

STATEWIDE GUARDIAN AD LITEM OFFICE v. C.C., ETC., ET AL.

>> Marshal: THE FLORIDA SUPREME COURT IS AGAIN IN SESSION PLEASE BE SEATED.

>> Chief Justice Carlos Muniz: WILL NOW TAKE UP OUR SECOND CASE STATEWIDE GUARDIAN AD LITEM OFFICE V.

C.C., ETC., ET AL.

CASE NO. SC23-0604 JUSTICE SASSO IS RECUSED FROM THIS CASE.

>> I REPRESENT THE DEPARTMENT OF CHILDREN AND FAMILIES. THE DEPARTMENT OF FAMILIES REQUEST THAT THIS COURT REVERSED THE DECISION BELOW AND REINSTATE THE TERMINATION OF PARENTAL RIGHTS JUDGMENT BECAUSE THE PLAIN LANGUAGE OF CHAPTER 39 THIS COURT'S PRECEDENT AND DIVISIONS OF FIVE DIFFERENT DISTRICT COURTS OF APPEAL HAVE HELD THAT WHERE THERE WERE EXTRAORDINARY CIRCUMSTANCES SUCH AS THIS TERMINATION WITHOUT A CASE PLAN IS THE LEAST RESTRICTIVE MEANS TO TRY TO PROTECT THE CHILD.

THREE KEY FACTS WE ASK THIS COURT NAVIGATES THIS ISSUE TODAY THE FIRST FACT IS THAT THE FATHER ADMITTEDLY HAS NEVER HAD CUSTODY TO ASSUME TO BE SIX-YEAR-OLD CHILD. THE SECOND THING WE ASK YOU TO KEEP IN MIND IS THAT THE FATHER HAS NEVER EXERCISED PARENTAL RIGHTS OR RESPONSIBILITIES BECAUSE IN HIS OWN WORDS AT MOST HE'S HAD A FOUR HOURS SUPERVISED VISITATION WITH THE CHILD ONCE WHEN THE CHILD WAS TWO YEARS OLD AND ONCE WHEN THE CHILD WAS THREE YEARS OLD.

>> YOUR ARGUMENT IS THAT CONSTITUTES ABANDONMENT.

>> WE DO ARGUE THAT CONSTITUTES ABANDONMENT BUT THE ACTUAL FINDING OF ABANDONMENT WAS NEVER FOLLOWED IN THE APPELLATE COURT BELOW THAT'S WE ASK YOU TO KEEP IN THE THIRD POINT OF THE TWO GROUNDS FOR TERMINATION OF ABANDONMENT AND CONTINUING INVOLVEMENT UNDER 398061 B AND C WERE NOT DISTURBING THE FIFTH DCA DECISION. BECAUSE OF THAT THE PLAIN LANGUAGE OF CHAPTER 39 STATES THE REASONABLE EFFORTS ARE NOT REQUIRED.

>> DON'T YOU THINK THEY'RE TWO DIFFERENT THINGS WE HAVE THE STATUTE THAT THE LEGISLATURE HAS SAID BEFORE YOU TERMINATE PARENTAL RIGHTS HERE ARE THE THINGS FOR REUNIFICATION FOR THAT.

HERE ARE SOME CASES WHERE YOU DON'T HAVE TO DO THAT AND YOU CAN GO STRAIGHT TO THIS. THAT IS THE STATUTORY SCHEME. BUT THAT IS NOT WHERE THE LEAST RESTRICTIVE MEANS PRONG COMES FROM THAT'S A JUDICIALLY RELATED ELEMENT FOR BETTER OR WORSE THAT'S WHAT WE HAVE. AND SO CAN YOU POINT ME IN CC THE CASE THAT WE HAVE TODAY NOT BASED ON THE FACTS UNDERSTAND YOU DISAGREE WITH THE APPLICATION WHERE THEY CAME TO THE DECISION POINT ME TO WHERE THE OPINION HOLDS SOMETHING DIFFERENT THAN WHAT THE OTHER OPINIONS HAVE HELD. BECAUSE ESSENTIALLY WHAT THIS OPINION SAYS IS THERE ARE NO EXTRAORDINARY CIRCUMSTANCES HERE. IT DOESN'T SAY YOU NEED MORE IT DOESN'T SAY YOU NEED LESS THERE JUST AREN'T ANY IN THE CASES OR DISTINGUISH A WILL. THIS FATHER DID NOT ABUSE AND THERE ARE SOME DISTINGUISHING FACTORS HERE FROM YOUR OTHER CASES SO WHERE IS THE

HOLDING IN CC THAT IS CONFLICTING WITH THE SORT OF HOLDING IN SM OR THESE OTHER CASES.

>> THE HOLDING IN CC THAT CONFLICTS IS WHERE THE COURT STARTS TO RECOGNIZE ITS PRIOR PRECEDENT IN THE RW CASE FROM 2017 IN THE FIFTH DCA. RECOGNIZES IT BUT THEN DOES NOT APPLY. THAT IN RE RW CASE SPECIFICALLY SPEAKS TO THIS COURT'S OWN PRECEDENT IN.

[LISTING NAMES]. IT ALSO SPEAKS TO THE APPLICATION OF 39806.2. LET ME TALK ABOUT.

[LISTING NAMES] FIRST. THIS COURT'S OWN 1994 CASE. THAT WAS THE CASE IN WHICH THIS COURT FIRST CAME UP WITH THE CONCEPT THAT ENOUGH PRONG OF LEAST RESTRICTIVE MEANS WHICH IS JUDICIALLY CREATED THAT THERE ARE SOME CASES WHERE THERE ARE EXTRAORDINARY CIRCUMSTANCES.

THE PARTICULAR EXTRAORDINARY CIRCUMSTANCE IN THAT CASE WAS PURSUANT TO THE GROUND IT WAS 39.4643. THAT GROUNDS IS THE CONTINUING INVOLVEMENT OF GROUND THAT IS INVOLVED IN THE 398061C THAT IS IN THIS CASE. THAT IS WHAT RW RECOGNIZED THAT IS WHAT CC ACTUALLY SAID TOO. WE'VE HAD THIS EVOLUTION OF NUMBERING BUT NOT WITH THE GROUNDS ACTUALLY ARE. AND BECAUSE OF THAT BECAUSE THIS WAS AN EXTRAORDINARY CIRCUMSTANCE CASE THAT THIS COURT IS ALREADY RECOGNIZED AND APPLICATION OF A 39806.2 IS CONSTITUTIONAL. BECAUSE WHATEVER LEGISLATURE HAS DONE IT SAYS NOTHING BE VERY DIFFERENT FAX TO LEAD TO ALL KINDS OF THINGS THAT WOULD RESULT IN TERMINATION OF APPEARANCE RIGHTS. THESE CATEGORIES CASES THESE ARE EXTRAORDINARY CIRCUMSTANCES.

AND SO THERE'S BEEN A LOT SAID IN THE BRIEFING ABOUT WHAT SPECIFICALLY THIS MAN HAS DONE TO THIS CHILD.

THIS CHILD WAS SIX YEARS AS OF THIS POINT SOON HAS HAD THAT UNCERTAINTY IN HIS LIFE.

EVERY OPPORTUNITY THAT THIS MAN WAS AFFORDED ENDED WITH EITHER AN ARREST OR A SENTENCE.

IT'S THE UNCERTAINTY THAT THIS COURT FOCUSED ON IN THE SM CASE. IN SM WE HAVE TO TALK ABOUT THE LEAST RESTRICTIVE MEANS TEST AND THE CONCEPT OF THE RIGHT THAT IS INVOLVED. HIS RIGHT TO BE A PARENT TO ONE'S CHILD. WHEN YOUR PARENT TO THIS CHILD THIS COURT EXPLAINED ITS ALL THE RIGHTS AND WITH POSSIBILITIES THAT THAT ENTAILS. HE IS NEVER HAD ANY RIGHTS AND RESPONSIBILITY IS TO THIS CHILD BECAUSE HE WOULD ALWAYS ENGAGE IN SOME KIND OF BEHAVIOR THAT WOULD ABSENT HIMSELF FROM THE CHILD LIFE.

WHEN WE LOOK AT SM, AND SM STANDING FOR THE PROPOSITION THAT WE HAVE THE LOOK AT CAN THE CHILD BE REUNIFIED IF THAT CHILD CANNOT BE REUNIFIED WHICH THIS CHILD COULD NEVER BE REUNIFIED WHICH THIS MEN THROUGHOUT THE ENTIRE DURATION OF THIS CASE AND THAT USUALLY USUALLY MEANS LEAST RESTRICTIVE MEANS TEST HAS BEEN SATISFIED.

