NEXT CASE ON THE COURT'S CALENDAR IS GAINS VERSUS -- IS GAINS VERSUS SAYNE. MR. GIBBONS.

GOOD MORNING. MAY THE PLEAS THE COURT. MY NAME IS JOHN GIBBONS, AND I REPRESENT EUGENE GAINES IN THIS PROCEEDING. I WOULD LIKE TO INTRODUCE WITH ME, HERE AT THE TABLE, TODAY, IS MR. ANDREW MOROBLY FROM TAMPA, WHO WAS TRIAL COUNSEL FOR MR. GAINES BELOW. BEFORE I GET INTO MU ARGUMENT, THERE IS ONE HOUSEKEEPING MATTERSER I WOULD -- MATTER I WOULD LIKE TO BRING TO THE COURT'S ATTENTION. THERE IS A CASE OUT OF THE FOURTH DCA, BARNETT VERSUS BARNETT, WHICH IS NOT CITED IN EITHER BRIEF, NOR HAS A NOTICE OF SUPPLEMENTAL AUTHORITY BEEN FILED BY EITHER SIDE. BUT THIS COURT HAS RECENTLY ACCEPTED JURISDICTION IN THAT CASE. AND IT, ALTHOUGH THE FACTS ARE SOMEWHAT DIFFERENT, THE ISSUEUOUS ARE SIMILAR, AND -- THE ISSUES ARE SIMILAR, AND THE FOURTH DCA, IN THAT CASE, HAS EXPRESSLY NOTED CONFLICT WITH JOHNSON V FEENEY, WHICH IS THE SAME CASE THAT THERE WAS CONFLICT JURISDICTION ON IN OUR CASE. THAT CASE WAS CITED BY THE FOURTH DCA, AFTER THE BRIEFS WERE FILED IN THIS CASE. THIS IS A DISCRETIONARY CONFLICT IN REVIEW FROM THE SECOND DISTRICT OPINION FROM BELOW. ALTHOUGH THERE ARE THREE ISSUES WHICH HAVE BEEN RAISED BY US IN THIS APPEAL, I AM GOING TO LIMIT MY ARGUMENT, HERE, TODAY, TO ONLY THE FIRST ISSUE, WHICH DEALS WITH THE FINALITY OF THE DISSOLUTION DECREE BELOW. THE OTHER TWO ISSUES WOULD BE RENDERED MOOT, IF THE COURT WERE TO FIND IN OUR FAVOR, BUT BY SO NOT ARGUING THOSE POSITIONS, WE DON'T INTEND TO ABANDON THEM BUT WOULD MERELY STAND ON OUR BRIEF ON THOSE TWO ISSUES.

BEFORE YOU GET INTO THE MERITS OF YOUR ARGUMENT, COULD YOU ADDRESS THE FACT THAT THE -- THIS ISSUE THAT YOU ARE RAISING, NOW, AND THAT THE SECOND DISTRICT ADDRESSED, THAT IS THAT THE DEATH OF MRS. GAINES, BEFORE THE MOTION FOR REHEARING, WAS FINALIZED, BASICALLY RENDERED THE DISSOLUTION ACTION MOOT, WAS NOT RAISED IN THE TRIAL COURT.

THAT ISSUE WAS NOT -- THE ISSUE OF WAIVER WAS NOT RAISED IN THE DCA BY EITHER PARTY, NOR HAS IT BEAN RAISED HERE IN BRIEFS BY EITHER PARTY, AND ALTHOUGH IT IS MENTIONED IN THE OPINION BELOW, IN PASSING, BY JUDGE ALTENBRAND, THE QUESTION OF JURISDICTION AT THE TRIAL COURT, TO PROCEED WITH THE DIVORCE, UPON THE DEATH, WOULD BE A JURISDICTIONAL QUESTION.

YOU ARE SAYING IT IS A SUBJECT THAT WOULD DIVEST THE COURT OF SUBJECT MATTER JURISDICTION. IS THAT YOUR POSITION?

THAT'S CORRECT. THAT'S CORRECT. AND THEREFORE IT IS A FUNDAMENTAL ISSUE AND THEREFORE COULD BE RAISED ON APPEAL. FOR THE FIRST TIME. AS I SAY, NEITHER SIDE HAS RAISED THAT ISSUE OR BRIEFED IT OR ARGUED IT. IT IS SIMPLY A COMMENT BY THE SECOND DCA BELOW, AND THEY DIDN'T REACH THAT ISSUE IN THEIR OPINION. THEY WENT AHEAD AND DECIDED THE CASE ON ITS MERITS.

WHAT IS WRONG WITH THE SECOND DISTRICT'S REASONING THAT THE -- FOR ALL INTENTS AND PURPOSES, FOR ALL PURPOSES, THE DISSOLUTION, THAT IS THE DISSOLUTION, THE MARRIAGE BETWEEN THE PARTIES, WAS FINALIZED BY THE ENTRY OF THE FINAL JUDGMENT. NEITHER PARTY CONTESTED THAT, AND THAT WAS NOT A POINT THAT WAS RAISED IN MR. GAINES'S APPEAL, WHICH HAD BEEN FILED PREMATURELY. WHY ISN'T THAT A DISPOSITIVE, THAT IS DISTINGUISHING

THAT FROM EARLIER CASES, WHERE IN THE 1940s, THE WHOLE DIVORCE LAW WAS DIFFERENT. THEY MADE A POINT IN THAT CASE, THE '40s CASE, THAT ON ANDEEL, THE -- THAT ON APPEAL, THE CASE COULD HAVE BEEN, ENDED UP HUSBAND AND WIFE AGAIN. WHY ISN'T THAT DISPOSITIVE?

WELL, THE PROBLEM WITH THAT IS THAT IT DOESN'T TRACK THE LAW IN THIS STATE. FROM THE EARLIEST DECISIONS IN THE DISSOLUTION AREA, IT HAS BEEN RECOGNIZED THAT A DISSOLUTION PROCEEDING IS A PURELY PERSONAL ACTION, AND THAT THE DEATH OF ONE OF THE PARTIES TERMINATES THE MARRIAGE. WHAT HAS OCCURRED IS THERE ARE BASICALLY TWO CASES, AND NOW, WITH BARNETT, ARGUABLY THREE, THAT DEAL WITH THIS PARTICULAR ISSUE, WHICH IS WHAT IS THE IMPACT OF A MOTION FOR REHEARING ON THE FINALITY OF THE DIVORCE DECREE.

WHERE THE MOTION FOR REHEARING DOES NOT GO TO THE DISSOLUTION OF THE MARRIAGE.

IT IS OUR POSITION THAT, IF YOU DON'T THAT IT IS A MISTAKE TO ADOPT A RULE THAT TURNS SIMPLY ON WHAT THE LANGUAGE MAY BE CHOSEN BY A LAWYER IN A MOTION FOR REHEARING. THERE ARE MANY MOTIONS FOR REHEARING, WHERE THE LAWYERS, AND PERHAPS THIS IS BAD LAWYERING, BUT WHERE THE LAWYERS ARE NONSPECIFIC, IN TERMS OF WHAT PARTICULAR ISSUE IS BEING CHALLENGED, AND TO ADOPT A FINALITY RULE WHICH TURNS ON SIMPLY THE LANGUAGE THAT MAY BE USED BY THE LAWYER IN THE MOTION, I THINK, IS A MISTAKE, AND I THINK THAT LITIGATORS, DIVORCE LITIGATORS IN THIS STATE DESERVE A BETTER, MORE CONCRETE, MORE EASILY APPLIED RULE THAN THAT.

