>> COURT IS IN SESSION, THE HONORABLE CHIEF JUSTICE CHARLES T CANNADY PRESIDING.
>> WELCOME TO THE SECTION OF THE FLORIDA SUPREME COURT.
THE FIRST CASE ON TODAY'S DOCKET IS C.N. VERSUS I.G.C..
COUNSEL, PLEASE PROCEED.
>> GOOD MORNING MISTER CHIEF JUSTICE AS MAY IT PLEASE THE COURT.
MY NAME IS ERIC TUNG ALONG WITH DOMESTIC VIOLENCE APPEALS PROJECT, WE WELCOME CHELSEA STAR NELSON, PETITIONER AND MOTHER IN THIS CASE.
I LIKE TO RESERVE 5 MINUTES FOR REBUTTAL.
THE TRIAL COURT, IN MS. NELSON, IT SHOULD BE REVERSED.
AS A CONDITION OF TIME SHARING, TO PARTICIPATE IN INTENSIVE THERAPY FOR AN INDEFINITE TIME.
IT WAS VAGUE, THE ORDER WAS MADE.
THAN THE ENTIRE TIME SHARING PLAN WILL BE VACATED AS WELL.
YOUR HONORS, WE NEED CONCRETE STEPS FOR BENCHMARKS -- DISTRICT COURTS OF APPEAL HAVE DONE IT FOR THREE DECADES AND THEY REJECTED THAT STATING THE GOVERNING STATUTE PROHIBITS THE PROVISION OF CONCRETE STEPS.
THAT IS WRONG.
>> COUNSEL, LET ME ASK YOU THIS.
THE CONCRETE STEPS, IT WILL BE CONCRETE STEPS THAT WOULD LEAD TO A RESTORATION OF THE PREVIOUS STATUS QUO.
>> THAT IS CORRECT.
>> IT SEEMS TO ME THE STATUS QUO IS CHANGED, THERE IS A NEW ORDER, THE PRESUMPTION OPERATIVE THE STATUS QUO WILL STAY IN PLACE UNTIL SOMETHING ELSE CHANGES.
THE REFERENCE POINT WITH AN ASSESSMENT DETERMINATION WILL BE THE BEST INTERESTS OF THE TRIAL.

THAT IS CLEAR IN THE STATUTORY SCHEME.
WHY ASSUME HE WILL RESTORE PREVIOUS STATUS QUO AND IN THIS CASE, IMAGINE THIS CHILD IS BECOMING SCHOOL AGE, A CHILD IN PARTICULAR SCHOOL AND YOUR PRESUMPTION IS THE MOTHER GET STABILIZED AND APPROVES THE SITUATION THEN THAT RESULTS IN A CHILD BEING TAKEN OUT OF THAT SCHOOL AND PUT IN ANOTHER SCHOOL.
I DON'T UNDERSTAND HOW THAT WOULD WORK.
>> THANK YOU, MISTER CHIEF JUSTICE, OUR POSITION IS THAT THE BEST INTEREST DETERMINATION WOULD APPLY IN ANY DECISION MADE BY THE TRIAL COURT.
WE ARE ARGUING SUCH A PATIENT IN THE TIME SHARING WHETHER THE CHILD GOES TO A DIFFERENT SCHOOL OR NOT IS CONTINGENCY IS BUILT INTO THE TIME-SHARING PLAN ITSELF.
IT WOULD NOT BE SUBJECT TO THE 2-PART MODIFICATION TEST ANNOUNCED IN WADE AND 61 -- 61.2-C.
THE QUESTION IS WHETHER THE PROVISION OF CONFLICT STEPS WOULD BE PROHIBITED AND WE ARE SAYING IT WOULD NOT BE.
>> THAT IS, SORRY TO INTERRUPT BUT SEEMS LIKE THE CONFLICT, I UNDERSTAND THE COMPLICATED QUESTION OF WHAT A PLAN ON THE FRONT END COULD INCLUDE AND WHETHER PEOPLE CAN ARGUE ABOUT WHETHER SOMETHING IS A MODIFICATION OR JUST BUILT INTO THE PLAN BUT THE CONFLICT ISSUE IS WHETHER IT IS ILLEGAL FOR A PLAN NOT TO INCLUDE STEPS TO GET BACK TO THE STATUS QUO.
DO YOU AGREE WITH THAT?
THE ISSUE ABOUT WHETHER A DIFFERENT PLAN WOULD HAVE SOME SORT OF STEPS WERE BUILT IN

