

>> Marshal: ALL RISE. HEAR YE, HEAR YE, HEAR YE. THE SUPREME COURT OF FLORIDA IS NOW IN SESSION, ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR. GIVE ATTENTION. YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE SUPREME COURT OF FLORIDA. PLEASE BE SEATED.

>> Justice Munoz: GOOD MORNING. WELCOME TO THE FLORIDA SUPREME COURT. OUR FIRST CASE TODAY IS BRITO V. SALAS CASE NUMBER SC2024-1184.

>> Eric Maier: MR. CHIEF JUSTICE, AND MAY IT PLEASE THE COURT, MY NAME IS ERIC MAIER. I REPRESENT THE PETITIONER, ASHLEY BRITO. THE ISSUE BEFORE THE COURT IS ONE OF STATUTORY INTERPRETATION. WHETHER THE WORD "DONOR" AS USED IN SECTION 742.14 MEANS A PERSON WHOSE BIOLOGICAL MATERIALS ARE USED TO CONCEIVE A CHILD THROUGH ASSISTIVE REPRODUCTIVE TECHNOLOGY AS THAT PHRASE IS DEFINED IN CHAPTER 742 OR WHETHER THE WORD "DONOR" HAS A BROADER MEANING THAT EXTENDS BEYOND THE SCOPE OF ASSISTED REPRODUCTIVE TECHNOLOGY AND WOULD ENCOMPASS A MAN WHO PROVIDES THE SEMEN USED TO CONCEIVE A CHILD THROUGH ARTIFICIAL INSEMINATION. -- WITH REFERENCE TO ITS STATUTORY TEXTUAL CONTEXT OR THE CANONS OF INTERPRETATION THAT ARE RELEVANT. INSTEAD, THE SECOND DISTRICT INTUITIVELY ASSUMED THAT THE WORD "DONOR" WOULD INCLUDE A MAN WHOSE SPERM IS USED TO CONCEIVE A CHILD THROUGH ARTIFICIAL INSEMINATION. THAT ASSUMPTION THEN DROVE ITS CONCLUSION THAT SECTION 742.14 APPLIES IN ALL PATERNITY ACTIONS INVOLVING ARTIFICIAL INSEMINATION. AS THIS COURT EXPLAINED IN CASES SUCH AS ALACHUA COUNTY AND -- A COURT MUST EXHAUST ALL TECHNICAL AND STRUCTURAL CLUES THAT BEAR ON THE MEANING OF DISPUTED TEXT. IN THIS CASE, THOSE CLUES COMPEL THE CONCLUSION THAT THE DEFINITION OF DONOR AS USED IN SECTION 742.24 DOES NOT EXTEND BEYOND THE CONTEXT OF ASSISTIVE REPRODUCTIVE TECHNOLOGY.

>> WHEN YOU SAY EXTEND BEYOND THE CONTEXT, I'M NOT SURE EXACTLY WHAT YOU MEAN. THE WORD "DONOR" IS NOT IN THE STATUTE, CORRECT?

>> Eric Maier: CORRECT.

>> The Court: THE STANDARD AND THAT POINT IS WE SEEK MEANING AT

THE TIME THE STATUTE WAS ENACTED, CORRECT?

>> Eric Maier: THAT'S THE STANDING POINT.

>> The Court: IF WITHIN DO THAT, I THINK ANY DEFINITION OF DONOR THAT WOULD BE, YOU KNOW, INTUITIVE TO AN ORDINARY SPEAKER OF THE ENGLISH LANGUAGE WOULD BE SOMEONE WHO GIVES.

A DONOR GIVES.

A DONOR, THEREFORE, ALIENATES HIM OR HERSELF FROM THE THING HE OR SHE IS GIVING, RIGHT?

A DONOR IS ALSO IN THE SORT OF ORIGINAL COMMON USAGE OF THE TERM DIFFERENT FROM A PARENT.

WE DON'T USUALLY SPEAK AS PARENTS AS DONORS IN COMMON ENGLISH. HELP ME OUT.

I DON'T THINK I'M DOING ANYTHING BY -- I'M NOT BROADENING THE DEFINITION OF DONOR QUOTE UNQUOTE BEYOND THE STATUTE.

I'M TRYING TO FIND THE TERM'S ORIGINAL PUBLIC MEETING AND USING IT IN THE STATUTE.

HOW IS THAT BROADER THEM THE STATUTE?

>> Eric Maier: WELL, I DON'T THINK -- THE DEFINITION IS NOT BROADER THAN THE STATUTE.

I THINK I AGREE WITH YOU THAT THERE IS AN INTUITIVE USE OF THE WORD "DONOR" THAT WE OFTEN THINK ABOUT, BUT I THINK AS THE COURT SAID IN CARNAGE --

>> The Court: IT'S NOT JUST INTUITION, RIGHT?

THE WAY THIS WORKS IS WE AGREE WHAT A WORD MEANS, AND EVIDENCE WHAT THAT AGREE IS, IF THERE ISN'T THAT AND WE LOOK TO DICTIONARIES AND WE LOOK TO USAGE AND WE LOOK TO, YOU KNOW, CONTEXT.

AND THEN WE DO OUR BEST TO COME UP WITH WHAT WOULD AN ORDINARY SPEAKER OF THE ENGLISH LANGUAGE UNDERSTAND THAT WORD TO MEAN. HELP ME UNDERSTAND HOW THAT'S BROADENING THE DEFINITION.

>> Eric Maier: I THINK THERE ARE FOUR PARTICULAR CLUES THAT I THINK WILL COMPEL THE CONCLUSION THAT WHAT THE LEGISLATOR INTENDED BY THE WORD, USE OF THE WORD "DONOR" WAS A DONOR IN THE CONTEXT OF ASSISTIVE REPRODUCTIVE TECHNOLOGY, AND I THINK THERE IS, YOU KNOW, SO IF I GO THROUGH THOSE FOUR CLUES, THE FIRST CLUE IS THAT AS THE SECOND DISTRICT ACKNOWLEDGED OR RECOGNIZED, ARTIFICIAL INSEMINATION SUCH AS THE PROCESS THAT WAS USED IN THIS CASE DOES NOT FIT WITHIN THE STATUTORY DEFINITION OF ASSISTED REPRODUCTION TECHNOLOGY.

AND THAT IS BECAUSE IT DOES NOT INVOLVE THE HANDLING OF --

>> The Court: AND THERE WAS -- TELL ME IF I'M WRONG, BUT AM I

CORRECT IN UNDERSTANDING THAT THERE WAS ALREADY A STATUTORY PROVISION DEALING WITH ARTIFICIAL INSEMINATION WHEN THIS PROVISION WAS ADOPTED AND WHEN THE PROVISIONS RELATED TO ASSISTED REPRODUCTIVE TECHNOLOGY WERE ADOPTED?

>> Eric Maier: YES, JUSTICE CANADY.

SUBSECTION 1 IS THE BALANCE THE LEGISLATOR STRUCK BETWEEN THE FUNDAMENTAL CONSTITUTIONAL RIGHTS OF THE BIOLOGICAL FATHER ON THE ONE HAND AND THE STATE'S INTEREST IN PROTECTING THE RIGHTS OF PEOPLE WHO CHOOSE TO HAVE A CHILD THROUGH ARTIFICIAL INSEMINATION.

AND THOSE -- THE PEOPLE WHO CHOOSE TO DO THAT, THEY CAN PROTECT THEIR RIGHTS BY EXECUTING A WRITTEN CONSENT, WHICH WILL MAKE IT AN IRREBUTTABLE PRESUMPTION THAT THEY ARE THE PARENTS OF THE CHILD.

SO THAT WAS -- THAT HAD BEEN IN EFFECT SINCE 1973 AND WAS IN EFFECT WHEN THE LEGISLATOR ENACTED THIS OTHER GROUP OF STATUTES IN 1993.

SO THAT IS A STATUTE THAT PROTECTS THOSE RIGHTS.

AND IN DMT, THE COURT ACKNOWLEDGED THAT THE STATUTE COULD -- INFRINGES ON CONSTITUTIONAL RIGHTS AND THEREFORE HAS TO MEET A STRICT SCRUTINY TEST.

IN DMT, A COMPELLING STATE INTEREST WAS PROTECTING THE RIGHTS OF PARENTS WHO CHOOSE TO UTILIZE ASSISTIVE REPRODUCTIVE TECHNOLOGY TO CONCEIVE A CHILD.

>> The Court: CAN YOU ADDRESS -- IT SEEMS LIKE YOUR ARGUMENT WOULD BE STRONGER IF THE EXCEPTION DIDN'T INCLUDE THE FATHER WITH THE PREPLANNED ADOPTION AGREEMENT BECAUSE THAT DOESN'T NECESSARILY -- WHEN YOU LOOK INTO THE DETAILS OF HOW THAT WORKS, THEY USE THE TERM "FERTILITY TECHNIQUE" AND THEY HAVE A DEFINITION THAT COULD INCLUDE THE ARTIFICIAL REPRODUCTIVE TECHNOLOGY, BUT IT COULD INCLUDE OTHER TYPES OF THINGS. AND SO ONE THING THAT I'VE BEEN STRUGGLING WITH IS MAYBE THE BEST WAY TO UNDERSTAND THIS IS THAT THIS USE OF "DONOR" IS IN THESE TWO CONTEXTS, WHETHER IT'S THE SURROGACY CONTEXT THAT'S WITH A GESTATIONAL SURROGATE THAT'S KIND OF OUTLINED IN THE 93-237, THE CHAPTER LAW THAT BROUGHT THAT INTO EFFECT, AND THEN YOU HAVE THE PREPLANNED ADOPTION, WHICH IS ANOTHER VERSION OF SURROGACY WHERE THERE IS, YOU KNOW, WRITTEN DOCUMENTATION. EVERYBODY KNOWS WHAT'S GOING ON, YOU KNOW, ETC. ETC. WHAT DO YOU THINK ABOUT THAT?

BUT I GUESS, IF YOU WANT TO JUST START WITH THE ISSUE OF DOESN'T THE EXCEPTION FOR THE FATHER IN THE PREPLANNED ADOPTION, DOESN'T THAT KIND OF UNDERMINE THE IDEA THAT IT ONLY APPLIES IN A.R.T. CONTEXT?

>> Eric Maier: IT DOESN'T UNDERMINE IT, MR. CHIEF JUSTICE. THE PREPLANNED ADOPTION STATUTE WAS IN EFFECT BEFORE THE ENACTMENT OF THE STATUTES IN 1993. AND THE PREPLANNED ADOPTIONS AGREEMENT WAS THE ONLY WAY PRIOR TO 1993 FOR A COUPLE TO HAVE A CHILD USING WHAT IS NOW DEFINED AS ASSISTIVE REPRODUCTIVE TECHNOLOGY. SO THE REASON THAT THAT SECOND EXCEPTION IN 7.214 EXISTS IS BECAUSE IF PEOPLE DO USE A PREPLANNED ADOPTION AGREEMENT WHETHER IT'S THROUGH A.R.T. OR YOU'RE CORRECT IT'S CONCEIVABLE THAT IT COULD BE BEYOND ASSISTIVE REPRODUCTIVE TECHNOLOGY, BUT THE STATUTE PROVIDES IF THE ADOPTION DOESN'T HAPPEN, IF IT'S TERMINATED OR IF THE ADOPTION CONTRACT IS BREACHED, THE BIOLOGICAL FATHER REMAINS THE FATHER AND THE MOTHER WOULD BE THE GESTATIONAL MOTHER, WHO IS IN MOST CASES A SURROGATE. THE REASON FOR THIS OTHER EXCEPTION, WHICH IS WORST, YOU KNOW, IN USAGE BY THE COMMISSION IN COUPLING EXCEPTION IS THERE WOULD HAVE BEEN THE UNINTENDED CONSEQUENCE OF INTERFERING WITH THAT OTHER STATUTORY SCHEME THAT WOULD KEEP THE FATHER INVOLVED IN A PREPLANNED ADOPTION AGREEMENT AS THE BIOLOGICAL FATHER IN THE EVENT THAT THE PREPLANNED ADOPTION AGREEMENT DIDN'T GO AS EXPECTED AND CULMINATE IN AN ADOPTION. SO IN EVERY CASE, A PREPLANNED ADOPTION AGREEMENT IS GOING TO INCLUDE A VOLUNTEER MOTHER WHO AGREES TO GIVE UP HER CHILD FOR ADOPTION AT THE CONCLUSION OF THE PREGNANCY OR THE BIRTH OF THE CHILD.