WELL, WHAT, IF ANYTHING, ON JANUARY 6, IS WHEN MRS. GAINES DIED, I BELIEVE.

NO. SHE DIED, ACTUALLY, IN FEBRUARY. FEBRUARY 25.

OKAY. FEBRUARY. ON FEBRUARY, IN FEBRUARY, WHEN SHE DIED, WHAT, IF ANYTHING, COULD EITHER PARTY HAVE FILED IN THE TRIAL COURT TO CONTEST THE FACT THAT THE MARRIAGE HAD BEEN DISSOLVED?

WELL, I AM NOT SURE THAT THERE WAS ANYTHING THAT COULD HAVE BEEN FILED AT THAT POINT IN TIME. BUT THE POINT --

ASSUMING THAT SHE HAD NOT DIED, AT THAT POINT COULD EITHER PARTY HAVE FILED ANY KIND OF MOTION OR PLEADING IN THE TRIAL COURT TO CONTEST THE FACT OF THE MARRIAGE HAVING BEEN DISSOLVED?

ONLY IF THERE HAD BEEN SOME PROBLEM WITH THE JURISDICTION OF THE COURT TO PROCEED. IN OTHER WORDS, IF THERE HAD NOT BEEN SUFFICIENT EVIDENCE OF RESIDENCY OR SUFFICIENT EVIDENCE THAT THE MARRIAGE WAS IRRETRIEVABLY BROKEN, AT THE TRIAL LEVEL.

DOESN'T THAT CONDITION, OF ITSELF, SUPPORT THE SECOND DISTRICT HERE?

NO. I DON'T THINK THAT IS CORRECT AT ALL. IF YOU TAKE A LOOK, FOR INSTANCE, AT THE SAYLOR VERSUS SAYLOR AND A LINE OF CASES AFTER THAT, TUCKER VERSUS MacKENZIE, THOSE SITUATIONS INVOLVED NOT REHEARING CASES, BUT THOSE INVOLVED SITUATIONS WHERE THE TRIAL COURT HAD PROCEEDED ALL THE WAY THROUGH A TRIAL, ALL THE WAY THROUGH A FINAL HEARING, AND WHAT HAD OCCURRED WAS THAT, IN AT LEAST ONE OF THOSE CASES, IF NOT ALL OF THEM, HAD ORALLY ANNOUNCED ITS DECISION. AND THE ONLY THING THAT REMAINED TO BE DONE WAS A FINAL JUDGMENT DRAFTED AND TRIED.

BUT HERE WE HAVE THE FINAL JUDGMENT, AND WE HAVE A 30-DAY PERIOD THAT HAS PASSED, AND NO ONE HAS CONTESTED IT. CORRECT?

THAT'S CORRECT. BUT THE FINAL JUDGMENT WAS NOT FINAL. BECAUSE A MOTION FOR REHEARING HAD BEEN FILED. THERE FOR NO APPEAL COULD HAVE BEEN TAKEN AT THAT POINT IN TIME. FROM THAT.

LET'S TALK ABOUT POSSIBLE OTHER REASONS FOR REEVALUATING THAT LAW. THAT IS THE LAW THAT SAYS UNTIL IT IS FINAL, THAT IF THERE IS A DEATH, THEN THAT IS WHAT TERMINATES THE MARRIAGE, AS OPPOSED TO FINAL JUDGMENT. HOW MUCH SHOULD WE TAKE INTO CONSIDERATION THE CHANGES IN SOCIETY AND CHANGES IN FAMILY LAW, SINCE THE TAME THAT WE LAST RECOGNIZED THIS RULE OF LAW THAT YOU ARE TALKING ABOUT?

WELL, THERE HAVE BEEN SIGNIFICANT CHANGES, OBVIOUSLY O THE NO-FAULT -- OBVIOUSLY. THE NO FAULT LAW, THE FACT THAT INCIDENCE OF DIVORCE IS MUCH HIGHER IN THIS SOCIETY, NOW, THAN IT WAS AT THE TIME, FOR INSTANCE, SAYLOR WAS DECIDED. HOWEVER, THE FLORIDA LEGISLATURE HAS GONE OUT OF ITS WAY, IN THIS CURRENT DIVORCE CODE, TO ENCOURAGE RECONCILIATION, AND I THINK, AS A COURT, OR AS A JUDICIAL SYSTEM, WE WOULD WANT TO DON'T RULES THAT ENCOURAGE THAT AND NOT RULES THAT DISCOURAGE RECONCILIATION OR THAT MAKE DIVORCE AN EASIER SITUATION. IN THIS PARTICULAR TIME, I THINK THE STATISTICS ARE SOMETHING LIKE 50% OF ALL MARRIAGES END IN DIVORCE. AND THAT IS A HORRIBLE, HORRIBLE SITUATION. AND ANOTHER PROBLEM WITH THIS RULE AS ADOPTED BY THE SECOND DCA IS THAT, WHAT IT REALLY DOES IS BIFURCATE THE ISSUE OF DISSOLUTION FROM ALL OTHER ISSUES IN THE CASE, AND IT DOES IT IN EVERY CASE.

WE HAVE PROVED THAT PRACTICE, THOUGH, HAVE WE NOT, IN THE PAST? THAT IS WHERE, IF YOU COULD HAVE A PARTIAL FINAL JUDGMENT?

NO. THE CLAUGHTON VCLAUGHTON DECISION, IN THIS COURT, IN 1980, JUSTICE OVERTON'S POSITION, POINTS OUT THAT THAT PROCEDURE IS A FAVORED PROCEDURE.

BUT ALLOWABLE ONE.

BUT ALLOWABLE ONE INSERT CIRCUMSTANCES. THE BARNETT VERSUS BARNETT CASE IS ONE OF THOSE CIRCUMSTANCES. AS A MATTER OF FACT, BARNETT, WHICH YOU HAVE JUST ACCEPTED JURISDICTION ON, IS A BIFURCATION CASE.

BUT THIS ONE IS NOT BIFUR INDICATED, IS IT?

NO, IT IS NOT.

AND THE MOTION FOR REHEARING IS SCHEDULED ON A MOTION FOR REHEARING, CORRECT?

THAT'S CORRECT.

AND THAT MOTION CAN BE DECIDED AT ANY TIME, UP YOU MEAN THAT IS DECIDED, CORRECT?

THAT'S CORRECT.

TAKE IT ONE STEP FURTHER. IF WE COULD LOOK AT THE SOCIAL CONCERNS, WHY NOT JUST SAY WHEN THE COMPLAINT IS FILED THAT WE CAN TERMINATE AT THAT POINT.

EXACTLY. I MEAN, IF THE CONCERN OF THE COURT WOULD BE THESE PEOPLE REALLY WANTED TO GET DIVORCED, AND WE SHOULD ADOPT A LAW THAT OR A RECALL THAT RECOGNIZES THAT, AS YOU SAY, WHY NOT WHEN THE CASE IS FILED? OR TAKE IT TO ITS EXTREME? WHEN THEY SEPARATE? YOU KNOW, IF -- AND I DON'T BELIEVE ANYONE WOULD APPROVE THAT KIND OF RULE, BUT TAKEN TO ITS EXTREME, THAT IS THE LOGIC OF THIS. WHEREAS THE OLDER CASE LAW COMING OUT OF THIS COURT, AND THE DCA'S, IS THAT, REALLY, JUDICIAL LABOR AT THE TRIAL

LEVEL HAS TO BE OVER, BEFORE THE DIVORCE IS CONSIDERED FINAL.