MOVING STATUS QUO OR SOMETHING,
THAT TYPE OF ORDER IS NOT IN
FRONT OF US AND NOT THE SUBJECT
OF THE CONFLICT, IS THAT RIGHT?
>> I WOULD RESPECTFULLY PUSH
BACK ON THAT.
THAT SHE WAS RELATED TO THE
QUESTION OF WHETHER CONCRETE
STEPS ARE REQUIRED.
IN THIS CASE A THERAPY ORDER WAS
IMPOSED THE WAS VAGUE.
ONCE THE THERAPY IS ORDERED AS A
CONDITION OF TIME-SHARING AS
PART OF THE PLAN THEN CONCRETE
STEPS ARE REQUIRED TO CURE THE
VAGUENESS.
OTHERWISE THE PARENTS, IN THIS
CASE MY CLIENT, DOESN'T KNOW
WHAT TO DO IN THERAPY.
THE THERAPIST DOESN'T KNOW WHAT
TO DO EITHER, THE COURT HAS LEFT
HER IN A POSITION WHERE SHE IS
POTENTIALLY STUCK INDEFINITELY.
>> THE ISSUE WITH THAT IS THAT
ARGUABLY, FIRST OF ALL THE FIFTH
DCA'S OPINION DOESN'T GET INTO
ANY OF THAT, THAT COULD RELATE
TO WHETHER THE STATUS QUO ANY
ORDER ITSELF COULD BE PRESERVED.
THAT DOESN'T HAVE ANYTHING TO DO
WITH THE QUESTION OF WHETHER
THAT'S A WAY TO GET BACK TO WHAT
THE CHIEF JUSTICE WAS REFERRING
TO, THE PREVIOUS STATUS QUO,
SEEMS THE CONFLICT ISSUE SEEMS
CLEAR.
WE HAVE TO HAVE A DISTRICT COURT
THAT SAYS THESE ORDERS HAVE TO
GIVE YOU A PATHWAY TO GET BACK
TO THE STATUS QUO, THE FIFTH DCA
AND FIRST DCA SAID THEY DON'T
HAVE TO SEE THAT AND THAT IS A
CLEAR-CUT QUESTION WE HAVE BEEN
ASKED TO RESOLVE THE DOESN'T
REQUIRE US TO GET INTO A KIND OF
THING YOU ARE REQUIRING WHETHER
THIS PARTICULAR ORDER WAS OR
WASN'T VAGUE, WHICH COULD RELATE
TO WHETHER THE MOM COULD LOSE
THE RIGHTS SHE HAS UNDER THIS

ORDER DEPENDING ON HOW THAT
GOES.
>> YOU FRAMED THE CONFLICT
CORRECTLY BUT WE ARE SQUARELY IN
THE CONFLICT, THE FIFTH DISTRICT
COURT OF APPEAL DID ADOPT THE
FIRST DIFFERENT COURT OF APPEAL,
THAT BECOMES PROBLEMATIC.
THE PROBLEM WITH OUR CASE HERE
IS WE DO HAVE A THERAPY ORDER
AND A LOT OF THE CASES THAT HELD
CONCRETE STEPS ARE REQUIRED
INVOLVE THERAPY ORDERS SO
BEGINNING WITH THE FIRST CASE
THAT AN OUNCE THE REQUIREMENT IN
HUNTER VERSUS HUNTER IN 1989
INVOLVED THERAPY AND THEN WITT
VERSUS BALLS AND THE TD CASE.
>> MOST OF THOSE CASES DEALT
WITH TEMPORARY OR EMERGENCY
ORDERS AS OPPOSED TO
MODIFICATION AFTER A FULL TRIAL.
SOME ARTISTIC WAS A BILL ON THAT
BUT JUST TO CLARIFY ARE YOU
SAYING CONCRETE STEPS ARE
REQUIRED IN ORDER TO PUT YOUR
CLIENT IN THE POSITION SHE WAS
BEFORE THE MODIFICATION.
CONCRETE STEPS ARE REQUIRED IN
ORDER FOR HER TO MAINTAIN HER
NEW TIME-SHARING.
>> I THINK IT IS UNCLEAR TO BE
HONEST FROM THE FACE OF THE
TRIAL COURT ORDER AND THAT FEEDS
INTO THE VAGUENESS OF THE TRIAL
COURT'S ORDER HERE.
THERE SETTLEMENT OF BOTH.
IF THE TRIAL COURT CONTEMPLATED
NELSON WERE TO SUCCESSFULLY
PROGRESS AND COMPLETE THERAPY,
TIME-SHARING COULD BE EXPANDED
THE STATUS, TO REINSTATE HER
PREVIOUS TIME-SHARING AND THAT
IS CLEAR ON PAGE 233.
>> WHERE IS THAT IN THE ORDER?
>> THERE IS A SUGGESTION OF WHAT
IS GOING TO HAPPEN IN THE
SUMMER, UNDERSTAND THAT BUT AS
FAR AS ANY SUGGESTION IN THE
TRIAL COURT ORDER THAT THERE

WOULD BE A REVERSION TO THE
PREVIOUS STATUS QUO WHICH SITES
PAGE AND LINE NUMBER.
>> THIS WOULD START THE THERAPY
ORDER ITSELF AND IN THE
IMPOSITION OF THE ORDER THE
TRIAL COURT MADE CLEAR THAT SHE
DID SO AS A CONDITION OF THE
TIMESHARE AND WE CITE VARIOUS
PAGE NUMBERS IN THE RECORD.
>> THE REVERSION TO THE PREVIOUS
STATUS QUO, CAN YOU CITE ME
ANYTHING THAT SUGGESTS THAT THE
THERAPY WAS AIMED AT CULMINATING
IN REVERSION TO THE PREVIOUS
STEPS.
>> YOUR HONOR POINT TO THE
SUMMER AND SPRING TIME-SHARING
AND ON PAGE 233 OF THE RECORD
WHERE THE TRIAL COURT MADE ITS
INTENT CLEAR THAT IT WANTED TO
IMPOSE SPECIFIC CONDITIONS TO
ALLOW THE MOTHER TO, QUOTE,
REINSTATE HER TIMESHARE, THAT IS
WHAT THE TRIAL COURT SAID AND
OTHER PLACES IN THE RECORD THE
TRIAL MAKES THAT --
>> THAT IS NOT IN THE ORDER.
>> THAT IS NOT IN THE WRITTEN
ORDER BUT THE COURTS HAVE MADE
CLEAR THE WRITTEN ORDER MUST BE
READ IN LIGHT OF THE COMMENTS
MADE BY THE TRIAL COURT IN THE
HEARING AS WELL.
>> YOUR HONOR.
>> JUSTICE COREY, YOU NEED TO
UNMUTE.
>> THANK YOU, CHIEF.
THE FIRST PART OF MY QUESTION IS
WE CAN AGREE THE SPECIFIC STEPS
REQUIREMENT YOU ARE ASKING THIS
COURT TO ADOPT OR REAFFIRM.
IS THAT RIGHT?
>> IT DOESN'T APPEAR ON THE CASE
OF THE STATUTE, THE LEGISLATURE
ADOPTED THE LONG-STANDING RULE
THE COURTS HAVE ANNOUNCED OVER
THREE DECADES AND IT IS CLEAR
SINCE 1989 WHEN SPECIFIC STEPS
REQUIRED IT WAS DESCRIBED IN

