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NEXT CASE IS M.W. VERSUS DAVIS. MS. SALISBURY.

YOUR HONOR, MAY IT PLEASE THE COURT. MY NAME IS CAROLYN SALISBURY. I AM A LAWYER WITH THE UNIVERSITY OF MIAMI CHILDREN YOUTH LAW CLINIC. I AM HERE, TODAY, ON BEHALF OF M.W.. YOUR HONORS, THIS CASE PRESENTS THIS COURT WITH THE IMPORTANT QUESTION OF WHETHER A MINOR, WHO IS AN OUT OF HOME CARE, IN THE TEMPORARY LEGAL CUSTODY OF THE STATE DEPARTMENT OF CHILDREN AND FAMILIES, MAY BE COMMITTED TO A LONG-TERM, LOCKED, PSYCHIATRIC INSTITUTION, WITHOUT BEING PROVIDED THE DUE PROCESS SAFEGUARDS OF THE BAKER ACT. YOUR HONORS, THIS QUESTION IS ANSWERED BY CHAPTER 39, SECTION 39.4074., WHICH MANDATES THAT, IF IT IS NECESSARY TO PLACE A CHILD WHO IS AN OUT-OF-HOME CARE, IN A RESIDENTIAL PROGRAM FOR MENTAL HEALTH SERVICES, THEN THE PROCEDURES AND CRITERIA OF THE BAKER ACT SHALL BE FOLLOWED.

WE ARE, REALLY, ON THIS ISSUE, THIS IS A QUESTION OF STATUTORY CONSTRUCTION. THAT IS WHETHER THE BAKER ACT PROCEDURES WERE INCORPORATED INTO CHAPTER 39 FOR LONG -- FOR RESIDENTIAL TREATMENT. CORRECT?

YES, YOUR HONOR.

AND ALTHOUGH YOU ARE SEEKING, HERE, AND M.W. WAS COMMITTED TO A LOCKED RESIDENTIAL FACILITY FOR PSYCHIATRIC TREATMENT, THERE IS NOT A DISTINCTION MADE, AT LEAST IN THE STATUTE YOU WOULD BE RELYING ON, BETWEEN LOCKED AND OTHER RESIDENTIAL TREATMENTS, IS THERE?

WELL, IT DOESN'T ENCOMPASS THE THERAPEUTIC FOSTER HOME, YOUR HONOR.

WE ARE TALKING ABOUT RESIDENTIAL, OUT OF HOSPITALIZATIONS.

YES, YOUR HONOR.

BUT IS THE ISSUE THAT IT IS LOCKED VERSUS UNLOCKED A QUESTION THAT AFFECTS THE STATUTORY CONSTRUCTION ISSUE?

NO, YOUR HONOR. I BELIEVE THAT IT JUST SHOWS YOUR HONOR WHAT THIS CHILD IS -- THAT THE LOSS OF HIS LIBERTY AND PRIVACY INTERESTS IN BEING IN A LOCKED FACILITY, BUT THE STATUTE APPLIES TO A RESIDENTIAL INSTITUTION.

ALL RIGHT. AS FAR AS THAT PARTICULAR STATUTE, IS CONCERNED, I UNDERSTAND YOUR POINT THAT THEY ARE TALKING ABOUT, AT LEAST AT THE TIME OF THIS SITUATION, THAT IT WAS A CHILD IN THE PHYSICAL CUSTODY OF THE DEPARTMENT, AND YOU ARE ARGUING THAT THAT REFERS TO BOTH CHILDREN BEFORE AND AFTER THEY ARE DECLARED DEPENDENT. CORRECT?

YES, YOUR HONOR. IF THERE WAS ANYTHING THAT WAS UNCLEAR ABOUT THE STATUTE, IT WAS CERTAINLY CLARIFIED IN THE RECENT CHANGE TO THE STATUTE.

BUT ON THAT, THE SECOND SENTENCE OF SUBPARAGRAPH 4 SAYS THE JUDGE MAY, ALSO, ORDER SUCH CHILD TO RECEIVE MENTAL HEALTH SERVICES FROM A PSYCHIATRIST, PSYCHOLOGIST OR OTHER APPROPRIATE SERVICE PROVIDERS. NOW, UNDER YOUR CONSTRUCTION, IF THAT WHOLE SUBSECTION APPLIES TO CHILDREN THAT HAVE ALREADY BEEN DECLARED DEPENDENT, DOESN'T THAT SENTENCE CONFLICT WITH THE PROVISION, IN 39.01 [70] WHICH ALLOWS, A DEPARTMENT, WHEN IN TEMPORARY LEGAL CUSTODY, IT TO ORDINARY MEDICAL, DENTAL, SURGICAL AND

PSYCHIATRIC CARE?

YOUR HONOR, DCF MAY GIVE THE CHILD THE ORDINARY CARE.

BUT NOT UNDER, UNDER SUBPARAGRAPH 4, IT SAYS IT IS THE JUDGE THAT IS THE ONE TO ORDER IT.

YOUR HONOR, IT SAYS IT, BUT THE JUDGE MAY, ALSO, ORDER. SO I THINK THERE ARE TWO WAYS THAT A CHILD CAN GET THIS ORDINARY PSYCHOLOGICAL CARE. EITHER DCF CAN PROVIDE THIS CARE TO THE CHILD OR THE JUDGE CAN ORDER IT, BUT IF THE JUDGE ORDERS THE CHILD PLACED IN A PSYCHIATRIC PROGRAM, THEN THE JUDGE MUST AFFORD THE CHILD THE BAKER ACT HEARING, YOUR HONOR.

WHAT IF WE WERE TO AGREE WITH YOU, THAT THE BAKER ACT SHOULD HAVE BEEN FOLLOWED, BEFORE THE CHILD WAS COMMITTED, WHAT -- WE ARE NOW HERE, AND IT IS A BIT DISCONCERTING, AT LEAST TO ME, THAT WE ARE HERE ALMOST TWO YEARS AFTER THE CHILD WAS INITIALLY COMMITTED, APPARENTLY, ACCORDING TO THE STATUS REPORT, HE IS STILL IN THERE. WHAT TYPE -- WE CAN'T REMEDY SOMETHING THAT HAPPENED THEN. WHAT WOULD BE THE RELIEF?

WELL, YOUR HONOR, I WOULD HOPE THAT THIS COURT WOULD GRANT THE HABEAS CORPUS ACTION. I WOULD HOPE THAT THIS COURT WOULD ORDER AN IMMEDIATE BAKER ACT HEARING TAKE PLACE. IN FACT, YOUR HONORS, THIS SHOWS WHY IT IS SO IMPORTANT TO HAVE THE BAKER ACT APPLY. IF, IN FACT, THE BAKER ACT DOES APPLY, AND I WOULD SAY THAT THE COURT THAT IT, DOES THIS CHILD NOT ONLY WOULD HAVE GOTTEN A HEARING BEFORE THE CHILD WAS COMMITTED BUT EVERY SIX MONTHS THIS CHILD --

DOESN'T THE RECORD SHOW THAT THERE WERE -- THERE HAVE BEEN PERIODIC REVIEWS OF THIS CHILD'S CASE?

YOUR HONOR, THAT HAS BEEN SUBJECT TO THE CITIZENS' REVIEW PANEL, WHICH HAS REVIEWED THE CHILD'S CASE EVERY SIX MONTHS, AND UNDER THAT STATUTE, WHICH THE FOURTH DISTRICT SAYS IS THE ONE THAT CAN BE USED TO SEND A CHILD TO THIS PROGRAM, THAT STATUTE REQUIRES NO NOTICE. THERE IS NO EVIDENTIARY HEARING. THERE IS NO BURDEN OF PROOF. THERE IS NO EVIDENTIARY STANDARD TO BE MET. THERE IS NO COUNSEL. THERE IS NOTHING IN THAT STATUTE THAT WOULD IN ANY WAY GUARANTEE THE RIGHTS OF THESE CHILDREN THAT ENTER THIS PROGRAM.