BUT WOULD IT BE JUST AS LOGICAL TO SAY YOU HAD TO HAVE THE FINAL APPEAL, WOULD IT NOT?

YES, IT WOULD BE. SURE.

AND SO YOU WOULD HAVE A FINAL APPEAL FROM SOME PROPERTYISH YAW, NOT FROM WHETHER THE MARRIAGE WAS IRRETRIEVABLY BROKEN, AND THEN THAT WOULD MEAN THAT IT WOULDN'T BE FINAL. CORRECT?

THERE IS SOME LOGIC TO THAT POSITION, BUT I THINK THAT THAT --

SO IF THE PERSON GOES OUT, THEN, WHILE THE MATTER IS STRETCH HAD GONE THROUGH THE APPEAL AND CONFLICT JURISDICTION AND THOSE ISSUES, AND THE SPOUSE IS KILLED IN AN AUTOMOBILE ACCIDENT, WHEN, AFTER THE MARRIAGE IS -- HAS BEEN FOUND BY A COURT TO BE IRRETRIEVABLY BRORN -- BROKEN, THERE WOULD STILL BE A CLAIM THE WRONGFUL-DEATH ACT BY A SPOUSE UNDER THAT PARTICULAR CIRCUMSTANCE, CORRECT?

I AM NOT SURE THAT I UNDERSTAND, COMPLETELY, YOUR QUESTION, BUT IF YOU ADOPTED A RULE OF LAW WHICH PLACED THE FINALITY OF A DIVORCE DECREE LATER, THEN OBVIOUSLY THAT WOULD BE THE RESULT. I THINK, TO TAKE IT INTO THE APPEAL LEVEL WOULD BE CONTRARY TO THE PRIOR DECISIONS OF THIS COURT, WHERE IT WOULD SEEM TO TURN ON IF YOU LOOK AT THE BURKENFIELD VERSUS JACOBS CASE, WHICH SEEMED TO TURN ON THE QUESTION OF FINALITY BEING WHETHER JUDICIAL LABOR AT THE TRIAL LEVEL IS CONCLUDED, AS OPPOSED TO ON ANY APPEAL.

BUT DIDN'T THIS COURT, REALLY, IN FREDERICK, DEAL WITH THE REALITY OF THE SITUATION THAT THERE WAS A DIFFERENCE THAT THE COURT, WHEN THE COURT HAD ENTERED AN ORDER FINALLY DISSOLVING THE MARRIAGE, WAS THERE RECOGNITION THAT THE MARRIAGE WAS OVER, EVEN THOUGH THERE WAS STILL SOME LINGERING PROPERTY ISSUES?

I THINK, MAYBE, URBS MISSPOKE. -- I THINK, MAYBE, YOUR HONOR MISSPOKE. YOU ARE TALKING ABOUT, MAYBE, FERNANDEZ?

FERNANDEZ. RIGHT.

BUT THE FERNANDEZ WAS A STIPULATED BIFURCATION CASE.

BUT WHY SHOULD THE LAW BE DIFFERENT JUST FOR DIFFERENT KINTS KOOINDZ OF THINGS LIKE BIFURCATION AND NONBIFURCATION AND A POLICY CONSIDERATION. WHY SHOULD THAT BE DIFFERENT?

WHEN THE PARTIES STIPULATE, THEMSELVES, TO A PARTIAL FINAL ENTRY OF SDO. OF THE MARRIAGE, I THINK THAT IS -- OF THE DISSOLVE PRESIDENT OF THE MARRIAGE, I THINK THAT IS A -- OF THE DISSOLVE MENT OF THE MARRIAGE, I THINK THAT IS A COMPLETELY DIFFERENT ISSUE THAN THIS SITUATION.

BUT NOT ON THAT ISSUE.

NOT ON THAT ISSUE, BUT WHEN THE PARTIES HAVE BOUND THEMSELVES, BY STIPULATION, TO ACCEPT A PARTIAL FINAL JUDGMENT, WHICH IS WHAT OCCURRED IN FERNANDEZ, THAT IS COMPLETELY DIFFERENT, YOU KNOW, SITUATION.

HOW IS IT COMPLETELY DIFFERENT? IN OTHER WORDS IF WE HAVE, FOR INSTANCE, A COMPLAINT

OR A PETITION FOR DISSOLUTION. THE OTHER SIDE ADMITS THAT THE MARRIAGE IS IRRETRIEVABLY BROKEN. THERE IS NO CONTEST THAT THE FINAL HEARING THAT THE PARTIES AGREE AND, IN ESSENCE, STIPULATE, BY DEGREEING, THAT THERE ISN'T ANY ISSUE WITH REFERENCE TO THE DISSOLUTION OF THE MARRIAGE, AND THEN A FINAL JUDGMENT IS ENTERED -- SBERDZ THERE IS COURT APPROVAL OF THAT OR COURT SANCTION TO THAT" HOW IS THAT DIFFERENT FROM A STIPULATION?

IF YOU LOOK AT THE CASE LAW, LET'S SAY THAT DEATH HAD OCCURRED PRIOR TO ANY ENTRY OF A FINAL JUDGMENT OR ANY ENTRY OF ANY DECREE. YOU STILL HAVE THE SAME SITUATION, IN MOST CASES, WHERE THE PETITION IS FILED, THE ALLEGATION OF IRRETRIEVABLY BROKEN MARRIAGE IS MADE. IT IS ADMITTED TO. A COUNTER-PETITION IS FILED, MAKING IT THE SAME --

BUT THE PETITION IS BEFORE ANY JUDGMENT IS RENDERED AND ALL. THAT IS A TOTALLY DIFFERENT SITUATION, UNDER ANY OF THESE CIRCUMSTANCES.

BUT THE PARTIES HAVE STILL STIPULATED, THROUGH THEIR PLEADINGS, THAT THE MARRIAGE IS IRRETRIEVABLY BROKEN.

BUT NOBODY IS ADVANCING THE PROPOSITION THAT THERE SHOULD BE A DISSOLUTION, WHEN, IN FACT, THERE IS NO DISSOLUTION BY A JUDGMENT.

CORRECT.

IS ANYBODY ADVANCING THAT PROPOSITION?

NO ONE HAS ADVANCED THAT, BECAUSE THE CASE LAW OF THIS STATE MAKES THAT PRETTY CLEAR.

BUT HOW DO YOU MAKE A VALID DISTINCTION, WHERE YOU HAVE THIS SERIES OF NO CONTEST, INCLUDING AT A FINAL HEARING, WHERE THERE IS NO CONTEST, AND AN UNREBUTTED SHOWING IS MADE, AND A FINAL JUDGMENT IS ENTERED ON THAT, AND THEN WE GO EVEN FURTHER, AND THAT IS THAT THERE IS AN OPPORTUNITY, NOW, FOR A REHEARING OF THAT MATTER, AND NOW WE HAVE IT SET OUT CLEARLY THAT THERE IS NO CONTEST AS TO THAT ISSUE ABOUT THE DISSOLUTION. HOW DO YOU VALIDLY DISTINGUISH THAT BETWEEN A -- THAT SITUATION AND AN ACTUAL FORMAL STIPULATION?

