

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE,  
THE SUPREME COURT OF  
FLORIDA IS NOW IN SESSION,  
ALL WHO HAVE CAUSE TO  
PLEAD, DRAW NEAR, GIVE  
ATTENTION AND YOU SHALL BE  
HEARD.

LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.  
PLEASE BE SEATED.

>> GOOD

MORNING, WELCOME TO THE FLORIDA  
SUPREME COURT.

OUR FIRST CASES KATHLEEN STEELE  
VERSUS SOCIAL SECURITY 22-13  
TWO.

>> CHIEF JUSTICE, FELLOW  
JUSTICES OF THE SUPREME COURT,  
MAY IT PLEASE THE COURT?  
MY NAME IS ROGER PLATA FROM ST.  
PETERSBURG, FLORIDA.

I REPRESENT THE APPELLATE WITH  
REGARD TO THIS CASE.  
THIS CASE STEMS FROM AN  
APPLICATION FOR CHILDREN'S  
INSURANCE BENEFITS UNDER SOCIAL  
SECURITY LAW.

THE SOCIAL SECURITY  
ADMINISTRATION DENIED THAT  
APPLICATION AT EVERY STAGE AND  
THE US DISTRICT COURT AGREED  
WITH THAT POSITION.

THE CASE IS CURRENTLY ON APPEAL  
TO THE ELEVENTH CIRCUIT COURT OF  
APPEALS, THE ELEVENTH CIRCUIT IN  
ORDER TO RENDER A DECISION ON  
THE APPEAL CERTIFIED TWO  
QUESTIONS TO THIS COURT.

>> COULD I ASK ABOUT THE FIRST  
PROVIDED FOR ISSUE?

WHEN YOU THINK ABOUT PROVIDED  
FOR YOU THINK THERE MIGHT BE  
SOMETHING IN THE WILL THAT IS  
LEFT TO SOMEONE, FOR INSTANCE, I  
LEAVE JAMIE \$5,000.

NOT .

NOT JUST MAY BE.

NOT JUST MENTIONING ME.

BUT PROVIDING SOMETHING FOR ME.

WHERE DO YOU THINK IT INDICATES  
THAT THIS CHILD WAS PROVIDED FOR  
IN THAT SENSE, OR WERE THEY?

>> IN ARTICLE 1 OF THE WILL, MR. STEELE STATES THE TERM CHILDREN AND DESCENDENTS SHALL INCLUDE THEM AND THE BLOOD RELATIONSHIP AND RELATIONSHIP TO ADOPTION.

>> I DON'T THINK YOU ANSWERED THE QUESTION. WHAT DID THE CHILD GET UNDER THE WILL?

>> THE PROPERTY PASSED DIRECTLY TO THE MOTHER, THE APPELLATE, AT THE TIME THE GENTLEMAN DIED. THE GENTLEMAN DIED IN 2013, THERE IS NO DIRECT STATEMENT WITH REGARD TO NAMING THE CHILD THAT IS NOT YET IN EXISTENCE.

>> THERE IS NO DIVIDE TO THE CHILD -- I WOULD TAKE POSITION THIS IS A LATER BORN CHILD AND BASED ON THE EVIDENCE FROM THE LAWYER WHO PREPARED THE BALLOT, AS WELL AS THE FERTILITY DOCTOR WHO PERFORMED THE PROCEDURE WHICH IS THE IN VITRO FERTILIZATION THAT THIS WAS INTENDED BY MR.

STEELE TO HAVE A PRODUCT, THE CHILD FROM THE IN VITRO FERTILIZATION TO BE THE CHILD PROVIDED --

>> WHAT'S THE RELEVANCE OF THAT INTENT?

>> THE RELEVANT OF THAT INTENT IS THE POSITION ANALYZING WHAT DOES PROVIDED FOR MEAN? IT IS IMPORTANT TO KNOW EXACTLY WHAT WAS SAID TO THE LAWYER WHO PREPARED THE WILL.

>> WHAT IS YOUR BEST CASE FOR THE PROPOSITION, TRYING TO FIGURE OUT THE TEXT, LOOK TO BE EXTRATEXTUAL STATEMENTS OF INTENT BY THE LAWYER AND POSITION.

>> I DON'T HAVE A CASE DIRECTLY ON OUT POINT, YOUR HONOR BUT OUR POSITION WOULD BE PROVIDED FOR UNDER MERRIAM-WEBSTER'S DICTIONARY, SOMETHING THAT WOULD HAPPEN IN THE FUTURE.

IN THIS CASE, THAT IS WHAT HAPPENED.

THE CHILD WAS A LATER BORN CHILD.

THE BASIS, THE INTENT AND KNOWLEDGE THAT THE PREPARER OF THE WILL, AND EXCEPTIONAL LAWYER, OF THE BAR ASSOCIATION HAS TOLD US WHAT HE THOUGHT MR. STEELE INTENDED.