>> The Court: IN THAT CASE IN THAT CONTEXT SHE MAY ALSO BE THE GENETIC MOTHER OF THE CHILD, WHEREAS IN A.R.T., SHE'S NOT.

>> Eric Maier: WELL, SHE MAY BE. IN MANY CASES, SHE MAY NOT BE RELATED TO ANY PARTY. SHE MAY NOT BE -- BECAUSE ONE OF THE MAIN USAGES OF PREPLANNED ADOPTION AGREEMENT IS SOMEBODY WHO GETS PREGNANT, DOESN'T WANT -- NOT WITH AGREEMENT BEFORE HAND, BUT THEN WANTS TO AGREE WITH ANOTHER COUPLE WHO WANTS A CHILD TO ADOPT THE BABY. SO IT'S NOT ALWAYS USED IN ARTIFICIAL INSEMINATION --

>> The Court: NO, BUT I THOUGHT IT WAS ALL FOR FERTILITY TREATMENTS. THEY ENTER A PREPLANNED UNDER THE -- IT SAYS IN THE PREPLANNED ADOPTION ARRANGEMENT IT SHALL INCLUDE BUT NEED NOT BE LIMITED TO THE FOLLOWING TERMS A, THE VOLUNTEER MOTHER AGREES TO BECOME PREGNANT BY THE FERTILITY TECHNIQUES SPECIFIED IN THE AGREEMENT TO BEAR THE CHILD AND THEN TO TERMINATE HER PARENTAL RIGHTS. THIS ISN'T LIKE OH, I'M PREGNANT AND I'M GOING TO DO [MULTIPLE SPEAKERS] I MEAN, IT'S INHERENT IN IT. IS A NECESSARY FEATURE OF IT.

I GUESS --

>> Eric Maier: THE POINT FOR THIS CASE IS THAT THERE STILL WOULD BE NO EXCEPTION FOR A MAN WHO WANTS TO BECOME A FATHER AND HAVE THE MOTHER BE THE GESTATING MOTHER, AS WAS THIS CASE. SO IN THIS CASE, THE PARTIES, YOU KNOW, THEIR ALLEGATION OR MY CLIENT SAYING SHE INTENDED TO BECOME A PARENT WITH THIS MAN. NOW, THERE WOULD BE NO WAY TO DO THAT IF THE STATUTE APPLIES TO ARTIFICIAL INSEMINATION BECAUSE REGARDLESS OF WHAT HAPPENS WITH PREPLANNED ADOPTION AGREEMENT, IT WILL ALWAYS INCLUDE A MOTHER WHO'S GIVING UP HER CHILD FOR ADOPTION. SO THE SITUATION THAT WE HAVE BEFORE US IS ARTIFICIAL INSEMINATION WHERE A MAN PROVIDES SEMEN TO A WOMAN WHO'S GOING TO BE THE MOTHER AND KEEP THE CHILD WILL ALWAYS LOSE HIS RIGHTS WITHOUT EXCEPTION --

>> The Court: WHY IS IT ALWAYS LOSE HIS RIGHTS IF THERE IS A SEPARATE STATUTORY SECTION ON, YOU KNOW, ESTABLISHING PATERNITY? AND THEN FROM THERE, LIKE THE TRIAL COURT DID IN THIS CASE, THE TRIAL COURT WENT THROUGH TESTIMONY AND SAID I FIND THIS TESTIMONY CREDIBLE, I FIND THIS TESTIMONY ON CREDIBLE. FOR THAT REASON, I FIND THIS A DONATION IN THIS CASE AND DENIES PATERNITY. IN THIS CASE, I FIND THAT TESTIMONY VERY CREDIBLE. THIS WAS NOT A DONATION. HE FULLY INTENDED TO BE A PARENT AT THIS TIME. WHY IS THAT NOT THE CASE?

>> Eric Maier: BECAUSE IN DMT WE DON'T LOOK AT THE INTENT OF THE PARTIES TO DETERMINE WHETHER THEY ARE A DONOR OR NOT. WE ONLY LOOK TO THE MODE OF THE CONCEPTION. THAT'S WHY IN DMT, THE RESPONDENT WAS DEEMED A DONOR, ALBEIT WITH AN EXCEPTION. BUT THE TRIAL COURT, THERE'S NO ROOM FOR THE TRIAL COURT TO TAKE TESTIMONY TO DETERMINE WHO IS AND WHO ISN'T A DONOR BASED ON THEIR INTENTION.

>> The Court: SO YOU THINK THE TRIAL COURT, AND THIS ISN'T NECESSARILY BEFORE US, BUT I UNDERSTAND THE BECAUSE YOU HAVE THAT VIEW OF DONOR FROM DMT, THEN FORMS YOUR INTERPRETATION OF THE STATUTE. YOU THINK THE TRIAL COURT IN THIS CASE AIRED IN TAKING TESTIMONY ON IT, THE ADDITION OF SO WE LOOKED AT THE METHOD OF CONCEPTION AND FROM THERE SAY IT'S A MATTER OF LAW. ANYBODY WHO PROVIDES, YOU KNOW, SPERM THROUGH I.U.I. OR ANYTHING LIKE THAT IS A DONOR PERIOD.

>> Eric Maier: I DON'T THINK IT SHOULD HAVE APPLIED 742.14. BUT WHAT THE COURT DID WRONG IN EVEN THE SECOND DISTRICT IMPLICITLY THE COURT DID WRONG, WHAT IT DID IN ITS TESTIMONY IS AT THE END OF THE CASE IS SAID OKAY, I'M DECIDING WHICH OF YOU TWO, THREE PEOPLE INVOLVED IN THE CASE, I'M DECIDING WHICH OF YOU TWO IS THE COMMISSIONING COUPLE AND I THINK -- I DON'T THINK IT'S THE MOM AND THE BIOLOGICAL DAD. I THINK IT'S THE MOM AND THE WIFE. THAT IS NECESSARILY WRONG BECAUSE, AS WE KNOW, THE COMMISSION IN COUPLE EXCEPTION CANNOT APPLY IN THE CONTEXT OF ASSISTIVE REPRODUCTIVE OTHER THAN IN ASSISTIVE PRODUCTION TECHNOLOGY.

>> The Court: SO CAN I ASK YOU A QUESTION? SORRY, GO AHEAD.

>> Eric Maier: SO WHAT THE COURT FAILED TO DO IS ANALYZE THE EVIDENCE BASED ON THE LONG-STANDING CONSTITUTIONAL RIGHT OF THE FATHER, WHICH IS AN IN COA INTEREST --

>> The Court: YOU STARTED YOUR ARGUMENT BY SAYING THIS IS A STATUTORY CLAIM. IT WASN'T PRESENTED AS A CONSTITUTIONAL ARGUMENT, RIGHT?

>> Eric Maier: IT'S NOT A CLAIM THAT STATUTE IS UNCONSTITUTIONAL. TO THE CONTRARY, I'M ADVOCATING FOR A CONSTRUCTION THAT WILL PROTECT IT FROM BEING UNCONSTITUTIONAL.

>> The Court: CAN I ASK YOU A QUESTION? YOU KEEP USING THE TERM ASSISTED REPRODUCTIVE TECHNOLOGY, WHICH IS DEFINED IN THE STATUTE AND SPECIFICALLY REFERS TO LABORATORY HANDLING OF HUMAN EGGS OR PRE-EMBRYOS. DOES NOT TALK ABOUT, YOU KNOW, DONATION OF SPERM IN CONTRAST FROM 742.14. SO HOW DO WE -- IT SOUNDS LIKE YOUR ARGUMENT RELIES HEAVILY ON THIS DEFINITION OF ASSISTIVE REPRODUCTIVE TECHNOLOGY BEING KIND OF RED THROUGHOUT THE STATUTES OR THE VARIOUS SECTIONS. SO WHAT DO WE DO WITH THE FACT THAT THE DEFINITION OF THAT TERM SPECIFICALLY REFERS TO HUMAN EGGS OR PRE-EMBRYOS?

>> Eric Maier: BECAUSE THE DEFINITION REFERS TO THE METHODS OF THE CONCEPTION. WHEN IT'S THE SORT OF CONCEPTION WHERE THE WOMAN WHO'S EGGS ARE BEING USED ARE GOING TO BE DIFFERENT THAN THE WOMAN WHO CARRIES THE CHILD SUCH THAT THE EGGS ARE GOING TO BE HANDLED IN A LABORATORY, EVERYBODY, INCLUDING THE PERSON WHO PROVIDES THE SPERM IN THIS CASE IS A DONOR BECAUSE THEY'RE A DONOR --

>> The Court: SO THAT WITHIN NOT APPLY TO I.U.I. BECAUSE THERE'S NO LABORATORY HANDLING OF THE EGGS IN THAT CASE?

>> Eric Maier: RIGHT, IT DOES NOT APPLY. IT'S NOT ASSISTIVE OR REPRODUCTIVE --

>> The Court: SO YOU THINK THE STATUTORY SCHEME ONLY APPLIES TO I.U.I. THEN. THERE'S NO DONATION OUTSIDE OF IVF.

>> Eric Maier: TO THE EXTENT THERE IS NO DAYLIGHT BETWEEN IVF AND ASSISTIVE REPRODUCTIVE TECHNOLOGY.

>> The Court: WELL, THAT'S DEFINED. THAT'S WHAT I'M ASKING YOU. IT SAYS REPRODUCTIVE TECHNOLOGY DEFINES HUMAN EGGS OR PRE-EMBRYOS, THAT WOULD LIMIT IT TO THIS PRE-STATUTORY SCHEME LIMITING TO IVF. I CAN'T THINK OF ANYTHING ELSE.

>> Eric Maier: YES, IT'S LIMITED TO ASSIST EVERY REPRODUCTIVE TECHNOLOGY, WHICH IS ESSENTIALLY IVF, BECAUSE IT'S ALWAYS GOING TO INVOLVE -- THERE ARE EXCEPTIONS. THERE'S OTHER METHODS. THERE ARE SITUATIONS WHERE EGGS WERE THE HANDLED IN A LABORATORY, BUT GENERALLY IT'S ALWAYS GOING TO BE ONE WOMAN IS DONATING HER EGGS, EITHER DONATING TO ANOTHER WOMAN OR PROVIDING THEM TO THE SURROGATE, BUT IMPORTANTLY, SHE'S A DONOR IN BOTH CASES. BUT IN ONE CASE, SHE'S A MEMBER OF THE COMMISSION IN COUPLE AND IN ONE CASE SHE'S NOT BECAUSE INTENT IS NEVER CONSIDERED. TO GET BACK TO YOUR ORIGINAL QUESTION, THAT IS WHAT THE TRIAL COURT DID WRONG. IT'S NOT A CONSTITUTIONAL CLAIM, BUT FOR ANY CLAIM, ANY TIME THAT A FATHER COMES TO CLAIM PATERNITY AND THERE'S A -- THERE'S A -- AND INTACT MARRIAGE, THE MOTHER AND ANOTHER PERSON, HE HAS TO PROVE THE FACTS THAT WOULD TURN HIS IN COET RIGHT INTO A CONSTITUTIONAL RIGHT, WHICH IS VERY FREESTANDING THAN WHAT THE COURT DID HERE SAYING WELL, I'M GOING TO PICK TWO OF THE THREE OF YOU TO BE PART OF THE COMMISSIONING COUPLE, BUT THAT'S NOT THE STANDARD THAT SHOULD HAVE BEEN USED. THE STANDARD THAT SHOULD HAVE BEEN USED THAT MR. RIVERA WAS IS THE FATHER AND HAS THE RIGHT TO THE FATHER IS WHETHER HE HAD DEMONSTRATED AN INTENTION TO BE FATHER IN TAKING RESPONSIBILITIES. THAT'S THE LANGUAGE THAT COMES FROM OPINIONS OF THIS COURT IN

TERMS OF HOW TO REBUT THE PRESUMPTION THAT NORMALLY EXISTS WHEN THE MOTHER IS MARRIED TO ONE PERSON BUT A MAN COMES OUT AND SAYS BUT I'M THE FATHER.

