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NEXT CASE ON THE COURT'S CALENDAR IS J.B. VERSUS FLORIDA DEPARTMENT OF CHILDREN AND FAMILY SERVICES. ALL RIGHT. THE NEXT CASE IS J.B.. MS. DOVE.

MAY IT PLEASE THE COURT. I AM JOYCE SIBSON DOVE, AND I REPRESENT THE FATHER IN THIS CASE, APPOINTED TO THIS CASE BY THE TRIAL JUDGE, AT THE END OF THE ADJUDICATORY HEARING ON THE TERMINATION OF HIS PARENTAL RIGHTS TO FOUR CHILDREN.

JUST SO I UNDERSTAND THE FACTUAL SCENARIO IN WHICH WE ARE OPERATING, THESE CHILDREN WERE WITH THEIR GRANDMOTHER, REMOVED FROM THE NATURAL FATHER SINCE 1988?

YES.

AND THEY WERE WITH THE GRANDMOTHER FROM 1988 TO 1995?

YES.

AND THEN THEY WERE IN FOSTER CARE FROM AUGUST OF 1995, WITH PETITION TO TERMINATE FILED IN OCTOBER OF '96. NOW WE ARE IN 2000. WHAT IS THE STATUS OF THESE CHILDREN? ARE THEY STILL IN FOSTER CARE IN.

AT THE LAST JUDICIAL REVIEW ON THIS MATTER, I BELIEVE THAT I CAN CONFIRM THAT THEY WERE IN FOSTER CARE. YES.

SO BECAUSE OF THIS ONE NOT GIVING THE FATHER 48 HOURS NOTE -- NOTICE VERSUS 24 HOURS' NOTICE, WE HAVE NOW SUCCEEDED IN KEEPING THESE CHILDREN IN FOSTER CARE, WHAT MUST BE HOW WOULD ARE THEY NOW?

-- HOW OLD ARE THEY NOW?

ONE HAS REACHED THE AGE OF MAJORITY AND THE OTHER IS 15, AND THE TWINS WILL BE 12 THIS YEAR.

AND YOUR CLIENT IS STILL INTERESTED IN BECOMING THE FATHER AND ASSUMING FULL TIME CARE OF THESE CHILDREN?

HE STILL MAINTAINS CONTACT WITH THEM, AND HE STILL, ALTHOUGH HE CERTAINLY WON'T BE CHARACTERIZED BY ANYONE AS A MODEL FATHER, HE STILL CONSIDERS THEM HIS CHILDREN. AND THEY STILL HAVE THAT -- THEY STILL HAVE THAT TIE TO HIM. THIS FATHER WAS WORKING ON HIS CASE PLAN EARLY IN '88, BUT THEN THE CASE WENT ON AND THE CHILDREN WERE WITH THE GRANDMOTHER. THE CIRCUMSTANCES ARE THAT THE DEPARTMENT MADE A DECISION, WHEN THE CHILDREN CAME BACK INTO FOSTER CARE, PROBABLY BECAUSE THE GRANDMOTHER WAS ELDERLY AND WAS NOT ABLE TO CONTINUE TO CARE FOR THEM, THAT THEY WOULD SEVER PARENTAL RIGHTS, IN ORDER TO PROVIDE SOME PERMANENCE OUTSIDE THE FOSTER CARE SYSTEM. THE CHILDREN HAVE SOME PROBLEMS. WHETHER THEY WILL BE ADOPTED OR NOT OR WOULD HAVE BEEN ADOPTED IS CERTAINLY QUESTIONABLE, BUT THE TESTIMONY AT THE TRIAL, THE ADJUDICATORY HEARING WAS THAT THEY COULD BE.

WAS THE GOAL WAS CHANGED IN MAY OF '96?

THE GOAL WAS CHANGED IN A HEARING IN MAY OF '96, WHICH HE WAS NOT AT.

HE WAS NOT NOTICED FOR THAT HEAR SOMETHING.