WELL, I THINK IT IS VERY EASY. THE FACT THAT THE DIVORCE DECREE, ITSELF, NOT YET FINALIZED, AND AS JUSTICE LEWIS POINTED OUT, AT ANY POINT UNDER THE RULES OF CIVIL PROCEDURE, WHATEVER IS IN THAT MOTION FOR REHEARING, CAN BE AMENDED. THERE CAN BE A CHALLENGE TO THE --

FOR ALL PRACTICAL PURPOSES, WHY SHOULDN'T THIS BE TREATED AS A BIFURCATION? THE PARTIES REALLY TREATED IT THAT WAY. DID THEY NOT?

WELL, I THINK MANY TIMES THAT THE PARTIES DO, BUT THE QUESTION IS DOES THIS COURT WANT TO ADOPT A RULE OF LAW FOR FINALITY PURPOSES THAT HAS BIFURCATION AT ITS CORE, WHEN THIS COURT HAS ALREADY RULED THAT THAT IS A PROCEDURE THAT IS DISFAVORED.

AND WHAT HARM WOULD BE DONE, FOR INSTANCE, IN THIS CASE? THERE IS NO, EVEN, AN ARGUMENT THAT THERE ARE ANY EQUITIES DISTURBED BY RECOGNIZING THE FINAL JUDGMENT, AS FAR AS DISSOLUTION. IS THERE?

NO. THERE HASN'T BEEN, AND I AM UNAWARE THAT THERE ARE ANY, QUITE FRANKLY. I AM NOT FAMILIAR WITH WHAT THE PROBATE ASSETS MAY BE IN THIS CASE OR NOT, BECAUSE I HAVE --.

I DON'T WANT TO INTRUDE ON YOUR RESERVED TIME.

YES. IF YOU WANT TO RESERVE ANY TIME.

I WILL RESERVE THE REST OF MY TIME. THANK YOU.

COUNSEL.

GOOD MORNING. MY NAME IS THEODORE J RERB HE WILL, AND I AM HERE ON -- RECHEL, AND I AM HERE ON BEHALF OF THE ESTATE OF CLAUDELL GAINES. I AM HERE ON BEHALF OF THE TRIAL COURT LEVEL.

WHEN THE MOTION FOR REHEARING WAS DENIED, COULD MR. GAINES OR MRS. GAINES HAVE MARRIED SOMEONE ELSE?

AT THE TIME OF THE ENTRY OF THE FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE, SINCE THE MARRIAGE WAS NOT CONTESTED FROM THE PLEADING STAGE TO THE TRIAL COURT STAGE, AND THEN THERE WAS AN ENTRY OF FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE, IT IS OUR POSITION, AT THAT POINT IN TIME, THAT MRS. GAINES OR MR. GAINES COULD HAVE GOTTEN REMARRIED.

AND IF THEY WANTED TO RECONCILE, THEY WOULD HAVE HAD TO REMARY?

THAT IS CORRECT.

AND LET ME ASK YOU ABOUT THE EQUITIES, BECAUSE HERE WE HAVE A SITUATION WHERE MR. GAINES FILED FOR THE DIVORCE, ALTHOUGH WE HAVE BEEN TOLD THAT WE DON'T KNOW WHO IS GOING TO DO BETTER. I THINK WE CAN SURMISE HOW THIS MIGHT TURN OUT. BUT LET'S TAKE A SITUATION IDENTICAL CASE, BUT IN THIS SITUATION MR. GAINES HAS DIED AFTER THE FINAL JUDGMENT WAS ENTERED BUT A MOTION FOR REHEARING WAS PENDING, AND MRS. GAINES, UNDER THE TERMS OF THE FINAL JUDGMENT, YOU KNOW, WAS GOING TO GET, BASICALLY, NO ALIMONY AND MINIMAL PROPERTY, BUT WITH MR. GAINES' DEATH, SHE WOULD, BECAUSE HE DIDN'T CHANGE HIS WILL, WOULD HAVE ENDED UP BEING A MULTIMILLIONAIRE. IF WE -- YOU REALLY WOULD BE URGING, HERE, IS THE BRIGHT LINE RULE BEING THAT, IF THE FINAL JUDGMENT HAS BEEN ENTERED, AND THERE IS NO CONTEST AS TO THE DISSOLUTION, WHICH IN MOST CASES THERE REALLY CAN'T BE, UNDER OUR SYSTEM OF NO FAULT DIVORCE, THAT THAT ENDS IT, AND THAT THE COLLATERAL PROPERTY MATTERS HAVE TO BE LITIGATED AS IF THE PERSON HAD BEEN DIVORCED. DO YOU AGREE WITH THAT, THAT WE CAN'T LOOK AT THE EQUITIES, EITHER WAY, THEN?

I WOULD AGREE TO THAT EFFECT, YES. ABSOLUTELY. AND YOU ARE RIGHT. I AM REQUESTING THE BRIGHT LINE RULE HERE. I THINK THAT THE COURT HAS FACED, AND THE PRACTITIONERS OF FAMILY LAW, ARE FACED WITH A WHOLE SPECTRUM OF THESE CASES WHERE THERE IS DEATH, AND THEY START FROM ONE END, WHEN PEOPLE DIE DURING THE PLEADING STAGE, AND THEY GO ALL THE WAY THROUGH TO THE OTHER END, I THINK, PRICE VERSUS PRICE IS THE ONE THAT IS OUT THERE, WHERE THERE IS AN APPEAL.

SO WHY WOULDN'T THE BETTER BRIGHT LINE RULE BE TO MAKE IT THE SAME RULE AS FINALITY, FOR PURPOSES OF APPEAL, BECAUSE ONCE AGAIN, WE GOT SOME THAT ARE STIPULATED, SOME THAT ARE BIFURCATED, SOME THAT ARE NOT CONTESTED, AND WE SEEM TO BE PUTTING EACH OF THESE INTO A LITTLE PLACE, BUT WHY ISN'T THE BETTER RULE JUST THAT FINALITY, IN THIS STATE, WILL BE WHEN ALL MOTIONS FOR REHEARING ARE DENIED?

I THINK IT IS SIMPLER AND CLEARER TO THE CITIZENS OF THE STATE TO UNDERSTAND AND FOR THE PRACTITIONERS TO EXPLAIN TO THEM, THAT, WHEN THE TRIAL COURT SIGNS A FINAL

JUDGMENT OF DISSOLUTION OF MARRIAGE, THAT ACTUALLY SAYS THE MARRIAGE IS IRRETRIEVABLY BROKEN AND THE BONDS AND MATRIMONY ARE DISSOLVED, THAT AT THAT POINT IN TIME, YOUR MARRIAGE IS NOW DISSOLVED AS WELL, AND YOU CAN RELY ON THAT WRITTEN FINAL JUDGMENT. I THINK, TO PROPOSE A RULE THAT WOULD SAY SOMETHING TO THE EFFECT THAT WE NEED TO WAIT UNTIL ALL JUDICIAL LABOR AT THE TRIAL COURT LEVEL IS FINISHED, INCLUDING ALL OF THE COLLATERAL ISSUES REGARDING PROPERTY AND ALIMONY AND SUPPORT, NEED TO BE RESOLVED.