THERE'S A PRESUMPTION THAT THE SPOUSE OF THE MOTHER IS A SECOND PARENT, BUT IT'S REBUTTABLE.

MR. RIVERA IN THIS CASE WAS NOT GIVEN THE OPTION TO REBUT IT BECAUSE THE COURT DIDN'T EVEN CONSIDER THAT STANDARD, BUT INSTEAD TRIED TO DECIDE WHICH OF THE TWO PEOPLE ARE GOING TO FIT COMMISSIONING COUPLE, AND THERE'S NO ROOM FOR ANY COMMISSIONING COUPLE IN A PROCEDURE THAT DOES NOT CONSTITUTE ASSISTIVE REPRODUCTIVE TECHNOLOGY.

>> The Court: IS IT POSSIBLE THAT THE STATUTE, RATHER THAN BEING FOCUSED ON THIS NECESSARILY NARROW DEFINITION OF A.R.T. THAT IT'S REALLY, THAT THE SCOPE, THE ROLE APPLIES ONLY IN THE GESTATIONAL SURROGACY CONTEXT?

BECAUSE THE CHANGES THAT WHEN IN 93237, IN ADDITION TO KIND OF SETTING UP THE SCHEME WITH THE COMMISSIONING COUPLE AND ALL OF THAT, IT ALSO AMENDED 74211 1 AND 2 TO KIND OF HAVE THESE CARVEOUTS FOR GESTATIONAL SURROGACY SO THAT THE HUSBAND OF THE SURROGATE WOULDN'T BE UNDER THE NORMAL PRESUMPTION.

YOU DON'T WANT HIM TO BE PRESUMED TO BE THE FATHER OF THE, YOU KNOW, OF THE ENSUING CHILD.

SO IS THAT -- I MEAN, IS IT POSSIBLE?

BECAUSE WE ARE ALSO TRYING TO FIGURE THIS OUT IN A SENSE.

YOU DON'T WANT TO SAY OH, THE CONSEQUENCES ARE BAD OR WHATEVER. WE ARE LOOKING AT THIS.

WE ARE TRYING TO FIGURE OUT THE CLUES.

I THINK MAYBE SOME OF US HAVE AN INTUITION THAT THE REASONABLE UNDERSTANDING OF WHAT THE SCOPE OF THE RULE WOULD BE IS NOT AS BROAD AS IT WOULD APPEAR ON ITS FACE BECAUSE ALL YOU DO IS FOCUS ON THE DONOR THING IN ISOLATION.

AND I'M WONDERING IF THE GESTATIONAL SURROGACY CONTEXT, WHICH COULD INCLUDE COMMISSIONING COUPLES AND IT COULD ALSO INCLUDE THE PREPLANNED ADOPTION.

I'M WONDERING IF THAT IS THE PREPLANNED SCOPE WHERE YOU WOULD APPLY THE RULE.

>> Eric Maier: I THINK THAT'S A MORE SUSTAINED WAY TO SAY WHAT I WAS SAYING BECAUSE TO THE EXTENT THERE IS ANY DAYLIGHT BETWEEN GESTATIONAL SURROGACY AND ASSISTIVE REPRODUCTIVE TECHNOLOGY, AND YOU'RE POINTING OUT THERE IS SOME.

I DO AGREE THAT THE STATUTE WOULD APPLY REALLY TO THE CONTEXT OF GESTATIONAL SURROGACIES, BUT STILL NOT IN THIS CASE.

IN ALMOST ALL CASES, A GESTATIONAL SURROGATE IS GOING TO BE SOMEBODY WHO GETS PREGNANT WITH THE EGGS OF ANOTHER WOMAN.

IT'S USUALLY COTERMINOUS, BUT TO THE EXTENT THERE IS DAYLIGHT.

I THINK THERE IS A POSSIBILITY OF DAYLIGHT IN THE DEFINITION YOU READ EARLIER.

I THINK IT IS FAIR TO SAY THAT THIS IS A STATUTE THAT GOVERNS GESTATIONAL SURROGACIES.

>> The Court: AND CAN I ASK YOU, ONE THING THAT COULD BE ALSO HELPFUL IS SORT OF THE MISCHIEF ISSUE.

I THINK I READ SOMEWHERE THAT THE FIRST GESTATIONAL SURROGACY HAPPENED IN 1985, OBVIOUSLY IN VITRO FERTILIZATION WAS AROUND WAS BEFORE THAT.

IS THERE ANY -- YOU CAN POINT TO THAT MIGHT GIVE US A SENSE OF WHETHER THIS STATUTE WAS A RESPONSE TO THE PHENOMENON OF GESTATIONAL SURROGACY AS OPPOSED TO SNEAKING -- AND I DON'T MEAN THIS IN A NEFARIOUS WAY.

IT'S A LITTLE BIT OF AN ELEPHANT IN A MOUSE HOLE IN THE SENSE THAT IF YOU HAVE SOMETHING THAT OVERALL IT APPEARS TO BE MAINLY FOCUSED ON GESTATIONAL SURROGACY AND THEN YOU SLIP IN THIS PROVISION THAT'S GOING TO SWALLOW ALL THIS OTHER STUFF WITH ARTIFICIAL INSEMINATION AND APPLY ALL THESE, YOU KNOW, DIFFERENT CONTEXT, EVERYTHING FROM AN ANONYMOUS SPERM BANK TYPE SITUATION TO THOSE VOLUNTARILY DOING THIS MAYBE EVEN ON THEIR OWN ETC. ETC. IS THERE ANYTHING OBJECTIVE OUT THERE THAT CAN GIVE US A SORT OF SENSE OF WHAT IT WAS THAT PROMPTED THIS LAW?

>> Eric Maier: WELL, ONE THING WE CITED IN OUR BRIEF, I MEAN, ONE PARTICULAR CASE, BUT AS AN EXAMPLE OF CASES, AND I THINK IT WAS IN THE '80S.

IT WAS ANOTHER STATE THAT USED THE ESSENTIAL THE PREPLANNED ADOPTION AGREEMENT.

BUT THERE WAS A BREACH OR TERMINATION AND IT LED TO A DISPUTE AS TO WHO IS THE MOTHER, THE WOMAN WHO IS GENETICALLY RELATED TO THE CHILD BECAUSE HER EGGS WERE USED FOR THE WOMAN WHO CARRIED THE CHILD AND DELIVERED THE CHILD.

THE COURT IN THAT CASE, AND THAT WAS A CASE OUT OF STATE AGAIN IN CALIFORNIA, HAD TO RESORT TO THE INTENTIONS OF THE PARTIES. AND A VERY SPECIFIC WE SET IT IT HAD TO DO THAT.

AND WHEN THIS SET OF STATUTES IN FLORIDA WAS ENACTED IN 1993, AND THIS COURT HAS, YOU KNOW, EXPLAINED IN A.R.T., THAT THE VERY PURPOSE OF IT WAS TO AVOID THAT VERY TYPE OF INQUIRY INTO THE SUBJECTIVE INTENTIONS OF THE PARTIES BECAUSE IT SET UP A STATUTORY SCHEME THAT SAYS HEY, IF EVERY WOMAN WHO DELIVERS A CHILD, THAT'S THE MOTHER UNLESS YOU HAVE THIS AGREEMENT THAT'S SET FORTH AND DESCRIBED IN SECTION 725.15 WHERE YOU HAVE A COMMISSIONING COUPLE ON ONE HAND AND YOU HAVE THE MOTHER WHOSE  
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>> The Court: WHY WOULD WE LOOK AT THAT INSTEAD OF IF WE'RE

LOOKING FOR SOMETHING OBJECTIVE THAT THERE IS, YOU KNOW, THE UNIFORM PARENTAGE ACT AND THE MODEL LEGISLATION THAT WAS PASSED SPECIFICALLY IDENTIFIED THIS WHOLE THAT THESE WOMEN WHO ARE BECOMING PREGNANT BY DONATED SPERM WHO WANTED -- WHO DIDN'T WANT TO GO THE VERY EXPENSIVE IVF ROUTE AND ARE USING AT HOME METHODS USING THE SAME PROTECTION OF LEGISLATION THAT WOMEN WHO HAD THE MEANS TO DO IVF.

AND NOW WE HAVE AT HOME I.U.I. KITS AND ALL THAT SORT OF THING IN THIS STATUTORY SCHEME WAS MEANT TO CAPTURE THAT PHENOMENON, AND YOU SEE THAT REFLECTED IN THE OREGON CASE THAT CITED IN THE BRIEFS, THE TEXAS CASE.

WHY IS THAT NOT A BETTER INDICATION OF KIND OF THE OBJECTIVE LANDSCAPE THAT LED TO THIS STATE OF CHANGE?

>> Eric Maier: BECAUSE THE DEFINITION OF REPRODUCTIVE TECHNOLOGY OR ASSISTIVE -- WHATEVER DEFINITIONS ARE IN THESE OTHER STATES ARE BROADER THAN THE DEFINITION OF ASSISTIVE REPRODUCTIVE TECHNOLOGY IN THE FLORIDA STATUTE AND, AS MY DIALOGUE WITH JUSTICE CANADY EARLIER REVEALED, UNDERScoreD, WE ALREADY HAVE THE PROTECTION FOR ARTIFICIAL INSEMINATION. AND THE WOMEN IN THIS CASE, IF THEY WANTED TO PROTECT THEMSELVES FROM ANY RIGHTS FROM THE FATHER COULD HAVE EXECUTED THESE CONSENTS IN 742.14 THEY WOULD UNREBUTTED LEE BE THE PARENTS. SO THE ANSWER IS THAT FLORIDA SHOWS A DIFFERENT STATUTORY SCHEME THAN THE MODEL RULES OR THESE OTHER STATES AND THEY VERY DELIBERATELY HAVE ONE SET OF RULES THAT GOVERNS ASSISTIVE REPRODUCTIVE TECHNOLOGY AS DEFINED, AND THEN THEY ALSO HAVE A ROLE TO PROTECT PEOPLE WHO ARE TRYING TO HAVE A CHILD THROUGH ARTIFICIAL INSEMINATION.

THOSE TWO ROLES, IF YOU APPLY 742.14 ARTIFICIAL INSEMINATION, THOSE TWO RULES ARE IN CONFLICT BECAUSE ON ONE HAND IF THE PARENTS, YOU KNOW, PARENTS CAN SIGN AN AGREEMENT, IF THE PARENTS DON'T SIGN AN AGREEMENT RATHER AS IN THIS CASE AND THERE'S NOT AN IRREBUTTABLE PRESUMPTION THAT THEY'RE THE PARENTS, BUT YET SECTION 742.14, IT DOESN'T REALLY MATTER IF THEY SIGNED IT OR NOT BECAUSE WE'RE ELIMINATING THE RIGHTS OF THE SOURCE OF THE SEMEN EITHER WAY.