LET ME ASK YOU, BEFORE THIS INCIDENT OCCURRED, IT LOOKED LIKE FOR MOST OF JUNE, JULY AND MOST OF AUGUST, THAT THE PLAN WAS CHANGED FOR RENUN FIX TO LONG-TERM FOSTER CARE, AND THAT THE RECOMMENDATION WAS FOR HIM TO GO INTO A THERAPEUTIC FOSTER HOME. HOWEVER, NO THERAPEUTIC FOSTER HOME WAS AVAILABLE. THEN M.W. APPARENTLY STAYED IN PALMETTO BEYOND THE TIME THAT HE WAS SUPPOSED TO STAY IN. HE GETS UPSET. HE DISLOCATES ANOTHER PERSON'S SHOULDER, AND THEN AT SOME POINT ANOTHER RECOMMENDATION IS FOR SUPPORTIVE BUT LOCKED RESIDENTIAL ENVIRONMENT. AT THE STATUS CONFERENCE, THE ONE THAT IS SORT OF THE CENTRAL ISSUE IN THIS CASE, IT LOOKED TO ME, FROM WHAT IS IN THE HABEAS APPENDIX, THAT DCF ACTUALLY ASKED THE COURT TO SET AN EVIDENTIARY HEARING, BECAUSE THIS ASSESSMENT RECOMMENDED A LOCKED FACILITY, AND THAT IT ONLY -- I AM NOT -- I DON'T UNDERSTAND WHETHER THE JUDGE -- IT WAS A TIME ISSUE THAT WAS -- THAT SET THE EVIDENTIARY HEARING FOR SIX WEEKS IN THE FUTURE, BUT IT LOOKS LIKE EVERYBODY WAS AGREEING THAT AN EVIDENTIARY HEARING SHOULD TAKE PLACE. DO YOU -- IS THAT -- AM I READING THE RECORD CORRECTLY?

YOUR HONOR, THE ONLY REASON WHY AN EVIDENTIARY HEARING WAS BEING ASKED FOR AND WHY THE TRIAL COURT INDICATES YOU WOULD SET ONE IS BECAUSE I WAS HIS COURT-

APPOINTED LAWYER, AND I ASKED FOR ONE.

THE COURT HAD APPOINTED YOU TO REPRESENT THE INTERESTS OF M.W.?

I HAVE BEEN HIS COURT-APPOINTED LAWYER FOR THREE YEARS, NOW, AND, YES, AS YOUR HONORS KNOW, VERY FEW CHILDREN IN FOSTER CARE HAVE COURT-APPOINTED LAWYERS. IT IS VERY RARE, AND BECAUSE THIS CHILD HAPPENED TO HAVE A LAWYER AND I HAPPENED TO ASK FOR HEARING IS THE ONLY REASON WHY THERE WAS EVEN A HEARING BEING OFFERED. THE -- ALL THE OTHER CHILDREN WHO ARE THE SUBJECT OF THE CLASS THAT HAS BEEN CERTIFIED TO THIS COURT, NO CHILD GETS AN EVIDENTIARY HEARING.

IS THIS A CLASS ACTION?

I AM SORRY, YOUR HONOR. IT IS THE SUBJECT OF THE CERTIFIED QUESTION THAT IS BEFORE YOUR HONOR.

THAT IS, ALSO, ANOTHER QUESTION. A HABEAS REVIEW IS ONLY IF THE ACTIONS OF THE COURT, IF VOID OR ILLEGAL, WILL HABEAS RELIEF BE GRANTED, SO THERE, IF THE COURT HAD GIVEN AN EVIDENTIARY HEARING IN A TIMELY FASHION, EVEN IF IT WEREN'T UNDER THE STRICT COMPLIANCE WITH THE BAKER ACT, PERHAPS, THERE IS AN ARGUMENT TO BE MADE, THERE IS NOTHING VOID OR ILLEGAL ABOUT THAT ACTION. HOWEVER, THE CERTIFIED QUESTION FROM THE FOURTH DISTRICT TAKES WHAT WAS A HABEAS ISSUE, A NARROW ONE, AND NOW CERTIFIES A BROAD QUESTION OF STATUTORY CONSTRUCTION. SO IS OUR JURISDICTION, THEN, EXPANDED, EVEN THOUGH THIS STARTED AS A HABEAS PETITION, TO JUST LOOK AT REVIEW ISSUES OF STATUTORY CONSTRUCTION?

WELL, YOUR HONOR, THE FOURTH DISTRICT THERE, JURISDICTION OF THE CASE WAS, OF COURSE, LIMITED, BECAUSE THE TRIAL COURT WAS LOCATED WITHIN THE THIRD DIRECT -- DISTRICT, AND, VORBS, THEIR SEWERS -- AND, OF COURSE, THEIR JURISDICTION WAS LIMITED, BUT I WOULD SUBMIT TO THIS COURT THAT IT IS NOT, THAT IT IS BEFORE THE COURT AND AFFECTS ALL CHILDREN WHO ARE IN FOSTER CARE.

IF THE COURT WOULD SAY THAT 39, WITH MODIFICATION OF THE CASE PLAN, THAT THERE IS PROVISIONS THAT WOULD ALLOW FOR EVIDENTIARY HEARINGS WITHIN 39. THAT WOULD NOT SATISFY YOU, BECAUSE YOU SAY THAT, NO, IT IS THE BAKE ARE ACT THAT HAS TO BE -- THE BAKER ACT THAT HAS TO BE FOLLOWED. IS THAT CORRECT?

YOUR HONOR, IF I COULD EXPLAIN WHAT MY POSITION IS. I DO BELIEVE THE STATUTE DOES MANDATE, BUT WHEN A CHILD IS OUT OF OF-HOME CARE -- OUT-OF-HOME CARE IS NOT BAKER-ACTED, THEN WE NEED GUIDANCE FROM THIS COURT. THE COURT IS CONDUCTING SOME OTHER KIND OF EVIDENTIARY HEARING. IT WAS NOT SPECIFIED WHAT KIND OF AN EVIDENTIARY HEARING, AND THE FOURTH DISTRICT NOTED, IN ITS RULING, CHAPTER 39, IF WE TAKE OUT THE 39.407 PROVISION, GIVES NO GUIDANCE AS TO WHAT IS MANDATED FOR THAT.

SO IT AFFECTS NOT ONLY THAT BUT OUR RULES ARE TOTALLY SILENT ON THIS AS WELL.

YOUR HONOR, YES. IT IS TROUBLING, YOUR HONORS, SO FIRST OF ALL, YOUR HONORS, I WOULD SAY THAT IT IS, IN FACT, TRUE THAT THE BAKER ACT DOES APPLY. HOWEVER, IF THIS COURT DID NOT FIND IT, THE BAKER ACT DOES NOT APPLY, I AM SEEKING FROM YOUR HONORS IS GUIDANCE FROM THIS COURT, WHICH IS DESPERATELY NEEDED FOR ALL CHILDREN IN FOSTER CARE.

WHAT HAPPENED TO THE EVIDENTIARY HEARING IN THIS CASE? THAT IS THAT WE WENT FROM -- IT LOOKING LIKE AN EVIDENTIARY HEARING, WHAT HAPPENED?

YOUR HONORS, EVENTUALLY THE HEARING, AT THE TIME THAT IT CAME ABOUT, THE FOURTH

DISTRICT COURT OF APPEAL HAD GRANTED THE HABEAS PETITION AT THE TIME, SO WHEN WE WENT THERE FOR THE EVIDENTIARY HEARING, DCF INDICATED THAT IT WOULD NOT BE GOING FORWARD WITH THE BAKER ACT HEARING, BECAUSE IT WAS NOT A FINAL RULING OF THE FOURTH DISTRICT, AND, IN FACT, IT WOULD NOT BE PUTTING ON ANY EVIDENCE, BECAUSE IT WAS SEEK AGO MOTION FOR REHEARING. FOLLOWING THAT,.