SO YOU WOULD BE, REALLY, ADVOCATING, THEN, REALLY, THAT WHAT WE SHOULD BE HAVING IN THIS STATE, SINCE THERE REALLY ISN'T EVER A CONTEST AS TO THE DISSOLUTION, THAT WE SHOULD HAVE A BIFURCATED PROCEDURE AND, BECAUSE THE PROPERTY MATTERS COULD TAKE, YOU KNOW, THEY COULD TAKE MONTHS AND YEARS, BUT THE DISSOLUTION IS, REALLY, A NO-BRAINER.

WELL, I DON'T AGREE THAT EACH CASE SHOULD BE CONSIDERED BIFURCATED. I THINK THAT THERE IS A DUAL NATURE OF EVERY DIVORCE DECREE. THE BONDS OF MATRIMONY ARE DISSOLVED, AND THEN ALL OF THE NECESSARY ISSUES THAT NEED TO BE LITIGATED FLOW THERE FROM. YOU HAVE TO HAVE A DISSOLUTION OF MARRIAGE TO REACH THOSE OTHER ISSUES, BUT BECAUSE WE HAVE THIS NO FAULT SYSTEM, MOST CASES ARE NOT CONTESTED AS TO THE MARITAL STATUS ISSUE.

WHAT IS THE BRIGHT LINE RULE, THEN, THAT YOU ARE ADVOCATING? DEFINE THE BRIGHT LINE.

THE BRIGHT LINE RULE THAT I AM ADVOCATING IS, IF YOU HAVE A SITUATION WHERE THE TRIAL COURT LEVEL, NO PARTY CONTESTS THE DISSOLUTION OF MARRIAGE, THAT IS THE PETITIONER PLEADS THAT THE MARRIAGE IS IRRETRIEVABLY BROKEN. THE RESPONDENT AGREES THAT IT IS IRRETRIEVABLY BROKEN. WE GO TO TRIAL. THE PARTIES DON'T CHANGE THEIR MIND. THEY DON'T TRY TO RECONCILE. ONE OF THE PARTIES TESTIFIES THAT THE MARBLING IS -- THAT THE MARRIAGE IS IRRETRIEVABLY BROKEN AND THE OTHER PARTY AGREES. THE COURT HAS THE JURISDICTION AND MAKES THE JURISDICTIONAL FINDINGS, AND THE RESIDENCY REQUIREMENTS ARE FOUND AND IN COMPLIANCE WITH. A FINAL JUDGMENT IS PREPARED, WRITTEN, AND THE JUDGE PUTS PEN TO PAPER AND SIGNS THE FINAL JUDGMENT. THAT IS THE POINT WHERE THE JUDICIAL LABOR, AS TO THE ISSUE OF THE DISSOLUTION OF MARRIAGE, THE MARITAL STATUS, AT THAT POINT, JUDICIAL LABOR IS TERMINATED TO THAT ISSUE.

BUT THE PART OF THE BRIGHT LINE THAT YOU DEFINE IS YOU HAVE TO GO BACK AND LOOK AT THE PLEADINGS TO SEE WHETHER OR NOT THE DISSOLUTION WAS CONTESTED, AND YOU HAVE TO LOOK AT THE TRIAL AND SEE WHETHER IT WAS CONTESTED THERE?

WELL, I AM SAYING THAT, IF YOU HAVE THAT SITUATION, THEN THE MARRIAGE IS DISSOLVED. NOW, IF THERE IS A QUESTION AS TO THE RESIDENCY REQUIREMENTS, THEN THERE MAY BE SOME ROOM FOR FILING MOTIONS FOR REHEARING OR FOR FILING AN APPEAL ON THE ACTUAL ISSUE OF DISSOLUTION OF MARRIAGE.

HOW DOES THIS GRANT ANYMORE STABILITY THAN THE OTHER PROCESS? WAITING UNTIL THE JUDICIAL LABOR, IF WE HAVE TO GO MAKE ALL OF THESE INQUIRIES?

WELL, I THINK THAT THE AVERAGE CITIZEN IS NOT GOING TO BE ABLE TO UNDERSTAND WHEN AN ISSUE IS COLLATERAL TO THE DISSOLUTION OF MARRIAGE AND WHEN A COLLATERAL ISSUE AND JUDICIAL LABOR HAS TERMINATED.

WELL, AS IN MOST OF THOSE CASES, ISN'T IT THAT THEY DON'T UNDERSTAND, AND THAT IS PROBABLY WHY THEY HAVE AN ATTORNEY TO HELP THEM UNDERSTAND.

ABSOLUTELY.

AND THE ATTORNEY CAN EXPLAIN THAT, CAN HE OR SHE NOT?

YES. BUT I BELIEVE THAT THE CITIZENS OF THE STATE OF FLORIDA HAVE THE RIGHT TO HAVE A CLEAR AND SIMPLE BRIGHT LINE RULE, AND I THINK THAT THIS IS A MUCH --

SHOULD WE CONFORM OUR LAW TO THE EXPECTATIONS OF WHAT -- THERE IS NOTHING IN THE RECORD, HERE, THAT INDICATES WHAT THE CITIZENS OF THE STATE WOULD EXPECT.

THAT IS ABSOLUTELY TRUE. I THINK, TO SOME EXTENT, THOUGH, THE COURT SHOULD TAKE THAT INTO CONSIDERATION. YES, I DO.

HOW CLEAR, THOUGH, IS THIS BRIGHT LINE THAT YOU HAVE DESCRIBED TO US? IF YOU HAVE TO LOOK AT THE PLEADING, AND YOU HAVE TO LOOK AT WHAT WENT ON IN THE FINAL HEARING, THAT IS NOT VERY BRIGHT LINE, IS IT?

I THINK IT CAN BE VERY CLEAR. THE PARTIES ARE GOING TO KNOW WHETHER ONE PARTY IS CONTESTING THE ISSUE OF THE DISSOLUTION OF MARRIAGE OR NOT.

SO YOUR BRIGHT LINE WOULD BE, IF THERE IS ANY CONTEST AT ALL ON THE DISSOLUTION, THAT THE FINAL JUDGMENT WOULD NOT BE FINAL?

IF THERE IS A MOTION FOR REHEARING THAT, IS, THEN, FILED AFTER THE WRITTEN FINAL JUDGMENT IS ENTERED, AND THAT MOTION FOR REHEARING DEALS WITH THE ISSUE OF MARITAL STATUS.

SO, NOW, PART OF YOUR BRIGHT LINE IS WE HAVE TO LOOK AT THE MOTION FOR REHEARING. IS THAT RIGHT?

IF YOU HAVE A SITUATION WHERE THE MARRIAGE WAS CONTESTED AT THE TRIAL COURT LEVEL AND THE MOTION FOR REHEARING ADDRESSES THE ISSUE ISSUEUOUS REGARDING THE MARITAL STATUS, AND I WOULD SUBMIT TO THE COURT --

DO YOU HAVE TO FILE A MOTION FOR REHEARING, IN ORDER TO ARGUE AN ISSUE ON APPEAL?

NO. ABSOLUTELY NOT.

SO LET'S SAY NO ISSUE WAS RAISED IN A MOTION FOR REHEARING. BUT ON APPEAL, THERE WAS AN ISSUE RAISED, SO NOW YOU HAVE TO WAIT AND LOOK AT THE APPEAL?