SO IF 742.14 WOULD APPLY TO ARTIFICIAL INSEMINATION, IT ESSENTIALLY WOULD READ OUT SECTION 742 SUBSECTION 1 AS COMPLETELY UNNECESSARY BECAUSE WHY DO WE NEED THAT PRESUMPTION TO PROTECT AGAINST CLAIMS OF A MAN WHO PROVIDED THE SPERM IF 742.14 IS JUST GOING TO SAY WELL, THAT MAN HAS NO RIGHTS AUTOMATICALLY.

>> The Court: WELL, AND ALSO THE PUBLIC POLICY, I THINK THERE IS SOME CONSENSUS SENSE OF PEOPLE THINKING ABOUT THE INTEREST OF WOMEN WHO WANT TO BE -- TO HAVE CHILDREN THROUGH ARTIFICIAL

INSEMINATION, BUT IF YOU LOOK AT THE PUBLIC POLICY OF THE STATE AT THE TIME AND THE STATUTE AT THE TIME, THEY ARE VERY CONCERNED WITH THE CONCEPT OF A MOTHER AND A FATHER.

EVEN IN THE CONTEXT OF THE ADOPTIVE ARRANGEMENT IF THE WHOLE DEAL FALLS THROUGH, THE COMMISSIONING OR THE INTENDED FATHER IS ON THE HOOK FOR, YOU KNOW, BEING, YOU KNOW, RESPONSIBLE STILL EVEN IF THE ADOPTION DOESN'T GO THROUGH.

YOU LOOK AT THE, YOU KNOW, THE FACT THAT COMMISSIONING COUPLES HERE HAVE TO BE, AGAIN, IN THE LANGUAGE OF 1993, MAN AND WOMAN, HUSBAND AND WIFE, WHATEVER.

AND I DON'T KNOW THAT THERE'S ANY EVIDENCE THAT THE PUBLIC POLICY IN FLORIDA WAS TO, YOU KNOW, YOU GOT THE INTEREST OF THE GESTATING LAW, YOU GOT THE INTEREST OF THE POTENTIAL DONORS, YOU'VE GOT THE INTEREST OF THE CHILD.

AND IT SEEMS LIKE IF YOU APPLY THE DONOR PROVISION SORT OF IN A BLANKET WAY, YOUR SORT OF CREATING AS A MATTER OF LAW THIS CATEGORY OF LEGALLY FATHERLESS CHILDREN IN A WAY THAT DOESN'T TAKE INTO ACCOUNT ANY OF THE DETAILS OF WHATEVER MAY HAVE BEEN GOING ON.

THAT MAY BE, YOU KNOW, IF YOU HAVE A REGIME THAT THERE ALLOWS TO BE FACT-FINDING OF WHAT PEOPLE'S INTENTIONS WERE AND ALL THAT, IT MAY BE THAT'S THE CORRECT OUTCOME, BUT DISORDER PREEMPT THAT WHOLE PROCESS AND SAY YOU ARE SORT OF LEGALLY FATHERLESS BECAUSE, YOU KNOW, THIS PERSON IS A QUOTE UNQUOTE DONOR WHO HAD TO RELINQUISH RIGHTS AND ETC. THAT WOULD BE TOTALLY INCONSISTENT OF THE PUBLIC POLICY OF THE STATE AS FAR AS I CAN TELL.

>> Eric Maier: MAY I ANSWER?

>> The Court: YEAH, GO AHEAD.

>> Eric Maier: I'M OVER THE TIME AND I APOLOGIZE FOR NOT ASKING THAT WHEN I WAS OVER TIME.

THAT IS ABSOLUTELY CORRECT.

IF THIS STATUTE INCLUDES ARTIFICIAL INSEMINATION SUCH AS IT WOULD ELIMINATE THE RIGHTS OF THE SOURCE OF THE SEMEN IN THAT CASE WITHOUT EITHER OF THESE EXCEPTIONS.

THIS WOULD BE THE ONLY WAY WITH STATE SANCTION CONCEIVE A CHILD THAT WOULD ONLY HAVE ONE PARENT BECAUSE THE PREPLANNED ADOPTION AGREEMENT SCENARIO, THERE'S GOING TO BE A JUDGE AT THE END OF THE DAY WHO DECIDES WHO THE PARENTS ARE.

THIS PARTICULAR STATUTORY SCHEME THAT INCLUDES 742.14, THIS IS GOING TO END WITH A COMMISSIONING COUPLE, AS YOU SAY, TWO PARENTS.

SO THIS WOULD BE THE ONLY WAY, IF THE SECOND DISTRICT IS CORRECT ABOUT HOW IT INTERPRETS IT, THIS WOULD BE THE ONLY WAY WHERE THE STATE IS PROVIDING A WAY FOR PEOPLE TO HAVE A CHILD THAT

AUTOMATICALLY MIGHT ONLY HAVE ONE PARENT BECAUSE IF --

>> The Court: AND IT WOULD HAPPEN IN A CONTEXT WHERE THERE'S NO GUARANTEE THAT THERE'S ANY KIND OF INFORMED CONSENT OR ANYTHING. I MEAN, THE OTHER THING THAT JUMPS OUT ABOUT THIS STUFF IS IN THE CONTEXT OF THE COMMISSIONING COUPLE AND THEN THE ADOPTION THING, THERE'S LIKE, ALL KINDS OF DONORS SUSPENDER SAFEGUARDS TO MAKE SURE THAT EVERYBODY INVOLVED IN THE TRANSACTION UNDERSTANDS WHAT'S GOING ON, AND THEN IF YOU JUST APPLY THE DONOR ACROSS THE BOARD OUTSIDE OF SITUATIONS WHERE THERE'S GOING TO BE, YOU KNOW, WRITTEN CONTRACTS AND ALL OF THAT, THESE RIGHTS ARE GOING OUT THE WINDOW AND, YOU KNOW, THERE WAS NO GUARANTEE THAT ANYBODY WOULD HAVE ANY CLUE ABOUT THAT. WHICH AGAIN, MAYBE POLICY WISE THAT'S WHAT PEOPLE WOULD WANT, BUT THAT DOESN'T SEEM LIKE THAT WOULD BE A REASONABLE INFERENCE WITH THE LEGISLATOR WAS DOING GIVEN ALL THIS STUFF.

>> Eric Maier: I AGREE, AND IN THIS CASE THE TRIAL COURT WAS INTERPRETING TEXT MESSAGES BETWEEN THE THREE PEOPLE TO DETERMINE, WELL, ONE OF THE INTENT WAS FOR MR. RIVERA TO GIVE UP HIS RIGHTS ARE NOT. THAT'S NOT THE WAY THAT WE WAIVE CONSTITUTIONAL RIGHTS VIA, YOU KNOW, TEXT MESSAGES THAT ARE CLEAR. I MEAN --

>> The Court: YOU CAN HAVE A COUPLE OF SECONDS TO WRAP UP.

>> Eric Maier: THANK YOU, HONOR. I WOULD ASK -- I ASSUME I HAVE EATEN THROUGH ALL MY REBUTTAL.

>> The Court: NO, YOU CAN HAVE THREE MINUTES. AND HONESTLY, YOU CAN HAVE AS MUCH TIME AS YOU NEED.

>> Eric Maier: I THINK THE ONLY WAY TO READ THIS STATUTE AND WHAT THE COURT IS ALLOWED TO DO, NOTWITHSTANDING IT'S NOT A CONSTITUTIONAL CLAIM --

>> The Court: WE ARE REQUIRED TO ADOPT REASONABLE READINGS THAT WOULD AVOID CONSTITUTIONAL PROBLEMS IF THE REASONABLE READING IS AVAILABLE.

>> Eric Maier: RIGHT, AND I THINK WE DISCUSSED ALTERNATE READINGS THIS MORNING, AND THE READING THAT WOULD BE THE BROADEST READING THAT WOULD SORT OF BE THE ELEPHANT IN THE MOUSE HOLE AS YOU DESCRIBED IT, WOULD -- WOULD ENABLE, YOU KNOW, WOULD TAKE AWAY THE RIGHT OF FATHERS TO PROVE THAT THEY INTENDED TO BE THE FATHERS, WHICH GOES AGAINST VERY FUNDAMENTAL LAW REGARDING

PARENTAGE.

>> The Court: OKAY.  
THANK YOU.

>> John Angstadt-Shearer: CAN I ASK HOW MUCH TIME I HAVE FOR REBUTTAL?

>> The Court: THREE MINUTES.

>> John Angstadt-Shearer: GOOD MORNING, MR. CHIEF JUSTICE,  
MEMBERS OF THE COURT.

MAY IT PLEASE THE COURT.

I AM ATTORNEY ROBERT ANGSTADT-SHEARER, AND I REPRESENT JENNIFER SALAS.

WE ARE HERE SPECIFICALLY FOR THE CERTIFIED QUESTION FROM THE SECOND DISTRICT COURT OF APPEAL.

QUESTION IS WHETHER SECTION 742.14 APPLIES TO PATERNITY ACTIONS ONLY WHEN THE CHILD WAS BORN AS A RESULT OF ASSISTED REPRODUCTIVE TECHNOLOGY ON BEHALF OF THE RESPONDENT.

I ASK YOU TO FIND NO AND THAT IT APPLIES TO ANY DONOR.

I'M GOING TO GO BRIEFLY THROUGH THE HISTORY OF THE CASE.

THIS STATUTE WAS ESTABLISHED THROUGH OTHER RELATED STATUTES 30 YEARS AGO IN 1993 AND HAS NOT BEEN CHANGED TODAY.

WE HAD 742.11, WHICH TALKED ABOUT THE ARTIFICIAL OR IN VITRO INSEMINATION AND ABOUT THE IRREBUTTABLE NATURE, AND IT SHOWS TO PROVE THE LEGISLATOR PASTA VS INTENT WAS TO PROTECT PARENTS FROM THE INTERFERENCE OF THIRD-PARTY DONORS TO ITS CUSTODIAL RIGHTS.

>> The Court: BUT IT ALSO BEGAN WITH THE GESTATIONAL -- I MEAN, THE ONE COMMON DENOMINATOR -- THERE IS SOME OVERLAP WITH THAT, BUT ONE COMMON DENOMINATOR, IF YOU LOOK AT THE CHANGES THEY MADE IS TO SPECIFICALLY ADDRESS THE GESTATIONAL CONCEPT.

>> John Angstadt-Shearer: YES, AND THAT IS FOR 742.11 THAT DOES THAT.

WITH 742.13, THAT'S WHERE WE GET OUR DEFINITIONS FROM, WHICH INCLUDES ASSISTIVE TECHNOLOGY REPRODUCTIVE.

IN FACT, THE WORD "SPERM" IS MENTIONED SIX TIMES IN 742.13, BUT IT IS NOT MENTIONED UNDER THE DEFINITION OF ASSISTED REPRODUCTIVE TECHNOLOGY, AND COURTS HAVE CONSISTENTLY HELD THAT DONATING SPERM IS NOT ASSISTED REPRODUCTIVE TECHNOLOGY.

SINCE THEN, THE CASE --

>> The Court: I MEAN, BUT ASSISTED REPRODUCTIVE TECHNOLOGY, IT'S GOING TO INVOLVE SPERM.

>> John Angstadt-Shearer: IT DOES, YOUR HONOR, BUT BUT I'M REFERRING TO THE RELATIVE FACT THAT HOME DO-IT-YOURSELF --

>> The Court: I'M SAYING, YOU MEAN, WE'VE GOT THE DEFINITIONS. THIS IS LIKE A COMPLICATED -- I DON'T NEED TO TELL YOU. THIS IS A MUSTANG IN COMPREHENSIVE WEB OF THINGS THAT ARE INTERCONNECTED. IF YOU'RE CAN HAVE ARTIFICIAL REPRODUCTIVELY TECHNOLOGY, YOU'RE GOING TO NEED A SPERM DONOR. SO IT'S NOT TO SAY THAT YOU'RE GOING TO HAVE THESE LINE DRAWINGS OF DONORS AND WHAT THEIR RIGHTS ARE AND BECAUSE IT MENTIONS SPERM THAT THAT TAKES IT OUT OF THE CONTEXT OF TREE 19. THAT DOESN'T MAKE ANY SENSE.