>> I THINK THAT THE WHAT'S INTERESTING WHEN YOU READ ALL OF THESE CASES IS WE HAVE ALL OF THESE DIFFERENT VERY THOUGHTFUL JUDGES DESCRIBING THE

LEAST RESTRICTIVE MEANS TEST DIFFERENTLY.

OBVIOUSLY ONE PART ONE I THINK THAT WE COULD DO WITHOUT WE RESOLVE THIS CASE IS EITHER FIX A MISTAKE OR SAY THAT IT WASN'T A MISTAKE THEN IN TERMS OF GOING FORWARD AND PROVIDING GUIDANCE TO THE COURT IT SEEMS LIKE IF POSSIBLE WE SHOULD USE THIS OPPORTUNITY TO KIND OF CLARIFY WHAT THE LEAST RESTRICTIVE MEANS THING IS. AND HOW IT FITS INTO THIS TEST STATUTORY SCHEME . IT SEEMS LIKE THE MOST RECENT ATTEMPT BY THIS COURT TO EXPLAIN IT WAS IN SM.

IF YOU READ SM IT DOES SEEM LIKE IT DOESN'T SEEM TO ACCEPT THE NOTION THAT AS LONG AS ONE OF THE FACTORS AND ONE OF THE GROUNDS FOR TERMINATION OTHER THAN SUBSECTION E IS ESTABLISHED THAT THAT IS PER SE THE LEAST RESTRICTIVE MEANS. DO YOU AGREE WITH THAT.

>> NOT NECESSARILY YOUR HONOR. THE REASON I DON'T NECESSARILY AGREE WITH THAT BECAUSE 8062 WAS NOT THE ISSUE RAISED IN SM AND SM TO PARENT IN THE BRIEFING OF THAT CASE ADDRESSED THE APPLICATION OF THE PARTICULAR GROUNDS THE GROUNDS WERE ADMITTED IN SM INSTEAD WITH THE TRIED TO DO IS EXPLAIN THE LEAST RESTRICTIVE MEANS TEST SHOULD TAKE INTO ACCOUNT ALL OF THESE RESTRICTIVE ALTERNATIVES. ONE OF THOSE ALTERNATES CAN BE PERMANENT GUARDIANSHIP OF THIS COURT PAINSTAKINGLY DID WAS LOOK THROUGH THE PERMANENCY OPTIONS THAT ARE AVAILABLE UNDER CHAPTER 39. THE RIGHT THAT'S INVOLVED WE TALK ABOUT LEAST RESTRICTIVE MEANS. THEN FIND THAT ULTIMATELY ANY KIND OF BOND THAT PARENT WAS TRYING TO RETAIN IN THAT CASE COULD NOT BE AT THE COST OF THE CHILD'S FUTURE. SO WE CAN'T AGREE THAT THIS COURT HAS DISMISSED 39 IT WAS 6.2 AND THE DIFFERENCE BETWEEN E AND C ON THESE OTHER GROUNDS.

>> IF WE ACCEPT YOUR POSITION ON 806.2 WHERE DOES THAT LEAVE THE LEAST RESTRICTIVE MEANS TEST?

DOES IT STILL DO ANY WORK OR WOULD WE BE BETTER OFF IN THE FUTURE WHICH I KNOW SOME JUSTICE.

[LISTING NAMES] THEY BELIEVE THAT THE STATUTE HAS EVOLVED TO A POINT WHERE IT IS SUFFICIENTLY CONFERENCE OF IF YOU JUST FOLLOW THE STATUTE AND TREATED AS A TWO-PRONGED TEST RATHER THAN A THREE PRONG TEST YOUR COMPLYING WITH WHATEVER THE CONSTITUTION MIGHT REQUIRE.

DO YOU AGREE WITH THAT?

>> I DO AGREE THERE'S BEEN A LOT OF CHANGES SINCE THE FIRST BUDGET CASE IN 1990. BECAUSE AT THAT POINT IN TIME THIS COURT HAD TO DEVELOP THE LEAST RESTRICTIVE MEANS BECAUSE THE ACTUAL BODY OF CASE LAW AS WELL AS CHAPTER 39 WOULD NOT BUILD DEVELOPMENT AT THAT TIME WAS THREE GROUNDS FOR TERMINATION ONE OF THEM WAS FOR THE TRADITIONAL CASE PLAN PATH AND THE OTHER TWO WERE THE CONTINUING INVOLVEMENT GROUND IN THE EXTRAORDINARY EGREGIOUS ABUSE. WE'VE EVOLVED AS A STATE. THERE ARE SO MANY OTHER THINGS THAT HAPPEN NOW WE HAVE MULTIPLE GROUNDS FOR TPR SO I DO THINK THAT THIS COURT SHOULD TAKE THE OPPORTUNITY .TO CLARIFY THE

LEAST RESTRICTIVE MEANS TEST ABSOLUTELY AGREE THAT FROM PADGETT TO FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES EVERY ONE OF THEM IS USING A DIFFERENT LEAST RESTRICTIVE MEANS TEST. BUT IT'S ALWAYS BEEN BECAUSE OF THE PARTICULAR ISSUE BEFORE THE COURT. WHAT'S THE ONE THING I STRUGGLE WITH WITH THE POSITION YOU GUYS ARE TAKING ON 806.2 IF THE LEAST RESTRICTIVE MEANS TEST IS TRULY A CONSTITUTIONAL REQUIREMENT THAN THE MERE FACT THAT THE LEGISLATURE IF THE LEGISLATURE SAYS IF ANY OF THESE EIGHT THINGS ARE FOUND THEN YOU DON'T NEED TO ATTEMPT REUNIFICATION. IT SEEMS LIKE MAYBE YOU'RE JUST READING THE STATUTE THE LEGISLATURE COULD SAY THAT. I DON'T THINK THAT THE LEGISLATURE CAN JUST DECLARE THAT THE PROCESS IS SATISFIED BY DOING X,Y OR Z WE WOULD STILL KIND OF HAVE AN INDEPENDENT OBLIGATION TO SEE IF THAT IS TRUE. WHEN YOU GUYS CITE THE STUFF ABOUT READING THE LANGUAGE OF THE STATUTE AND ALL THAT THAT IS FINE BECAUSE IT TELLS ME HOW TO READ IF I DRAW A CIRCLE AROUND THE STATUTORY SCHEME THAT IS TRUE BUT DOESN'T ANSWER THE QUESTION WHETHER ANY PARTICULAR CASE SOMEONE'S IS DUE PROCESS RIGHTS WERE SATISFIED. DOES THAT MAKE SENSE.

>> IT DOES MAKE SENSE ABSOLUTELY AGREE WITH YOU DILIGENTLY YOU CANNOT SAY THE DUE PROCESS WAS MET BECAUSE THIS ONE EVENT OCCURRED BUT IT IS THE PROCESS THAT IS PROVEN THAT PARTICULAR CASE ONE TO?

DO WE HAVE FROM FLORIDA DEPARTMENT OF CHILDREN VERSUS FL IS WITH THE LOOK AT THE TOTALITY OF THE CIRCUMSTANCES AND HOW WE GOT THERE. SO IN IMPROVING THAT PARTICULAR GROUND WE HAVE TO LOOK AT THE ULTIMATE HARM THAT IS INVOLVED SO IN THIS CASE THE PARTICULAR GROUNDS THERE IS A TRUE HARM OF BEING ABANDONED FOR NEARLY 6 YEARS AT THIS POINT IN TIME THERE IS A TRUE HARM ACTUALLY IN THE PLAIN LANGUAGE OF THE PARTICULAR GROUND 398062 C, WHERE IT SAYS THAT THIS IS CONTRARY TO THE CHILD'S HEALTH AND SAFETY WELL-BEING. IF THE WORK TO BE JUST SOME LEGISLATIVE GROUNDS THAT COMES UP WITH ANY PARENT THAT DOESN'T HAVE THE CHILD THE A VEGAN THAT THAT WILL BE â ; WE STILL HAVE DUE PROCESS REQUIREMENTS THAT WE HAVE TO ABIDE BY IN THE DEPARTMENT IS NOT ASSERTING THAT WE DON'T HAVE TO COMPLY WITH DUE PROCESS IN THIS CASE THE WEST DUE PROCESS. THERE WAS MULTIPLE TIMES TO ENGAGE WITH HIS FATHER TO PROVIDE HIM SERVICES AND UNFORTUNATELY DUE TO HIS ACTIONS NOT ONCE NOT TWICE NOT THREE TIMES BUT FOUR MORE TIMES HE GOT ARRESTED AND DESPITE THE PROVISION OF DUE PROCESS WE STAND HERE TODAY.WHERE HIS RIGHTS NEED TO BE TERMINATED SO THAT THIS CHILD HAS THE OPPORTUNITY TO BE RAISED BY THE PERSON WHO HAS BEEN RAISING THE CHILD FOR THE LAST FIVE YEARS.