-- FOLLOWING THAT, ON THE MOTION FOR REHEARING, WHAT THE FOURTH DISTRICT RULED, YOUR HONORS, IS THAT WHAT THE TRIAL COURT DID AT THE TRIAL LEVEL WAS COMPLETELY PROPER. THE TRIAL COURT COULD LOOK AT THE PAPERS BEFORE THE TRIAL COURT, NOT NOTICE THE CHILD, NOT HAVE AN EVIDENCIARY HEARING, NOT APPOINT A CHILD COUNSEL, NOT HAVE A BURDEN OF PROOF AND NOT BE COMPLETELY PROPER, AND I WOULD SUBMIT TO YOUR HONORS THAT IT IS IMPROPER, AND IF IN FACT IT IS HELD THAT THE BAKER ACT IS NOT APPROPRIATE, I WOULD ASK THIS COURT FOR --

LET'S GO BACK AND TALK ABOUT THE IMP CAKES OF THE -- THE IMPLICATIONS OF BAKER ACT BEING FOLLOWED. APPARENTLY THERE ARE NO PROCEDURES IN EFFECT, THAN IS CERTAINLY DISCONCERTING, TO, IF THE BAKER ACT IS FOLLOWED, DOESN'T THAT LIMIT THE FLEXIBILITY OF A DEPENDENCY COURT, AS WELL AS THE DEPARTMENT, AS FAR AS AUTHORIZING THERAPEUTIC RESIDENTIAL TREATMENT, BECAUSE, UNDER THE BAKER ACT, THERE ONLY -- THE CHILD HAS TO EITHER BE MENTALLY ILL ARE A -- OR DANGEROUS TO HIMSELF OR OTHERS. THAT WOULD LIMIT THE CLASS OF CHILDREN THAT COULD RECEIVE THIS TYPE OF TREATMENT, AND IRONICALLY, MORE OFTEN THAN NOT, THE COURTS HAVE SEEN CASES WHERE EITHER THE ADD HAVE CATS FOR THE -- EITHER THE ADVOCATES FOR THE CHILD OR THE COURT WANTS THAT TYPE OF TREATMENT AND THE COURT SAYS THEY ARE NOT AGREEING TO IT, SO IT IS USUALLY THE OPPOSITE, SO WOULDN'T WE BE RAISING, ISN'T OTHER COUNTERVEILING POLICY ARGUMENT, THAT IF THE BAKER ACT PROCEDURES WERE TO BE FOLLOWED, THAT, IN FACT, CHILDREN THAT COULD USE RESIDENTIAL TREATMENT WOULD NOT GET IT?

WELL, YOUR HONOR, I WOULD SAY WITH THE BAKER ACT, IT BOTH REALLY HELPS THE SITUATION. IF A CHILD DOES NEED THIS INTENSIVE LEVEL OF TREATMENT, THEN THE COURT CAN MAKE THESE FINDINGS ABOARDER IT, BUT -- AND ORDER IT, BUT IF A CHILD IS NOT, YOUR HONORS, HERE IS MY CONCERN. EVERY CHILD, UNDER THE JURISDICTION OF THE JUVENILE COURT, RECEIVES A BAKER ACT HEARING. THE ONLY SMALL CLASS, SMALL NUMBER OF GROUP OF CHILDREN WHO ARE NOT, ARE M.W. AND HIS FELLOW FOSTER YOUTH, FOR WHOM THE STATE GRANTS CONSENT --

WHO ARE THE OTHER CHILDREN? SOMEBODY WHO IS WITH THEIR PARENTS, IT IS PLACED IN A MENTAL HEALTH FACILITY, THEY DON'T GET, DO THEY GET A BAKER ACT TREATMENT?

IF, YOUR HONOR, THEY ARE UNDER THE JURISDICTION OF THE JUVENILE COURT, THERE ARE CRIMINAL PROCEEDINGS, AND EVEN IN SHELTER CARE, THEY DO GET A BAKER ACT HEARING, ACCORDING TO THE STATUTES.

SO HOW ABOUT ADDRESSING WHAT JUSTICE PARIENTE IS ASKING ABOUT, THE CASES THAT FALL THAT MAY NOT BE UP TO THE BAKER ACT STATUS, BUT WHERE THERE IS SUBSTANTIAL NEED FOR RESIDENTIAL TREATMENT, AND, CERTAINLY, WITH PARENTS OUT THERE THAT HAVE THE MEANS OR WHATEVER, AND THEN YOU WOULD ASSUME THAT THE LARGER CLASS OF PERSONS WOULD BE SERVED BY THAT INTERMEDIATE, AND SO WHAT IS YOUR POSITION ABOUT THE AVAILABILITY OF THAT INTERMEDIATE FORM OF CARE, SHORT OF THE BAKER ACT, BUT STILL A RESIDENTIAL MEANS.

THE INTERMEDIATE CARE IS CERTAINLY AVAILABLE. FOSTER HOMES OR GROUP HOMES.

I AM TALKING ABOUT RESIDENTIAL TREATMENT IN A PSYCHIATRIC -- IN OTHER WORDS A FACILITY DESIGNED FOR LONGER LONGER-TERM CARE, PSYCHOLOGICAL, PSYCHIATRIC

PROBLEMS.

I UNDERSTAND, YOUR HONORS.

WHAT IS YOUR POSITION ABOUT THE AUTHORITY OF A JUDGE, OKAY, TO PLACE A CHILD, SHORT OF THE BAKER ACT STANDARDS, IN A LONG-TERM RESIDENTIAL TREATMENT FACILITY?

MY POSITION IS THAT THERE HAS TO BE DUE PROCESS, BEFORE A CHILD IS COMMITTED. I UNDERSTAND THIS COURT'S POLICY CONCERN, BUT IF I COULD ADDRESS ANOTHER POLICY CONCERN. IF, IN FACT --

YOU ARE NOT ARGUING AGAINST THAT. EYE BELIEVE THAT THE TRIAL COURT HAS -- I BELIEVE THAT THE TRIAL COURT HAS THE POWER TO ORDER WRAP AROUND SERVICES, TO ORDER THERAPY, TO ORDER GROUP HOPES, TO ORDER EVERYTHING -- GROUP HOMES, TO ORDER EVERYTHING EXCEPT A PSYCHIATRIC INSTITUTION WITHOUT THE BAKER ACT.

WE ARE TALKING DUE PROCESS, WE ARE TALKING THE CONSTITUTION SETS THE THRESHOLD VERY LOW, DOES IT NOT, FOR WHAT IS REQUIRED BEFORE PLACE AGO CHILD, WHETHER HE IS WITH -- BEFORE PLACING A CHILD, WHETHER HE OR CHICAGO IS WITH A PARENT OR A -- HE OR SHE IS WITH A PARENT OR IN A DCF SITUATION, IN REGARD TO RESIDENTIAL TREATMENT.

YES, YOUR HONOR, BUT THIS LAW --

WE GO BACK TO STATUTORY QUESTION, AND IT IS AN ALL OR NOTHING, BECAUSE THE ONLY PLACE THAT YOU CAN HANG YOUR HAT IS 407, AND THAT REFERS TO THE BAKER ACT, AND THEN WE HAVE GOT SOME QUESTIONS AS TO WHERE H. WHETHER THE STANDARD FOR THE BAKER ACT SEEM TO FIT INTO THIS SITUATION. YOU SAID IF YOU HAD GRUR YOUR DRUTHERS, YOU WOULD REDO THE STATUTE. WOULD THE STANDARD FOR ADMISSION BE, IN A BAKER ACT PROCESS, BE AS HIGH AS THE BAKER ACT, OR WOULD YOU, AS JUSTICE ANSTEAD SUGGESTS, HAVE IT DOWN AT AN INTERMEDIATE LEVEL, WHERE IT DIDN'T HAVE TO MEET THAT HIGH THRESHOLD?

WITH A CHILD SUBJECT TO THESE MASSIVE IN TRUCKSS, WHERE HE IS -- INTRUSIONS, WHERE HE IS SUBJECT TO FOUR-POINT LEATHER STRAPS.

WE DON'T HAVE INFORMATION IN THE RECORD AS TO FOUR-POINT LEATHER STRAPS.

YOU DO IN THE RECORD WITH OTHER CHILDREN, WHERE HE GETS HALCON INJECTIONS AND HE CANNOT PHONE HIS MOTHER. I WOULD SUGGEST, IN AA VERSUS ROLL, THIS COURT WAS TROUBLE BY THE MIXING TOGETHER OF DIFFERENT CATEGORIES OF CHILDREN. CHILDREN WHO WERE FOSTER CHILDREN WERE BEING PUT IN JUVENILE JAILS, ESSENTIALLY, AND BEING WAREHOUSED IN THOSE FACILITIES, AND THIS COURT WAS VERY TROUBLE BY THAT, YOUR HONOR, SIMILARLY IT IS TROUBLING, IF A CHILD DOES NOT MEET THE BAKER ACT STANDARDS, IF NOT MENTALLY ILL, TO BE PLACED IN THE SAME FACILITY AS OTHER CHILDREN WHO ARE SERIOUSLY MENTALLY ILL.