>> COUNSEL, THERE IS NO QUESTION THAT A WILL HAS A PROVISION FOR POSTHUMOUSLY CONCEIVED CHILD AND MAKE PROVISION FOR THAT CHILD AND LEAVE SOMETHING TO THE CHILD.

MAKE UP A QUEST OR DEVISE TO THE CHILD, NO QUESTION THAT COULD BE DONE.

>> COULD HAVE BEEN DONE.

>> NO QUESTION THAT WASN'T DONE IN THIS WILL.

>> IT WASN'T DONE IN THAT MANNER.

THE USAGE OF THE TERM LATER BORN IS SIGNIFICANT.

>> AT THE END OF THE DAY, THE CHILD DOES NOTHING UNDER THIS WILL.

NOTHING.

>> WASN'T IN EXISTENCE.

>> I'M STRUGGLING TO UNDERSTAND HOW A WILL THAT LEAVES NOTHING TO THE CHILD CAN BE SAID TO BE A WILL THAT MADE PROVISION.

>> OUR POSITION IN LOOKING AT THE LETTER I RECEIVED WAS HE BELIEVED THIS WAS A PLANNED PREGNANCY THAT MR.

STEELE WAS AWARE OF HIS HEALTH AND AGE, THAT HE WANTED TO PRESERVE HIS SPERM SO THEY COULD BE USED BASED ON THE NEW SCIENCE WE HAVE WHERE CHILDREN CAN BE COME INTO EXISTENCE AND PRECONCEIVED AFTER THE DEATH OF A PERSON, THAT HE WISHED MR. STEELE INTENDED THAT TO BE DONE. THE JUDGE FROM THE 11TH CIRCUIT, SPECIFICALLY IN THE LETTER, AND THE OPINION, PAGE 4 THAT SAY THE DOCTOR WHO PERFORMED, FERTILIZATION PROCEDURE, AND I QUOTE, MR.

STEELE DOCUMENTED HIS DESIRE FOR HIS WIFE TO USE THE SPERM FOR A FUTURE CONCEPTION EVEN IF HE WERE TO BE INCAPACITATED OR

DECEASED.

WHAT I'M SAYING TO THIS COURT IS THAT I BELIEVE, BASED ON THE STATEMENTS FROM THE DOCTORS AND THE USE OF THE TERM LATER BORN IN THE WILL THAT THAT IS WHAT MR.

STEELE INTENDED TO HAVE DONE.

>> YOU ARE ASKING US TO READ PROVIDED FOR IS THE SAME AS ACKNOWLEDGE THE POSSIBLE EXISTENCE OF.

>> THE PROCEDURE WOULD HAVE TO BE SUCCESSFUL, PERFORMED, AND THAT --

>> ISN'T THAT UNUSUAL IN THIS CONTEXT, PROVIDED FOR IN THIS CONTEXT TAKING CARE OF, LEAVING MONEY TO, ET CETERA.

IT SEEMS LIKE UNDER THE LOGIC OF YOUR POSITION, THERE'S A POSSIBILITY THAT THERE WILL BE POSTHUMOUSLY CONCEIVED CHILDREN BUT I WANT THEM TO TAKE NOTHING UNDER THIS BILL.

UNDER YOUR THEORY THEY WOULD BE, QUOTE, PROVIDED FOR BECAUSE THERE EXISTENCE, POSSIBLE FUTURE EXISTENCE WOULD BE ACKNOWLEDGED.

>> THE IMPORTANT THING HERE IS LOOKING AT THE STATUTE, LOOKING AT 742.174.

THE REASON THE STATUTE WAS CREATED 30 YEARS AGO WAS CREATED BY THE FLORIDA LEGISLATURE WAS TO BE IN LINE WITH THE NEW SCIENCE OF THE TIME, THAT THIS WOULD BE PERMISSIBLE IF THE THREE CRITERIA IN SECTION 732 WERE PRESENT, THEY ARE.

THAT IS WHAT WE HAVE, MISTER AND MISSUS STEELE, WHO WERE INTENDED TO BE THE PARENTS OF THE CHILD.

SECONDLY, WE HAVE IN VITRO FERTILIZATION PROCEDURE WHICH BASED ON THE NEW SCIENCE, WOULD ALLOW HER CHILD TO BE CONCEIVED EVEN AFTER THE DEATH OF THE DECEASED AND THERE'S THE REQUIREMENT OF PROVIDED FOR BUT THE REALLY MAJOR POINT STATE OF FLORIDA MAKES IN THE BRIEF TO THIS COURT.

THE WRITING, THERE SHOULD BE

SOMETHING CONNECTING THE CHILD WITH THE TESTING.