WELL, ABSOLUTELY NOT. I AM SAYING THAT, IF THE TEN-DAYTIME PERIOD FOR THE TIME TO FILE YOUR MOTION FOR REHEARING HAS EXPIRED, WHEN THE CASE IS CONTESTED, AS FAR AS THE DISSOLUTION OF MARRIAGE, THEN, AT THAT POINT IN TIME, THE FINAL JUDGMENT BECOMING FINAL AND THE MARRIAGE DISSOLVED.

BUT YOU SAID THAT YOU DON'T HAVE TO FILE A MOTION FOR REHEARING. YOU CAN STILL RAISE AN ISSUE ON APPEAL.

YOU CAN RAISE THE ISSUE ON APPEAL.

I AGREE.

I DON'T THINK THAT ANYONE HERE IS CONTENDING THAT THE PARTIES SHOULD BE FORCED TO REMAIN MARRIED UNTIL THE END OF THE APPELLATE PROCESS. AND SO I AM NOT PROPOSING SOMETHING THAT FAR DOWN THE SPECTRUM THAT WE HAVE IN THESE DEATH CASES. I THINK THAT IS ABSOLUTELY --

GOING BACK TO PUBLIC EXPECTATIONS, CAN YOU TELL ME WHAT THE INTERNAL REVENUE SERVICE POSITION IS ON WHEN YOU CAN NO LONGER FILE A JOINT RETURN?

AS TO --.

IS IT FINAL AT THE TIME OF THE --

I CANNOT TELL YOU THAT WITH CERTAINTY. I AM SORRY.

JUSTICE QUINCE, YOU HAD A QUESTION.

THERE IS A CHANCE TO CLARIFY THIS ISSUE, AND I THINK THAT, TO SOME EXTENT, IT ALREADY HAS BEEN CLARIFIED, IN THE BURKENFELDT DECISION. IT WAS BACK IN 1955. IT WAS A FLORIDA SUPREME COURT CASE, AND IN THAT SITUATION, WE HAD THE PARTIES, NEITHER ONE CONTESTED THE DISSOLUTION OF MARRIAGE IN THEIR PLEADINGS. THEY, BOTH, AGREED THAT THE MARRIAGE WAS BROKEN. THEY, BOTH, REQUESTED THE DISSOLUTION OF MARRIAGE. THE TRIAL COURT HELD A TRIAL. ENTERED A FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE. AND BEFORE THAT FINAL JUDGMENT COULD ACTUALLY BE RECORDED, THE HUSBAND ACTUALLY EXPIRED, RIGHT THEN AND THERE IN THE JUDGE'S CHAMBERS, IF YOU CAN IMAGINE THAT. THE TRIAL COURT, THEN, ON ITS OWN MOTION, VACATED HIS FINAL JUDGMENT, BECAUSE THE FINAL JUDGMENT HAD NOT BEEN RECORDED. AND THE SUPREME COURT TOOK A LOOK AT THIS SITUATION AND DECIDED THAT, ALTHOUGH THE FINAL JUDGMENT WAS NOT IN SUCH. FINAL. AS TO BE THE BASIS FOR ADDITIONAL PROCESS OR PROCEDURE, BECAUSE IT HAD NOT YET BEEN RECORDED, NEVERTHELESS, THE FINAL JUDGMENT WAS STILL GOOD FOR THE PURPOSE OF DISSOLVING THE MARRIAGE. AND EVEN THOUGH THE TEN DAYS HAD NOT YET EXPIRED FOR THE FILING OF THE MOTION FOR THE REHEARING, AND EVEN THOUGH THE 30 DAYS HAD NOT EXPIRED FOR FILING AN APPEAL, THE SUPREME COURT FOUND THAT THE WRITTEN FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE WAS SUFFICIENT TO DISSOLVE THE BOUNDS OF MATRIMONY, AND SO WE, ALREADY, HAVE A CASE THAT IS A LITTLE FARTHER BACK IN THE SPECTRUM, IN THE PROCESS, WHERE WE HAVE A PARTY THAT DIES, FARTHER BACK FROM WHERE WE ARE HERE TODAY. WE HAVE HAD A RECORDED FINAL JUDGMENT HERE. WE HAVE HAD A FINAL JUDGMENT THAT, IT WAS RECORDED. IT COULD HAVE SERVED AS THE BASIS FOR ADDITIONAL PROCESS. IT WAS NOT YET IN FINAL APPELLATE. HOWEVER. JOHNSON VERSUS FEENEY IS A CASE THAT THE PETITIONER RELIES ON, AND IT IS, REALLY, THE ONLY CASE THAT HE RELIES ON OUT THERE. IT IS THE ONE CASE, SINCE BURKENFELDT, THAT HAS DESCRIBED A SITUATION WHERE WE SHOULD APPLY THE RULES OF APPELLATE PROCEDURE IN DETERMINING THE FINALITY OF A FINAL JUDGMENT.

OF COURSE IN JOHNSON, WE REALLY DON'T KNOW, DO WE, WHAT WAS IN THE MOTION FOR REHEARING. AND THEY COULD HAVE BEEN CONTESTING THE DISSOLUTION IN THAT CASE.

THAT'S CORRECT. JOHNSON DOES NOT EVEN RECOGNIZE THAT PRINCIPLE OF FLORIDA LAW THAT GOES BACK TO THE CASES FROM THE '30s AND '50s AND IS, ALSO, RECOGNIZED BY SOME OF THE CASES IN THE '60s, BAGUETTE AND BECKER, AND, ALSO, SOME OF THE CASES FROM THE SECOND, FOURTH AND FIFTH DCA'S. THEY TALK ABOUT THE SUBJECT MATTER OF THE MOTION FOR REHEARING. WHAT IS IT, WHAT MOTION FOR REHEARING COULD POSSIBLY CAUSE THE COURT TO VACATE A FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE THAT DOESN'T ADDRESS THE MARITAL STATUS, ITSELF? THE MOTION THAT I FILED ON BEHALF OF MY CLIENT HAD TO DO WITH THE COLLATERAL ISSUES OF PROPERTY DISTRIBUTION.

LET ME ASK YOU THIS: IF WE ARE GOING TO DON'T THIS KIND OF RULE, THEN WOULDN'T WE BE LETTER OFF TELLING THE BENCH AND BAR THAT THERE -- EVEN IF IT IS NOT BIFURCATED, AS FAR AS THE TWO DIFFERENT TIMES, THAT THERE SHOULD BE TWO SEPARATE FINAL JUDGMENTS ENTERED? ONE THAT IS THE FINAL JUDGMENT OF DISSOLUTION AND THE OTHER THAT DEALS WITH THE PROPERTY AND OTHER MATTERS. BECAUSE OTHERWISE, WE ARE GOING TO BE PLAYING

GUESSING GAMES EACH AND EVERY TIME, THAT YOU KNOW, WHERE -- WHERE IT IS A STIPULATION OR IT IS NOT CONTESTED, AND I DON'T KNOW HOW THAT HELPS THE PUBLIC, IN TERMS OF THEIR EXPECTATIONS.

WELL, THE BIFURCATION PROCEDURE, IN FERNANDEZ, IS EXPRESSLY CONDONED, BUT IT IS ONLY CON DOBD IN -- CONDONED IN EXCEPTIONAL CIRCUMSTANCES, AND IN THE BARNETT CASE, WHICH HAS JUST COME DOWN, WE HAVE AN EXCEPTIONAL CIRCUMSTANCE, AND I BELIEVE WE, ALSO, HAVE AN EXCEPTIONAL CIRCUMSTANCE HERE, WHERE ONE OF THE PARTIES FINLEDZ OUT THAT THEY HAVE A TERM NIL NAL ILLNESS -- AND FINDS OUT THAT THEY HAVE A TERM NIL ILLNESS AND HAS A TERM NIL ILLNESS, AND THAT IS THE BIFURCATION THAT IS PASSED UP.