HUNTER, THERE HAVE BEEN 39
AMENDMENTS IN THE GOVERNING
TIME-SHARING STATUTE.
NONE OF THEM ADDRESS THE ISSUE
OR EXPRESSLY ABROGATED THE
LONG-STANDING RULE OF
INTER-DISCIPLINES.
>> OR EXPRESSLY ADOPTED ONE
EITHER.
>> OR EXPRESSLY ADOPTED IT.
THE PRESUMPTION IS THE
LEGISLATURE IS AWARE OF THE CASE
LAW.
THAT IS A MATTER OF
INTERPRETATION.
WHEN IT APPLIES THE CANDIDATE IS
CLEAR LEGISLATURE ADOPTED WHAT
WE ARE ADVANCING HERE.
>> I UNDERSTAND THE ARGUMENT,
THE SECOND PART OF MY QUESTION,
IN THE CASES, THE DOCTRINE HAS
BEEN ELABORATED, MANY OF THEM
ARE IN TEMPORARY RESTRICTIONS
AND I KNOW MANY OF THESE CASES
DEAL WITH TERMINATION OF
TIME-SHARING ALTOGETHER.
SITE IS THE CASE WHERE THE
PRESUMPTION YOU ARE ASKING US TO
SAY APPLY TO A REDUCTION ON A
NEW STATUS QUO BASIS OF
TIME-SHARING RATHER THAN
PRELIMINARY RESTRICTION OR
TERMINATION OF TIME-SHARING
ALTOGETHER.
>> THE TD CASE AND OTHER CASES,
OTHER CASES, NOT ALL OF THEM
ADDRESS NEARLY TEMPORARY
MODIFICATIONS, THEY NEVER HELD
THAT THAT WOULD BE A
DISTINCTION, THAT MIGHT BE A
FEATURE OF THOSE CASES, A LEGAL
HOLDING, WE SEE NO DISTINCTION
BETWEEN A REDUCTION VERSUS A
COMPLETE DEPRIVATION AND IN ONE
OF THE CASES, CURIEL VERSUS
CURIEL, THE COURT MADE CLEAR
THAT IF THE REDUCTION, I BELIEVE
IT WAS A REDUCTION CASE BUT I
HAVE TO CHECK.
ANY KIND OF DEFICIENCY THAT WAS

IDENTIFIED BY THE TRIAL COURT
MUST, THE CONCRETE STEPS MUST
ADDRESS AND GO TO THAT
DEFICIENCY.
EVEN IN THE CASE THAT OPPOSING
COUNSEL RELIES ON, HUGHES VERSUS
AMY, THE FIRST DISTRICT COURT OF
APPEALS CASE, THE COURT ALSO
SAID IT WOULD NOT BE PROHIBITED
FOR A TRIAL COURT IN HIS OR HER
DISCRETION TO REQUIRE CONCRETE
STEPS AND WHEN A THERAPY ORDER
IS ISSUED REQUIRING THE PARENT
TO UNDERGO INTENSIVE CARE AND
SEE -- UNBOUNDED AND UNLIMITED
THERAPY ORDER, THE PARENT MUST
HAVE RECOURSE TO GUIDANCE TO
CONCRETE STEPS.
OTHERWISE THE COURT IN THE FIFTH
DISTRICT COURT OF APPEALS
WITHOUT ADDRESSING A POINT WHICH
WE BRIEFED LEE LEAVES HER IN.
>> I HAVE A QUESTION.
I WANT TO MAKE SURE I UNDERSTAND
YOUR POSITION OF CONCRETE STEPS.
COULD THE CIRCUMSTANCES OF THE
CASE OR WHATEVER WAS INVOLVED, A
JUDGE COULD PULL NO CONCRETE
STEPS WITH MATTERS TO STATUS
QUO, WOULD IT DO ANY GOOD?
THE MOTHER AND THE FATHER LOSES
CUSTODY OR WHATEVER PERMANENTLY?
BE SOMETHING?
>> THAT COULD BE SO.
GIVE THEM' CASE THE TRIAL COURT
SAID THE RESTORATION WAS NOT
POSSIBLE.
I WOULD REFER YOUR HONOR'S 2
PAGES 887 OF THE RECORD AND 889
AND PAGE 233 WHEN THE TRIAL
COURT MADE THAT CLEAR.
THAT SITUATION IS POSSIBLE BUT
THAT IS NOT OUR SITUATION HERE.
>> A LITTLE MORE THAN 15
MINUTES.
YOU ARE EATING INTO REBUTTAL.
YOU MAY CONTINUE OR RESERVE.
>> IF YOUR HONOR HAS ANOTHER
QUESTION I'M HAPPY TO ANSWER.
I MEETING INTO MY REBUTTAL TIME.