WHAT I DO BELIEVE YOU HAVE HERE WITH A CHILD WHO IS NOT IN EXISTENCE, IS NOT NAMED, BUT WAS INTENDED THAT IF THERE WAS A LATER BORN CHILD, THAT HE WOULD BE PROVIDED FOR IN A WILL.

AND BASED ON THE NEW SCIENCE AND WHAT WE HAVE, REMEMBER THAT THIS WAS DONE, THE WILL WAS CREATED IN 2010, THE SCIENCE HAS GONE BEYOND THAT.

THE STATUTE IN QUESTION WAS CREATED IN 1993 AND IT WAS DESIGNED I BELIEVE TO HELP OUR COURTS BE ABLE TO DISTRIBUTE PROPERTY TO CHILDREN WHO HAVE COME INTO EXISTENCE BY WAY OF IN VITRO FERTILIZATION.

>> YOU NEED TO WRAP UP, YOU CAN HAVE ONE MINUTE FOR REBUTTAL.

>> AT THE POSITION OF THE APPELLATE THAT BASED UPON THE WILL ITSELF, WHAT IT STATES, STATEMENTS THAT ARE IN THE RECORD AND THE STATEMENT THAT WAS REFERRED TO BY THE 11TH CIRCUIT PLUS --

>> THANK YOU.

>> MR.

CHIEF JUSTICE, MAY IT PLEASE THE COURT.

DEREK MUNSON ON BEHALF OF THE STATE.

THE FLORIDA LEGISLATURE ENACTED SECTION 742 TO PREVENT REPRODUCTIVE CELLS FROM BEING USED CONTRARY TO HIS WISHES TO CONCEIVE CHILDREN WHO COULD MOUNT ATTACKS ON THE ESTATE. BUT THE WILL REFLECTING INTENT TO HAVE OR PROVIDE FOR POSTHUMOUSLY CONCEIVED CHILDREN, A CONCERN THAT IS NO LONGER PRESENT SO THE LEGISLATURE GRANTED JUDGMENT IN THOSE CIRCUMSTANCES THE SAME RIGHTS THAT ANY OTHER CHILD ORDINARILY HAS UNDER FLORIDA LAW.

>> HOW MUCH OF YOUR POSITION DEPENDS ON THE WORDS HAVEN'T PROVIDE, THE INTRODUCTION HERE, IF YOU DECIDE THAT THE WILL DOES

NOT SPEAK CLEARLY AT ALL TO PROVIDE FOR ANY CHILD, WHAT IS THE STATE'S POSITION?

>> THE STATE AGREES THAT IF THE WILL DOES NOT APPLY TO THE CHILD WITHIN THE MEANING OF SECTION 74, THE CHILD WOULD NOT HAVE THAT UNDER THE STATUTE.

>> WHAT IS THE STATE'S VIEW OF WHAT IT MEANS TO PROVIDE FOR SOMETHING IN THE STATUTE?

>> THE STATE DID NOT TAKE A POSITION OR AN ORAL ARGUMENT, SPECIFICALLY WHAT THE PHRASE MEANS AS FAR AS WHETHER OR NOT IT REQUIRES A DIVISION OF PROPERTY IN THE WILL OR INTENT, THE STATE HASN'T TAKEN A POSITION ON THAT.

REGARDLESS WHAT THE STATUTE REQUIRED THAT IS THE CONDITION THAT MUST BE MET BEFORE THE CHILD CAN ENJOY IT BUT THE COMMISSIONER IS READING EVEN IF A CHILD IS PROVIDED IN THE WILL, THE CHILD DOES NOT HAVE ANY OF THE RIGHTS THAT A CHILD HAS UNDER FLORIDA LAW AGAINST DECEASED PARENTS AT STATE.

>> SHOULD WE BE CONCERNED THAT YOU ARE ASKING US TO READ A FAIRLY BROAD RIGHT GRANTED IN SORT OF THIS UNCLEAR SENTENCE THAT IS NOT IN ANY OF THE STATUTES WE WOULD NORMALLY LOOK AT, IT'S NOT IN THE PROBATE CODE.

IT IS A FAIRLY BROAD RIGHT, AND THERE IS NO LIMITATIONS OR RESTRICTIONS.

THERE IS NO TIME LIMIT.

50 YEARS LATER SOMEONE COULD SHOP AND ASK FOR THIS RIGHT. DOES THAT CONCERN THE STATE AT ALL?

IT SEEMS VERY BROAD IN THE WAY ARE ASKING US TO INTERPRET IT. WHAT'S YOUR RESPONSE TO THAT?