AREN'T YOU, NOW, ARGUING ABOUT A PARTICULAR SITUATION OR OUTCOME, AND WE ARE TRYING TO GRAPPLE WITH, YOU KNOW, A POLICY ISSUE HERE, IN TERMS OF THE AUTHORITY OF THE TRIAL COURT JUDGE, OKAY, TO PROVIDE HELP TO A CHILD THAT, IF THE CHILD WAS IN HIS PARENTS' CARE, THE PARENTS WOULD HAVE SUBSTANTIAL DISCRETION OKAY, UNLESS, AND ORDINARILY, UNLESS THINGS HAVE CHANGED OUT THERE, THE BAKER ACT IS, REALLY, RESERVED FOR EXTREME SITUATIONS, WHERE THINGS ARE REALLY OUT OF CONTROL AND EVERYBODY SAYS THIS IS AN EMERGENCY, AND THEREFORE, YOU KNOW, ALL KINDS OF BEST GO OFF, AND THAT KIND OF THING, SO WE ARE ASKING FOR YOUR HELP, AGAIN, I USE THE WORD INTERMEDIATE. NOW, IF IT TURNS OUT TO BE, FOR PURPOSES OF MY QUESTION, AN INTERIMMEDIATE HEARING, AND THEN THE PICTURE IS PAINTED FACTUALLY AT THE HEARING, THAT SOMEBODY IS GOING TO BE LOCKED UP IN DR. FRANKENSTEIN'S CHAMBERS AND TORE

CHERD OR SOMETHING -- AND TORCH ERRED OR SOMETHING, AND A JUDGE GOES ALONG WITH THAT, THEN MAYBE THERE IS RELIEF AVAILABLE, AND THAT CAN BE DEALT W WE DEAL WITH THAT ALL OF THE TIME. BUT ARE YOU AGREEING THAT THE TRIAL COURT DOES HAVE AUTHORITY, AND OF COURSE THERE HAS TO BE DUE PROCESS OF SOME KIND, BUT TO ORDER THE PLACEMENT OF A CHILD IN A TREATMENT FACILITY, AND WOULDN'T HAVE TO ALWAYS MEET THE STANDARDS OF BAKER ACT, IN ORDER TO DO THAT?

YOUR HONOR, IT SEEMS TO ME THAT IS WHAT THE STATUTE SAYS. WHAT THE BAKER ACT HEARING IS MANDATED.

YOUR POSITION IS THERE IS NO INTERMEDIATE. THAT IF YOU PLACE THE CHILD IN A LONG-TERM RESIDENTIAL TREATMENT, THAT YOU CAN ONLY DO IT UNDER BAKER ACT STANDARDS. IS THAT?

ACCORDING TO THE STATUTE, YES, YOUR HONOR.

I AM ASKING YOU IS THAT YOUR POSITION?

YES, YOUR HONOR.

AREN'T WE DEFINING, THEN, HUNDREDS, IF NOT THOUSANDS -- AREN'T WE CONFINING, THEN, HUNDREDS, IF NOT THOUSANDS OF CHILDREN, UNDER ADEQUATE TREATMENT, UNDER THAT CONCEPT, BECAUSE OBVIOUSLY WE ARE NOT GOING TO HAVE ALL OF THESE CHILDREN THAT NEED THAT HELP FALL UNDER THE BAKER ACT, AND SO THOSE CHILDREN, THE BOTTOM LINE WILL BE, TO MAKE A LEGAL POINT THAT, THEY DON'T GET ANY HELP AT ALL?

YOUR HONOR, BY CONTRACT, IT IS ASSURING THAT CHILDREN ARE NOT PLACED IN THAT KIND OF SETTING, UNLESS THEY MEET THE STANDARD FOR THAT AND SURELY THEY ARE NOT MIXED WITH CHILDREN WHO ARE MUCH MORE SERIOUSLY MENTALLY ILL THAN THEY ARE AND COULD HARM THE --

ISN'T THIS WHAT THE TRIAL COURT WOULD DEAL, WITH AND THAT IS, AS I SAID BEFORE, IF THE TRIAL COURT SAYS, ALL RIGHT, IT LOOKS LIKE THIS IS SOMETHING THAT COULD BE HANDLED PRETTY EASILY AND IT IS NOT GOING TO REQUIRE A REAL LONG TIME, BUT I DON'T CARE. I LIKE THIS FAST TREATMENT, AND I AM GOING TO SEND HIM OVER TO DR. FRANK ENSTEIN'S PLACE, AND THOSE ERRORS CAN BE CORRECTED, COULD THEY NOT, BUT SHOULD WE BE DEPRIVING CHILDREN THAT NEED HELP OF THIS HELP, JUST BECAUSE WE ARE GOING TO DON'T ONE -- GOING TO ADOPT ONE STANDARD, WHICH IS AN EXTREME HIGH STANDARD.

YOUR HONOR, THAT IS WHAT I SUGGEST THIS COURT IS NEEDED, IF, IN FACT, THE BAKER ACT IS NOT APPROPRIATE AND THIS COURT HOLDS THAT IT IS NEEDED, BECAUSE IN YOUR HONOR'S SCENARIO, WE HAVE ALL OR NOTHING.

THAT IS WHAT I AM CONCERNED ABOUT. HOW LONG AGO WAS IT THAT THIS EVIDENTIARY HEARING WAS ABOUT TO BE HELD AND THEN NEVER GOT HELD?

THAT WOULD BE, I BELIEVE, WELL OVER A YEAR AGO.

HAVE THEIR BEEN ANY OTHER HEARINGS, OTHER THAN BEFORE THE CITIZENS' ADVISORY COMMITTEE?

NO, YOUR HONOR. WE WOULD NOT KNOW WHAT PROCESS TO FOLLOW. WHAT STANDARD TO FOLLOW OWE.

NOBODY HAS ASKED FOR ANY, I TAKE IT.

YOUR HONOR, THE CONCERN IS WHO WOULD HAVE THE BURDEN EARN OF PROOF, WHAT WOULD BE THE STANDARD, WHAT WOULD BE THE PROCESS. THAT IS WHY THIS COURT'S GUIDANCE IS NEEDED.

THANK YOU, COUNSEL. MS. WELLS.

GOOD MORNING. MAY IT PLEASE THE COURT. LINDA WELLS ON BEHALF OF THE RESPONDENT, FLAT DEPARTMENT OF CHILDREN AND FAMILIES. THE QUESTION THAT WAS ASKED BY THE FOURTH DISTRICT COURT OF APPEAL IS WHETHER THE BAKER ACT IS THE GATE WAY FOR DEPENDENT CHILDREN INTO RESIDENTIAL TREATMENT FACILITIES. AND THE ANSWER TO THAT QUESTION IS ABSOLUTELY POSITIVELY NOT, NOT UNDER EXISTING STATUTES, WHICH DO PROVIDE A GATEWAY FOR DEPENDENT CHILDREN INTO RESIDENTIAL TREATMENT, WITHOUT APPLYING THE BAKER ACT.

NOW, WHICH GATEWAY STATUTE DO YOU LOOK TO?

I AM LOOKING -- I AM SORRY, YOUR HONOR.

WHICH SUBSECTION?

I AM LOOKING TO THREE DIFFERENT THINGS. FIRST I AM LOOKING TO 39.407, WHICH DEALS WITH CHILDREN IN SHELTER CARE, OUT-OF-HOME PLACEMENT IN SHELTER CARE, AND THEN I AM LOOKING TO PART THREE OF CHAPTER 94, THE COMPREHENSIVE CHILD MENTAL HEALTH ACT.