>> I'M NOT HEARING --
>> FURTHER QUESTIONS --
>> I WILL RESERVE THE REMAINDER
OF MY TIME FOR REBUTTAL.
THANK YOU.
>> THANK YOU.
COUNSEL?
>> MAY IT PLEASE THE COURT, MY
NAME IS WADE LUTHER REPRESENTING
THE RESPONDENT IN THIS CASE.
THE RELIEF WE ARE SEEKING TODAY
IS FOR THIS COURT TO AFFIRM THE
DISTRICT COURT BELOW AND
SPECIFICALLY HOLD FLORIDA
STATUTE 61.13 IS THE SOLE
METHOD TO MODIFY FURTHER
RESPONSIBILITY IN TIME-SHARING.
FURTHER SEEKING THIS COURT TO
CLARIFY THAT STATUTE DOES NOT
REQUIRE NOR DOES IT PERMIT A
TRIAL COURT TO COME UP WITH
CONCRETE STEPS WHICH ONCE THOSE
CONCRETE STEPS ARE PUT INTO
PLACE WOULD SOMEHOW
AUTOMATICALLY REVERT TO THE
PRIOR STATUS QUO OR THE PRIOR
FINAL JUDGMENT.
THE FIRST ARGUMENT OF THE MOTHER
IS THE EVERY MODIFICATION OF THE
FINAL JUDGMENT INVOLVING
TIME-SHARING OR RESPONSIBILITY
MUST HAVE CONCRETE STEPS AND
ONCE THESE STEPS ARE
ACCOMPLISHED, AUTOMATICALLY
REVERTS TO THE PRIOR FINAL
JUDGMENT.
THAT IS COMPLETELY CONTRARY TO
THE STATUTE WE ARE DEALING WITH,
THE COURT RAISED THAT ISSUE.
IN TWO PLACES AND 61.13, SECTION
2-C, MODIFICATION OF THE
PARENTING PLAN REQUIRES
SUBSTANTIAL MATERIAL AND
UNANTICIPATED CHANGE OF
CIRCUMSTANCES.
WHAT IT DOESN'T SAY IS UNLESS
THE TRIAL COURT DECIDES THERE IS
A DIFFERENT WAY A BETTER WAY TO
HANDLE IT.
THE SAME STATUTE, PARAGRAPH 3,

THE TIME-SHARING MAY NOT THE
MODIFIED WITHOUT THE SHARING OF
SUBSTANTIAL CHANGE IN
CIRCUMSTANCE AND THE
MODIFICATION IS IN THE BEST
INTEREST OF THE CHILD, WHAT THE
STATUTE DOES NOT SAY IS ALMOST
THE TRIAL COURT DETERMINES THERE
IS A BETTER WAY TO DO THIS.
>> WHAT OF THE PETITIONER'S
ARGUMENT THAT THE STATUTE IN ITS
LONG HISTORY HAS BEEN AMENDED IN
VARIOUS WAYS THE WOULD UNDO THE
WAY THE COURTS HAVE ON OCCASION
READ THE PERMISSION OF
REQUIREMENT CONCRETE STEPS IN
THE CASE OF THERAPY, SHOULD WE
FOLLOW THE PETITIONER'S
SUGGESTION AND PRESUME THE
LEGISLATURE KNEW THAT CASE LAW
IN THIS CASE.
>> THE HUNTER CASE WAS 1989.
IN THIS COURT, 2005, 1.1 3.
WE ENCOURAGED THE CASE DID NOT
INCLUDE THE REQUIREMENT EVERY
SUBSTANTIAL CHANGE IN SERVICING.
THE DETERMINATION WILL BE
DETERMINED BY THE BEST INTERESTS
OF THE CHILD AND PURSUANT TO JE
A SO THE HUNTER CASE AND THE
CASE BEFORE THE STATUTE WAS
AMENDED, ONCE THEY AMENDED THE
STATUTE REQUIRED SUBSTANTIAL
CHANGE IT NEGATES THE COURT'S
PRIOR INTERPRETATION, PRIOR TO
THAT AMENDMENT, THE COURT WAS
LEFT TO FILL IN THE BLANKS ON
WHAT DOES THIS MEAN, SURELY YOU
DON'T KNOW CHANGING
CIRCUMSTANCE, THEY CONTENDED IS
IN THE BEST INTEREST OF THE
CHILD.
ONCE THEY AMENDED THE STATUTE,
THAT NEGATED THE PRIOR CASE LAW.
WITH REGARD TO THERAPY NONE OF
THE CASES WE ARE DEALING WITH,
THE HUNTER CASE, THE PEREZ CASE,
THOSE ARE NOT THERAPY CASES,
THOSE ARE CASES, AND AS THE
COURT HAS POINTED OUT MANY OF