>> I DON'T KNOW THAT I AGREE THAT IT IS NECESSARILY BROAD. THE STATUTE HAS LIMITATIONS, THE CHILD'S RIGHT TO INHERIT, IT DOES LIMIT THIS BENEFIT TO CHILDREN, POSTHUMOUSLY CONCEIVED

GRANDCHILD, TO INHERIT  
INTERSTATE PROPERTY.  
I WOULD DISAGREE THIS CODE IS  
ONE THAT WE LOOK TO TO ANSWER  
QUESTIONS, THE DOMESTIC  
RELATIONS CODE AND PROBATE CODE  
WILL OFTEN INTERACT.

DOMESTIC RELATIONS CODE  
ESTABLISHES FAMILIAR  
RELATIONSHIPS THAT HAS BEARING  
ON INHERITANCE RIGHTS UNDER  
FLORIDA LAW AND THAT AN  
IMPORTANT POINT ABOUT WHY THE  
STATUTE DOES WHAT THE STATE SAYS  
IT DOES.

DISPLACEMENT IN DOMESTIC  
RELATIONS CODE IN A CHAPTER  
TITLED DETERMINATION OF  
PARENTAGE.

>> ANY CHILD CONCEIVED IN THIS  
MANNER IS A FUNCTION OF THE WAY  
MARRIAGE IS EXTINGUISHED, IT IS  
TILL DEATH DO WE PART.

WHAT DO WE DO ABOUT THE FACT  
THAT ANY CHILD CAN SEE THE WAY  
BORN OUT OF WEDLOCK, INCLUDING  
SECTION 402 AND 700 TO 10 ABOUT  
THE EFFECT OF WEDLOCK ON THE  
CHILD'S STATUS ON THE FAMILY  
CODE.

IT SORT OF WIPES THAT WAY.  
HOW DO WE RECONCILE YOUR  
POSITION?

>> THERE IS A DISPUTE ABOUT THE  
PARENTAGE OF THE CHILD, IT WOULD  
BE ESTABLISHED.

>> LEAVE ASIDE PARENTAGE, WE CAN  
SAY THERE IS NO DISPUTE, THE  
QUESTIONS ABOUT WEDLOCK.

>> THE MORE RELEVANT STATUTE,  
REPRODUCTIVE TECHNOLOGY, WHEN  
YOU ESTABLISH PARENTAGE WHEN A  
CHILD IS BORN WITH THIS ASSISTED  
TECHNOLOGY AND THE STATUTE SAYS  
THE DONOR, THE SOURCE OF  
REPRODUCTIVE CELLS --

>> I'M NOT HEARING ANSWER TO THE  
QUESTION.

LET'S SAY PARENTAGE IS NOT AN  
ISSUE.

WHAT IS THE EFFECT OF THE  
STATE'S READING OTHER PORTIONS  
OF THE STATUTE?

>> I DON'T KNOW PORTIONS OF THE

STATUTE DEALING WITH WEDLOCK ARE NECESSARILY -- HAVE THE SAME ENFORCEMENT DEALING WITH CHILDREN BORN WITH REPRODUCTIVE TECHNOLOGY.

>> WHY SHOULD WE READ THOSE PROVISIONS ON THE STATUTE?

>> THE STATUTES OF 742.

14 SAYS THE PARENTS OF A CHILD BORN THROUGH REPRODUCTIVE TECHNOLOGY OR THE COMMISSIONING COUPLE, 742.3 DEFINES THE INTENDED PARENTS OF THE CHILD.

>> DOLLAR THAT PRESUMES, DOESN'T IT, THE COUPLE IS CONSISTENT, SOME SORT OF FORM OF LIVE BIRTH. THE REASON I AM ASKING TO FOCUS ON THIS, IT SEEMS TO ME PROBLEMATIC, URGING A READING OF THE STATUTE BUT CAUSES US TO CLOSE OUR EYES TO THIS CODE AND PRETEND IT IS NOT THERE WHEN LEGISLATURE NEEDS TO ADDRESS HOW THESE THINGS INTERACT.

>> THE REASON I DON'T KNOW THE STATUTE IS DEALING TO APPLY IN THE SAME WAYS, THE COMMISSIONING COUPLE DOESN'T HAVE TO SEE THAT THROUGH REPRODUCTIVE TECHNOLOGY, THE COMMISSION REPRODUCTIVE TECHNOLOGY, THEY ESTABLISHED THE INTENT UNDER 742.14, I THINK 742.17 IS THE EXTENSION OF THAT PRINCIPLE APPLIED WHEN ONE OF THE PARENTS IS DECEASED.

OF THE WILL REFLECTS THE PARENT INTENDED TO BE THE PARENT OF A CHILD, PART OF THE COMMISSIONING COUPLE, THEN THE PARENT, THEY ESTABLISHED PARENTAGE ASSUMING THEY ALSO ESTABLISHED GENETIC PARENTAGE AND THE CHILD, THEY GOT ALL THE RIGHTS THAT COME IN THE RELATIONSHIP.