JUST SO I UNDERSTAND SOMETHING, WE COULDN'T GO, IN THIS STATUTE, IF WE DON'T GO TO 407.4 AND SAY A HA! THIS IS WHAT HAPPENS WHEN WE DON'T HAVE THE CHILD AT HOME PLACEMENT IN FOSTER CARE, IN THERAPEUTIC FOSTER CARE, BUT WE ARE GOING, NOW, TO THE NEXT LEVEL, PROBABLY THE MOST SERIOUS LEVEL WHERE YOU COULD PUT A CHILD, WHICH IS INTO A LOCKED RESIDENTIAL FACILITY. WE CAN GO THROUGH EVERY RULE OF THIS COURT, EVERY STATUTE, AND NOT BE ABLE TO PUT OUR FINGER ON SOMETHING THAT ADDRESSES THIS SITUATION.

I THINK YOU MIGHT BE ABLE TO, UNDER THE RESIDENTIAL, UNDER THE COMPREHENSIVE ACT, FOR CHILDREN, AND LET ME TELL YOU HOW YOU GET THERE FROM HERE, BECAUSE IT IS NOT NECESSARILY AN EASY PATH TO-, BECAUSE YOU CAN GET THERE FROM HERE -- TO FOLLOW, BECAUSE THERE ARE TWO PATHS TO FOLLOW HE, JUSTICE PARIENTE. 49 .0 7, FOR CHILDREN WHO ARE NOT NECESSARILY PLACED IN A SHELTER BUT PLACED SOMEWHERE ELSE. WE EXERCISE NO AUTHORITY, PLACEMENT OR OTHERWISE. THE DEPARTMENT OR THE COURT, AND THAT IS WHY THE BAKER ACT HAPPENS TO BE THE GATE WAY FOR THOSE CHILDREN.

WHY IS IT, JUST SINCE WE ARE BACK ON THAT, THERE IS SOMETHING THAT DOES CONCERN ME THAT 407 SEEMS LIKE IT IS AND ISN'T MORE INCLUSIVE, WHEN YOU GET TO SUBSECTION TWO, IT REFERS TO CHILDREN WHO ARE IN THE CUSTODY OF THE DEPARTMENT BUT WHO HAVE NOT YET BEEN COMMITTED TO THE DEPARTMENT.

CORRECT.

CONSPICUOUSLY ABSENT FROM SUBSECTION 3 AND SUBSECTION 4 IS JUST AS IT SAYS PHYSICAL CUSTODY, BUT ALL THEY WOULD HAVE HAD TO SAY, IF THE INTENT WAS NOT TO APPLY THOSE STATUTES TO CHILDREN THAT HAVE ALREADY BEEN COMMITTED, IS USE THE SAME LANGUAGE AS IN SUBSECTION 2, WHICH IS IN THE CUSTODY OF THE DEPARTMENT BUT WHO HAVE NOT YET BEEN COMMITTED TO THE DEPARTMENT. SINCE WE ARE, NOW, IN THE SAME SECTION, THE SAME STATUTE, DOESN'T THAT, ALONE, TELL US THAT THE LEGISLATURE, AND SINCE THERE IS NOTHING ELSE ANY OTHER PLACE, WHEN THEY WERE GOING TO BE ORDERING RESIDENTIAL TREATMENT, DECIDED THAT IT WAS THE BAKER ACT PROCEDURE TO FOLLOW.

NO. NOT WHEN YOU CONSIDER WHAT THE PURPOSE AND FUNCTION OF THAT STATUTE IS AND THE RICE AND POWERS OF THE DEPARTMENT.

IS THIS JUST FROM A STATUTORY CONSTRUCTION, THEN WHAT ARE WE TO BE -- HOW DO WE READ THE FACT THAT IT SAYS "WHO HAS NOT YET BEEN COMMITTED", IN SUBSECTION TWO, AND THAT LANGUAGE IS NOT IN THREE AND FOUR? IS THIS JUST AN EXAMPLE OF POOR DRAFTING, OR ARE WE TO CONSTRUE NOTHING AT ALL FROM THAT LANGUAGE?

NO. IT COULD BE HAVE BEEN DRAFTED BETTER AND CLEARER. HOWEVER --.

SO IT IS NOT CLEAR. YOU STARTED OUT SAYING IT IS AS CLEAR AS CAN BE THAT IT IS NOT -- 407.4 DOES NOT APPLY. MEANWHILE THE FIRST DISTRICT FIRST THOUGHT IT DID AND THEN IT DIDN'T. I DON'T KNOW, BUT READING IT, TO ME, AGAIN, WHEN I LOOK AT THIS OTHER LANGUAGE, THAT IT WAS SIGNIFICANT THAT WHO HAS BEEN COMMITTED IS NOT IN THOSE SECTIONS.

WHEN YOU LOOK AT 407 SUBSECTION 1, SECTION 2, 3 AND 4 TOGETHER, YOU HAVE TO READ THEM IN PARRY MATERIA AND YOU READ THEM IN THE CONTEXT OF WHERE THEY ARE LOCATED, THEN IT IS CLARIFIED. LET ME TRY TO EXPLAIN THIS. PART FIVE, IN WHICH THE SECTION IS LOCATED, IS NOW TITLED IN THE NEW STATUTE, IN THE 1999 STATUTE, TAKING INTO CUSTODY AND SHELTER CARE. TAKING INTO CUSTODY IS THE TITLE OF THIS WHOLE PART. IT HAS FIVE SECTIONS.

LET ME JUST ASK YOU, WE ARE SUPPOSED TO LOOK AT THE 1999 STATUTE THEN? YOU ARE ASKING US TO DO THAT?

IF YOU ARE LOOKING AT 1999. THAT IS THE ONE THAT WE LOOKED AT THAT YOU HAVE BEEN READING FROM JUST NOW. WE TALK ABOUT OUT-OF-HOME PLACEMENT, IT USES THAT LANGUAGE FOR THE FIRST TIME. IN 1997 --

I AM LOOKING AT THE 1998 STATUTE.

1997 AND 1998 TALKED ABOUT PHYSICAL CUSTODY. THEY BEGAN TO MOVE OUT OF HOME PLACEMENT.

THE WORD I USED, MAYBE YOU ARE NOT HEARING ME, IT SAYS, IN SUBSECTION 2 THAT IT REFERS TO IN THE CUSTODY OF THE DEPARTMENT BUT WHO HAS NOT BEEN COMMITTED TO THE DEPARTMENT.

OKAY. THOSE ARE CHILDREN WHO ARE DEPENDENT CHILDREN. CHILDREN WHO ARE COMMITTED TO THE DEPARTMENT MOVE INTO A DIFFERENT CATEGORY. THEY ARE DEPENDENT CHILDREN.

THAT'S RIGHT. WHAT I AM SAYING TO YOU --

THEY ARE STRICTLY SHELTERED CHILDREN, OVER WHOM, BY DEFINITION OF THAT STATUTE, WE ONLY HAVE PHYSICAL CONTROL.

THAT IS WHY I SAID. IT IS USED IN SUBSECTION TWO BUT NOT IN THREE AND FOUR. THE WORDS -- THREE AND FOUR DO NOT HAVE, IN THE 1997 ONE '8 VERSION, DO NOT -- ONLY SAY PHYSICAL CUSTODY, WHEREAS SUBSECTION TWO SAYS CUSTODY BUT WHO HAVE NOT YET BEEN COMMITTED TO THE DEPARTMENT. SUBSECTION TWO IS REFERRING TO CHILDREN WHO HAVE NOT YET BEEN DECLARED DEPENDENT.

CORRECT.

BUT YOU ARE SAYING THREE AND FOUR DOES, ALSO, AND I AM ASKING YOU WHY, THEN, DIDN'T THEY USE THE LANGUAGE "OR IN THE CUSTODY BUT WHO HAVE NOT YET BEEN COMMITTED TO



THE DEPARTMENT"?