>> WE WILL HEAR FROM YOUR COLLEAGUE YOU CAN RETAIN YOUR ONE MINUTE REBUTTAL.

>> APPEARANCE FOR PETITIONER:
SARA E. GOLDFARB.

>> Sara E. Goldfarb, Petitioner: I WILL START WITH THE QUESTION THAT CHIEF JUSTICE

MUNIZ WAS ASKING THE DEPARTMENT RELATED TO THE LEGISLATURE CAN'T JUST DECLARE WHEN DUE PROCESS IS SATISFIED. THAT IS TRUE I THINK THE KEY POINT HERE IS THE LEGISLATURE DIDN'T JUST DECLARE DUE PROCESS SATISFIED. IT CODIFIED TM CODIFIED A PRIOR HOLDING OF THIS COURT IN WHICH THE CONSTITUTIONALITY OF THE ABILITY TO TERMINATE PARENTAL RIGHTS WITHOUT PROOF WITHOUT REQUIRING PROOF OF REASONABLE EFFORTS OR CASE PLAN IT FOUND THAT CONSTITUTIONAL. THAT WAS THE ISSUE IN THAT CASE. SO TO THE EXTENT THE LEGISLATURE HAS EXTENDED THE GROUNDS FOR WHICH CASE REQUIREMENTS ARE NOT REQUIRED IT IS DONE SO FROM THE DIRECTION OF THIS COURT THAT THAT CAN BE DONE. AND THAT EACH OF THE BEHAVIORS OR EACH OF THE GROUNDS THAT IS CHOSEN TO BE INCLUDED HAVE BEEN SPECIFICALLY TIED TO THE CONDUCT THAT IN THOSE GROUNDS. THAT IS WHY THE CASE PLAN GROUNDS THEY ARE ACCEPTED. BECAUSE THEY ARE NOT BASED ON BEHAVIOR THAT IS INHERENTLY OR FUNDAMENTALLY AT ODDS WITH ASSUMING PARENTAL RESPONSE BODIES. BUT THE BEHAVIOR IN THE GROUNDS THAT ARE INCLUDED IN 39.806 THOSE SORTS OF BEHAVIORS ARE SPECIFICALLY TIED TO PARENTAL CONDUCT THAT IS ANTITHETICAL TO THE ASSUMPTION OF PARENTAL RESPONSIBILITY. IT IS DEFINED AS HARM TO A CHILD AS THE DEPARTMENT SAID SUBSECTION C INCLUDES A FINDING OF RISK OF HARM TO THE CHILD. WHEN WE GET TO F EGREGIOUS GROUNDS I THINK THAT IS THE EASIEST CASE THOSE ARE THE MOST HEINOUS ACTS THAT WE SEE OUR PARENTS COMING TO COURT WITH. AS WE GO DOWN THE LIST THERE ARE SPECIFIC ACTS OF HARM TO A CHILD. THAT IS WHAT BRINGS THE CASE UNDER THAT'S WITH THE GROUNDS FOR TERMINATION ARE.

>> IS IT FAIR TO SAY JUDGE.

[LISTING NAMES] HAD THAT ONE OPINION WHERE HE WAS KIND OF TRYING TO EXPLORE THE IDEA THAT THERE WAS A SUBSTANTIVE COMPONENT TO THIS PROCEDURAL COMPONENT TO IT FROM THE DUE PROCESS PERSPECTIVE. AND THE SUBSTANTIVE ASPECT WHAT ARE THE REASONS THAT THE LEGISLATURE SAYS ARE THINGS THAT CAN TRIGGER THE TERMINATION OF YOUR PARENTAL RIGHTS? THOSE THINGS HAVE TO MEET SOME KIND OF SUBSTANTIVE TEST THAT IS TIED TO WHETHER YOU ARE HARMING YOUR CHILD. THEN DEPENDING ON WHICH THING IT IS THAT HAS CAUSED YOU TO KIND OF FORFEIT YOUR RIGHTS YOU MAY NEED A DIFFERENT SORT OF PROCEDURAL PATH TO HAVE THAT BE ESTABLISHED AND SO IF THE THINK THE CAUSED YOU TO FORFEIT YOUR RELATIONSHIP WITH YOUR CHILD IS THAT YOU ESSENTIALLY JUST CAN'T GET DIRECT TOGETHER AS A PARENT AND YOU HAD ALL OF THESE OPPORTUNITIES AND YOU FAILED CASE PLAN AND WHATEVER THAT THAT SORT OF BUILDS IN THIS KIND OF LEAST RESTRICTIVE CONCEPT. BUT IF THE THING THAT CAUSED YOU TO FORFEIT YOUR RIGHTS WAS ABANDONMENT OR EXTREME PHYSICAL ABUSE OR SOMETHING LIKE THAT ESSENTIALLY THERE IS NO CORRESPONDING SORT OF PROCEDURAL RIGHT THAT YOU HAVE OTHER THAN JUST THE RIGHTS THAT ARE GOING WITH HAVING IT BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE. THAT'S A SENSIBLE WAY TO LOOK AT IT. THE LEAST RESTRICTIVE MEANS THING I THINK IT WOULD BE A SHAME IF MAYBE IT'S NOT

FIXABLE. BUT I DO THINK THAT OUR COURT I THINK YOU CAN HELP US THINK IF THERE IS A WAY GOING FORWARD TO KIND OF MORE PRECISELY TELL THE LOWER COURTS BUT IT IS WHAT THEY ARE SUPPOSED TO BE DOING.

>> Sara E. Goldfarb, Petitioner: I THINK THAT'S EXACTLY IT.

THE TERMINATION SCHEME IS A WHOLE THERE ARE THREE PARTS TO IT THERE ARE GROUNDS, MANIFEST BEST INTEREST, THEN WE HAVE THE JUDICIALLY IMPOSED LEAST RESTRICTIVE MEANS. ONE OF THE DIFFICULTIES I THINK WITH THE CC OPINION IS THAT IT LOOKS IT LEAST RESTRICTIVE MEANS IN A VACUUM. IT SAYS THIS FEELS UNFAIR FOR THESE REASONS WITHOUT TAKING UP TO LOOK AT FIRST WE HAVE TO GET TO GROUNDS THOSE HAVE NOT BEEN CHALLENGED HERE. THOSE OF BEEN CONCEDED ESSENTIALLY AS BEING CORRECT BECAUSE THEY WEREN'T RAISED. SOME HAVE ABANDONMENT AND WE HAVE WILL BE CALLED THE CONTINUING INVOLVEMENT GROUND. THAT IS HARM TO THIS CHILD AND I THINK WHERE THE OPINION MAKES THE SECOND STEP IS IT RECONSIDERS HARM TO THE CHILD UNDER THE LEAST RESTRICTIVE MEANS TEST.

THOSE PIECES THE DUE PROCESS PEACE AND THE RISK OF HARM PEACE HAVE BEEN TALKED ABOUT IN TM IN A FEW CASES FROM THIS COURT BECAUSE IN MANY THOSE CASES THE ISSUE IS NOT SO MUCH WHETHER THERE WAS HARM BUT THE HARM IS NOT TO THE CHILD WHOSE TO WHOM THE RIGHTS ARE BEING TERMINATED WITH THIS NEXUS ISSUE THE COUPLE GETS THE MATTER. AND SO WE TOOK TO FUNDAMENTAL FAIRNESS WHAT IS FAIR FOR TERMINATION OF PARENTAL RIGHTS TO A CHILD WHO THE PARENT TRULY HAS NOT HARMED BECAUSE IT WAS LATER BORN CHILD WHATEVER THAT MIGHT BE. THAT IS WHERE THINGS BECOME MORE COMPLICATED WHEN YOU'RE LOOKING AT LEAST RESTRICTIVE MEANS AND IS THIS FAIR?

WHERE IS THIS ISSUE OF THE CHILD AT ISSUE IS THE CHILD WITH BEEN HARMED THIS THE CHILD WAS ABANDONED THIS IS THE CHILD FOR WHOM CONTINUING THE PARENT-CHILD RELATIONSHIP IS HARMFUL.

THOSE BEHAVIORS ARE SUFFICIENT TO TERMINATE PARENTAL RIGHTS UNDER THIS WEIGHING OF FUNDAMENTAL FAIRNESS UNDER DUE PROCESS. THIS IS THE CHILD PROTECTION PROCEEDING TO SET UP THE CHILD THIS IS ABOUT THE LEGISLATURE THIS COURT HAVE CLEARLY STATED THAT THE PRIMARY GOAL HERE THE PRIMARY CONSIDERATION IS THE CHILD'S WELFARE.

THAT IS THE PRINCIPLE UNDER WHICH EVERYTHING ELSE FALLS.