>> LET ME ASK ABOUT THE RELATIONSHIP BETWEEN SECTION 742.17 AND THE PROBATE. YOU WOULD CONCEDE IT IS INTERROGATION OF THE PROBATE CODE, CORRECT?

>> THAT IT IS --

>> IT IS INCONSISTENT.

LET ME CLARIFY.

YOUR INTERPRETATION OF IT WOULD

BE CONSISTENT WITH PROVISIONS IN THE PROBATE CODE.

>> I WOULD AGREE IT HAS AN ADDITIONAL EXCEPTION TO SOME PROVISIONS OF THE PROBATE CODE.

>> ALL RIGHT.

I DON'T THINK ANYBODY HAS TALKED ABOUT THIS BUT IN THE PROBATE CODE, ISN'T THERE AN OVERARCHING PROVISION AGAINST IMPLIED REPEAL THAT SAYS THIS CODE IS INTENDED AS UNIFIED COVERAGE OF THE SUBJECT MATTER.

THIS IS WITHIN THE SUBJECT MATTER AND NO PART OF IT SHOULD BE REVEALED BY CONSTRUCTION IF IT IS AVOIDED.

SO THERE IS GOING TO BE A PRESUMPTION AGAINST INTERPRETING ANY OTHER PROVISION SUBSEQUENT THE ENACTED PROVISION OF THE LAW IN A WAY THAT IS INCONSISTENT WITH PROVISION OF THE PROBATE CODE.

ISN'T THAT CORRECT?

>> I DON'T KNOW THAT THIS IS IMPLIED REPEAL.

THE PROBATE CODE ESTABLISHES THAT, NOT A UNIVERSAL RULE BECAUSE A PRODUCT CODE.

>> THERE IS A SPECIFIC EXCEPTION IN THE PROBATE CODE FOR ERRORS OF A DECEDENT CONCEIVED BEFORE HIS OR HER DEATH BUT BORN THEREAFTER.

THIS IS DEFINITELY OUTSIDE THAT. SOMETHING THAT WAS PRECLUDED BY THAT SPECIFIC PROVISION.

I DON'T KNOW HOW THAT GIVES YOU REFUGE IN THAT PROVISION.

>> MY TIME IS EXPIRED.

>> I THINK THE POSTHUMOUSLY -- SORRY, AFTER THE STATUTE, THE EXCEPTION TO THAT RULE.

TO PRECLUDE THE LEGISLATURE FROM ENACTING DIGITAL EXCEPTIONS AND DOESN'T REQUIRE THE LEGISLATURE AND ACT THE PROBATE CODE AND OUR POSITION IS THE STATUTE CREATES AN ADDITIONAL EXCEPTION, VERY NARROW CLASS OF ERRORS.

>> CAN I ASK, I AM CURIOUS ABOUT THE INTERACTION OF 217, 732-106. IN THE 17-4, IT TALKS

ABOUT THE PERSON DYING BEFORE THE TRANSFER, WE CAN IMAGINE CONCEPCÓN HAVING TO HAPPEN WHEN A PERSON IS ALIVE IS A HARD AND VIEWING THIS AS AN EXTRA REQUIREMENT THAT YOU OVERLAY ON 732.

ONE HUNDRED 6, THAT THERE IS CONCEPCÓN WHILE THE PERSON IS ALIVE AND TRANSFER HAPPENS AFTER THAT, HE SENSUALLY THE PROVISION FOR THEM IN THE WILL WOULD BE AN EXTRA REQUIREMENT BUT WOULDN'T DO AWAY WITH THE UNDERLYING CONCEPTION BEFORE HAND.

COULD YOU ADDRESS THAT?

>> SECTION 742, DOESN'T DISTINGUISH AN EMBRYO CREATED BEFORE THAT.

THE STATUTE SAYS ANYTIME THE CHILD IS CONCEIVED, THE SPERM OR EGGS OR BEFORE THE TRANSFER, IT COVERS SITUATIONS WHERE THE EMBRYO AFTER THAT, PLAINLY INCLUDES THE SITUATION WHERE THE EMBRYO WAS CREATED.

>> THANKS.

>> IF IT PLEASES THE COURT, MY NAME IS RICHARD BLAKE AND I REPRESENT THE COMMISSIONER OF SOCIAL SECURITY IN THIS MATTER. THIS CAME ABOUT BECAUSE THE APPELLATE MOTHER APPLIED FOR CHILD INSURANCE BENEFITS ON THE EARNINGS OF THE DECEASED FATHER ON BEHALF OF THE CLAIMANT. THIS DENIED THE INSURANCE APPLICATION BASED ON A DETERMINATION THAT THE CLAIMANT COULD NOT INHERIT A CHILD'S SHARE OF THE WAGE EARNERS A STATE UNDER FLORIDA LAW, UNDER THE SOCIAL SECURITY ACT AND COMMISSION'S REGULATION, AND TO QUALIFY FOR INSURANCE BENEFITS. UNDER THE ACT, CONSIDER AN INDIVIDUAL TO BE CHILD OF THE WAGE EARNER, A CHILD'S SHARE OF THE WAGE EARNER'S PERSONAL PROPERTY UNDER THE LAW OF THE STATE IN WHICH THE WAGE EARNER WAS DOMICILED AT THE TIME OF HIS DEATH.