THOSE CASES STARTED WITH THE FACT THERE WAS NO TIME-SHARING WHATSOEVER.
PRIOR TO THE AMENDMENT OF STATUTE TO ADD THE SUBSTANTIAL CHANGE, WHERE WE ARE ENTERING THE FINAL JUDGMENT THERE WAS NO TIME-SHARING, WE HAD A PATH BACK TO THE PAIR HAVING TIMESHARE.
THE MOTHER, AS PER MENTAL HEALTH, MORE PARTICULARLY IF THEY DEMONSTRATE SHE STOPS OR WON'T DO THESE DETRIMENTAL BEHAVIORS, FILING THE SUPPLEMENTAL PETITION, AND UNANTICIPATED CHANGE IN CIRCUMSTANCE.
>> I WOULD.
THERE WAS SOME QUALIFICATION, FORESEEABLE VERSUS UNANTICIPATED.
THERE IS A BLUR IN THAT.
IT IS FORESEEABLE ONE ANOTHER IN THIS CASE WOULD IMPROVE YOURSELF AND STOP THOSE BEHAVIORS.
IN THIS CASE HAVING TO DO WITH ALIMONY, THE TRIAL COURT HAD FACTORED IN, THE MOTHER WILL GET BETTER.
IN 6 MONTHS.
AND THAT IS FACTORED INTO IT.
AND THIS DETERMINE WHETHER THEY GOT BETTER.
IT IS MY POSITION, THE COMMUNITY USED CLARIFICATION ON THIS, THAT JUST IS SOMETHING IS FORESEEABLE, WE FORESEE SHE MIGHT GET BETTER.
THAT WOULD NOT PREVENT HER FROM FILING A SUPPLEMENTAL PETITION, 6 MONTHS DOWN THE ROAD OR 5 YEARS DOWN THE ROAD, UNDERSTAND THAT I HAVE NOW IMPROVED, NO LONGER DO THAT SENTIMENTAL ACTS THE COURT WAS SO CONCERNED ABOUT, THEREFORE LET ME MODIFY AND AT THAT POINT SHE THEN THE TRIAL COURT HAS TO LOOK AT THE BEST INTEREST OF THE CHILD FACTORS A THROUGH T AND THOSE

FACTORS HAVE TO BE
CONTEMPORANEOUS WITH THE
MODIFICATION WAS WHAT THE MOTHER
IS ARGUING IN THIS CASE, EVERY
COURT IN MODIFICATION ACTION HAS
TO PROVIDE STEPS UPON WHICH THEY
REVERT BACK TO THE FINAL
JUDGMENTS.
THE SUPPLEMENTAL FINAL JUDGMENT,
SUPPLEMENTS A FINAL JUDGMENT
WOULD BE A TEMPORARY ORDER, IN
ADDITION TO THAT IT IS VERY
IMPORTANT FOR THE COURT TO LOOK
AT THE ARTHUR CASE WHICH CAME
OUT OF THIS COURT WHICH TALKS
ABOUT THE PERSPECTIVE ANALYSIS.
IN THAT CASE A RELOCATION CASE
AND THE COURT, THE UNDERLYING
REPORT, IN 20 MONTHS, WENT AFTER
THE SUPREME COURT AND THIS COURT
THE ANALYSIS WAS NOT PERMITTED.
WHAT THIS COURT HELD WAS THE
BEST INTEREST FACTORS FOUND IN
61.1300 ONE, CONTEMPORANEOUS
WITH THE EVENT, IN THE BEST
INTEREST OF THE CHILD.
SO THAT DETERMINATION WAS MADE
AT THAT POINT.
>> CAN I HAVE YOU ADJUST THE
ARGUMENT REGARDING THE THERAPY?
LET'S ASSUME WE VIEW THE ORDER
NOT AS REQUIRING THERAPY NOT TO
RESTORE THE PREVIOUS
TIME-SHARING BUT REQUIRING
THERAPY TO MAINTAIN THE NEW
CRITERIA SHE HAS BEEN GIVEN
UNDER THE MODIFICATION.
DO YOU AGREE THAT THE ORDER
ITSELF IS VAGUE AS TO THE STEPS
REQUIRED?
>> KNOW I DON'T.
FIRST OF ALL I DON'T THINK THAT
ISSUE IS BEFORE THIS COURT BUT I
DON'T THINK IT IS VAGUE.
NOW OR IN THE FINAL JUDGMENT OF
THE CONDITION OF TIME-SHARING
AWARDED ON HER PARTICIPATING
THERAPY.
STRICT READING OF THAT ORDER SO
SHE MUST PARTICIPATE IN THERAPY,

SHE MUST BEGIN IMMEDIATELY AND
THE STATUS CONFERENCE SEVERAL
MONTHS DOWN THE ROAD.
THE STATUS CONFERENCE DIDN'T
HAPPEN BECAUSE THE MOTHER
APPEALED THE CASE, IT LOST
JURISDICTION TO DO ANYTHING
ABOUT THAT BUT THE STRICT
READING OF THAT ORDER NOWHERE
CONDITIONS THE TIME-SHARING THAT
WAS AWARDED UPON HER DOING
ANYTHING EXCEPT FOR STARTING
THERAPY.
IT DOESN'T SAY HOW LONG SHE HAS
TO GO, SPECIFICALLY MAINTAINED
IT WAS NOT AN EVALUATION, SHE
MAINTAINED HER THERAPIST
PRIVILEGE, THERE IS NO STATED
CONSEQUENCE, SO SHE DIDN'T, SHE
DID START THE THERAPY, THE TRIAL
COURT REQUIRED SHE FILE A NOTICE
STATING SHE STARTED THERAPY AND
GIVE THE THERAPIST'S NAME AND
GIVE A FATHER TIME TO OBJECTIVE
HE THOUGHT THE THERAPIST WASN'T
QUALIFIED ENOUGH, THAT DIDN'T
HAPPEN.
AND THE TECHNICAL SINCE THE
MOTHER HAS ALREADY 100% COMPLIED
WITH THE TERMS OF THE THERAPY
REQUIREMENTS OF THE FINAL
JUDGMENT.
IF SHE WERE TO STOP THERAPY NEXT
WEEK THERE'S NOTHING IN THE
FINAL JUDGMENT THAT COULD BE
USED FOR ENFORCEMENT TO SAY YOU
ARE IN CONTEMPT BECAUSE YOU ARE
STILL NOT IN THERAPY.
THE THERAPY ORDER DIDN'T SAY FOR
ANY PERIOD OF TIME THAT IT HAD
TO BEGIN.
THE ORDER DID SAY AND WAS BASED
ON EXPERT TESTIMONY THE THERAPY
COULD LAST A NUMBER OF YEARS BUT
NOWHERE IN THE FINAL JUDGMENT,
NOWHERE DOES IT SAY THE MOTHER
HAS TO PARTICIPATE FOR ANY
PARTICULAR TIME.
THE MEETING OF THE FINAL
JUDGMENT, THE REASON THE TRIAL