THIS COURT HAS SAID IN ITS PRECEDENT THAT THAT IS WHERE FUNDAMENTAL PARENTAL RIGHTS HEALED. THE YIELD TO THE BEST INTERESTS OF THE WELFARE OF THE CHILD BECAUSE THAT'S WHY WE'RE HERE.

SO DUE PROCESS TO PARENT FUNDAMENTAL FAIRNESS IS NOT A CEILING. IT'S A FLOOR. WE WANT THINGS TO BE FAIR BUT THE GOAL OF THIS IS TO ACHIEVE SAFETY AND STABILITY FOR THE CHILD AND WE CAN NEVER LOSE SIGHT OF THAT.

I THINK THAT IS WHERE THE FIFTH DISTRICT OPINION I THINK WENT A LITTLE BIT OFF COURSE.

I DO THINK IT ALSO DIDN'T START IN THE RIGHT PLACE. THE OPINION BEGINS WITH IT

ACKNOWLEDGES THE CASE PLANS ARE NOT ALWAYS REQUIRED SAYS BUT IN ANY EVENT WITH THE APPROVED LEAST RESTRICTIVE MEANS. FROM THERE IT REMOVES THE REGIONAL EFFORTS WITHOUT TAKING THE STEP TO CONSIDER WHETHER 39806 DIRECTLY APPLIES AND TO CONSIDER WHETHER THE CASE PLAN WAS REQUIRED IN THE FIRST INSTANCE. I THINK HAD THE COURT STARTED AT THAT POINT IN TIME THE COURT WOULD'VE BEEN ABLE TO PUT 39.806 INTO TM AND THE CASE LAW THAT CONCERNS LACK OF OF THE NEW CASE PLAN AND CONTEXT WOULD'VE KEPT THEM ON TRACK GOING THROUGH THE REST OF THEIR ANALYSIS.

>> THIS 8061C WHERE IT TALKS ABOUT HARM IRRESPECTIVE OF SERVICES WHY IS THAT NOT I'M NOT AN EXPERT IN THIS STUFF THERE MAY BE AN OBVIOUS ANSWER TO THIS. WHY IS THAT NOT SIMILAR TO E IN THE SENSE OF IT SEEMS LIKE C AND E ARE SIMILAR IN THAT THEY DO KIND OF ON THEIR FACE TEXTUALLY KIND OF FOCUS YOUR ATTENTION IN PART ON WHAT THE DEPARTMENT WAS AND WASN'T DOING BEFORE THE TERMINATION PETITION WAS FILED WHICH SM TELLS US THAT THAT IS WHEN IT IS SUPPOSED TO BE THE FOCUS OF LEAST RESTRICTIVE MEANS.

>> Sara E. Goldfarb, Petitioner: THE DIFFERENCE IS I THINK FUNDAMENTALLY THAT ON THE SUBSECTION C GROUND IT DOESN'T REQUIRE CASE PLANNING. YOU CAN TERMINATE PARENTAL RIGHTS UNDER SUBSECTION C BECAUSE SERVICES ARE FUTILE. THAT MIGHT BE IN A CASE WHERE YOU HAVE A PARENT WITH MENTAL ILLNESS. AND MAYBE THEY'VE BEEN RECEIVING TREATMENT FOR MANY YEARS ABSENT THE DEPENDENCY SYSTEM WHEN THEY COME IN WE KNOW WE CAN PROVE THAT THERE IS NOTHING THAT'S GOING TO BE ABLE TO READ BOTH THE TEMPERANCE.

>> Justice Charles Canady: THE LANGUAGE IRRESPECTIVE OF THE PROVISION OF SERVICES DOES NOT MEAN IRRESPECTIVE OF THE PROVISION OF SERVICES THAT HAVE BEEN PROVIDED?

>> Sara E. Goldfarb, Petitioner: CORRECT.

>> Justice Charles Canady: IT MEANS IRRESPECTIVE OF THE PROVISION OF SERVICES MAY BE PROVIDED.

>> Sara E. Goldfarb, Petitioner: YES.

THERE IS THE CASE CALLED PO. I CAN'T REMEMBER THE CITATION AT THE MOMENT BUT THAT WAS A CASE IN WHICH THE DEPARTMENT HAD NOT MADE REASONABLE EFFORTS BUT THE PARENT HAD HAD ACCESS TO SERVICES IN OTHER AREAS. SO TERMINATION IN THE CASE WAS AFFIRMED BECAUSE THAT PARENT COULD NOT BENEFIT FROM SERVICES PROLONG THE CASE TO REQUIRE THE DEPARTMENT TO PROVIDE REASONABLE EFFORTS TO PROVIDE A CASE PLAN WAS OF NO BENEFIT BECAUSE WE ALREADY KNEW THAT THAT WASN'T GOING TO BE SUCCESSFUL.

>> Chief Justice Carlos Muniz: ALTHOUGH THE STATUTE GOES ON TO SAY PROVISION OF SERVICES MAY BE EVIDENCED BY PROOF THAT SERVICES WERE PROVIDED THROUGH PREVIOUS PLAN OR OFFER IN A CASE PLAN. I AGREE WITH YOU THAT ULTIMATELY WHAT YOU'RE SHOWING IS THAT THERE IS NO POINT IN DOING ANYTHING MORE BUT IT'S NOT JUST SORT OF THIS HYPOTHETICAL LIKE THIS PERSON IT SEEMS LIKE YOU COULD BE A MIX OF WHAT WE MAYBE COULD HAVE

DONE AND WHAT WE ALSO DID WHAT THE RESULTS WERE AND WHAT WE GOT. THAT'S ONE WHERE IT IS NOT AS OBVIOUS AS SOME OF THESE THINGS JUST SEEM LIKE SOMEONE DID SOMETHING EGREGIOUS AND THERE IS REALLY NOTHING YOU CAN SORT OF FORFEITED YOUR PARENTAL RIGHTS AT THAT POINT AND WE CAN MOVE ON TO WHAT'S IN THE BEST INTEREST OF THE CHILD.

RESPECTIVELY SOME OF THIS OTHER STUFF AND IT IS NOT JUST E IT SEEMS LIKE THERE MAY BE SOME WORK FOR THE LEAST RESTRICTIVE MEANS. FOR EXAMPLE THE ONE ABOUT DRUGS BEING FOUND IN THE CHILD'S SYSTEM. IF YOU JUST READ 806.2 LITERALLY THAT WOULD MEAN THAT A FATHER WHO DIDN'T VISCERALLY HAVE ANY ROLE OR CONTROL OVER THE DRUGS BEING IN THE BABY SYSTEM WHEN IT IS BORN WOULD IT BE SAFE? THAT COULD BE A TRIGGER FOR TERMINATING THE FATHER'S PARENTAL RIGHTS THEN GOING STRAIGHT TO THE MANIFEST BEST INTEREST PRONG?

>> NO YOUR HONOR THAT SUBSECTION I BELIEVE ONLY APPLIES TO THE MOTHER WAS CARRYING THE CHILD.

>> Chief Justice Carlos Muniz: IT IS NOT WRITTEN THAT WAY.

>> Sara E. Goldfarb, Petitioner: I CAN TELL YOU MY EXPERIENCE I HAVE NEVER SEEN IT APPLIED TO A FATHER WITH NO CONTROL OVER THE WITH THE MOTHER PUT IN HER BODY DURING THE PREGNANCY. TO GO BACK TO YOUR POINT I SEE THAT MY TIME TO GO BACK TO POINT THERE IS SOME OVERLAP I THINK BETWEEN THE GROUNDS AND I THINK THERE ARE INSTANCES IN WHICH THEY BOTH MAY APPLY. BUT THE E GROUNDS LOOK AT THE DEPARTMENT HAS MADE REASONABLE REGIONAL EFFORTS THAN THE PARENT FOR THE E GROUND WHICH OF THE GROUND AT ISSUE HERE WHERE 12/22 MONTHS WITH THE CHILD IN OUT OF HOME CARE. IN THE PARENT STILL ISN'T THEIR. DOESN'T MEAN THE PARENT CAN'T EVER GET THERE. WHAT E GROUNDS DO THEY SAID MORE OF A TIME LIMIT ON IT. WHEREAS THIS C GROUND FOCUSES ON THE ABILITY OF THE PARENTS BEHAVIOR OR CONDUCT OR WHATEVER IS THE CAUSE OF THE DEPENDENCY AT ISSUE.

I THINK THAT C GROUND BECAUSE IT IT IS IRRESPECTIVE OF SERVICES IS WHAT MAKES IT A GROUND THE QUALIFIES UNDER 39.086.2 THIS IS A BEHAVIOR BY NATURE AND ELEMENTS HAVE TO PROVE WE CAN'T FIX. THERE ARE NOT ANYMORE SERVICES THAT IS GOING TO ADDRESS THIS. THE PARENT CHANGED HIS PARENTS BEHAVIOR WHETHER BECAUSE THE PARENT CAN CHANGE OR BECAUSE THE PARENT IS CHOOSING NOT TO CHANGE. THAT IS REALLY HERE.