THE OVERARCHING ISSUE IS WHETHER

FLORIDA STATUTE 742, A  
POSTHUMOUSLY CONCEIVED CHILD  
SHALL NOT BE ELIGIBLE FOR A  
CLAIM OF THE DECEDENT'S ESTATE,  
IS PROVIDED BY THE DECEDENT'S  
WILL.

IF THE DECEDENT'S WILL PROVIDED  
FOR THE CHILD.

FLORIDA STATUTE 742-14-7, THE  
STATUTE THAT ADDRESSES INTENT --  
DOES ACTUALLY -- DOESN'T ADDRESS  
THAT.

THE ONLY STATUTE THAT ADDRESSES  
POSTHUMOUSLY CONCEIVED CHILDREN  
OR POSTHUMOUSLY CONCEIVED CHILD.

THE STAIR TUTORIAL LANGUAGE  
DISCUSSES ONLY INHERITANCE  
RIGHTS CREATED THRUWAY WILL, THE  
MENTION OF THE TERM INTESTACY.

>> WOULD HAVE TO BE THE CASE FOR  
THE READING, IT CAN'T MEAN A  
SPECIFIC MONETARY REQUEST  
BECAUSE IF IT DID, THEY WOULD  
NOT BE INTESTACY LAND.

>> ONE OF THE COMMISSIONER'S  
POINTS, THE COMMONLY HELD  
DEFINITION OF INTESTACY UNDER A  
FLORIDA PROBATE CODE UNDER THE  
MODEL PROBATE CODE UNDER LEGAL  
SOURCES, ALL AGREE THAT  
INTESTACY IS IN THE ABSENCE OF A  
WILL.

>> THE STATUTE SAYS ANY PART OF  
THE ESTATE OF THE DECEDENT NOT  
EFFECTIVELY DISPOSED OF BY WILL  
PASSES TO THE DECEDENT AS  
PRESCRIBED IN THE FOLLOWING  
SECTIONS OF THE CODE, DISPOSES  
OF CERTAIN PROPERTY, PASSES BY  
SUCCESSION.

ISN'T THAT CORRECT?

>> THAT MANY CASES WHERE YOU  
HAVE AN ESTATE OR A WILL THAT  
DISPOSES PROPERTIES NOT NAMED IN  
THE WILL AND ANY LEFTOVER  
PROPERTY WILL PASS THROUGH  
INTESTACY.

THAT IS ABSOLUTELY CORRECT.  
THAT DOESN'T CHANGE THE FACT  
VOTE 742-17-4 ONLY TALKS  
ABOUT, FOR THIS CHILD, BEING  
ABLE, BEING PROVIDED FOR BY THE  
DECEDENT'S WILL.

THE STATUTE ITSELF STATES THAT A

CHILD CONCEIVED FROM THE EGG, SPERM AND PRE-EMBRYO OF A PERSON WHO DIED BEFORE THE TRANSFER OF THE EGG, SPERM OR PRE-EMBRYO TO A WOMAN'S BODY SHALL NOT BE ELIGIBLE FOR A CLAIM AGAINST THE DECEDENT'S ESTATE UNLESS THE CHILD HAS BEEN PROVIDED FOR BY THE DECEDENT'S WILL.

>> SORRY TO INTERRUPT.

732.302 TALKS ABOUT CHILDREN AND WHEN THE TEST PROVIDES A WILL FOR ANY OF HER CHILDREN ADOPTED AFTER MAKING THE WILL, DO YOU THINK WE NEED TO INTERPRET THE PROVIDED FOR LANGUAGE IN 742-17-4, THE SAME WE INTERPRET, PROVIDED BY WILL FOR CHILDREN IN 732-302?

>> THE DIFFERENCE IS 742.174 IS SPECIFICALLY TALKING ABOUT A CHILD WHO IS POSTHUMOUSLY CONCEIVED.

>> I UNDERSTAND IT IS ADDRESSING THAT SPECIFIC CONTEXT BUT I'M WONDERING IF YOUR POSITION WOULD BE IF WE DO ADDRESS THE PROVIDED FOR ASPECT OF THIS DO YOU THINK WE -- DO WE NEED TO BE CONSISTENT, OR IS IT POSSIBLE THAT, QUOTE, PROVIDED FOR IN THIS CONTEXT REQUIRES SOMETHING DIFFERENT FROM WHAT WE WOULD REQUIRE?