THE RECORD DOESN'T SHOW ANY NOTICE. CIRCUMSTANCES SHOW THAT WHEN YOU HAVE ONE HEARING, YOU RECEIVE NOTICE FOR THE OTHER, AND THAT PROCEDURE IS HANDLED MUCH MORE TIGHTLY NOW THAN IT WAS AT THAT TIME.

ALTHOUGH NOT THE NOTICE REQUIREMENT, MAYBE, BUT A LOT OF THIS IS CHANGED WHERE THERE IS NOW INVOLVEMENT EARLY ON. WOULD ATTORNEYS BE INVOLVED IN THIS PROCESS EARLY ON, ALSO, UNDER THE NEW LAW?

ATTORNEYS, UNDER THE NEW LAW, WOULD BE APPOINTED IMMEDIATELY, AND THAT IS ONE OF THE SAFEGUARDS THAT IS IN PLACE NOW.

IMMEDIATELY FROM WHAT POINT?

THAT POINT IS STILL UNCLEAR. WHEN YOU HAVE CHILDREN COME BACK INTO FOSTER CARE, PROBABLY THE BIGGEST HOLES IN THE CURRENT STATUTE IS WHAT DO YOU DO AND WHAT ARE THE TIME LINES FOR WHEN CHILDREN COME BACK INTO THE FOSTER CARE OR BACK INTO THE DEPARTMENT'S CARE AFTER BEING PREVIOUSLY DECLARED DEPENDENT. THE CIRCUMSTANCES --

DOES THAT MEAN THAT WE ARE NOW GOING TO MOVE -- WHEN THEY COME BACK INTO CARE, DOES THAT MEAN THAT THE DEPARTMENT IS NOW MOVING INTO TERMINATION OF PARENTAL RIGHTS?

IT DOESN'T NECESSARILY MEAN THAT, BUT BECAUSE OF THE CIRCUMSTANCES WITH ANYONE'S BUDGET, I AM SURE THAT THEY ATTEMPT TO DO IT AS QUICKLY AS THEY CAN, AND THE SITUATION THAT THEY HAVE WITH A SITUATION WITH, SAY, PARENTS NOT INVOLVED, WEREN'T THE CUSTODIANS FOR THE PAST EIGHT YEARS, LIKE THIS SITUATION THEY WOULD TRY TO DO SOMETHING WHICH WOULD ALLOW FOR CHILDREN TO BE SOMEWHERE PERMANENT AND, MAYBE, EVEN TOGETHER, ALTHOUGH THAT NEVER WAS A REALITY FOR THESE CHILDREN AND IT ISN'T TO THIS DAY.

YOU WERE GOING TO PINPOINT FOR US, THOUGH, UNDER THE PRESENT SCHEME, WHEN THE APPOINTMENT OF COUNSEL WAS MADE.

YES. AND THERE IS A POINT WHERE THE ONLY POINT I CAN SAY THAT IS CLEAR IS THAT, IF A PARENT SHOWS UP AND DEMONSTRATES INDGENERALS I, THEY GET -- INDIGENCY, THEY WILL GET AN ATTORNEY. IF THE PARENT DOES NOT COME TO COURT --

AT WHAT POINT, IF THE PARENT DOES NOT COME TO COURT?

IF THE PARENT NEVER SHOWS UP, THAT BECOMES AN ISSUE. IN THE CASE WHERE THERE THEY ARE SUMMONSED TO COURT, LIKE THIS CASE, WHICH IS STILL, THIS CASE, THE WAY THIS CASE CAME TO COURT IS STILL SIMILAR. THE CASE HAD BEEN HAPING FOR THREE YEARS. THE FATHER HAD BEEN COMING, OFF AND ON, TO HEARINGS. WHEN THE DEPARTMENT CHANGED THE GOAL IN MAY, THE BURDEN OF THE DEPARTMENT IS TO SERVE THEM AND TO SERVE THE PARENTS AND TELL THEM IMMEDIATELY THIS IS WHAT WE DID. WE CHANGED THE GOAL.

THEY DIDN'T DO THAT. THEY WENT FROM MAY, THE PETITION, UNTIL OCTOBER.