THIS IS THE CHOICE OF THE PARENT. THE CHOICE OF THE FATHER IN THIS CASE TO CONTINUE HIS DECADES LONG HISTORY OF CRIMINAL BEHAVIOR AND HIS INABILITY TO CHANGE THAT PATTERN EVEN THOUGH HE KNEW HIS RIGHTS TO HIS CHILD WERE ON THE LINE.

>> Chief Justice Carlos Muniz: THANK YOU YOU CAN HAVE ONE MINUTE FOR REBUTTAL.

>> Sara E. Goldfarb, Petitioner: THANK YOU.

>> Keith A. Peterson, Respondent: APPEARANCE FOR RESPONDENT:

KEITH A. PETERSON CC IN THIS CASE. IN HERE TO SUPPORT THE FINDING IN THE 5TH DCA THE REVERSED THE TRIAL COURT'S DETERMINATION OF MY CLIENT'S PARENTAL

RIGHTS. THIS IS A CASE WHERE THAT HIS PRIMARY PROBLEM WAS HE COULDN'T STAY OUT OF JAIL. OTHERWISE HE DID WHAT HE COULD IN TERMS.

>> Justice Charles Canady: COUNSEL ISN'T THAT A LITTLE BIT OF A STRETCH. HE HAD THE OPPORTUNITY TO MOVE TO FLORIDA.

IF I REMEMBER CORRECTLY WHAT'S IN THE WHAT I READ IF IT'S INACCURATE WHAT I READ HE DIDN'T LIKE THE ATMOSPHERE. AND SO ALL OF THIS IS COMPLICATED BY HIS DECISION TO STAY UNDERSTAND DURING SOME PERIOD HE DID NOT HAVE ANY CHOICE ABOUT BEING IN NORTH CAROLINA BECAUSE SHE WAS IN THE CUSTODY OF THEIR DEPARTMENT OF CORRECTIONS. EVEN ASIDE FROM THAT HE MADE CHOICES THAT MADE IT MORE DIFFICULT FOR HIM TO ESTABLISH ANY KIND OF MEANINGFUL RELATIONSHIP WITH THIS CHILD.

HE GOT THE CHILD IN NORTH CAROLINA AND THEN MADE THESE KIND OF OCCASIONAL EFFORTS AND ISN'T THAT PART OF THE PICTURE HERE TO.

>> Keith A. Peterson, Respondent: IT IS JUDGE A FEW A GOOD SHARE OF THE DEPENDENCY SYSTEM IS ABOUT PARENTS NOT MAKING THE DECISION. WE TAKE THE DECISION THAT WE DON'T HAVE A WHOLE LOT. WE CAN ARGUE IN THIS CASE THE DAD ONE OF HIS CASES NEEDED A POSITIVE HOME STUDY NORTH CAROLINA NORTH CAROLINA TOLD HIM BECAUSE OF YOUR CRIMINAL RECORD WE WILL NOT GIVE YOU.

>> Justice Charles Canady: HE TRIED TO BURN DOWN THE FAMILY HOME RIGHT? WASN'T THAT WAS GOING ON.

>> Keith A. Peterson, Respondent: IF THAT IS THE CASE I'M THINKING OF I THINK THAT IS 10 YEARS DOWN.

>> Justice Charles Canady: HE TRIED TO TORCH THE FAMILY HOME.

>> Keith A. Peterson, Respondent: HE PUT HIMSELF IN A POSITION TO HAVE A HOME BUT FOR HIS CRIMINAL RECORD THEREFORE WILL NOT BE ABLE TO ACHIEVE ANY KIND OF REUNIFICATION. HE MADE PLANS TO MOVE TO FLORIDA TO RELOCATE TO FLORIDA AND TO DO AN UPDATED PSYCHOLOGICAL THE REQUEST OF THE COURT AND ALSO HAVE A VISITATION IN PERSON WITH THE CHILD.

>> Chief Justice Carlos Muniz: THEN WHEN ALL THIS IS GOING ON HE GETS CONVICTED OF ASSAULT AND A FELON WITH A FIREARM AND ALL THAT IT SEEMS LIKE THIS IS VERY COMFY GATED CASE WHEN IT COMES TO TRYING TO MAKE SENSE OF LEAST RESTRICTIVE MEANS WHAT WE WOULD SAY FOR GUIDANCE GOING FORWARD. IF ANYTHING IT SEEMS DIFFICULT TO ARGUE ON THESE FACTS ESPECIALLY GIVEN THAT YOU DIDN'T BELOW CONTEST THE ABONDEMENT FINDING WHATEVER SORT OF DUE PROCESS SOMEONE HAS BEFORE THE STATE CAN GO AHEAD AND INITIATE TERMINATION OF THIS PERSON'S BACKGROUND IF THE GOAL IS CAN YOU BE A PARENT NOT IT SEEMS LIKE OUR CASE LAW IS CLEAR THAT THE QUESTION ISN'T CAN YOU BE A BENIGN NON-HARMFUL PRESENCE SOMEWHERE IN THE CHILD'S LIFE DOING ZOOM CALLS ONCE A WEEK OR WHATEVER? CAN YOU BE A PARENT?

IT SEEMS VERY UNREASONABLE TO SUGGEST THAT THIS PERSON HAS NOT HAD A FAIR OPPORTUNITY TO SEE WHETHER THAT IS POSSIBLE AND FOR THIS POOR CHILD FOR NOW FIVE YEARS OLD OR WHATEVER AND HAS BEEN IN LIMBO.

THAT SEEMS IMPOSSIBLE.

>> Keith A. Peterson,Respondent: ONE OF THE COUPLE GETTING FACTORS IN THIS CASE THAT HAD FREQUENT VISITATION WITH THE CHILD BOTH VIRTUALLY THREE OR FOUR OR TWO OR FOUR TIMES A WEEK THEN IN PERSON THREE OR FOUR TIMES A YEAR. ALL OF HIS INTERACTIONS WITH THE CHILD WERE POSITIVE.

THAT DISTINGUISHES THE SITUATION FROM A LOT OF THE OTHERS WHERE ONE OF THE CASES I WAS LOOKING AT THE DAD WAS A DIAGNOSED SCHIZOPHRENIC AND WOULDN'T STAY ON HIS MEDICATION. THAT'S A DIFFICULT SITUATION ESPECIALLY BEING IF THE CHILD WAS PLACED WITH THAT FATHER THE KID WILL NOT BE SAFE. IN THIS SITUATION WITH CC THERE IS NO INDICATION THAT THE CHILD OF THE CHILD WERE TO MEET WITH THE FATHER THAT THE CHILD WOULD NOT BE SAFE.

>> HOW CAN YOU ASK US TO BUY THAT BASED ON WHAT WE MUST EXCEPT WHEN YOU'VE NOT COSTED CONTESTED BUT THE FINDING OF THE TRIAL COURT WITH RESPECT TO ABANDONMENT.

>> Keith A. Peterson,Respondent: WOULD ARGUE JUDGE THAT THE ISSUES WERE ADDRESSED BY THE ORIGINAL APPELLATE ATTORNEY IT WASN'T ME BUT THEY WERE DRESSED IN THAT EXTENSIVELY WENT INTO THE LEAST RESTRICTIVE MEANS ISSUE. ESPECIALLY AS IT PERTAINS TO THE SITUATION THIS IS THE CASE AS YOU ARE AWARE OF WAS FILED UNDER SUBSECTION B AND SUBSECTION C. THERE IS ALSO ONE E3 WAS THE BASIS FOR THE ORIGINAL TERMINATION I'M CONFUSED I'M SORRY COUNCILS ARE YOU ARGUING THAT FORMER APPELLATE COUNSEL DID MAKE CHALLENGES TO THE TRIAL COURT'S FINDING ON CONTINUING INVOLVEMENT AND ABANDONMENT.

>> Keith A. Peterson,Respondent: I'M ARGUING THE LEAST RESTRICTIVE MEANS WITH THE PRIMARY ISSUE AND HE ARGUED THAT ISSUE AND APPLIED ACROSS THE BOARD MIGHT HAVE ORGANIZED IT PARTICULAR IT WORKED THE WAY I WOULD HOWEVER EXTENSIVELY ARGUED LEAST RESTRICTIVE MEANS.

>> YOU ARE SAYING IT IS NOT WAIVED.

>> Keith A. Peterson,Respondent: YES EXACTLY. LEAST RESTRICTIVE MEANS THAT ISSUE IS NOT WAIVED.