>> John Angstadt-Shearer: IT MIGHT, BUT IT WOULDN'T FOR THAT REASON.

>> John Angstadt-Shearer: UNDERSTAND, YOUR HONOR. IT DOES SPECIFY THE LAB PRE-EMBRYOS, THEN THINGS THAT HAVE ALREADY HAD SPERM APPLIED TO THEM. I DO AGREE WITH THE COURT ON THAT. THE DISTRICT COURTS OF APPEAL HAVE CONSISTENTLY HELD FROM 1993 ALL THE WAY UP UNTIL 2022 THE INTERPRETATION THAT WE ARE ASKING YOU TO ADOPT TODAY IN THE TRIAL COURT AND SECOND DCA DID IN THIS CASE. IN 1999, LAL VERSUS -- THEY FOUND THAT THE COURTS FIRST SAID TO LOOK AT 742.14, WHICH AGAIN, WAS THE SAME AS IT IS NOW. AND THEN 2002, LAMAR VERSUS LUCAS, THE COURT FOUND MR. LUCAS DID NOT HAVE RIGHTS AND LESSEE WAS PART OF THE COMMISSIONING COUPLE OR PREPLANNED ADOPTION AGREEMENT.

>> The Court: COULD I ASK YOU A QUESTION?

>> John Angstadt-Shearer: OF COURSE.

>> The Court: UNDER YOUR KIND OF READING OF THE STATUTE, LET'S SAY WE HAVE TWO INDIVIDUALS, ONLY TWO INVOLVED. AND THERE IS A AT HOME ARTIFICIAL INSEMINATION USED. AT THE HOSPITAL PEOPLE COME AROUND, BOTH PARENTS ARE THERE OR BOTH PEOPLE ARE THERE. THEY BOTH TO THE AFFIDAVIT. THEY ESTABLISH, YOU KNOW, THEY BOTH SIGN THAT ESTABLISHES PATERNITY.

>> John Angstadt-Shearer: IT DOES.

>> The Court: LEGALLY, CORRECT?

>> John Angstadt-Shearer: YES, YOUR HONOR.

>> The Court: WHICH TRUMPS?

HAS THAT PERSON HAS THE BIOLOGICAL FATHER WAIVED?  
HE HAS NO RIGHTS THAT COULD BE ASSERTED BECAUSE HE -- THEY USED,  
YOU KNOW, HE WOULD BE A DONOR UNDER YOUR DEFINITION, OR DOES  
THAT ACT OF FILLING OUT THE AFFIDAVIT AND BEING ON THE BIRTH  
CERTIFICATE REESTABLISH HIS RIGHTS?

>> John Angstadt-Shearer: THAT'S AN INTERESTING SCENARIO  
BECAUSE UNDER 742.10 BECAUSE AFTER -- HE IS THE LEGAL FATHER.  
SO THAT WOULD GIVE A PATH IN MR. RIVERA'S SITUATION -- WHAT'S  
INTERESTING IS IF YOU LOOK AT THIS COURT'S RULING IN DMT, THAT  
WAS A BIOLOGICAL EGG LACED INTO ANOTHER WOMAN, AND THEN THAT  
CHILD WAS BORN.  
AND IN THAT CASE, THE COURT AGAIN PROTECTING THE ROLE OF THE  
FAMILY AND THAT FAMILY'S RIGHT TO RAISE A CHILD FREE FROM THIRD  
PARTY INFLUENCE.  
NO, SHE'S NOT A DONOR.  
SHE'S A PARENT.  
IT WOULD NOT APPLY AND WE HAVE A PARENT SITUATION.  
SO IN THAT SITUATION WHERE YOU HAVE A CLEARLY INTENDED PARENT, I  
THINK THAT WOULD BE DIFFERENT.  
BUT OF COURSE, THE FACTS AT ISSUE TODAY WE DO HAVE A DONATION  
MADE TO AN INTACT COUPLE.

>> The Court: SO THE CASE FROM THE FIFTH DISTRICT --

>> John Angstadt-Shearer: YES, MA'AM.

>> The Court: THAT WOULD INVOLVE PARENTS WHO INTEND A CHILD --  
PERSON INVOLVED IN THE CHILD'S LIFE REFERRED TO AS "DAD" FOR  
SEVEN YEARS OF LIFE.  
WOULD YOU CONSIDER THAT A COMPLETELY DIFFERENT SITUATION THAN  
WHAT YOU HAVE HERE?

>> John Angstadt-Shearer: I WOULD APPLY THE STATUTE THE SAME  
WAY AS JUSTICE [NAME] DID.

>> The Court: SO HE WOULD HAVE NO RIGHTS?

>> John Angstadt-Shearer: AS THE DISSENT IN THOSE CASES,  
UNFORTUNATELY, WE APPLY THE STATUTE AS WRITTEN [MULTIPLE  
SPEAKERS]

>> The Court: BECAUSE -- SO THE DISSENT IN THAT CASE STARTED

OUT BY HIGHLIGHTING THE FACT THAT THERE'S NO TRANSCRIPT.  
AND SO THIS GOES TO THE DMT ISSUE.  
THE TRIAL COURT IN THIS CASE TOOK FACTS ON THE -- TOOK TESTIMONY  
ON THE FACTS SURROUNDING THE CONCEPTION.  
I THINK OPPOSING COUNSEL HAS INDICATED THAT HE BELIEVES THAT  
BECAUSE OF THIS COURT'S OPINION IN DMT, THAT THAT KIND OF  
FACTUAL ANALYSIS WHEN IT COMES TO DONATION IS WRONG.  
THAT IT'S JUST KIND OF IF YOU LOOK AT THE METHOD OF DONATION, IF  
YOU DO THAT, YOU'RE A DONOR PERIOD END OF STORY.  
DO YOU THINK THAT DMT, IF THAT'S CORRECT, IF DMT'S ASSESSMENT OF  
DONOR AS -- THAT COURTS ARE LEGALLY PROHIBITED FROM LOOKING AT  
INTENT OR ANYTHING LIKE THAT WHEN IT COMES TO DONATION, DO YOU  
THINK THAT IS CONSISTENT WITH THE REST OF THE STATUTORY SCHEME?

>> John Angstadt-Shearer: I DO, AND THAT IS BECAUSE LAMAR  
VERSUS -- THAT'S VERY MUCH IF YOU ARE A DONOR AND THOSE TWO  
EXCEPTIONS, YOU'RE OUT, WHICH ULTIMATELY JUSTICE SASSO WROTE IN  
THE DENIAL, WHICH IS LEGAL LOOK AT THE PLAIN MEANING BEFORE WE  
LOOK AT ANY OUTSIDE CLUES.  
THAT'S WHAT --

>> The Court: JUST TO FOLLOW UP ON WHAT THE CHIEF ASKED EARLIER  
--

>> John Angstadt-Shearer: YES.

>> The Court: -- TO THE OTHER PARTY.  
IF YOU HAVE TWO PEOPLE WHO MADE NO AGREEMENT AND THEY HAVE A  
CHILD THROUGH A MORE TRADITIONAL SENSE OUT OF NOT BEARING, TO  
GIVE UP THOSE RIGHTS REQUIRE MOUNTAINS OF PAPERWORK.  
I THINK IT IS STILL 14 POINT BOLDED 5 ON ALL OF THE CONSENT  
FORMS.  
NUMEROUS NOTARIES, JUST A HUGE, HUGE HURDLES TO JUMP THROUGH IN  
ORDER TO WAIVE THOSE RIGHTS.  
IN THIS CASE WHERE YOU MIGHT HAVE TWO PEOPLE WHO MAKE A DECISION  
TO HAVE A CHILD TOGETHER BUT JUST HAPPENED TO USE THAT  
TECHNIQUE, THIS TRUMPS, YOU KNOW, KIND OF THAT WHOLE CONCEPT OF  
WAIVER OF PARENTAL RIGHTS.  
IN THIS KIND OF ONE SENTENCE.

>> John Angstadt-Shearer: YES, JUSTICE.  
WHEN YOU HAVE TWO PEOPLE --

>> The Court: WELL, IT'S NOT -- IT'S TWO PEOPLE.  
LET'S SAY IT'S A MAN AND A WOMAN.  
LET'S SAY IN THE FIFTH DCA CASE WHERE YOU HAVE TWO FRIENDS.

>> John Angstadt-Shearer: IN THE FIFTH DCA, THAT'S THAT HOME DO-IT-YOURSELF.  
JUST WANT TO CLARIFY IF YOU'RE REFERRING TO ARTIFICIAL INSEMINATION OR?

>> The Court: I'M JUST SAYING IN THE CASE WHERE YOU DON'T USE THAT AND YOU HAVE PEOPLE MAYBE NOT INTENDING TO BE PARENTS, YOU GOT HURDLES AND HURDLES TO WAIVE YOUR PARENTAL RIGHTS AS THE FATHER.  
BUT WHAT YOU'RE SAYING IS EVEN IF THERE IS INTENT TO BE PARENTS AND YOU JUST HAPPEN TO USE THAT TECHNIQUE IN SORT OF AN OBSCURE LINE OF A DIFFICULT STATUTE, ALL OF THAT GOES AWAY.  
THEY HAVE WAIVED ALL PARENTAL RIGHTS.

>> John Angstadt-Shearer: YES, THAT'S CORRECT.  
BUT THE DIFFERENCE WHEN PEOPLE DO IT THE OLD-FASHIONED WAY, THERE'S A WHOLE SEPARATE SET OF CASE LAW ABOUT THAT, AND THE CASE LAW SUPPORTS THE FACT OF THE CHILD BEING ABLE TO BE SUPPORTED FINANCIALLY.  
I THINK YOU'RE REFERRING TO -- PEOPLE COME TO ME AND SAY WELL, I JUST WANT TO SIGN AWAY MY RIGHTS.  
I SAY NOT SO FAST.  
YOU HAVE A KID WHO NEEDS TO EAT, WHO NEEDS TO GO TO SCHOOL AND NEEDS SUPPLIES.  
THAT SITUATION IS VERY DIFFICULT TO GET OUT OF.

>> The Court: WHY WOULD NATIONAL LEGISLATURE TREAT THE OLD-FASHIONED TYPE OF REPRODUCTION BETWEEN TWO UNMARRIED PEOPLE DIFFERENTLY FROM THIS, YOU KNOW, IN THE ONE CASE, IT'S THE PERSON'S, THE SPERM DONOR MALE IS ON THE HOOK FOR ALL THAT STUFF, AND THEN HERE NOT ONLY ARE THEY ON THE HOOK, BUT WHATEVER RIGHT, QUOTE UNQUOTE RIGHTS THEY WOULD HAVE ARE GONE, WHATEVER OBLIGATIONS THEY HAVE ARE GONE.  
AND I UNDERSTAND THAT, YOU KNOW, LEGISLATOR SOMETIMES MAKE BAD RULES, BUT IF THERE'S A WAY THAT IS CONTEXTUALLY PERMISSIBLE TO READ THE ROLE THAT WOULD DO SOMETHING THAT'S COUNTERINTUITIVE TO PUBLIC POLICY, WHY WOULD WE DO THAT?

>> John Angstadt-Shearer: YES, YOUR HONOR.  
THE LEGISLATOR HAS MADE CHANGES.

>> The Court: LET'S TALK ABOUT 1993.  
IF THERE IS SUCH A THING AS THE MIND OF THE LEGISLATOR IN 1993.

>> John Angstadt-Shearer: WELL, THE MIND OF A LEGISLATOR'S MULTIPLE EVIL OVER MULTIPLE DIVERSE SESSIONS.  
AND IT'S STILL TODAY AS WELL.

IT'S NOT JUST 1993.

>> The Court: BUT WE HAVE TO FIGURE OUT WHAT WAS THE RULE PUT IN PLACE IN 1993 AND UNTIL CHANGED THAT IS THE ROLE WE'RE GOVERNED BY.