COURT ENTERED THAT IS THE TRIAL
COURT GAVE THE MOTHER CERTAIN
TIME SHARING BASED ON WHAT IS IN
THE BEST INTEREST OF THE CHILD
AS OF THE DATE OF THE TRIAL
WHICH IS THE CORRECT THING TO
DO.
WITH THE TRIAL COURT WANTED,
WHAT THAT WAS, THE TRIAL COURT
DID NOT BELIEVE THAT THE MOTHER,
BASED ON EVIDENCE AT THE TRIAL.
THE TRIAL COURT, OUT OF
GENEROSITY TO FOSTER THE
RELATIONSHIP.
THEY COULD OBTAIN MORE
TIME-SHARING.
AND PROHIBITED BY ARTHUR AND
POTENTIALLY THE FATHER APPEALED
THAT BUT HE DIDN'T, NOT THAT
BEGIN ISSUE.
THE ORDER, THE WAY IT IS SET UP
DOES NOT REQUIRE THERAPY FOR ANY
TIME, ONLY GIVES THE OPTION TO
GIVE MORE TIME-SHARING.
NOWHERE IN THEIR DOES IT SAY
ANYTHING ABOUT TIME-SHARING WILL
BE RESTRICTED.
>> THE ORDER DOES SAY THE COURT
ANTICIPATES THE THERAPY WILL
LAST SEVERAL YEARS OR MORE.
DOES IT?
>> IT DOES SAY THAT.
IS A TECHNICAL SINCE, NOWHERE
NEAR SPECIFIC TO ENFORCE OR HOLD
HEARING ATTEMPT IF WE SHOULD
STOP THERAPY AFTER SIX MONTHS.
TO ME THAT DIDN'T SAY --
>> YOU WOULD NOT BE MOVING IF
SHE DROPPED OUT OF THERAPY YOU
WOULD NOT BE MOVING FOR
CONTEMPT?
>> ABSOLUTELY NOT.
I DON'T THINK THE LANGUAGE OF
THAT ORDER WOULD SUPPORT
CONTEMPT.
IT WOULD HAVE TO BE, THE ORDER
HAS TO BE CLEAR AND UNAMBIGUOUS
WITH WHAT RESPONSIBILITIES ARE.
THAT LINE FROM THE FINAL
JUDGMENT IN NO WAY SPECIFIC

ENOUGH TO SUPPORT CONTEMPT,
WHERE THAT LINE CAME FROM IS THE
EXPERT WHO DID A PSYCHOLOGICAL
EVALUATION OF THE MOTHER
TESTIFIED TO THAT, HE
ANTICIPATED CAN TAKE THAT LONG.
THAT WAS NOT A FIRM OPINION FROM
HIM THAT WOULD REQUIRE ANY
SPECIFIC TIME.
NOW EXPERT IF YOU DO THERAPY 30
MONTHS, NO ONE COULD SAY WITH
ANY CERTAINTY WHAT THAT IS.
TO ME THAT LINE IN THE FINAL
JUDGMENT IS A REFLECTION OF THE
COURT EXPRESSING THE SEVERITY OF
THE ISSUE THE MOTHER WAS GOING
THROUGH BUT AS YOU POINTED OUT I
DO NOT THINK THERE'S ANY WAY
ENFORCEMENT ACTION COULD BE
SUPPORTED OF THAT AND WHAT I
WOULD LIKE TO POINT OUT THE
RELIEF OF THE MOTHER SEEKING IS
SIMPLY UNWORKABLE, THE FIRST DCA
CASE, A SIMILAR FACT PATTERN,
THE FATHER HAD SUBSTANCE ABUSE
ISSUES.
AND LIMITED THE TIME OVERNIGHT,
THEY PROVIDED CONCRETE STEPS TO
THE FATHER, WITH VETERANS COURT
HAVING THE MOTOR VEHICLE
VIOLATIONS FOR A YEAR, THE
FATHER COMPLETING THOSE STEPS
WOULD AUTOMATICALLY REVERT TO
50/50 TIME-SHARING.
THE DISTRICT COURT OF APPEAL
REVERSED THAT, A PERSPECTIVE
BASED ANALYSIS BUT LOOKING AT
THAT CASE AS A PRIME EXAMPLE OF
WHAT THE MOTHER IS SEEKING IN
THIS CASE, HOW COULD THAT
POSSIBLY WORK?
THERE WAS NO TIMEFRAME.
THE FATHER IN THE HUGHES CASE
DIDN'T HAVE ANY TRAFFIC TICKETS
OR RESIDENTS, IF IT TOOK A
MONTH, IF IT TOOK A YEAR, WHAT
IF IT TOOK FIVE YEARS.
IT AUTOMATICALLY REVERTS TO
EQUAL TIME-SHARING.
THE FATHER COMPLETED THOSE