>> Justice Charles Canady: LET'S GO BEYOND THE ISSUE OF WAIVER. MAYBE I MISSED IT BUT I READ YOUR BRIEF.

YOU ASSERTED THAT THAT THE GROUNDS OF CONTINUING INVOLVEMENT AND ABANDONMENT WERE NOT ESTABLISHED.

CORRECT?

>> Keith A. Peterson,Respondent: CORRECT.

>> Justice Charles Canady: I SEE THAT ASSERTION AND IT SEEMS THAT YOUR WHOLE ARGUMENT KIND OF HINGES ON THAT ON THAT ASSERTION.

THAT IF THAT IS THE CASE THAT TAKES YOU OUT OF SUBSECTION 2. CORRECT?

>> Keith A. Peterson,Respondent: PERHAPS GO ON.

>> Justice Charles Canady: I THOUGHT THAT IS WHAT YOU ARGUED.

>> Keith A. Peterson,Respondent: I WANT TO HEAR YOUR QUESTION.

>> Justice Charles Canady: [LAUGHTER] YOU ARE GOING TO FIND OUT WHERE LEADING

YOU.

I SEE YOU MADE THIS ASSERTION THAT THOSE GROUNDS WERE NOT ESTABLISHED. BUT I'VE NOT SEEN AN ARGUMENT THAT EXPLAINS TO US WHY THEY WERE NOT ESTABLISHED.

I JUST DON'T SEE IT IN THE BRIEF. YOU MAKE THE ASSERTION BUT THEN IT IS NOT REALLY ANYTHING THE GUARDIAN AD LITEM IN THE REPLY BRIEF FOCUSED ON THIS I DON'T REALLY SEE THE ARGUMENT WHERE I CAN LOOK AT WHAT YOU SAY AND I GUESS IN SOME WAYS WHICH ARE MAKING IS A TIPSY CUSHMAN ARGUMENT.

>> Keith A. Peterson,Respondent: TO A CERTAIN EXTENT.

>> Justice Charles Canady: I DON'T THINK YOU JUST ASSERT A TIPSY CUSHMAN BASIS. WITHOUT EXPLAINING TO US BASED ON THE LAW AND THE FACTS WHY THAT WOULD BE A CORRECT WAY TO UPHOLD THE DECISION OF THE DISTRICT COURT. I JUST DON'T SEE IT IN YOUR BRIEF IF I'M MISSING IT YOU POINT ME TO IT.

>> Keith A. Peterson,Respondent: BUT I WOULD ARGUE YOUR HONOR IS THAT IN A TYPICAL DPR CASE THE DEPARTMENT HAS APPROVED THE STATUTORY GROUNDS BEST INTEREST AND THEN IN SOME SITUATIONS LEAST RESTRICTIVE MEANS. THE SUBSECTION B THROUGH D AND F THROUGH M HAS BASICALLY SAID THE DEPARTMENT DOES NOT HAVE THE SOLE LEAST RESTRICTIVE MEANS IN THOSE CASES AND THOSE ARE TYPICALLY EXTREME SITUATIONS. SOME OF THE STATUTE SPECIFICALLY GOING TO THE THESE CASES.

WHAT HAPPENED THIS SITUATION THOUGH IS THE DEPARTMENT CHOSE TO FILE WHAT I THINK FIFTH FELT WAS NOT EXTRAORDINARY SITUATION UNDER SUB B AND SUB LETTER SECTION C THE DEPARTMENT DOING THAT IS ATTEMPTING TO RID THEMSELVES OF THE NEED TO PROVE LEAST RESTRICTIVE MEANS THROUGH A PROVISION OF SERVICES BECAUSE THIS IS A CASE FOR THE DAD NEVER HAD A CASE PLAN THAT DID NOT HAVE A CASE PLAN.

>> Justice Charles Canady: ISN'T IT INTEGRAL TO YOUR ARGUMENT YOUR ASSERTION THAT THE BROWNS UNDER B AND C NOT ESTABLISHED?

>> Keith A. Peterson,Respondent: AT TRIAL.

>> Justice Charles Canady: UNDERSTAND THAT'S WHERE THEY WOULD BE ESTABLISHED.

>> Keith A. Peterson,Respondent: AND THE FIFTH SAID THEY DID NOT ESTABLISH THOSE GROUNDS BUT MY ISSUE AND PERHAPS DID NOT ARTICULATE WELL BUT MY ISSUE WAS THAT DUE TO THE FILING OF THIS DECISION GO THROUGH SUBSECTION B AND SUBSECTION C THE DEPARTMENT ABSOLVES CELLS OF THE SHOW THESE RESTRICTIVE MEANS TO THE PROVISION OF SERVICES IN THE CASE PLAN. THERE WAS NO CASE PLAN HIM SINCE IS NOT EXTERNALLY SITUATION THE DEPARTMENT IS TRYING TO SHORT-CIRCUIT THE SYSTEM AND A LOT OF THE DUE PROCESS RIGHTS.

>> Justice Charles Canady: IF THERE IS ABANDONMENT THERE DOES NOT MAKE HIS PLANT AS IT.

>> Keith A. Peterson,Respondent: YES.

>> Justice Charles Canady: IF ABANDONMENT IS ESTABLISHED ALL THAT IS KIND OF A MOOT POINT. IN THE TRIAL COURT DECIDED THAT THERE WAS ABANDONMENT.

AND YOU'VE NOT SHOWN ME FROM WHAT I SEE IN YOUR BRIEF I DON'T SEE IN ARGUMENTS THAT THE TRIAL COURT WAS WRONG ABOUT THERE BEING ABANDONMENT. I JUST DON'T SEE IT.

>> Keith A. Peterson,Respondent: I THINK THE DCA MADE FINDING THAT WITH THE FATHER THAT GIVEN HIS CIRCUMSTANCES HE STILL MAINTAINS SUBSTANTIAL AND SIGNIFICANT CONTACT WITH THE CHILD. FREQUENT CONTACT THROUGH VIRTUAL AND IN PERSON.

>> ON THE IN PERSON FRONT ISN'T THE RECORD IS IT LESS THAN FIVE HOURS IN TOTAL.

>> Keith A. Peterson,Respondent: MY RECOLLECTION WAS THERE WAS TESTIMONY THAT HE OR FIVE TIMES A YEAR FOR THREE OR FOUR TIMES A YEAR IN PERSON AND TWO OR FOUR TIMES PER WEEK VIRTUAL.

>> BUT IN TOTAL ISN'T IT TRUE SEMI-MISTAKEN OR IS THE RECORD THAT WE ARE TALKING ABOUT OVERWORKED LIFE LIKE A GRAND TOTAL OF FIVE HOURS IN PERSON?

>> Keith A. Peterson,Respondent: I DON'T WANT TO SAY THAT IS NOT CORRECT I DON'T HAVE A SPECIFIC ONE WAY OR ANOTHER.

>> I'M HAVING A HARD TIME UNDERSTANDING YOUR POSITION IT SOUNDS LIKE YOU ACTUALLY AGREE WITH THE OTHER. I THOUGHT THE BRIEF COULD OF BEEN RENTED THIS WAY ALSO I JUST WANT TO CLARIFY.

IT SOUNDS LIKE YOU ARE AGREEING WITH THE PREMISE THAT IF ANY OF THE FACT TERMINATION OF FACTORS OTHER THAN E ARE PROVEN BY CLEAR AND CONVINCING EVIDENCE LEAST RESTRICTIVE MEANS TEST GOES AWAY.

>> Keith A. Peterson,Respondent: I THINK IT HAS BEEN MADE FAIRLY CLEAR IN HIS CORONARY CIRCUMSTANCES THE DEPARTMENT IS NOT OBLIGATED.

>> Chief Justice Carlos Muniz: TO ACCEPT THEIR PREMISE THAT THOSE THINGS ARE SORT OF BY DEFINITION INHERENTLY THAT EVERY CASE MEETS ANY OF THE CIRCUMSTANCES OTHER THAN E THAT IT'S LEGAL PURPOSES EXTERNALLY?

>> Keith A. Peterson,Respondent: WOULD ACCEPT THE PREMISE THAT THE PURPOSE OF E THROUGH F AND D THROUGH M IS TO GIVE A LANDING SPOT FOR CORONARY CIRCUMSTANCES AND I WOULD ARGUE THAT BY THE DEPARTMENT FILING MANAGED ORDINARY SITUATIONS UNDER STATUTORY PROVISION.

>> Chief Justice Carlos Muniz: THAT SEEMS LIKE IT REALLY DOES COME DOWN IT SEEMS LIKE YOU BOTH AGREE WITH THE LEGAL QUESTION IT'S JUST A QUESTION OF WHETHER B AND C WERE IN FACT PROVEN BY CLEAR AND CONVINCING EVIDENCE. IT SEEMS LIKE THAT SHIP HAS SAILED. YOU ARE NOT TELLING US NOW WITH THE ERROR WAS KNOWN BELOW WAS CLEAR ABOUT IT.