>> John Angstadt-Shearer: AT ANY DONOR OF SPERM IS OUT UNLESS THEY MEET THE TWO EXCEPTIONS.

>> The Court: BUT NOT OUT FOREVER.

>> John Angstadt-Shearer: WELL, OUT IN LESS THEY MEET THE TWO EXCEPTIONS OR THE LEGISLATOR POTENTIALLY CHANGES THE ROLES AS WELL.

[MULTIPLE SPEAKERS]

>> The Court: ARE THEY ESTABLISHED FRATERNITY THROUGH THE PATERNITY STATUTE?

>> John Angstadt-Shearer: RIGHT, BUT THEY ESTABLISH PATERNITY THROUGH 742.10.

>> The Court: BECAUSE IT SAYS SHALL RELINQUISH.  
IT SAYS SHALL RELINQUISH.  
IT'S GONE.  
IT AIN'T COMING BACK.

>> John Angstadt-Shearer: THAT'S WHAT IT SAYS, YOUR HONOR.

>> The Court: IF YOU'RE GOING TO BE PLURALISTIC ABOUT THIS, YOU'RE GOING TO BE TIED TO THAT SORT OF THING.  
ISN'T THAT CORRECT?

>> John Angstadt-Shearer: THAT WAS MORE CHALLENGING BECAUSE WITH THE FACTS OF THIS CASE --

>> The Court: [INDISCERNIBLE] [MULTIPLE SPEAKERS]

>> John Angstadt-Shearer: WE HAVE TWO PEOPLE WITH ONE ON THE BIRTH CERTIFICATE AND THE OTHER TRYING TO ASSERT.  
ONE EXAMPLE WOULD BE THERE'S A SINGLE PARENT ON THE BIRTH CERTIFICATE AND THERE'S A STATUTORY MECHANISM FOR A PERSON TO ADD THEMSELVES AND THE OTHER PERSON TO OBJECT WITHIN 60 DAYS, THAT IS 742.10.

>> The Court: CAN I ASK THE QUESTION THIS WAY IN THE CONTEXT OF THE STATUTE, ARE THE TERMS "DONOR" AND "PARENT" MUTUALLY

EXCLUSIVE?

THAT IS, IF I'M A DONOR.

I AM NOT A PARENT.

AND IF I'M THE PARENT, I MAY HAVE CONTRIBUTED GENETIC MATERIAL,  
BUT I AM NOT A DONOR.

>> John Angstadt-Shearer: THAT IS WHEN THE SECOND DISTRICT IN  
THIS CASE REFERRED TO IN DMT BECAUSE IN THAT CASE THE PARTY  
COULD BE THEORETICALLY BOTH A PARENT AND A DONOR.

I WOULD CERTAINLY, TO ANSWER YOUR QUESTION DIRECTLY, YES, BUT  
POTENTIALLY NO.

WITH THE FACTS THAT WE HAVE TODAY, THE ANSWER FOR THE UNDERLYING  
CASE, IT WOULD BE UNKNOWN BECAUSE AGAIN IT'S A DONATION MADE TO  
AN INTACT COUPLE.

>> The Court: WELL, WE KNOW FROM THE EXCEPTIONS THAT THE DONOR  
AND THE INTENDED FATHER IN THE PREPLANNED ADOPTION AGREEMENT CAN  
BE THE SAME PERSON.

OTHERWISE, THERE WOULDN'T -- I MEAN, THAT'S LIKE AN EXPLICIT  
DISCUSSION.

ALL THESE PROBLEMS ABOUT, YOU KNOW, THAT IT'S NOT YOUR FAULT,  
BUT I MEAN, ALL THESE TOUGH HYPOTHETICALS, IF YOU ONLY APPLY  
THIS RULE IN THE CONTEXT OF GESTATIONAL SURROGACY AND THE  
PREPLANNED ADOPTIONS, YOU HAVE A COMPREHENSIVE STATUTORY SCHEME  
THAT IS DESIGNED TO TELL YOU WHO THE PARENTS ARE.

IT ASSUMES THAT YOU'RE GOING TO HAVE, YOU KNOW, A FATHER AND A  
MOTHER.

AGAIN, 1993, THERE HAVEN'T BEEN ALL THE TWEAKS TO ACCOUNT FOR  
INVOLVING ALL THE -- WHATEVER.

YOU HAVE A FATHER AND A MOTHER.

YOU KNOW WHO'S GOING TO BE ON THE BIRTH CERTIFICATE.

INITIALLY, YOU KNOW THE PROCESS FOR THAN GETTING IT TRUED UP.

THE OLD BIRTH CERTIFICATE BECOMES A CONFIDENTIAL SEALED THING.

THIS WHOLE THING, IT KIND OF MAKES SENSE AND FITS TOGETHER AND

IT DOESN'T HAVE ALL THESE KIND OF, YOU KNOW, TRYING TO HAVE A

RULE THAT MIGHT MAKE SENSE FOR AN ANONYMOUS SPERM DONOR AT A

SPERM BANK, BUT IT DOESN'T REALLY MAKE ANY SENSE WHEN YOU'RE

TALKING ABOUT THESE KIND OF ONGOING RELATIONSHIPS AND WHATEVER.

SO WHY ISN'T THAT THE MORE REASONABLE AND SENSITIVE WAY TO

UNDERSTAND WHAT THIS IS ALL DOING, TO APPLY IT IN THE CONTEXT

WHERE THE LEGISLATOR TRIED TO PUT IT TOGETHER IN PIECES OF THE

JIGSAW PUZZLE THAT WOULD MAKE SENSE?

>> John Angstadt-Shearer: I WOULD PUT IT THIS STATUTE IS

UNCHANGED SINCE 1993.

THIS CASE GOT A LOT OF ATTENTION.

THE -- THERE WAS AN AMICUS BRIEF SUBMITTED BY THE FLORIDA FAMILY

LAW SITUATION AND THEY ALSO SUBMITTED ONE TODAY.  
ANOTHER KNOWN FUNCTION OF THE FAMILY LAW SECTION IS TO PROPOSE  
LEGISLATION, WHICH WE SAW EFFECTIVELY TOOK PLACE IN 2023 WITH  
THE REVISION OF THE ALIMONY STATUTE, WITH THE REVISION OF  
MODIFICATIONS.

FOR US TO INFER A BROADER MEANING TO THE LEGISLATOR WHEN THE  
LEGISLATOR ITSELF HASN'T DONE IT, AND THAT'S WHAT I'M ASKING THE  
COURT TO APPLY THE STATUTE AS WRITTEN AND TO LET THE OTHER  
BRANCH OF THE GOVERNMENT, THE LEGISLATOR --

>> The Court: I WISH -- I'M NOT TRYING TO BE CRITICAL.  
THE WHOLE AS WRITTEN THING, THAT'S WHAT THIS WHOLE THING IS  
ABOUT.

OBVIOUSLY, AS WRITTEN, IT'S IN CONTEXT.  
IT'S PART OF THIS KIND OF SEAMLESS WEB OF STUFF.  
I DON'T THINK THAT IT'S REALLY HELPFUL TO JUST SAY QUOTE UNQUOTE  
APPLY AS WRITTEN WHEN THE WHOLE POINT IS WHAT IS THE LEGAL  
SIGNIFICANCE OF ALL OF THESE WRITINGS LOOK TOGETHER.

>> John Angstadt-Shearer: UNDERSTAND, YOUR HONOR.  
AND UP UNTIL ERIQUEZ V. VASQUEZ, ANY DONOR MEANS ANY DONOR.  
TO APPLY THE INTERPRETATION TO THE STATUTE, AND ONLY IF IT'S  
UNCLEAR IN 742.14 TO GO OUT TO THE OTHER SECTIONS OF 742.  
AS JUSTICE SASSO SAID IN HER DISSENT, IT'S UNCLEAR AND THAT'S  
THE INQUIRY.  
ARE THERE ANY FURTHER QUESTIONS?  
ALL RIGHT.  
PERFECT.  
THEN I WILL ASK THE COURT TO AFFIRM THE SECOND DCA'S RULING AND  
TO ANSWER THE QUESTION OF WHETHER -- JUST AFFIRM THE SECOND D.C.  
THANK YOU.

>> The Court: THANK YOU VERY MUCH.

>> Eric Maier: THANK YOU.  
I WANTED TO FIRST ANSWER JUSTICE COURIEL'S QUESTION, WHETHER  
DONOR AND PARENT ARE MUTUALLY EXCLUSIVE, AND THEY ARE NOT  
MUTUALLY EXCLUSIVE.  
THAT'S BECAUSE OF THE EXCEPTIONS THAT ARE PROVIDED FOR IN THE  
STATUTE.  
AND THAT'S EXACTLY WHY THE EXCEPTIONS ARE PROVIDED FOR BECAUSE,  
AS THE COURT IN DMT SAID, YOU'RE A DONOR IF YOU ARE ONE OF THE  
CONTRIBUTORS BIOLOGICALLY, WHICH IS INCONSISTENT WITH OUR  
INTUITIVE UNDERSTANDING OF THE WORD "DONOR", BECAUSE YOU DON'T  
THINK OF A DONOR AS SOMEBODY WHO IS GIVING SOMETHING -- USING  
HIS SPERM, GIVING IT SO THAT A CHILD CAN BE CREATED FOR HIM.

>> The Court: IT'S NOT JUST INTUITION, THOUGH.  
THAT IS WHAT THE WORD MEANS.  
AND THIS IS PART OF THE DANCE THAT WE DID IN DMT ABOUT  
INTENTION.  
TO SAY WE DON'T CONSIDER INTENTION, A DONOR IS DEFINED BY  
DONATIVE INTENT.  
IT'S LIKE TO SAY THE WORD "SWIMMER", BUT WE DON'T LOOK TO SEE IF  
THE PERSON IS SWIMMING.  
IF SOMEBODY IS A DONOR, IT IS BECAUSE THEY ARE IN ENGAGED IN THE  
ACT OF GIVING.  
DO WE AGREE ON THAT?

>> Eric Maier: I AGREE THAT IS THE GENERAL DEFINITION OF DONOR.

>> The Court: OKAY.  
IT'S NOT A MATTER OF INTENTION.  
THAT IS THE COMMONLY USED -- SPEAKERS OF THIS LANGUAGE AGREE  
THAT THE WORD "DONOR" INCLUDES THE ACT OF GIVING.  
FAIR?

>> Eric Maier: YES, THAT IS WHAT WE GENERALLY UNDERSTAND.

>> The Court: OKAY.  
IT'S NOT A DEFINED TERM IN THE STATUTE.  
WE LOOK TO THE COMMONLY DEFINED WORD.

>> Eric Maier: WE ALSO LOOK TO WHAT THIS COURT SAID IN DMT AND  
WHAT IT SAID WAS THAT WE DON'T -- WE DON'T LOOK AT INTENT.  
AND IF WE DID LOOK AT INTENT, THEN THESE STATUTORY EXCEPTIONS  
WOULD BE --

>> The Court: WE DON'T LOOK AT THE SUBJECTIVE INTENT ABOUT THE  
GOING FORWARD, THE PURPOSE OF THE DONATION.  
SO FAR SO GOOD.  
BUT WE CAN'T READ THAT TO MEAN THAT WE DON'T -- LIKE, WE ERASE  
DONATIVE INTENT.  
GOING BACK TO MY SWIMMING THING, IT WOULD BE LIKE SAYING OKAY,  
WE'RE LOOKING AT THE WORD "SWIMMER", BUT WE'RE NOT ACTUALLY  
GOING TO LOOK AT WHAT THEY ARE DOING WITH THEIR ARMS AND FEET.  
OF COURSE, IF WE'RE GOING TO IDENTIFY SOMEONE AS A SWIMMER,  
WE'RE GOING TO SEE IF THEY ARE SWIMMING.  
THAT'S NOT THEIR INTENT.  
IT'S NOT WHERE THEY ARE SWIMMING TOO, BUT IT IS LOOKING AT THE  
DEFINITION OF THE WORD.