THAT'S RIGHT.

I AM CONCERNED, AND I KNOW YOU ARE CONCERNED, AND I DON'T KNOW WHETHER IT APPLIES TO THIS CASE. WE DON'T HAVE A RULE IN PLACE, NOW, THAT SAYS ANYTHING OTHER THAN THERE SHALL BE A HEARING AS SOON AS POSSIBLE. SO I WOULD IMAGINE YOUR ARGUNIT IN THIS

CASE IS THAT, IF AS SOON AS POSSIBLE CAN BE 24 HOURS, THAT IS JUST NOT ENOUGH NOTICE, AS A MATTER OF LAW.

IT IS CERTAINLY NOT, WHEN YOU HAVE AN EIGHT OR NINE YEAR CASE, AND IT CERTAINLY ISN'T ENOUGH TIME FOR A PARENT TO DIGEST THE RESPONSIBILITIES THAT ARE BEING GIVEN TO THEM. THE DEPARTMENT'S CHANGE OF GOAL MEANS THAT THEY ARE AT THE RISK OF LOSING ALL OF THEIR PARENTAL RIGHTS.

WHY WAS 24 HOURS AN ISSUE IN THIS CASE? THE MAN DID NOT READ THE NOTICE UNTIL DAYS LATER. IF IT HAD BEEN 48 HOURS, 72 HOURS, AND IN THIS CASE IT WOULD HAVE BEEN IRRELEVANT.

IT IS POSSIBLE THAT, BECAUSE THE SWORN TESTIMONY WAS THAT HE DIDN'T READ IT UNTIL AFTER THE WEEKEND, THAT THAT MIGHT BE TRUE, AND THAT IS WHY WE HAVE ARGUED, CONTINUOUSLY, THAT THE DEFAULT PROVISIONS ARE UNCONSTITUTIONAL, BECAUSE THERE IS A CONSISTENT BURDEN ON THE DEPARTMENT TO PROVIDE, BY CLEAR AND CONSISTENT EVIDENCE, WHAT --

THAT IS WHAT THEY WERE GOING TO DO AT THE ADJUDICATORY HEARING, WASN'T IT?

IN FACT THEY DID. THE MOTHER WAS NOT PRESENT. THE FATHER WAS.

SO HE, BASED UPON HIS FAIL YOUR TO EVEN LOOK AT THE DOCUMENTS, HE DID NOT SHOW UP, AND HAD THEY BEEN SEVERAL DAYS AS OPPOSED TO 24 HOURS OR 48 HOURS LATER, IT WOULD HAVE MADE NO DIFFERENCE, SO THE JUDGE WENT AHEAD AND, THEN, ENTERED THE CONSENT. CORRECT?

THAT'S RIGHT.

AND THEN WHAT HAPPENED?

IT IS FAIR TO ASSUME THAT, NO MATTER WHAT, HE WOULD NOT HAVE SHOWN UP AT THE ADVISORY HEARING, BUT WHEN THE ADJUDICATORY HEARING, WHICH IS THE SUBSTANTIVE HEARING ON THE MERITS WAS HELD, HE SHOWED UP AND SAID HE WANTED TO PARTICIPATE. HE DIDN'T WANT TO LOSE HIS PARENTAL RIGHTS, AND HE WANTED A LAWYER.

AND THEN THE RULING ON THAT, DID THAT GO UP ON APPEAL CENTRAL.

IT DID.

AND IT WAS SENT BACK FOR THE PURPOSE OF MAKING THAT DETERMINATION. WHETHER OR NOT HE COULD VALIDLY SET ASIDE THE CONSENT.

YES. FIRST, THE HOLDING WAS THAT HE SHOULD HAVE HAD AN ATTORNEY APPOINTED IMMEDIATELY. IT WAS MANDATORY AT THAT TIME, AS IT IS NOW.

AND THE JUDGE RULED THAT HE DID NOT MAKE A SUFFICIENT SHOWING TO SET ASIDE THE CONSENT.

YES. THAT IS THE RULING OF THE TRIAL COURT.

