAT I BE RIGHT ABOUT THAT?
>> UNDER THAT SPECIFIC
CONSTRUCT YES.
IF THEY ARE SAYING IT IS
IMPOSSIBLE TO REVIEW, WE CAN'T
GIVE MEANINGFUL APPELLATE
REVIEW BECAUSE THESE FINDINGS
ARE NOT MADE IT LEGISLATURE
REQUIRES THEM, ROADS LEAD TO
THE SAME PLACE.
>> THAT COULD BE FACTOR
DEPENDENT IN THE PARTICULAR
CASE.
>> IT IS BECAUSE THE MESSAGE IS
THE LEGISLATURE SAYS YOU HAVE
TO CONSIDER THESE FACTORS.
>> IF THAT IS WHAT THE COURT,
WHAT THOSE COURTS WERE SAYING,
THE CATEGORY OF PER SE
REVERSIBLE IS READILY AVAILABLE
CATEGORY THEY COULD HAVE
DEPLOYED AND THEY DID NOT DO
IT.
>> DIDN'T USE THE LANGUAGE PER

SE REVERSIBLE AND THIS COURT
DOESN'T HAVE TO EITHER.
IF THOSE FINDINGS ARE NOT MADE.
I AM OUT OF TIME.
APPRECIATE IT.
>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS AND YOUR PRO BONO
SERVICE IN THIS CASE.