>> Eric Maier: THE REASON WE ARE SAYING SUBJECTIVE INTENT, AND  
WE ARE NOT LOOKING AT SUBJECTIVE INTENT, IS BECAUSE THE

LEGISLATOR -- IF WE ARE GOING TO SAY THIS WOMAN WHO'S HAVING A  
BABY IS HAVING A BABY OF OURS, YOU NEED TO HAVE AN AGREEMENT,  
AND THE AGREEMENT WOULD DEFINE YOU TO BE THE COMMISSIONING  
COUPLE.

SO IT DOES LOOK AT INTENT.

IT LOOKS AT OBJECTIVE INTENT, BUT THE ONLY OBJECTIVE INTENT IS  
GOING TO BE FOUND IN AN AGREEMENT THAT COMPLIES WITH SECTION  
724.15.

I SEE THAT --

>> The Court: DID YOU HAVE ANY QUESTIONS?

>> The Court: I'M GOOD.

>> Eric Maier: I SEE THAT I'M OUT OF TIME AND I WOULD JUST ASK  
THE COURT TO --

>> The Court: HE'LL BE BACK.

[LAUGHTER] I THINK YOU'RE COMING BACK.

>> Eric Maier: I ASK THE COURT TO QUASH AND REMAND TO THE TRIAL  
COURT FOR A TRIAL CONSISTENT WITH THE RIGHTS OF THE FATHER TO  
ESTABLISH HIS RIGHTS.

THANK YOU.

>> The Court: THANK YOU.

THE COURT WILL BE IN RECESS FOR 10 MINUTES.

>> ALL RISE.

Okay.

Now we'll do, Rivera versus  
Solis, number 2024, dash 1190.

Okay.

Thank you.

Chief justice, may it please the court?

My name is Mark Neumeier.

I represent the petitioner, Mr.

Rivera, the biological father of the child  
at issue in this case.

You speak up a little bit.

I'm having trouble.

Yeah. I'm sorry.

I'm always soft spoken as well.

Mark Neumeier, representing the,

biological father in this case.

Since we're continuing on from the,

previous, argument,

I did want to make a few points.

First, of course, it is the same issue as,

just argued.

Just a so-so,

there was an indication that perhaps,  
I misunderstood, but you thought that

the trial court had made findings that,

this father was not involved and so forth.

But as we indicated in the brief,  
the only findings

that the trial court made in the order  
under appeal,

dealing  
with the credibility of the parties

is specifically on the issue of whether  
they were commissioning the couples.

The court should have, under the proper,

evaluation that we, we believe was

proper under  
that looked at whether the father had,

manifested a continuing concern  
over the child's welfare

and had met that burden by a clear  
and convincing, evidence.

But the problem is that  
because the court got on to this 742

.14 analysis, they never got there.

He made no findings.

If he had made findings under the proper  
standard,

that we wouldn't be here  
because there would be an alternate,

sustainable basis  
for the decision that the court did.

And I also want to point out,  
when we've been talking

about the alternatives of perhaps later bringing,

signing a birth certificate and so forth.

This case did not just deny the petition, it dismissed it

because under 740 214, the trial court found that

my client had no standing to even be there in the first place.

So this is not a situation where it's easy to remedy

what we believe is the incorrect application of the statute,

the cases outside of the assisted reproductive, technology statute

in DMD, this court

specifically wrote in the opinion.

Furthermore, we necessary we necessarily must read sections

742 .13 and 742 .14 together.

So this court has actually already looked at the fact that

this is a coherent statutory scheme.

It's tied together.

Yes. There's no definition of donor in 742 .14.

But if you look at the definitional section, it specifies

which of the subsections of the statute

it applies to.

So if you look in the definitional statute, it kind of ties it together.

That these five subsections are the, are the,

assisted reproductive technology statute.

Now, keeping that in mind, that doesn't help you a lot when you go looking in.

742 .13 for a definition of donors.

It's just not there.

So perhaps we infer, but if you're reading those two in parametrically,

again, we feel that donor as

as used in 742 .14 necessarily is restricted

to those situations involving assisted reproductive technology.

My brief unlike counsel who focus more on the statutory history,

statutory interpretation mind more went into as a practitioner of family law,

the unintended consequences of the application of 742 .14

to cases outside of.

Let me ask you this, the legislature could have cabinet

the effectiveness of this statute more affirmatively.

Right? Yes. Both ways, Your Honor.

We don't see any legislative choice saying,

the provisions of this section shall only apply

to assisted reproductive technologies.

Period. Full stop.

We don't see that choice either. Right.

And they could

not only have put that in at the beginning,

but with these other cases they could have gone in and

put it in afterwards to provide more for clarification.

Absent that affirmative choice. Yes.

By the legislature, aren't we to presume that the law is the law?

The problem is that the legislature has dumped this question on this court.

Well, I mean, I I'm not sure I agree

that when the legislature, acts in a way

and says no more that it's dumped anything, it's just legislated.

And I guess my question is,

why aren't we to assume that the legislature

had the choice to make clear what you're arguing for didn't use

the common ordinary understanding of donor  
and dropped Mike, you know.

Yes. Because, applying it that way

leads to irrational,

contrary and conflicting,

results, as council indicated,  
possibly conflicting results.

But what's irrational?

Help me understand.

What what is the what is the irrational

result of giving it that effect?

Irrational,  
your honor, is if 742 .14 is untethered

and donor has its common meaning,  
that means that not merely pregnancies

resulting from artificial insemination  
would be covered, but all impregnation.

Where does it say?

Not the old fashioned way.

Where does it say it? Says donor.

It says donor.

I look, I, I, I, I am willing to bet

that in a, in a

whether it's within a marital union  
or a non marital union,

you know, whether it's  
by the old fashioned way or at home

technology or whatever, folks  
who have no donors

intent are not donors.

We don't refer in normal parlance  
to, you know, a couple getting together  
and deciding to have a child as donors.

In a very technical sense,  
they're each giving genetic material,  
and the legislature  
could have chosen to define that.

Instead, they said donor  
in it's commonly understood meaning,  
because people understand  
that when they get together  
and have a baby, they're not being donors.

The problem, again, Your Honor, is that.

There is already  
law that covers what happens with,  
artificial insemination.

There is already a law that deals with  
what happens with,  
pregnancies out of wedlock.

There is already,  
statutes that deal with this  
and giving it that interpretation.

Leaves it open for a,

the reputation application as here,  
which would have constitutional violations  
as a potential outcome, that is.

So imagine an application of the law  
that doesn't have any law,  
constitutional implications  
as a potential outcome,  
I think, I would disagree, Your Honor.

This is one of the all sorts of stuff.

I mean, you know, this is one of the  
the most fundamental  
of the constitutional rights.

This is not can I write something  
on a postcard and somebody takes umbrage?

Is it slander or is it, you know, is it  
an invitation to run fire  
because I said something that was wrong.

This is a case where, a person  
who may or may not be a parent of a child  
is barred forever  
from any rights to enjoy the,  
upbringing of the child,  
the company of the child, and is stripped  
of any obligation to provide a child.

Doesn't doesn't the statutory scheme  
reflect a series of legislative choices  
about how someone in your client's  
position can avoid

this horrible situation?

It doesn't, Your Honor, because if 742

.14 doesn't apply,  
he doesn't have to do anything.

He just goes there.

He gives us his is, is material.

And the law talks about what you do  
if you get somebody pregnant

prior to them getting married,  
how you can go in order prevent

what you have  
to do in order to prove that,

for instance,  
there's also in this statute,

there has been for quite a while  
DNA testing.

If we say 742 .14 applies

to all pregnancies  
or even all artificial insemination.

That's ever said,  
it applies to all pregnancies. So,

there's

this word that has said  
that it does apply to all pregnancies.

That's true and correct.

And so and when we look at 74 seven 4212,

it talks about the requisite

sexual contact and that sort of thing

that would seem to define

the old fashioned way as the second DCA  
or fourth DCA referred to it.

And when you look at the donation statute,  
it refers to,

artificial insemination.

And I think every court that's addressed  
that has has cabin

to, to the artificial insemination.

So I this I think you're,  
you're advocating a position

that if this court reads it that way,  
that it would include every pregnancy.

That's ever happened.

And I just  
I don't see any evidence textually

or from the way any court has interpreted  
it since the statute has been, in fact,

that would lead us to that conclusion,  
Your Honor, what my position would be

is that if you follow the statute,  
the way that I'm advocating,

there's going to be an objective  
third party available.

Like in  
many of these other cases of other,

states, there has to be a doctor involved.

There has to be, at each step,  
an objective third party

who will be involved, able  
to give them an objective evidence. Yes.

This semen was put into this egg

or whatever it is, and at each  
step of the process would therefore

have an opportunity to provide information  
needed for an informed consent.

By the way,  
you understand what this means.

I'm taking your egg out.

By the way, here's  
some form of here's some forms to sign,

including potentially work.

We understand  
the legal obligations are going to be.

The problem is when you talk  
about artificial insemination

and the old fashioned way,  
does that mean digital penetration?

Listen, can we can

we just so if we counsel, let's take the  
old fashioned stuff off the table okay.

All right.

All these I think would I think though  
that would be helpful for us to hear you

elaborate on is

I think one of the things that's emerged  
from the discussion today is that

if you if you literally understand

the relinquishment

of the rights of the donor,

understanding it,  
you know, the way the other side wants to,

that some of these things that may  
that might appear to be workarounds,

you know,

having side agreements or whatever,

it's possible  
that they're not really legally available

because of the shall relinquish  
rights and obligations language.

So could you elaborate on that?

I think that is definitely a problem as

using the second de ses interpretations,

it is unclear whether there can be  
a later workaround, either by way of,

signing an acknowledgment of birth  
and getting a birth certificate,

potentially marrying that,

person who had the child,

because then you would get under  
the putative father,

manner of, obtaining birth.

But the problem is

there may be available ways to do it,

but if you're not able to do any of those,

if you have every intention

of getting together,  
living together, having this child,

and then a week before the baby is born,  
you have a big fight and you're separated.

You're not on the birth certificate.

And it just happened  
that because of the reasons set forth in,

in council's, initial brief,

allergies to proteins and semen  
and so forth.

So there may be reasons why  
you would have artificial insemination,

even though you're fully intending to do  
this the old fashioned way is just that.

You can't get pregnant  
the old fashioned way.

So you have to use these other things.

If we apply this statute

the way the second DCA says, that's a bar,

that is a bar and that is

that is a very,

you know, you can almost not understand in

other than losing your life,  
losing your children.

That's a very severe sanction.

To be governed is so silly.

I mean, the issue with you  
is from the child's perspective,

which obviously seems to have been  
very much a concern of the legislature.

If you look at all  
the different touch points for this stuff.

Yes. Not just about the two,  
you know, adults

or I mean, obviously there's all kinds  
of one of the things

with this whole context  
is that there's like so many permutations

of the different cast of characters  
that can be involved with this. Yes.

And I would suggest that the prevent  
is this court's best shot at

and very useful in as well  
clear and convincing evidence of manifest,

involvement in in the

child's welfare and benefit. The

a little bit further afield,  
but doing a best interest analysis,

the, capacity  
and disposition to provide for the child's

emotional, physical, financial.

So write that into this.  
So that's just a sorry.

Go ahead.

Just so you're just saying by finding  
this was an implied,

you just go to the traditional paternity process.

You do.

But again otherwise you don't get in the you don't get in the courthouse door.

If your rights are stripped because of the application, some 42.

And for you don't get to have a best interest determination

because you don't get into court, you don't have the right to

take action to try and you don't.

You don't get an opportunity to talk about whether the intent was done or not.

Correct.

That we're getting again into.

But yes.