THEY GAVE HIM A LAWYER AT THAT POINT.

BUT GAVE HIM A LAWYER AT THAT POINT. ANOTHER LAWYER WAS GIVEN AT THE END OF THE ADJUDICATORY TRIAL IN 1996. WE WERE APPOINTED, MY OFFICE WAS APPOINTED AT THAT TIME TO APPEAL. WE TOOK THE APPEAL, WON THE APPEAL, CAME BACK FOR THE CONSENT. WE WERE

CONTINUED IN HIS REPRESENTATION AND APPEARED WITH HIM FOR THE CONSENT HEARING. YES.

AND SO NOW THAT IS BACK UP BEFORE US. IS THAT CORRECT?

WELL, ACTUALLY --

THAT WENT BACK TO THE APPELLATE COURT, THAT RULING.

THE RULING THAT THE JUDGE -- THE JUDGE MADE, WHICH, AS WE ARGUE, IS THE JUDGE BASICALLY MOVED BEHIND THE POINT, WHERE THE FIRST DISTRICT COURT OPINION SAID WAS PROBLEM, WHERE THERE WAS NO LAWYER, SHE MOVED BACK TO THE OCTOBER TIME POINT, AWAY FROM THE DECEMBER TIME POINT, WHICH WOULD HAVE CLEARLY BEEN RULED BY THE SECOND DISTRICT COURT OF APPEALS TO BE AN ERROR, AND SAID THAT HE STILL DIDN'T APPEAR. HE HAS NO EXCUSE. BUT THEY ACCEPTED THE FACT THAT HE WAS SICK. THEY ACCEPTED THE FACT THAT HE COULDN'T READ. THEY ACCEPTED THE FACT THAT HE WAS -- THEY COULD SEE CLEARLY, AS YOU CANNOT, THAT HE WAS A BLACK MAN BORN IN 1956, EDUCATED IN THE '60s, ONLY INTO THE NINTH GRADE, IF THAT, AND THAT HE SHOULD HAVE KNOWN, WITHOUT AN ATTORNEY, WITH NO ATTORNEY HAVING BEEN APPOINTED IN THE CASE, THAT HE, THIS WAS THE RISK, AND THAT EVEN THOUGH HE SHOWED UP FOR THE SUBSTANTIVE HEARING ON THE MERITS, THAT THEY WERE GOING TO REINSTATE THE OCTOBER 1996 CONSENT. AND THAT IS WHERE THE CONSENT, AGAIN, I BELIEVE, BECAME UNCONSTITUTIONAL, BECAUSE, NOW -- THE FATHER SOUGHT THE RELIEF OF THE COURT TO REMOVE THE JUDGMENT, AND YET GOT A FAVORABLE RULING FROM THE SECOND DISTRICT COURT OF APPEALS, AND IS SIMPLY PUT BACK IN THE STATUS THAT HE WAS BACK IN OCTOBER 1996.

WAS THIS ISSUE RAISED IN THAT APPEAL? I SAY THIS ISSUE, I MEAN THE ISSUE OF THE SHORTNESS OF THE NOTICE AND THE DECISION OF THE TRIAL COURT NOT TO LET THE FATHER PARTICIPATE AT THE ADJUDICATORY HEAR SOMETHING.

YES. THE BRIEF, IN THE FIRST INSTANCE, YOUR HONOR, WAS VERY SIMILAR, IF NOT ALMOST IDENTICAL TO THE BRIEF IN THIS ONE.

AND DID THE FIRST DISTRICT RULE ON THOSE ISSUES?

NO. THE FIRST DISTRICT ONLY RULED THAT THEY ONLY HAD TO REACH THE STATUTORY MANDATE, THAT THE FATHER WOULD HAVE BEEN APPOINTED AN ATTORNEY AT ANY HEARING, AT WHICH HE APPEARED, AND THAT AT EVERY SUBSEQUENT HEARING, HE MUST, THAT OFFER MUST BE RENEWED, AND A MEANINGFUL WAIVER MUST BE PLACED ON THE RECORD, AND SINCE THAT HAD NOT HAPPENED, THE COURT STOPPED THERE AND APPOINTED THE ATTORNEY AND SENT IT BACK.