IT MAKES ME WONDER WHY WE'RE EVEN HERE. BECAUSE IT SEEMS LIKE THE LEGAL QUESTION WE WOULD BE PROBABLY BE HERE TO BE RESOLVING IT SOUNDS LIKE BOTH SIDES AGREE.

I DON'T NOTE THAT AGREE WITH EITHER ONE OF YOU ON THAT BY THE WAY THINK THE DCA MADE A MISTAKE IF WE JUST TAKE IF WE TREAT LEAST RESTRICTIVE MEANS AS A SEPARATE WRONG AND WE SAVED THAT EVEN IF YOU PROVE B AND C THERE IS

STILL THE SORT OF CONSTITUTIONAL MINIMUM THAT HAS TO BE PROTECTED I STILL THINK THAT THE LOWER COURT KIND OF FUMBLER THAT STAGE. IT SOUNDS LIKE YOU GUYS DON'T EVEN DISAGREE ON THE LEGAL QUESTION.

>> Keith A. Peterson, Respondent: I WOULD ARGUE YOUR HONOR THAT OUR CONCERN IS THAT IF THE DEPARTMENT IS ALLOWED TO FILE NONEXPERT SITUATIONS UNDER ONE OF THOSE PROVISIONS.

[LISTING NAMES] PROVISIONS FOR EXTRAORDINARY SITUATIONS THAN THEY BASICALLY JUST ABSOLVED THEMSELVES.

>> Justice Charles Canady: COUNSEL YOU WOULD HAVE TO ADMIT YOUR OPTION IS IF YOU FILE UNDER THE WRONG GROUND AND THERE IS NOT A FACTUAL BASIS FOR ESTABLISHING THE GROUND YOU HAVE TO CHALLENGE THE GROUND. THAT IS JUST BASIC.

AND SO IF THAT DOES NOT HAPPEN IF THAT IS NOT DONE AT THE LOWER LEVEL THEN EVEN THOUGH SOMEHOW THE DISTRICT COURT STUMBLES AND GET THE RIGHT RESULT FROM YOUR PERSPECTIVE, EVEN THOUGH HE FAILED TO DO THAT THEY GET THE RIGHT RESULT THEN TO COME UP HERE AND TO TRY TO GET THAT SUSTAINED ON THIS TIPSY COACHMAN MAYBE I'M MISSING THAT BUT IT SEEMS LIKE THAT IS WHAT YOUR ARGUMENT IS REALLY A TIPSY COACHMAN ARGUMENT WITHIN DON'T REALLY GIVE US THE REASON TO SAY THAT THE DECISION IS CORRECT FOR THESE OTHER REASONS AND SHALL WHY THE TRIAL COURT ERRED IN THOSE REGARDS THEREFORE IT WAS CORRECT FOR THE DISTRICT COURT RESORT OR REVERSED THE TRIAL COURT.

>> Keith A. Peterson, Respondent: I CAN ANSWER THAT YOUR HONOR. THE REASON THE RULING WAS CORRECT IS BECAUSE IF THE DEPARTMENT IS ALLOWED TO PROCEED WITHOUT LEAST RESTRICTIVE MEANS IN USUAL NORMAL SITUATION NOT EXTERNALLY SITUATION THEY DON'T HAVE TO PROVIDE SERVICES AS A MEANS OF EXPRESSING THE LEAST RESTRICTIVE MEANS.

CASE PLAN IS HOW TYPICALLY PLAYS OUT. AND IF THEY WERE NOT IF THE DEPARTMENT IS NOT REQUIRED TO PROVIDE THOSE SERVICES THAT IS WHERE A LOT OF THE FUNDAMENTAL RIGHTS LIVE OR IN THAT PROVIDING SERVICES PROCESS.

THE CASE PLAN APPARENT WORKING ON THE CASE PLAN SUCCEEDING AND FAILING THERE IS A LOT OF RIGHTS THAT ARE HOUSED IN THAT PROCESS WE CAN SHELTER AND TERMINATION. TO ELIMINATE THAT NONEXTRADINARY CIRCUMSTANCES. WOULD BE A SUBSTANTIAL SORT OF IMBALANCE IN TERMS OF THE POWER OF THE GOVERNMENT TO REACH INTO THE LIVES OF PRIVATE CITIZENS WITHOUT THAT THE PROCESS.

>> Justice Charles Canady: AT A CERTAIN LEVEL COUNSEL WHO CAN DISAGREE WITH YOUR POSITION THAT STATE SHOULD NOT UNDER A GROUND THAT IS NOT WARRANTED BY THE FACTS. THAT IS JUST KIND OF ACXIOM . THAT DOES NOT ADDRESS WHAT HAPPENED IN THIS CASE WHERE THAT IF THIS FAILURE OF THE STATE TO HAVE GROUNDS TO ESTABLISH THESE GROUNDS. IT IS NOT BEEN LITIGATED.

IT IS NOT BEEN LITIGATED IN THE DISTRICT COURT IT'S NOT REALLY BEEN LITIGATED HERE IT HAS BEEN ASSERTED BUT NOT REALLY ARGUED.

UNLESS I'M BADLY MISSING SOMETHING LIKE THE PAGES GOT STUCK TOGETHER IN THE BRIEF WHEN I READ IT I DON'T THINK SO.

[LAUGHTER]

>> Keith A. Peterson,Respondent: THE PROBLEM THE CASE PRESENTS IS THERE IS NOT A FUTURE POTENTIAL THREAT OF THE FATHER AND THE CHILD INTERACTING. THAT IS A FEATURE IN A LOW LOT OF THE OTHER CASES THAT THERE IS A PROBLEM LIKE THE SCHIZOPHRENIC CASES THAT WILL PRESENT A FUTURE PROBLEM IF THAT THE CHILD WERE TO BE REUNIFIED. THIS SITUATION THERE IS NO EVIDENCE THAT THAT WOULD BE THE CASE. BECAUSE WE HAVE A DAD WHOSE ALL OF HIS CONTACT WITH THE CHILD HAS BEEN UNIVERSALLY APPROPRIATE.

>> Justice Charles Canady: THE LAST POINT AND THIS IS THE FATHER ACTUALLY SAID I'M READY TO TAKE CUSTODY ONE CUSTODY NOW.

>> Keith A. Peterson,Respondent: AT WHAT POINT HE WENT TO HOME STUDY NORTH CAROLINA HE MADE PLANS TO MOVE TO FLORIDA.

>> Justice Charles Canady: BASED ON THE RECORD THE WAY THINGS ARE IN THIS CASE WHEN HE CAME TO US WAS WAS THE FATHER IN A POSITION TO TAKE CUSTODY OF THE CHILD IN YOUR VIEW.

>> Keith A. Peterson,Respondent: IF HE WAS REQUESTING HOMESTUDY I ASSUME WAS IN A POSITION TO DO THAT. IF THE ONLY REASON WITH HER LINEUP WAS REJECTING THE HOME STUDY WAS THE PRIOR CRIMINAL HISTORY THERE WAS NO INDICATION THAT THERE WAS OTHER BASIS FOR REJECTING OR FOR THE DENIED HOME STUDY. HE CAME TO FLORIDA BECAUSE HE THOUGHT HE GET A POSITIVE HOME STUDY BECAUSE THE METRIC USED DOWN HERE IS DIFFERENT THAN NORTH CAROLINA FOR HOME STUDIES.

>> Justice Charles Canady: TO HAVE A HOMESTUDY IN FLORIDA YOU HAVE TO HAVE A HOME IN FLORIDA.

>> Keith A. Peterson,Respondent: THAT'S WHAT HE WAS WORKING ON THEN HE PICKED UP HIS LAST ARREST. HE WAS IN THE PROCESS OF MAKING THAT MOVE HE PICKED UP THE REST HE ENDED UP DOING STATE TIME AND I THINK HIS SENTENCE WAS SET TO END A COUPLE OF MONTHS AGO.

BUT WAS MAKING THAT MOVE BUT THAT IS WHEN HIS LAST ARREST HAPPENED.

NONE OF HIS CRIMES WERE CHILD RELATED.

NONE OF HIS CRIMES INVOLVED HIS KID THAT'S ANOTHER COMPETITION.

>> Justice Charles Canady: MAYBE IT WASN'T A CHILD MOUSE BUT TORCHING A FAMILY DWELLING SEEMS TO ME TO BE A PRETTY SERIOUS THING.