STEPS, DID EVERYTHING HE WAS SUPPOSED TO BUT WAS CONVICTED OF HUMAN TRAFFICKING OR DOMESTIC VIOLENCE AGAINST CHILDREN OR SOME MONUMENTAL ISSUE THAT WOULD AFFECT THE BEST INTERESTS OF THE CHILD, THEN A FINAL JUDGMENT, WHEN THE HUSBAND, AUTOMATICALLY REVERTS 50/50, HOW THEN CAN YOU CORRELATE SAYING WE NEED TO LOOK AT THE BEST INTEREST OF THE CHILD UNDER 61.13, THE FACTOR A THROUGH T, YOU CAN'T.
IT AUTOMATICALLY REVERTS UNLESS SOMETHING MONUMENTAL HAPPENS AND MAYBE WE DON'T DO THAT BUT THE FINAL JUDGMENT DOESN'T MEAN WHAT IT SAYS AND SO THE TWO POSITIONS YOU SIMPLY CANNOT CORRELATE THE TWO TOGETHER.
>> WE DON'T NEED TO HYPOTHESIZE ABOUT WHAT OTHER ORDERS MIGHT SAY AND WHY THAT WOULD BE UNWORKABLE, WE JUST HAVE TO ADDRESS THE QUESTION WHETHER THE LAW REQUIRES THERE TO BE CONCRETE STEPS.
GETTING INTO THE QUESTION OF WHAT ANOTHER ORDER MIGHT SAY AND WHETHER YOU COULD CHARACTERIZE IT AS BAKED INTO THE CAKE OR UP PERSPECTIVE MODIFICATION WHICH COULD GET PRETTY COMPLICATED WHEN YOU ARE NOT EVEN LOOKING AT SOME SPECIFIC THING IN FRONT OF YOU.
THAT IS NOT REALLY NECESSARY TO RESOLVE THE CONFLICT.
ARE YOU WRITE ABOUT THAT?
>> TO THE NEXT STEP, THE OUTCOMES OF THE POSITION, IT IS PERSUASIVE.
THE FACT THE MOTHER'S POSITION, THE COURT UPHELD THE MOTHER'S POSITION, IT WOULD CAUSE INCREDIBLE TURMOIL BUT TO ANSWER YOUR QUESTION AND WE HAVE ALREADY ADDRESSED IT, THE STATUTE IS CRYSTAL CLEAR THAT THERE IS ONE METHOD TO MODIFY A

FINAL JUDGMENT AND THERE IS NO
REQUIREMENT IN THE STATUTE AND
NO LEGISLATIVE INTENT TO PROVIDE
ANY CONCRETE STEPS.
THE HUNTER CASE WHICH I CITED IN
MY BRIEF DIDN'T CITE A STATUTE,
THIS HUNTER CASE CITED TWO OF
THE CASES WHICH WHEN YOU REVIEW
THE CASES DIDN'T HAVE ANYTHING
TO DO WITH CONCRETE STEPS.
I DON'T SEE THE SUPPORT WHERE
HUNTER CAME UP WITH THIS OTHER
THAN THE COURT'S DESIRE NOT TO
LEAVE A PARENT WITH NO
TIMESHARE.
>> DOESN'T THAT SORT OF AFFECT
THIS IDEA THAT WE ARE SUPPOSED
TO THINK THE LEGISLATURE WENT
ALONG WITH THIS INTERPRETATION
OF THE STATUTE, THEY DON'T
INTERPRET THE STATUTE, DOESN'T
THAT ARGUMENT GO AWAY?
>> THE HUNTER CASE, MANY CASES
DECIDED BY THE MOTHER --
>> NOT SAYING SUCH AND SUCH
PROVISION MEANS XYZ AND
DEBATABLE OR INCORRECT
INTERPRETATION, THAT THE
LEGISLATURE GOES ALONG WITH THAT
AND DISTRICT REPORT SAYING
DIDN'T INCLUDE SUCH AND SUCH BUT
NOT LINKING IT TO STATUTORY
INTERPRETATION BUT IT DOESN'T
PLAY INTO IT.
>> THAT IS CORRECT.
THE MORE RECENT CASES, THE CASES
I'M ASKING THE COURT TO SIGN
WITH, THE DUKE CASE AND THE
COURT BELOW AND THE HUGHES CASE,
IN PARTICULAR THE DUKES CASE,
SUCH STEPS APPEAR CONTRARY TO
SECTION 61.13 WHICH SETS FORTH
ITS OWN REQUIREMENTS AND THEY
SAY IT BETTER THAN I CAN, TO
ALLOW DIFFERENT STANDARD IS TO
UNDENIABLY DISREGARD AND USURP
THE LEGISLATIVE INTENT OF THE
STATUTE AND THAT IS NOT THE
JUDICIARY'S ROLE TO TRY TO
CREATE A NEW STANDARD WHEN WE