So if you can't get in, you can't talk to anything.

That was a softball.

The answer is yes.

I'm sorry, I did not make that clear.

Yes, yes.

Give me,

Again, it is a very strict penalty.

It is a very strict penalty,

not just to the parent

but also to the child you don't inherit.

You don't get child support for life.

Certainly not giving child support to kids

is not one of the policies  
behind the statute.

742 completely so interpreting it in a way

that strips the child of

not just the social interactions

with the one parent,  
but, the right to financial contribution.

There's the sky is the horrible parent.

There can still be child support,  
but not when 740

214 is applied in the way  
that the second DCA is doing it.

So you're in your rebuttal.

You're welcome to keep going, but  
we're going to stay on time for this one.

Thank you. If I could have just a second.

I just want to make sure

I've had all my points.

In conclusion,

reserving my time,  
whatever is left for rebuttal.

This is once again, a situation where

law is chasing science,

and we're trying to find ways  
to make this all make sense

morally, socially, policy wise.

And we're chasing culture as well.

As much as  
we don't want to have to do that.

We believe that the proper

interpretation of 742 .14

is that it be restricted to the context

of assisted reproductive technology,

which involves the laboratory handling of,

human over or pre embryos?

That is what makes the most sense.

And that is what keeps us both  
from potentially stripping rights

from kids and parents.

And it,

Prevents other, aspects of the statute

from being contravened  
by such an application.

So thank you. Thanks.

Good morning, Chief Justice.

May it please the court.

I'm Attorney Robert Ochsner,  
and I still represent the respondent,

Jennifer Salis, from Tampa, Florida.

I'm going to pick up  
where he left off a little bit,

because I think it's important

that we remember the facts of the case  
that's before the court.

In fact, these facts are different from  
DMT in a way that the second DCA below

said it could make a different ruling  
because we had different set of facts.

In this the facts in this case is  
we have a committed

couple in a relationship,  
both women, that Mr.

Rivera goes to their home.

And by the way, he's the third person  
they asked.

And the second person  
that attempted this procedure.

So this is not a situation  
of stripping away some unknown rights.

He made his donation  
and left that with Salazar.

The respondent.

He never even saw Brito that day  
that Brito got pregnant, that

the parties got married, that the child  
was covered by insurance from Salas,

and then the child was born  
during an intact marriage.

So when the

when Rivera came along and filed,

when there was marital  
strife between Brito and Solis.

So Rivera and Brito filed for paternity.

And subsequently that was set aside once,

Solis got involved  
and then upheld again and again.

But I want to touch on the uniform  
parentage

that was addressed a little earlier  
during my last presentation,

because I think that's important,  
because if if this court expands

the definition of 742 .14 or expands  
by adding the words that,

the fifth suggests that it applies  
only to assisted reproductive technology.

The assisted reproductive technology  
statute, or definition itself

requires a laboratory setting,  
and that would go against

what this court has been trying to do.

For example,  
the Uniform Parentage Act was refined

to remove the license  
physician requirement before you only had

protections if it was performed  
by a licensed physician

and it was removed saying, well,

it's not fair, you know, equal protection  
to people that can't afford a licensed

physician, 15, 20 or 30,000  
whatever IVF, or using a physician cost.

And those people should still be right,  
still have the right to have a family

free from the interference  
of a third party, whether it's same sex

like our parties here, whether it's  
a traditional opposite sex family,

you know, husband and wife  
that just can't for whatever reason,

have children there just to not have  
the interference of this third party donor

and not have the roadblock  
of having to have the money for

a laboratory setting, which, if we apply  
what the fifth district did.

We're adding only through assisted  
reproductive technology.

I think, though, that I mean,  
when you're saying expanding,

I think that if if the contrary position  
two years were to prevail,

it would contract the scope of this rule  
and it would essentially allow

other sources of law contract,  
you know, the generic

pretty stuff, whatever,  
that would sort of fill in and in a way

that that those other sources of law

are much more nimble and much more able

to be adapted to all the different  
kind of fact patterns.

I mean, I think one of the things that  
people are struggling with, this is a very

this is this rule  
kind of fits in the context

of these gestational surrogacy  
arrangements, where,

you know, everybody knows that  
there are certain parties who are kind of

by definition,

it's baked into the arrangement  
that there are intended to go away, etc..

And that rule and maybe the statute,  
maybe the correct statutory interpretation

answer is that the legislature

just enacted an overbroad rule,  
but maybe they actually did.

Maybe they have a coherent scheme and that  
the, you know, the proper understanding

is to let the other sources of law  
do the work the way they can,

and only use this rule in the context  
where it actually makes sense.

I would agree, if the rule itself

weren't so clear on its face with the word  
Annie has.

Just as I said in her dissent,

where if the statute is clear on its face,  
then the inquiry stops.

That's the end of our session,  
or that's the end of our.

Because what I believe she's just is  
you're questioning about it as well.

Shouldn't we look in the context?

Shouldn't we look at the overall picture?

Maybe the legislator  
can revise the paternity statute because.

Right. That's right.

There is a way,

you know, there there's other means  
to establish best interests of the child.

I don't know of any that involves  
three parents.

Which would be the alleged situation  
if that side prevails,

but not technically something is  
is that the the effect of this rule,

because it's so blunt  
is that it cuts off any inquiry into it.

You know,  
just because you can get in the door

doesn't mean  
that you're ever going to get any rights,

or that you're going to be on the hook  
for anything.

It just means that you get the opportunity  
to have all of these things be relevant,

as you know, as they are, aren't relevant under these other sources of law.

I mean, so it's not as if if the court were to kind of contract

the scope of this rule, it doesn't mean that it's imposing any sort of,

you know, similarly kind of blunt rule on these other contexts.

It just means that there's other sources of authority.

They're going to fill in the gaps,

potentially, Your Honor.

But to do that, the court would have to add words

to a statute that the legislator hasn't done in 32 years.

And there's also different

in the paternity statute.

Otherwise, it's not set up for three parents.

There's no, you know, Supreme Court parenting plan.

There's only two parents.

But that okay, that may mean that in this context, somebody's particular

person loses based on all the other things floating around.

But that's not

what's at stake in this case here today.

Is this broader or narrower rule,  
however you want to frame it.

This can have implications  
well beyond the context

of this particular case  
and the particular facts of this case.

And that. Right. It is, Your Honor.

It is Your honor. And again, it's more of.

I can I defer to the,

the dissent in the, in Enriquez,  
which I also point out

that the majority and Enriquez did  
not certify conflict with a beaver's PSC,

even though a beaver's PSC applied

the exact it's  
the almost identical access the court.

And so I said to here  
and there was not conflict certified.

I do agree with the dissent  
that conflict should have been certified.

But again,  
it just shows that the application of law,

if we take this, you know,  
the law is written as is and apply

that strict constructionist  
and yes, under so under your reading,

what Justice Coryell was referring to  
as the, the intent,

as being a donor,  
that wouldn't matter to you at all either.

So it is the only thing that causes  
this to be in place

is the fact that genetic material was

transferred in a fashion,

using, you know, an at home cat.

That's that's the only statute  
that makes a person a donor.

And subject to this,

so what's it?

Kind of. Yes.

So, yes, the at home  
do it yourself insemination as Lamar.

It's how to be Lucas said in 2002  
and has been held since then.

A beaver specie.

So yes, subjective intent of the donor  
themselves is not.

But anyway, I'm just saying  
that no other fact matters,

that no other relationship of the parties.

How many parties are involved?

What the if

if those people were in a relationship,  
if they weren't in a relationship?

Absolutely. All of that is off the table.

The only thing that happens

that pulls this entire provision into play

is that genetic

material was transferred  
using an at home kit.

That's the only fact.

Yes, Your Honor, unless they have a pre  
planned adoption agreement.

Or are they couples  
do all the time on their own, right?

Yeah.

I understood the other,  
or a member of a commissioning couple.

And that's what's interesting  
about the trial court did in this case

or actually what the marriage had  
a did in the second SCA

was they said that to be a member  
of a commissioning couple, you have to

at least be some sort of rubric  
other couple.

So that's  
where your question would come in.

If it's a couple that does this well,  
that's a rubric of a couple.

Therefore  
it could be a commissioning couple.

But if it's not a commissioning couple

according to the definition  
of the statute, they are definitely not

for the for this case, they would be out  
like they wouldn't even be.

I wouldn't be an exception

because they're not a commissioning couple  
under the definition.

Correct.

So literally a couple who uses this  
if they are not married,

that male has zero rights.

Yes, under the statute,  
as it's written today.

And I would ask the  
court to apply it as written.

And again, and I do

realize that could be a harsh outcome  
under the Enriquez facts.

Not not as harsh for what

we have today, where we have  
the committed couple that used that.

They're a third party.

But yes, in the Enriquez facts  
where you had a,

you know, two friends that said,  
let's get together and have a kid,

and then one friend is like,  
you know what? I changed my mind.

I don't want to see you anymore.

I understand, and I and of course,

the irony in that case is they both agreed  
about how it all should go.

And then some circuit judge came in and,  
disrupted of what they wanted to do,  
without anybody asking them to.

Yes. Your honor, the the response  
nature of the trial court was very again,  
that wasn't it wasn't really argued  
in the, in the district court.

So that's not the district court's fault.

But what a travesty.

I agree, Your Honor.

The. Yes.

And then Rico, as it was two parties,  
they agreed they file paternity together.

And then the judge at the trial was Lewis  
Monti.

Applied the statute and said,  
we can't do this.

Goodbye.

And that is an unfortunate outcome.

But again, unfortunately,  
the role of the courts is not to

even when there's a bad outcome,  
unfortunately, we must apply that.

Unfortunately, we must have had a law.

So I have taken up enough time.

I appreciate the opportunity to be here  
before the court.

It's been an absolute honor

and I will yield the remainder of my time.

Thank you.

Thank you very much.

May it please the court?

My only one response would be, the,

the upa,

that does contain separate provisions,  
I believe,

for artificial insemination  
and assisted reproductive technology.

So pointing out that the,  
artificial insemination provisions have

certain,

the relaxation of the requirement

of having a licensed physician,

that is different

than taking an assisted  
reproductive technology provision

and applying it across genres,  
if you will, to or special,

insemination, otherwise, unless there's  
any other questions by the court.

But so why do you think when in 93 237

when the legislature  
was making the changes to it?

Seven 4211 why did they create this

whole new subsection to on donated

eggs or pre embryos, rather than just add  
those words into what's now sub one.

But before was the whole thing like  
why do they why does the legislature seem  
to make a distinction  
from the regular from I mean not?

Well, I don't want to assume anything,  
but they, they treat artificial

or in-vitro insemination in one section  
and then they have donated eggs and pre

embryos in the other section,

even though the substantive rules  
appear to be the same.

I apologize, Your Honor.

I don't know. I don't know why

they made that distinction  
other than what I would speculate.

But. Well, I mean, I'm just wondering

because it obviously raises the question  
of whether there's some.

Well, you know, it's kind of in line  
with what your argument is that there is

is different treatment for the, art

from artificial insemination,  
which obviously occurs

in myriad kind of different  
sort of factual permutations.

Whereas they are because of the complexity  
of it in everything.

It's much narrower. Yes.

That would, I believe, be the reason why?

Because it is more complicated.

And there are, again,  
they're talking about.

Those kind of donations involving  
the maternal side of it.

There are going to be, you know,  
objective third parties and the potential  
for some informed consent there.

Okay. You got 15 seconds.

We would ask that the court, reverse,  
the ruling below by the second DCA,  
we would ask that the court specify that,  
seven the

the the forfeiture requirements of 742 .14

only apply within the context of assisted  
reproductive technology,

as set forth  
in the comprehensive statutory scheme,

and that the case be sent back down  
so that my client can attempt

to prove under that,  
that he has some rights.

Relating to this trial. Thank you.

Thank you very much.

We're adjourned. Was.