THERE WAS NO NECESSITY TO DO SO, SINCE THE WHOLE PROVISION ONLY RELATES TO CHILDREN WHO ARE IN SHELTER CARE, THE CHILDREN WHO HAVE NOT YET BEEN COMMITTED TO OUR CUSTODY THAT IS A WHAT A SHELTER CHILD IS. THAT IS A CHILD OVER WHOM, WHEN YOU LOOK AT ALL OF THOSE PROVISION IN HIS THAT PART, OVER WHOM WE EXERCISE NOTHING BUT NAKED PHYSICAL CONTROL. IN OTHER WORDS THAT PART OF THE STATUTE AUTHORIZES THE DEPARTMENT INVESTIGATORS WHO GO INTO ANYONE'S HOME ON, AN ABUSE CALL, AND ON NOTHING MORE THAN PROBABLE CAUSE, NOTHING MORE, TO PHYSIQUE LAY TAKE A CHILD -- PHYSICALLY TAKE A CHILD OUT OF YOUR HOME OR MY HOME, TAKE THEM AWAY FROM THEIR PARENTS, AND WHAT HAPPENS IS THE STATUTE HAS BEEN MODIFIED. THEY RESPECT THAT THOSE CHILDREN ARE NOT JUST PUT IN A SHELTER. THAT THEY CAN BE PUT WITH A RELATIVE, WHICH IS A OUT-OF-HOME PLACEMENT. BUT ALL OF THE SECTIONS IN THAT PART DEAL WITH THOSE CHILDREN OVER WHOM THE DEPARTMENT DOES NOT HAVE ANY AUTHORITY TO PLACE NOR DOES THE COURT HAVE ANY AUTHORITY TO PLACE, AND THAT IS WHY IT IS IMPORTANT THAT YOU HAVE TO LOOK AT THE STATUTE, CHAPTER 39 AS A WHOLE, BECAUSE THERE IS A REALLY CRITICAL DISTINCTION BETWEEN DEPENDENT CHILDREN LIKE MATTHEW, I AM SORRY, M.W., AND SHELTER CHILDREN, WHO ARE DEALT WITH IN 39.407. IT IS NOT AN INSIGNIFICANT DIFFERENCE. IT IS AN ENORMOUS DIFFERENCE, AND IT MAKES A DIFFERENCE AS TO WHY THE GATE WAY IS THE BAKER ACT, AND FOR THE CHILDREN WHO ARE SHELTER CHILDREN, WHEREAS IT IS NOT A GATEWAY UNDER THE COMPREHENSIVE MENTAL HEALTH ACT. IN OTHER WORDS THE COMPREHENSIVE MENTAL HEALTH ACT SAYS HERE IS HOW YOU GET INTO A RESIDENTIAL TREATMENT FACILITY, AND IT IS NOT THE BAKER ACT. THE BAKER ACT IS EXCLUDED THERE, AND IT SAYS BY THE WAY THIS ACT IS APPLIED TO TWO CLASSES OF CHILDREN. IT INCLUDES CHILDREN WHO LIVE WITH THEIR PARENTS, AND IT INCLUDES CHILDREN WHO ARE IN THE CUSTODY OF THE DEPARTMENT, BECAUSE THOSE CHILDREN, THE DEPARTMENT HAS THE AUTHORITY TO -- AND I THINK JUSTICE ANSTEAD HAS OPINIONS, BEFORE, RECOGNIZED THE DISTINCTION, THE TENSION HERE, BETWEEN A COURT'S POWER AND THE DEPARTMENT'S POWER, WITH REGARD TO CHILDREN DEPENDING ON THE VARIOUS STAGES OF THE PROCEEDING THEY ARE IN. AFTER A CHILD HAS BEEN ADJUDICATED DEPENDENT, LIKE M.W., THE DEPARTMENT REPDZ, IS GIVEN THE AUTHORITY IN THE -- RECOMMENDS, IS GIVEN THE AUTHORITY IN THE STATUTE, TO SAY WHERE THAT CHILD SHOULD BE PLACED. THE COURT, AT THAT POINT, ONLY HAS THE AUTHORITY TO SAY YES OR NO. THAT PLACEMENT IS OKAY, IF IT IS IN THE BEST INTEREST OF THAT CHILD, BUT BEFORE THAT CHILD IS ADJUDICATED DEPENDENT, WHEN HE IS ONLY IN THE STAGE OF THE PROCEEDINGS, LIKE 39.407 ADDRESSES, WHERE I HAVE DONE NOTHING ACCEPT COME AND TAKE YOUR CHILD AWAY FROM YOU, THE DEPARTMENT HAS NO AUTHORITY TO SAY WHERE THAT CHILD SHOULD BE PLACED.

BUT ONCE YOU GET TO THE POINT WHERE M.W. IS, THE QUESTION THAT I AM CONCERNED ABOUT IS WHAT KIND OF PRESENT, UNDER THE RULES, OR ASSURANCES ARE THAT THE RESTRAINT THAT IS PLACED UPON THIS CHILD IS GOING TO GET SOME TYPE OF RECURRING LOOK BY THE COURT?

LET ME TELL YOU HOW IT WORKS WHEN YOU ARE -- ONCE WE GET A CHILD LIKE M.W., WHO HAS BEEN ADJUDICATED DEPENDENT, THERE IS A PROCEDURE, IN THE ADMINISTRATIVE RULES, THAT COMES UNDER THE COMPREHENSIVE MENTAL HEALTH ACT FOR CHILDREN, WHICH TELLS YOU HOW, AND BY THE WAY IT EXCLUDES BAKER ACT CHILDREN WHO ARE ELIGIBLE, DON'T COME UNDER THIS. THEY HAVE TO BE BAKER-ACTED AND PUT IN TOTALLY DIFFERENT FACILITIES, AND HERE IS WHAT THEY SAY YOU HAVE TO DO. FIRST OF ALL, THE CHILD'S COMPREHENSIVE ACT SAYS WE HAVE AN ARE A RAY OF SERVICES, AND THAT -- AND ARRAY OF SERVICES, AND THAT INCLUDES CHILDREN OF ALL LEVELS, THERAPEUTIC HOMES, FOSTER HOMES, RESIDENTIAL GROUP FACILITIES, WHERE CHILDREN WHO ARE IN THE DEPARTMENT'S CUSTODY CAN BE PLACED, AND HERE IS HOW YOU GET PLACED. FIRST YOU HAVE TO HAVE A PSYCHOLOGIST OR A PSYCHIATRIST WHO EVALUATES THE CHILD AND RECOMMENDS THE PLACEMENT. THEN THE CHILD GOES TO WHAT IS CALLED THE CRC, THE CITIZENS REVIEW COMMITTEE.

COULD YOU SAY, AS YOU SAY THIS, WHAT STATUTE FOR EACH THING, SO THAT WE KNOW?

YES. I AM GOING UNDER 394.462 AND 463, WHICH ARE PART THREE OF THE COMPREHENSIVE ACT, AND THE ADMINISTRATIVE RULES THAT GO UNDER THAT ARE 6 A-E-0.018 AND 10.013 AND 0.014.

SO THERE ARE ADMINISTRATIVE RULES THAT TELL THE DEPARTMENT, THAT THE DEPARTMENT PASSED, TO TELL ITSELF HOW TO HANDLE THIS.

AND THE LEGISLATURE SAID THEY HAD TO PROMULGATE RULES, AND THESE ARE THE RULES THAT WERE PROMULGATED, SO THESE RULES REQUIRE US TO, FIRST, THERE HAS TO BE A DETERMINATION OF ELIGIBILITY FOR TREATMENT, ONE OF THESE TREATMENT MODALITIES, AND THAT HAS TO HINGE UPON A PSYCHIATRIST OR A PSYCHOLOGIST'S RECOMMENDATION FROM THE CRC, WHICH IS REQUIRED AS A MULTIDISCIPLINARY TEAM, HAS TO REVIEW THAT PSYCHOLOGIST'S OR PSYCHIATRIST'S PREPAREDATION FOR THIS CHILD, AND WHAT THEY DO IS THEY HAVE A RANGE OF WHAT YOU DESCRIBED, IN THE ADMINISTRATIVE RULE PLACEMENT THAT THEY CAN PUT THE CHILD IN, AND THEY TAKE THAT RECOMMENDATION. AS A MATTER OF FACT, I THINK ONE OF THE TIMES WHEN M.W. WAS NOT SENT SOMEWHERE WAS BECAUSE WE DIDN'T HAVE A CHANCE TO GET THE RECOMMENDATION BEFORE THE CRC FIRST. THE CRC, THEN, ISSUES A RECOMMENDATION, SAYING THE CHILD SHOULD BE PLACED IN EITHER RESIDENTIAL TREATMENT FACILITY OR HERE.