>> IT IS DIFFERENT BECAUSE OF THE NATURE OF POSTHUMOUSLY CONCEIVED CHILD AND BECAUSE OF THE STATUTE YOU WERE DISCUSSING EARLIER IF YOU WANT TO GO TO THAT, FLORIDA STATUTE 732.106 WHICH TALKS ABOUT POSTHUMOUSLY BORN CHILDREN, AND AS POINTED OUT, THAT DOES SPECIFICALLY TALK ABOUT --

>> IS THERE ANY CASE YOU COULD POINT US TO?

I HAVEN'T FOUND ANYTHING IN THE 742-745 TEXT BUT ANY CASE YOU CAN POINT TO THAT WOULD SHED LIGHT ON ALL WE INTERPRET, PROVIDED FOR?

>> I DON'T HAVE ANY STICK SPECIFIC TESTS ON THAT. I WOULD ALREADY --

>> IT SEEMS YOU HAVE A STRONG CASE.

IF PROVIDED FOR MEANS ANYTHING LIKE ACTUALLY LEAVING SOMETHING TO -- IS IT YOUR, IS THERE ANYTHING IN THE WILL THAT YOU THINK IS EVEN CLOSE TO PROVIDING FOR THE CHILD?

>> THEY, THE LANGUAGE THAT WAS TALKED ABOUT, IN LIGHT OF THE DEFINITION OF FAMILY, IT TALKS ABOUT THE TERMS CHILDREN AND LINEAL DESCENDENTS INCLUDING THOSE BORN LATER OR ADOPTED, MAKING THE POSITION, GROUPING THOSE TERMS TO GATHER, FLORIDA LAW DOESN'T RECOGNIZE ADOPTION RIGHTS FOR DECEASED INDIVIDUALS OR ABILITY TO DIE FOR DECEASED INDIVIDUALS, THIS WOULD HAVE TO REFER TO LATER BORN OR ADOPTED DURING AFTER THE EXECUTION OF THE YOU WILL.

>> THAT COULD ONLY BE RELEVANT IF PROVIDED FOR MIGHT MEAN ACKNOWLEDGE THE POSSIBLE EXISTENCE OF.

IF WE INTERPRET PROVIDED FOR TO MEAN LEAVING SOMETHING TO SOMEONE IN THE WILL THERE IS NO PROVISION THAT COMES CLOSE TO LEAVING ANYTHING EVEN IF YOU THOUGHT IT WAS REFERRING TO THIS CHILD IT DOESN'T LEAVE THE CHILD ANYTHING.

AM I RIGHT ABOUT THAT?

>> I DID READ THE WILL AND YOU ARE CORRECT.

IN THIS CASE EVERYTHING PASSED TO THE WIFE.

THERE IS NO SPECIFIC -- THE COMMISSIONER'S ARGUMENTS, THERE'S NO SPECIFIC PROVISION EITHER RECOGNIZING THE CHILD BY NAME OR DESCRIPTION UNLESS YOU HAVE A BROAD DESCRIPTION AND AS FAR AS ACTUALLY WITH A SPECIFIC REQUEST, THERE IS NOT.

IF YOU HAVE A BROAD READING AND THE CHILD IS A CATEGORY --

>> YOU WANT TO CONCEDE THIS CASE?

>> I DON'T.

>> I AM REALLY STRUGGLING WITH

THE POSITION OF THE SOCIAL SECURITY ADMINISTRATION. THIS POINT ABOUT WHETHER THERE IS A PROVISION MADE FOR THE CHILD, THE DEFINITION, THIS ISSUE ABOUT WHETHER SOMETHING IS LEFT TO THE CHILD, YOU DON'T SEEM TO BE MUCH INTERESTED IN. ARE YOU?

>> TO YOUR POINT, THE ANSWER IS NO, THERE IS NO PROVISION FOR THE CHILD.

>> YOU THINK THAT'S RELEVANT?

>> UNDER THE STATUTE THE STATUTE DOES SAY THAT FOR IT TO BE ABLE TO MAKE THE CLAIM YOU HAVE TO BE PROVIDED FOR.

THAT IS THE BASIC POINT OF THE CASE, THAT IS WHAT WE ARE SAYING, THE ONLY WAY TO BE CLEAR, THE ONLY WAY A POSTHUMOUSLY CONCEIVED CHILD CAN TAKE UNDER FLORIDA LAW IS PROVIDED FOR IN A WILL.

FLORIDA LEGISLATURE DID NOT PROVIDE INTESTACY RIGHTS FOR POSTHUMOUSLY CONCEIVED CHILDREN. IT EXCLUDED THEM.