YOU SAY THERE WAS A TERMINAL ILLNESS THIS CASE?

MY CLIENT HAS PASSED AWAY.

BUT THERE WASN'T ANY MANEUVERING THAT WAS DONE, IN TERMS OF RECOGNITION PROCEEDINGS, AS THERE WAS IN FERNANDEZ, IS THAT RIGHT?

SHE DIDN'T CONTACT ME REGARDING THE FACT THAT SHE WAS TERMINALLY ILL, UNTIL AFTER THE FINAL JUDGMENT HAD BEEN FILED AND UNTIL AFTER I HAD FILED MY MOTION FOR REHEARING, AND IN FACT, THE TRIAL COURT HAD GRANTED THE ACTUAL HEARING ON THE REHEARING. THAT IS WHEN WE FOUND OUT, AND SHE VERY, VERY QUICKLY DESCENDED AT THAT POINT IN TIME.

BUT YOUR BRIGHT LINE WOULDN'T, AGAIN, BECAUSE I THINK YOU ANSWERED THIS, BUT I WANT TO MAKE SURE, WOULD NOT LOOK TO THE EQUITIES OF THE SITUATION AND TO SEE WHETHER YOUR CLIENT WAS GOING TO GAIN BY WHAT WAS -- WHETHER THERE WAS GOING TO BE A DISSOLUTION OR NOT. IT WOULD JUST BE SORT OF A SEMIBRIGHT LINE.

WELL, SINCE I KNEW THAT THE MARRIAGE HAD NEVER BEEN CONTESTED AT THE TRIAL COURT LEVEL, AND BECAUSE WE HAD A WRITTEN FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE, THERE WOULDN'T BE ANY QUESTION AS TO WHETHER OR NOT ANY MANEUVERING WOULD NEED TO BE DONE, AND THERE WOULDN'T BE ANY TEMPTTATION BY THE HUSBAND TO FILE A MOTION FOR REHEARING OR DO ANYTHING ELSE TO TRY TO CONTINUE TO BREATHE LIFE INTO THIS MARRIAGE THAT HAD ALREADY BEEN BROKEN. SO I HOPE THAT ANSWERS YOUR QUESTION. I THINK THAT IT WOULD HAVE ALLEVIATED THE SITUATION THAT I HAD TO FACE, AND THAT WAS I HAD A PROBLEM WITH THE I CAN EQUITABLE DISTRIBUTION. -- WITH THE I HAD A PROBLEM WITH THE EQUITABLE DISTRIBUTION. I NEEDED TO FILE A MOTION FOR REHEARING, AND AT THE TIME THAT I FOUND OUT THAT MRS. GAINES WAS GOING TO PASS AWAY IN A RELATIVELY SHORT PERIOD OF TIME AND WAS FACED WITH THE SITUATION OF LOOKING AT REOPENAL, AND WHETHER THIS COURT WOULD LOOK AT THIS ONE ISSUE, WITHOUT REGARD TO WHETHER THE DISSOLUTION OF MARRIAGE WAS GOING TO BE OVERTURNED AND CONTINUE WITH MY MOTION FOR REHEARING HEARD, OR ON THE OTHER HAND SIMPLY WITHDRAW MY MOTION FOR REHEARING, SO THAT THE MARRIAGE BECAME TERMINATED AT THAT POINT IN TIME, BECAUSE THERE WAS NO PENDING MOTION FOR REHEARING, AND FORGET ABOUT THE FACT THAT THERE WAS AN ERROR IN THE TRIAL COURT REGARDING THE EQUITABLE DISTRIBUTION. IT WAS A DECISION THAT WAS VERY DIFFICULT TO MAKE, AND I THINK THAT THIS BRIGHT LINE RULE WOULD ALLEVIATE THAT PROBLEM FOR PRACTITIONERS DOWN THE ROAD WHO FACE THE SAME SITUATION. THERE IS, ALSO, SOMETHING THAT I THINK THAT THE COURT SHOULD CONSIDER. THE BARNETT CASE, AND I BELIEVE, WHEN THEY PRESENT THEIR ARGUMENT, THEY WILL DISCUSS THIS FURTHER, BUT BARNETT IS A CASE WHERE THERE WAS A BAY FUR INDICATION, BECAUSE THERE WAS A TERMINAL ILLNESS, AND THAT WAS NOT A STIPULATED BIFURCATION. THE TRIAL COURT, NEVERTHELESS, FOUND THAT THIS WAS EXTRAORDINARY CIRCUMSTANCE, AND BIFURCATION WAS APPROPRIATE, AND THE COURT BIFURCATED AND ENTERED A FINAL JUDGMENT, RESERVING

ON PROPERTY ISSUES. THEN WE HAVE THE LEGAL MANEUVERING THAT I HAVE ALREADY EXPRESSED CONCERN ABOUT IN MY BRIEF, IN THAT THE SURVIVING PARTY FILED A MOTION FOR REHEARING.

LET ME ASK YOU SORT OF AN ETHICAL QUESTION. I DON'T KNOW IF SOME MORAL QUESTIONS, IT IS AN ETHICAL QUESTION. WHAT IF, AFTER THE FINAL JUDGMENT WAS ENTERED, YOU FOUND OUT YOUR CLIENT WAS TERMINALLY ILL, BUT, AGAIN, THIS WAS A SITUATION WHERE SHE WOULD HAVE BENEFITED FROM REMAINING MARRIED, AND YOU, THERE AFTER, FILED YOUR MOTION FOR REHEARING, AND YOU INCLUDED, IN IT, THAT CONTEST OF THE UNDERLYING DISSOLUTION, UNDER THE RULE THAT YOU ARE ESPOUSING, THAT WOULD, THEN, KEEP THAT ISSUE GOING UNTIL THAT MOTION FOR REHEARING WAS FINAL, AND, AGAIN, I GUESS I AM STARTING TO THINK THAT, ISN'T IT -- THIS IS WHY IT PROBABLY SHALL BE THAT IT IS AFTER ALL MOTIONS FOR REHEARING ARE DISPOSED OF AND THAT IS THE RULE, ONCE AND FOR ALL, AND NO SHADES OF GRAY?