THE SAME PROCEDURE IS -- FOLLOWED, WHETHER FOR FOSTER CARE, THERAPEUTIC CARE OR RESIDENTIAL -- THERAPEUTIC CARE OR RESIDENTIAL FACILITY? DOES IT DIFFERENTIATE BETWEEN --

MENTAL HEALTH. FOR MENTAL HEALTH. NOT JUST REGULAR FOSTER HOMES. THERE ARE THREE LEVELS. THERAPEUTIC FOSTER HOMES, WHERE THE FOSTER PARENTS HAVE EXTRA DRAIN TRAINING, TO DEAL WITH -- EXTRA TRAINING, TO DEAL WITH MENTAL HEALTH ISSUES. THERE ARE USUALLY TWO IN THE HOME. UP TO EIGHT IN A GROUP HOME, AGAIN, THE FOSTER PARENT HAS SPECIALIZED TRAINING FOR MENTAL HEALTH, AND THERE ARE RESIDENTIAL FACILITIES, WHERE THEY ARE IN A DORMITORY SETTING. SO THEY HAVE FLEXIBILITY TO CHOOSE WHERE THIS CHILD SHOULD BE PLACED, BUT THAT IS NOT THE END.

THE PROCEDURE IS THE SAME, WHETHER IT IS A THERAPEUTIC GROUP HOME OR A LOCKED RESIDENTIAL FACILITY.

IT IS NOT THE PROCEDURE IS THE SAME, JUSTICE. IT IS --

THERE ARE NO EXTRA PROTECTIONS FOR THE CHILD.

IN OTHER WORDS THEY ARE LOOKING INTO DECIDING WHICH ONE IS APPROPRIATE, BASED UPON WHAT THE PSYCHIATRIST SAYS.

SO THERE IS NO EXTRA PROTECTION FOR THE CHILD, IF THE RECOMMENDATION IS RESIDENTIAL FACILITY. CORRECT?

CORRECT. BECAUSE THEY ARE NOT JUDGING ON THE LEVEL OF INTENSITY. THEY ARE JUDGING ON THE LEVEL OF ILLNESS OF THE CHILD. HOWEVER, I HAVE TO SAY THAT THE ADMINISTRATIVE RULES MAKE IT CLEAR THAT THE CHILDREN WHO ARE ELIGIBLE FOR THESE PROGRAMS, THE CHILDREN ARE BROKEN DOWN INTO CATEGORIES, BASED UPON THE SEVERITY OF THEIR MENTAL ILLNESS, UNDER THE COMPREHENSIVE ACT, AND THE CHILDREN WHO ARE ELIGIBLE FOR THESE TREATMENTS ARE THE ONES WHO, BY DEFINITION, ARE NOT BAKER ACTABLE. THEY ARE EXCLUDED. SO WHAT HAPPENS, THEN, IS AFTER THIS COMMITTEE TAKES THE PSYCHIATRIST'S RECOMMENDATION, IT DECIDES WHICH ONE OF THESE PROGRAMS WOULD BE THE PROGRAM

THAT WOULD BE APPROPRIATE. IT MAKES A RECOMMENDATION, AND THEN -- A RECOMMENDATION, AND THEN THE DEPARTMENT TAKES THAT TO THE DEPENDENCY JUDGE, BECAUSE THE DEPARTMENT HAS TO HAVE A COURT ORDER HERE, AND THE DD DEPENDENCY JUDGE IS THE JUDGE THAT -- BECAUSE THE DEPENDENCY JUDGE IS A JUDGE WHO HAS A HEARING AND YOU CAN COME IN A QUESTION THE PSYCHIATRIST'S REPORT AND PUT ON WHATEVER EVIDENCE YOU SET FORTH --

WHERE IS THAT DONE? WHEN IT GOES BEFORE A DEPENDENCY JUDGE FOR THAT EMPLOYMENT PLACEMENT?

IT A REGULAR PROCEDURE THAT YOU COME UNDER, FOR GETTING APPROVAL FOR EXTRAORDINARY OR ORDINARY MEDICAL TREATMENT AND CARE.

WHERE IS THAT RULE?

BEST INTEREST OF THE CHILD. ACTUALLY IT IS IN THE JUVENILE RULES, AND I WISH I COULD TELL YOU THE SPECIFIC RULE, BUT THE JUVENILE RULES DO REQUIRE COURT ORDERERS, I BELIEVE, FOR INTERIM MEDICAL TREATMENT. MEDICAL TREATMENT ORDER.

IS THERE A REQUIREMENT FOR AN ATTORNEY UNDER THE PROCEEDING FOR A RESIDENTIAL TREATMENT FACILITY FOR THE CHILD?

THERE IS NO ATTORNEY FOR THAT PROCEEDING. IT IS BASED ON THE BEST INTEREST OF THE CHILD. LET ME TELL YOU BAKER ACT PROCEDURES, WHICH THE ONLY SIGNIFICANT DIFFERENCE THERE WOULD BE THE APPOINTMENT AFTER ATTORNEY TO REPRESENT THE CHILD, IS NOT AN EXTRA LAYER OF DUE PROCESS OR HELP THAT THE COURT WANTS TO INJECT, BECAUSE THAT, REALLY, IS PROBABLY THE ONLY DISTINGUISHING FACTOR BETWEEN THE BAKER ACT PROCEEDING AND THE CHAPTER 39 PROCEEDING, AND LET ME TELL YOU WHY.

ONE IS WRITTEN IN VERY EXPRESS LANGUAGE IN THE STATUTE, AND THE OTHER, SO FAR, IS NOWHERE TO BE EXPRESSLY FOUND.

ACCEPT, ACCEPT THAT THE DEPARTMENT CANNOT PLACE A CHILD, CANNOT PLACE -- PLACEMENT DECISIONS OF THE DEPARTMENT, UNDER CHAPTER 39, YOU CAN DECIDE WHERE YOU HAVE TO PLACE THE CHILD, BUT IT ALWAYS HAS TO BE APPROVED BY THE COURT, AND THAT IS IN CHAPTER 39. THE COURT APPROVES IT AND THE DEPARTMENT REPDZ PLACEMENT, BASED UPON WHAT IS THE BEST INTEREST OF THE CHILD, AND THAT IS TRULY WHAT THE COURTS MAKE, WHETHER TO PUT THEM IN A THERAPEUTIC FOSTER HOME OR FOSTER HOME OR LET'S PUT THEM IN A RESIDENTIAL TREATMENT FACILITY.

IS IT CORRECT, THEN, THAT THESE KINDS OF CONCERNS CAN BE RAISED BEFORE THE TRIAL COURT, REALLY, AT ANY TIME, THAT THEY DON'T HAVE TO WAIVE A STATUS HEARING, THAT IF SOMEONE WANTS TO COME IN ON BEHALF OF A CHILD AND CALL ATTENTION TO THE CIRCUMSTANCES AT THE FACILITY OR WHATEVER.

THEY CAN FILE A MOTION. CORRECT. FILE A MOTION AND BRING IT TO THE COURT'S ATTENTION.

OR THE JUVENILE COURT COULD APPOINT A GUARDIAN AD LITEM FOR THE CHILD.

AT ANY TIME, FROM THE MOMENT THE CHILD WALKS INTO THE DEPENDENCY COURT, THE COURT CAN APPOINT A GUARDIAN AD LITEM OR AN ATTORNEY, AND -- AD LITEM HERE ON OR AN ATTORNEY, AND THE CHILD HAS HAD AN ATTORNEY ALL ALONG, BECAUSE THE COURT FELT IT WAS APPROPRIATE TO APPOINT AN ATTORNEY FOR THE CHILD. I WOULD LIKE TO TAKE A MOMENT TO THINK ABOUT IMPORTING A BAKER ACT PROCEEDING INTO THE PROCEEDING OF CHAPTER 39 AND JUST PUT THE TWO THINGS SIDE-BY-SIDE. BY THE TIME YOU FINALLY GET YOUR

PSYCHOLOGIST OR PSYCHIATRIST REPORT FROM A BAKER ACT AND YOU HAVE AN INVOLUNTARY EXAMINATION AND THE ADMINISTRATOR FILES A PETITION TO INVOKE A CIRCUIT COURT TO REALLY START LOOKING INTO WHETHER A PERSON SHOULD BE COMMITTED SOMEWHERE, WHAT YOU GET THERE IS YOU GET THE BAKE ARE ACT COURT DOWN AT THE METRO -- THE BAKER ACT COURT DOWN AT THE METRO JUSTICE BUILDING, AND IT IS CERTIFIED THAT IT DOESN'T HAVE TO BE A --

WHEN WAS THE LAST TIME A STATUS HEARING WAS HELD IN THIS INSTANCE?