HAVE A CLEAR STATUTORY STANDARD.
I AM ASKING THE COURT TO SAY
UNEQUIVOCALLY 61.13 IS THE SOLE
METHOD TO MODIFY THAT THERE IS
NO REQUIREMENT FOR OUR TRIAL
COURTS PERMITTED TO PROVIDE ANY
OTHER STANDARD TO REVERT BACK
UNLESS THE COURT HAS QUESTIONS.
THANK YOU VERY MUCH FOR YOUR
TIME.
>> REBUTTAL ARGUMENT.
>> YOUR HONOR, OPPOSING COUNSEL
SAYS UNDER OUR MODIFICATION
WOULD BE SUBJECT TO REOPENING,
THAT IS NOT TRUE.
OUR CASE INVOLVES VERY NARROW
LIMITED CIRCUMSTANCE WHERE
THERAPY HAS BEEN IMPOSED.
AS MISTER CHIEF JUSTICE POINTED
OUT THE COURT ANTICIPATED THE
LAST SEVERAL YEARS OR MORE.
WE HAVE NO ASSURANCE THAT
CONTEMPT FILINGS WON'T BE MADE
OR THE COURT WON'T DO THAT.
THE ORDER STATES CLEARLY ON ITS
FACE THE PARENT SHALL, QUOTE,
IMMEDIATELY BEGIN, QUOTE,
INTENSIVE MENTAL HEALTH THERAPY.
THE TRIAL COURT BELOW AS MISTER
LUTHER KNOWS, THERE WAS A VERY
ENGAGED BACK AND FORTH BETWEEN
WHAT THE WORD INTENSIVE MEANT IN
THE COURSE CAME TO NO CLEAR
UNDERSTANDING THOUGH THE PARTIES
HAVE A CLEAR UNDERSTANDING WHAT
INTENSIVE IN A SITUATION MEANS.
THE THERAPY ORDER REMAINS
EXTREMELY VAGUE, ONE WAY TO CURE
IT AS WE HAVE BEEN ARGUING IS
CONCRETE STEPS ARE TO BE MADE.
>> IN ORDER TO AVOID --
>> YOUR VAGUENESS CHALLENGE,
WHAT WITH THE ORDER HAVE HAD TO
HAVE SAID ABOUT THERAPY?
>> THE ORDER WOULD HAVE TO AT
LEAST IMPOSE SOME KIND OF
DURATION WHICH MANY COURTS OF
APPEALS HAVE REQUIRED.
SOME KIND OF TIMEFRAME ABOUT THE
DURATION OF THE ORDER.

THE FREQUENCY --
>> IF IT HAD SAID FOR NOT LESS THAN THREE YEARS WOULD WE STILL BE HERE TODAY?
OR WOULD THAT BE PERMISSIBLE FROM THE STANDPOINT OF YOUR ARGUMENT Q
>> IT WOULD STILL POSE PROBLEMS. ON THE UPPER END, IT COULD POTENTIALLY LAST INDEFINITELY AND THAT IS WHAT WE HAVE HERE, YOUR HONOR.
THE CASE THAT OPPOSING COUNSEL RELIES ON, PRIMARILY THE HUGHES VERSUS BEATTY CASE, THAT CASE ITSELF SAYS IN ITS LEARNING THE ART MEDICAL REVERSION WOULD NOT BE ALLOWED AS A PROSPECT OF FINDING, IT SAYS, QUOTE, ON PAGE 998 THIS IS NOT TO SAY THAT A COURT CANNOT INSTRUCT A PARENT AS TO STEPS THEY MIGHT TAKE TO SUFFICIENTLY, MIGHT BE PREVENTING THEM FROM BEING IN THE BEST INTEREST OF THE CHILD'S LIFE.
EVEN IN THE CASE THAT MISTER LUTHER SITES, IT ALLOWS COURTS TO PROVIDE CONCRETE STEPS.
THAT DIDN'T INVOLVE A THERAPY -- THIS CASE DOES.
UNDER HUNTER AND NUNEZ 2017 CASE WHICH ALL INVOLVE THERAPY, CONCRETE STEPS WOULD BE REQUIRED TO CURE THE VAGUENESS THAT IS INHERENT IN THIS ORDER.
>> SORRY TO INTERRUPT.
ISN'T THE BOTTOM LINE THIS IS A COMPLETELY SEPARATE ISSUE?
IT SEEMS GIVEN WHAT THE CHIEF JUSTICE WAS ASKING, ARGUABLY THE ORDER IS VAGUE AND SUBJECTS THE CLIENT TO EXPOSURE THAT ISN'T FAIR BUT THAT HAS NOTHING TO DO WITH WHETHER EVEN IF YOU GOT A PERFECTLY CRYSTAL-CLEAR ORDER AS TO WHAT THERAPY IS REQUIRED AND FOR HOW LONG THAT HAS NOTHING TO DO WITH AUTOMATICALLY REVERTING TO PREEXISTING BASELINE

TIMESHARE.
AND WHETHER THE STATUTE
REQUIRES.
>> YOUR HONOR, WE DISAGREE.
WE THINK IT HAS EVERYTHING TO DO
WITH IT BECAUSE AS I MENTIONED
THE CONCRETE STEPS IS THE WAY TO
CURE THE VAGUENESS.
BARRING THAT, THE THERAPY ORDER
SHOULD BE VACATED ALTOGETHER.
IF MISTER LUTHER THINKS MS.
NELSON HAS COMPLIED, HE SHOULD
BE IN FAVOR OF THE VACATUR AS
WELL BUT AS THE ORDER STANDS IN
THIS NELSON IS UNDER AN
AFFIRMATIVE OBLIGATION TO
UNDERGO THERAPY.
WITH RESPECT, WE THINK THE
DISTRICT COURT OF APPEAL
DECISION IS BELOW SHOULD BE
REVERSED AND CONCRETE STEPS
SHOULD BE REQUIRED OR IN THE
ALTERNATIVE THE THERAPY ORDER
SHOULD BE VACATED.
>> ALL RIGHT, THANK YOU BOTH FOR
YOUR ARGUMENTS AND YOUR BRIEFS
IN THIS CASE.