WELL, ACTUALLY IN THAT CIRCUMSTANCE, IF I KNEW THAT MY CLIENT WAS TERMINALLY ILL AND SHE STOOD TO GAIN UNDER MY RULE AND, AGAIN, I AM TRYING TO INCORPORATE PRINCIPLES OF FLORIDA LAW THAT HAVE LONG BEEN RECOGNIZED, IF YOU NEVER CONTESTED THE DISSOLUTION OF MARRIAGE AT THE TRIAL COURT LEVEL, WHY ARE YOU FILING A MOTION? WHY ARE YOU FILE AGO MOTION TO CONTEST THAT PARTICULARISH YAW NOW? AND -- THAT PARTICULAR ISSUE NOW? AND SO I FEEL, ETHICALLY, THAT I WOULD BE PRECLUDED FROM FILING THAT MOTION. I WOULD NOT FILE THAT MOTION. I WOULD EXPLAIN TO MY CLIENT THERE IS A WRITTEN FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE, AND IT IS FINAL, FOR PURPOSES OF DISSOLVING THE BOUNDS OF MARRIAGE. IF YOU TOLD ME THAT YOU STILL LOVE YOUR HUSBAND AND THAT YOUR MARRIAGE WAS NOT IRRETRIEVABLY BROKEN, FROM THE BEGINNING, OR THAT YOU TOLD ME HALFWAY THROUGH AND I AMENDED MY PLEADINGS, AND YOU WANTED TO RECONCILE, AND I FILED A MOTION FOR THE THREE-MONTH STAY THAT IS ALLOW BY THE STATUTE, I COULD, THEN, IN GOOD FAITH, FILE THAT MOTION, BUT IF YOU HAVE NEVER CONTESTED THAT AND YOU WENT TO TRIAL, YOU OBVIOUSLY WERE CONVINCED THAT THE MARRIAGE WAS IRRETRIEVABLY BROKEN ON THE DAY OF TRIAL. I DON'T CARE IF IT IS THE DAY BEFORE TRIAL, AND THE CLIENT SAYS I WANT TO RECONCILE, YOU BRING THAT TO THE ATTENTION OF THE COURT. BUT WHEN THEY HAVE TESTIFIED THAT THE MARRIAGE IS IRRETRIEVABLY BROKEN AND THE JUDGE HAS SIGNED THAT ORDER, HOW CAN YOU, IN GOOD FAITH, FILE THAT MOTION FOR REHEARING? I SEE THAT MY TIME IS OVER. I THANK YOU FOR YOUR TIME TODAY.

THANK YOU. REBUTTAL, MR. GIBBONS?

YES. JUST VERY BRIEFLY. THE -- I WANTED TO POINT OUT TO THE COURT THE BURKENFELDT DECISION, IF THE COURT TAKES A LOOK AT THAT CASE, CLEARLY THE PIVOTAL POINT IN THAT CASE IS THAT JUDICIAL LABOR HAS ENDED. HAD ENDED, AND IT IS STATED SEVERAL TIMES IN THE OPINION.

WHAT ARE THE FACTS OF THAT CASE?

WHAT HAPPENED, IN BURKENFELD. IT IS THERE WAS A FINAL HEARING HELD IN FRONT OF A CHANCELLOR WHO, AT THAT POINT IN TIME, WAS FUNCTIONING AS THE JUDGE IN DISSOLUTION CASES, AND A FINAL JUDGMENT WAS SIGNED BY THE CHANCELLOR. AND IT WAS SENT DOWN TO THE CLERK'S OFFICE FOR RECORDING. AND THE HUSBAND WAITED IN THE CHANCE ALREADY'S CHAMBERS FOR THAT TO COME BACK FROM RECORDING, AND WHILE HE WAS WAITING, HE WAS STRICKEN AND DIED. WITHIN, LITERALLY, MINUTES OF THE DECREE BEING ENTERED, AND WHAT THIS COURT HELD IN BURKENFELD. IT WAS THAT, THE RECORDING OF THE JUDGMENT BY THE CLERK WAS SIMPLY AN ADD MIGHT NOT STEERL ACT AND -- AN ADD MIGHT NOT SISTERIAL ACT AND THAT ALL OF THE -- AN ADMINISTERIAL ACT, AND THAT THE SIGNING OF THE DECREE WASN'T AFFECTED.

THE TIME PERIOD, WAS IT HELD THAT THE FILING FOR MOTION OF REHEARING DID NOT NEED TO PASS BEFORE IT BECAME FINAL?

NO. THERE WAS NO ISSUE OF REHEARING IN THAT CASE AT ALL.

I REALIZE THAT THERE IS NO ISSUE OF REHEARING, BUT THE RULE OF LAW THAT YOU ADVOCATE WOULD REQUIRE THE PASSAGE OF THE TIME FOR REHEARING, WOULD IT NOT, BEFORE A JUDGMENT COULD BE FINAL?

WHAT IT REQUIRES WOULD BE THAT ALL JUDICIAL LABOR AT THE TRIAL LEVEL HAVE ENDED. IN -- IF A REHEARING MOTION WERE FILED, THEN IT WOULD DELAY THE EFFECTIVENESS --

SO THERE WOULD BE NO REQUIREMENT OF WAITING UNTIL THAT TIME EXPIRED?

WELL, IF THE TIME STILL IS THERE.

IN OTHER WORDS, WHAT IS YOUR BRIGHT LINE? THAT IS HOW OLD YOU DEFINE WHEN THE -- WHEN A JUDGMENT WOULD HAVE THE EFFECT OF DISSOLVING THE MARRIAGE?

WHEN THE TIME HAS PASSED AND ALL JUDICIAL LABOR HAS ENDED.

WHEN WHAT TIME HAS PASSED?

YOU ARE ASKING ABOUT THE REHEARING? MY BRIGHT LINE --

I AM JUST ASKING YOU --

MY BRIGHT LINE APPROACH WOULD BE THAT THE DECREE WOULD NOT BE FINAL, AS, YOU KNOW, ANY OPINION IN THIS COURT SAYS, WHEN IT COMES OUT. IT IS NOT FINAL UNTIL THE TIME PASSES FOR REHEARING TO BE FILED.

SO WE WOULD HAVE TO RECEDE FROM BURKENFIELD?

I DON'T BELIEVE SO, BECAUSE I DON'T THINK THAT WAS AN ISSUE AT ALL IN THE CASE AND WAS NEVER RAISED AS AN ISSUE. I THINK YOU COULD EXPLAIN BURKENFIELD. REHEARING WAS NEVER A QUESTION IN THAT CASE. FURTHER PROCEEDINGS AT THE TRIAL LEVEL WERE NEVER A QUESTION IN THAT CASE AT ALL.

SO IF YOU HAD A CASE LIKE THAT, IN OTHER WORDS, WHERE THE PARTIES, THE JUDGE, ON THE RECORD, FOR INSTANCE, SAID, ARE EITHER OF YOU GOING TO FILE A MOTION FOR REHEARING, AND THE PARTIES SAID NO, THEN THAT DISSOLUTION WOULD BECOME EFFECTIVE IMMEDIATELY?

I WOULD THINK SO.

EVEN THOUGH ONE OF THE PARTIES SUBSEQUENTLY FILED A MOTION FOR REHEARING?

FOR INSTANCE, THE SAME WAY WITH A STIPULATED BIFURCATION. WHEN THE PARTIES STIPULATE TO THE ENTRY OF THE PARTIAL FINAL JUDGMENT OF KITSLUTION, IT IS EFFECTIVE -- OF DISSOLUTION, IT IS EFFECTIVE IMMEDIATELY, BECAUSE THE PARTIES HAVE STIPULATED.

BUT YOU HAVE TO LOOK AT SOMETHING ELSE TO FIND THAT OUT.

I UNDERSTAND THAT, AND THAT IS A PROBLEM FOR ME WITH THE STIPULATION LATED BIFURCATION, BUT I THINK IT IS DIFFICULT -- WITH THE STIPULATION LATEED BIFURCATION, BUT I THINK IT IS GIVE CONSULT TO IGNORE WHAT THE PARTIES, THEMSELVES, HAVE DONE.

THANK YOU.

I THINK THAT IS DIFFICULT.

THANK YOU, MR. GIBBONS. THANKS TO BOTH OF YOU. NEXT CASE IS JASON DEMEETRIES