>> Keith A. Peterson,Respondent: WAVING A GUN AT PEOPLE WHEREVER THEY MAY BE SEEMS TO HAVE A SERIES INVOCATIONS FOR THE CHILD AS WELL.

>> Keith A. Peterson,Respondent: WE WOULD ARGUE THIS IS NOT A WORLD WHERE THAT IS A POTENTIAL CONDITION OF THAT WAS ELIMINATED LONG TIME AGO AT SUCH JUST HAVING THE INCARCERATION PROBLEM ISN'T THE SAME THING SOME OF THESE OTHER ISSUES THAT ARE NOT SUBJECT TO REMEDIATION. LIKE SCHIZOPHRENIA THE

UNRESOLVED DRUG ISSUES AND THINGS LIKE THAT.

IT IS A DIFFERENT CRITTER DOESN'T NOTHING GIVES HIM A BLANK CHECK I'M NOT SAYING HE GETS A PASS. HOWEVER BECAUSE IT IS DIFFERENT THAN THE PSYCHOLOGICAL ISSUES AND THE DRUG ADDICTION ISSUES THAT ARE NOT RESOLVED IT DOES END UP PLAYING OUT IN THE FUTURE TENSE DIFFERENTLY THAN THOSE OTHER KIND OF SITUATIONS.

YOUR HONOR I WOULD ARGUE THAT THE CRITICAL NECESSITY OF THE FIFTH DCA RULING IN CC IT CREATES THE NECESSITY TO MAINTAIN THE DUE PROCESS PROCESS LEAST RESTRICTIVE MEANS AS EXPRESSED IN THE CASE PLAN REQUIREMENTS.

IN THAT PROCESS BETWEEN THE SHELTER AND DETERMINATION. BY LOWERING THE DEPARTMENT TO RID THEMSELVES OF THE ALLEGATION TO PROVIDE THE SERVICES THAT FILTERING PROCESS THAT ALLOWS PARENTS TO EITHER SUCCEED OR FAIL, THROUGH A CASE PLAN, THAT IS WHERE A LOT OF THE DUE PROCESS RIGHTS ARE AND IN THIS CASE THERE WAS NO CASE PLAN. THERE WAS NO OPPORTUNITY FOR THE FATHER TO DEMONSTRATE THAT HE COULD POTENTIALLY PARENT THE CHILD IN THE FUTURE.

OTHER QUESTIONS Y

THANK YOU FOR THE OPPORTUNITY.

>> Chief Justice Carlos Muniz: THANK YOU.

>> I WOULD LIKE TO TAKE THIS OPPORTUNITY TO TRY TO ADDRESS WHAT IT IS THE CHIEF JUSTICE'S MAIN CONCERN IS WHICH IS WHERE WE GO FROM HERE WE START BACK TO WHERE THE LIST RESTRICTIVE MEANS COME FROM BACK IN 1991 ESCORT SAID TO PROTECT THE RIGHTS OF THE PARENT AND THE CHILD ESTATE AT THE SHOW BY CLEAR AND CONVINCING EVIDENCE THE REUNIFICATION WITH THE PARENT PLACES A SUBSTANTIAL RISK OF SIGNIFICANT HARM TO THE CHILD LET'S TALK ABOUT THE RISK THAT IT LET'S FOCUS ON THE RISK IS GO THROUGH THE DIFFERENT GROUNDS. WHAT THE COURT ATTEMPTED TO DO BACK IN PADGETT WAS GIVE AN EXAMPLE WE CAN ESTABLISH RISK. WHICH IS WORK YOUR CASE PLAN AND YOU DON'T BENEFIT FROM THE SERVICES BECAUSE YOU DON'T CHANGE YOUR BEHAVIORS THAT IS ONE WAY. TO ESTABLISH RISK. I THINK IT WAS ALL RETRACTED WITH ESTABLISH AN EXAMPLE BUT SINCE THEN THERE'S BEEN ANY MORE EXAMPLES OF HOW YOU ESTABLISH RISK. ESTABLISH HARM BY BENDING CHILD.

WHICH IS WHAT WE HAVE HERE AND WHAT YOU ANSWERED JUSTICE COURIEL'S QUESTION ABOUT THE TIME I DON'T WANT TO MISLEAD THE COURT WAS NOT JUST FIVE HOURS IN TOTAL WITH THE QUIZ OF THE CASE BUT THE FATHER TESTIFIED TO THE LONGEST TIME HE EVER SPENT WAS A FOUR HOUR VISIT WHEN THE CHILD WAS TWO YEARS OLD AND THE FOUR HOUR VISIT WHICH I WAS THREE YEARS OLD HE HAD TWO MORE VISITS IN PERSON AFTER THAT PRINT THAT THE EXTENT OF THE IN-PERSON VISITS WITH THE FATHER.

>> THE HARD PART THAT MEANS ALL YOU NEED TO DO IS TO ONE OF THE GROUNDS BY CLEAR AND CONVINCING EVIDENCE AND THEIR DIFFERENT SOME OF THEM INVOLVE FAILING TO PLAN SOME OF THEM DON'T.

>> IS NOT JUST LOOKING AT PROVING JUST BACKGROUND IT'S ALSO PREVENT HOW THE GROUND ELITES OF THE CHILD. WE WILL TAKE OUR CASE FROM FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES VERSUS FL WHICH WAS THE 2004 CASE THAT ADDRESSED PART INVOLUNTARY TERMINATION OF PARENTAL RIGHTS. THIS COURT SAID CAN JUST LOOK AT THAT ONE TERMINATION AND WHAT HAPPENED IN THAT CHILD'S END OF THE CHILD'S HISTORY WHICH HAVE BEEN 20 YEARS AGO FOR ALL WE KNOW. WE GOT TO LOOK AT WHAT IS THE HARM TO THIS PARTICULAR CHILD. THAT IS SOMETHING THE DEPARTMENT TO LIVE WITH BECAUSE WHAT WE ARE TRYING TO DO FOR THESE FAMILIES IS WE ARE TRYING TO UNITE THESE FAMILIES. WHERE IT IS APPROPRIATE TO DO SO?

THERE IS NO HARM IN PROVIDING A CASE PLAN WE OFFER A CASE PLAN AND THEN IF THE PARENT CONTINUES TO ENGAGE IN DANGEROUS BEHAVIOR COULD CUT THAT RISK. WHERE THERE ARE SOME THINGS THAT ARE JUST SO HORRIBLE THAT THEY ARE DEPLORABLE FLAGRANT ABANDONMENT WE ARE ESTABLISHING A RISK TO THAT CHILD AND THAT IS WHERE THE CONSTITUTIONAL PROTECTION IS IN EXISTENCE. I SEE I'VE RUN OVER MY TIME THANK YOU VERY MUCH.

>> Chief Justice Carlos Muniz: THANK YOU.

>> Sara E. Goldfarb, Petitioner: I JUST WANT TO LEAVE THE COURT WITH SOME LANGUAGE THAT THIS COURT USED IN TM.

WHEN IT REJECTED THE CONSTITUTIONAL ARGUMENT IT SAID ONLY THROUGH THESE MEASURES WITH THESE MEASURES THINK THE ABILITY TO TERMINATE WITHOUT PROVISION OF THE CASE PLAN. WILL THE COURT TO BE ABLE TO ADHERE TO THE OVERRIDING PRINCIPLES THAT ITS ULTIMATE WELFARE BEST INTEREST OF THE CHILD WHICH MUST PREVAIL. WHAT THAT MEANS IS I THINK THE STATE IS EXERCISING HIS PARENTS PATRIARCHAL DUTY IN THIS CASE AS TO PROTECT THE CHILDREN. AND IF SO THIS TOOL DISABILITY TO GO WITHOUT A CASE PLAN IS ONE OF THE TOOLS IN THE STATES TOOLBOX TO BE ABLE TO NOT ONLY DECREASE THE HARM TO THE CHILDREN THE PARENTS BEHAVIOR DIRECTLY BUT ALSO TO ENSURE THE NO CHILD STAYS AND OUT OF HOME CARE LONGER THAN IS ABSOLUTELY NECESSARY AND WE GET THE PERMANENCY AS QUICKLY AS POSSIBLE. IN ALL OF THAT FEEDS INTO LEAST RESTRICTIVE MEANS IN THE ULTIMATE BALANCE BETWEEN WHAT IS FAIR BEFORE TERMINATING PARENTAL RIGHTS. SO THE GUARDIAN AD LITEM OFFICE WOULD ASK THIS COURT AGAIN TO REVERSE THE OPINION OF THE FIFTH DISTRICT COURT OF APPEALS AND REINSTATE THE ORDER DETERMINING PARENTAL RIGHTS SO LA CAN FIND PERMANENCY AFTER NEARLY 6 YEARS.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH WILL TAKE A 10 MINUTE RECESS.

>> Marshal: ALL RISE.