>> YOU AGREE THAT 742-17-4, YOU DIDN'T NEED TO ENACT ANYTHING TO AFFIRMATIVELY GIVE THE RIGHT TO LEAVE SOMETHING IN YOUR WILL TO A CHILD CONCEIVED AND BORN UNDER THESE CIRCUMSTANCES SO IS IT YOUR POSITION THAT THE ONLY WORK THAT THIS IS DOING IS TO CUT A INTESTACY RIGHTS?

>> YES.

>> IF THAT'S THE WORK IT IS DOING, WHY WOULD THE LEGISLATURE NOT HAVE BEEN EXPLICIT AND TALK ABOUT INTESTACY RATHER THAN DOING THIS, BY IMPLICATION?

>> BECAUSE I BELIEVE THERE WERE NO INTESTACY RIGHTS FOR CONCEIVED CHILDREN.

AS POINTED OUT THE CHILD IS COMING INTO EXISTENCE AFTER THE DEATH OF THE PERSON, THE DECEDENT.

>> YOU COULD BE CONCEIVED AND TRANSFERRED AFTER. IT IS POSSIBLE WITHOUT VISTA

COMPLY WITH 732.

16 IF CONSUMPTION HAPPENS BEFORE  
DEATH AND TRANSFER HAPPENS AFTER  
DEATH.

>> RIGHT.

BUT I THINK 742, 17-4,  
THIS WAS THE LEGISLATURE'S  
ATTEMPT.

WHAT THEY WERE GETTING AT IF IT  
WAS DONE INARTFULLY PERHAPS BUT  
WHAT THEY WERE SAYING THAT IS  
CLEAR ON ITS FACE, IT COULD BE  
OPEN TO INTERPRETATION AS THE  
11TH CIRCUIT SAID BUT IT IS  
CLEAR WHAT THEY ARE SAYING IS  
THIS CHILD, THIS POSTHUMOUSLY  
CONCEIVED CHILD SHALL NOT BE  
ELIGIBLE FOR A CLAIM AGAINST THE  
DECEDENT'S ESTATE UNLESS  
PROVIDED FOR IN THE WILL AND  
THAT IS THE ONLY WAY, THAT  
PROVISION IN THE WILL PROVIDING  
FOR IS THE ONLY WAY THAT A  
POSTHUMOUSLY CONCEIVED CHILD CAN  
INHERIT UNDER FLORIDA LAW.  
THAT IS THE COMMISSIONER'S  
POSITION.

WE THINK THAT IS THE WORDING OF  
THE STATUTE AND THE INTENT OF  
THE LEGISLATURE.

WE SEE THAT WHEN WE LOOK AT 106,  
BECAUSE 106 GRANTS INTESTACY  
RIGHTS BUT IT MAKES IT CLEAR  
THAT THOSE INTESTACY RIGHTS ARE  
FOR CHILD CONCEIVED BEFORE THE  
DECEDENT'S DEATH BUT BORN AFTER  
AND THAT IS TO THE EXCLUSION OF  
A POSTHUMOUSLY CONCEIVED CHILD.  
SO IF THE PANEL HAS NO FURTHER  
QUESTIONS I WILL REST ON THE  
COMMISSIONER'S BRIEF.

>> THANK YOU.

>> THANK YOU, YOUR HONOR.

IN REBUTTAL TO THAT, THE FLORIDA  
STATUTES ARE READ IN HARMONY,  
WHEN YOU COME TO THE POINT OF  
HAVING SATISFIED 742.

74, YOU LOOK AT THE STATUTES  
WITH REGARD TO TESTING.

WHAT IT SAYS IS PROPERTY NOT  
EFFECTIVELY DISPOSED OF GOES TO  
THE AIR.

WHO ARE THE HEIRS?

THEY ARE SPECIFICALLY, IN THE

FOLLOWING SECTION.

IT STATES UNDER FLORIDA LAW  
DESCENDENTS TAKE INTERSTATE.

>> THAT IS DETERMINED AT THE  
TIME OF DEATH.

IF IT WEREN'T FOR 732-106 EVEN  
SOMEONE WHO WAS CONCEIVED  
WOULDN'T INHERIT, WOULDN'T BE  
ENTITLED.

>> MY POINT IS I DON'T THINK THE  
FLORIDA LEGISLATURE INTENDED TO  
DISCRIMINATE BETWEEN WHETHER YOU  
WERE CONCEIVED BEFORE OR AFTER  
DEATH AND IF THERE ARE STATUTES  
IN PLACE IN FLORIDA LAW DEALING  
WITH INTESTACY SO THE CHILD  
COULD TAKE --

>> ONE LAST QUESTION BECAUSE  
YOUR TIME IS UP.

DO YOU HAVE ANY CASE OF THE  
PREMEDITATED CHILDREN STATUTE,  
PROVIDED FOR IN THE WILL THAT  
SUPPORTS YOUR POSITION?

>> I DO NOT.

>> THANK YOU VERY MUCH.