THE LAST ONE I SAW WAS A PROGRESS REPORT. I DON'T KNOW WHEN THE ACTUAL HEARING WAS, BUT I KNOW A PROGRESS REPORT WAS GENERATED IN JANUARY OF THIS YEAR. HE HAS BEEN GETTING HIS PROGRESS REPORTS, WHICH ARE SUBMITTED TO THE DEPARTMENT.

WHEN WAS THE ACTUAL TIME WHEN THE JUDGE SAT TLAN EVERYBODY WAS IN THERE TO BE QUESTIONED OR THAT THE -- THERE, AND EVERYBODY WAS IN THERE TO BE QUESTIONED OR THAT THE JUDGE COULD GET A GOOD HANDLE ON THE STATUS AT THAT TIME. WAS THAT IN JANUARY?

I DON'T KNOW IF THE COURT SAW THIS CHILD. HE IS SUPPOSED TO BE HAVING JR'S EVERY SIX MONTHS, AND IF IT DOESN'T GO BEFORE THE COURT, IT GOES BEFORE THE CITIZENS' REVIEW PANEL, SO EVERY SIX MONTHS SINCE HE WAS PUT IN, THE REPORTS HAVE BEEN GENERATED OUT. I CANNOT TELL YOU, WITH CERTAINTY THAT, IT HAPPENED.

CAN YOU TELL ME, WITH CERTAINTY THAT, THERE HAS BEEN A STATUS CONFERENCE WITH THE JUDGE AT SOME TIME THAT YOU ACTUALLY KNOW ABOUT, WITHIN THE LAST MONTHS OR SIX MONTHS OR YEAR?

I COULD NOT TELL WITH YOU CERTAINTY, JUSTICE ANSTEAD. I DON'T KNOW WHEN THE LAST TIME IT CAME UP BEFORE THE COURT WAS.

WAS THERE ANY WAY FOR US TO BE CERTAIN THAT, AT LEAST WITHIN THE LAST YEAR, THIS WAS BEFORE A JUDGE?

I THINK THE RECORD OF THE DEPENDENCY RECORD WILL SHOW WHEN HE HAD A JR AND WHEN HE LAST, BEFORE THE CR, BEFORE HE WAS THE CITIZENS REVIEW PANEL OR THE COURT.

I AM TALKING ABOUT THE COURT. THIS RECORD WON'T TELL NEWS IS I GUESS ONE OF THE THINGS THAT I AM -- TELL US? I GUESS ONE OF THE THINGS THAT I AM CONCERNED ABOUT IS THERE HAS BEEN A LOT OF FOLK OUST THIS PARTICULAR CASE, AND AT THE VERY LEAST, THE STATUS CONFERENCES SHOULD HAVE BEEN GOING ON, SO THAT A JUDGE CAN KEEP MONITORING WHAT -- BUT APPARENTLY THAT HAS BEEN LOST.

THE RECORD THAT CAME -- THAT COMES BEFORE THIS COURT, REALLY, ONLY GOES UP THROUGH THE TIME THAT HE WAS COMMITTED TO LOCK DOWN. WE HAVE NOT BROUGHT UP, TO THE COURT, WHAT HAS HAPPENED TO HIM SUBSEQUENTLY. AS I SAID, THE RECORDS THAT I HAVE SEEN, AT LEAST THE PORTIONS THAT I HAVE SEEN, DO SHOW THAT STATUS REPORTS HAVE BEEN COMING OUT OF LOCK DOWN EVERY SIX MONTHS, WHICH SHOULD BE COINCIDING WITH HIS TIME OF --

HOE OLD IS THE CHILD?

THREE MONTHS -- HOW OLD IS THE CHILD NOW?

HE IS THREE MONTHS SHORT OF 18. ON JUNE 22, HE WILL BE 18. I KNOW THAT BOTH COUNSEL AND I DID CHECK ON HIS PROGRESS, AND ALTHOUGH HE DID MAKE SOME INITIAL PROGRESS, HE HAS BACK SLID A LITTLE BIT, SO HE IS NOT READY TO BE DISCHARGED, UNDER THE CRITERIA QUITE

YET.

HAS THERE BEEN A LEVEL OF COOPERATION, SO THAT THERE HAS BEEN A FREE FLOW OF INFORMATION BETWEEN ALL OF YOU THAT ARE INTERESTED IN THE WELFARE OF THIS CHILD?

YES.

THERE HASN'T BEEN ANY --

YES.

THERE HAS BEEN A FREE FLE OF INFORMATION.

YES. YES.

THERE SEEMS TO BE A DISPUTE AS TO WHETHER THIS FACILITY, YOU ARE REPRESENTING THAT THIS WOULD NOT AND FACILITY THAT, IF SOMEBODY WAS COMMITTED UNDER THE BAKER ACT, WHERE THAT CHILD WOULD GO? THAT THIS IS ONLY FOR CHILDREN THAT ARE BELOW THE CRITERIA FOR THE BAKER ACT? IS THAT WHAT YOU HAVE REPRESENTED TO THIS COURT?

IF ONE OF OUR CHILDREN, IF A DEPARTMENT CHILD WERE, AND IT HAPPENS FREQUENTLY, ANYONE CAN TAKE A CHILD TO A RECEIVING FACILITY, AND THERE ARE CERTAIN RECEIVING FACILITIES THAT DCF IS OBLIGATED, BY STATUTE, TO DESIGNATE BAKER ACT RECEIVING FACILITIES, AND THOSE ARE LICENSED AS SPECIAL FACILITIES, AND THEY AREUREMENT USUALLY IN HOSPITAL -- AND THEY ARE USUALLY IN HOSPITAL FACILITIES, BECAUSE IT IS VERY SPECIFIC.

CAN YOU ANSWER THAT QUESTION, YES OR NO?

THAT COULD BE BAKER-ACTED AND COME BACK TO THIS FACILITY? YES. THEY CAN COME BACK TO THIS FACILITY OR SUBSEQUENTLY BE PLACED IN THIS FACILITY AFTER THEY CAME OUT OF WHAT IS CALLED A CRISIS STABILIZATION UNIT, WHICH IS A TERM FOR WHERE ONLY THE MOST ACUTE GO.

IS THIS A PRIVATE PSYCHIATRIC HOSPITAL FACILITY JUST FOR ADOLESCENTS OR IS THIS A PRIVATE PSYCHIATRIC HOSPITAL?

THIS IS ON THE GROUNDS. IN OTHER WORDS THERE IS A SOUTH FLORIDA STATE HOSPITAL, BUT IT IS A SEPARATE BUILDING. THERE IS NO INTERMINGLING OF THE CHILDREN WITH THE ADULT POPULATION. THE CHILDREN GO TO SCHOOL THERE. AND THEY LIVE IN A DORMITORY SETTING. THERE IS SOME INTERACTION WITH THE CHILDREN. THEY DO GO TO SCHOOL TOGETHER. IT IS JUST THAT THEY HAVE TO RESIDE THERE. WE WOULD URGE THE COURT NOT TO IMPORT ANOTHER LEVEL OF PROCEEDINGS OR PROCESS IN THIS. WE ARE, ALREADY, HAVE STAGGERING NUMBER OF DUE PROCESS REQUIREMENTS HERE, AND CERTAINLY NOT TO IMPOSE THE BAKER ACT CRITERIA OR STANDARDS, ESPECIALLY NOT THE STANDARDS, ON THIS POPULATION OF CHILDREN, TO GET THE HELP SO NEEDED. THE PURPOSE OF IT IS TO KEEP THEM FROM REACHING THAT LEVEL OF NEED. THANK YOU.

THANKS TO BOTH OF YOU. I BELIEVE YOUR TIME IS EXPIRED. WE WILL BE IN RECESS.