BUT THEY NEVER WENT TO AN ADJUDICATORY HEARING, WHEN IT WENT BACK.

NO. NO EVIDENCE WAS PRESENTED, IN FACT. NO EVIDENCE WHATSOEVER.

AND WAS THAT ASKED FOR? DID THEY -- DID YOU ASK FOR AN ADJUDICATORY HEARING?

WE MOVED TO VACATE THE CONSENT AND MOVED TO VACATE THE DEFAULT, EXCUSE ME, WHICH, OF COURSE, IS THE CONSENT, AND ARGUED ORALLY AND PROFFERED AND THE DEPARTMENT PROFFERED, AND THE JUDGE RULED, IN A SIX-PAGE RULING, BASED ON PROVERS, THAT THERE WAS NO DIF-- PROFESSORS, THAT THERE WAS NO DIFFERENCE -- BASED ON THE PROFFERS, THAT THERE WAS NO DIFFERENCE IN THE ADJUDICATORY HEARING AND MARCH 1998.

AND THAT WENT TO THE APPELLATE COURT AND IS THE BASIS ON WHICH WE ARE RULING.

YES, AND THE SECOND TIME THE DISTRICT COURT OF APPEALS SAW THE CASE, THEY RULED THE DEFAULT WAS ACCEPTABLE, BECAUSE 24 HOURS, 25 HOURS AND FIVE MINUTES WAS ENOUGH FOR SOMEONE WHO HAD BEEN INVOLVED IN SUCH A CASE PREVIOUSLY.

YOU ARE CHALLENGING THE CONSTITUTIONAL EIGHT OF THE DEFAULT -- THE CONSTITUTIONALITY OF THE DEFAULT PROCEDURES. YOU RAISE THAT AS A PRATT POINT IN THIS APPEAL?

YES.

WHETHER IT IS -- AS AN AS A POINT IN THIS APPEAL?

YES.

THAT WHETHER IT IS 24 HOURS OR 48 HOURS OR 72 HOURS, THAT NOT SHOWING UP IS CONSTITUTIONAL?

YES.

AND YOU PRESENTED THAT TO THE APPELLATE COURT? AND DID THEY DISCUSS IT?

NO. THEY DID NOT RULE ON THAT AT ALL. THEY WENT STRAIGHT TO ONE POINT, WHICH I UNDERSTAND THE BURDEN OF THE COURT SYSTEM IS TO MAINTAIN THE CONSTITUTIONALITY OF THE STATUTES, BUT THIS SITUATION THAT WE HAVE HERE WITH THE RULING ON THE DEFAULT IN 1996 IS NOT ONLY BOUND TO BE REPEATED IN THE FUTURE BUT THE FACT THAT, NOW, IN THE STATUTE, YOU CAN BE DEFAULTED FOR THE EXACTLY SAME REASON AT BOTH THE ADVISORY AND THE ADJUDICATORY.

LET ME MAKE SURE I UNDERSTAND WHAT THE CURRENT PROCEDURE, YOU -- IF HE DIDN'T SHOW UP FOR THE ADVISORY, HE WOULDN'T HAVE GOTTEN AN ATTORNEY, IF HE DIDN'T SHOW UP AT THE ADVISORY HEARING.

AT THE CURRENT PROCEDURE, IT DOESN'T SEEM TO ME, AS A PARENT'S ATTORNEY, THAT THAT WOULD BE TRUE, BUT I HAVE OBSERVED THAT IT HAS BECOME DISCRETIONARY ON THE PART OF THE JUDGE AND OFTENTIMES THE JUDGE WILL APPOINT AN ATTORNEY TO TRY TO FIND OUT WHY THAT --

SO YOU ARE SAYING THAT IT NEEDS TO BE CLEAR THAT, WHEN THE GOAL CHANGES FROM REUNIFICATION TO TERMINATION, THAT THAT AN ATTORNEY SHOULD BE APPOINTED FOR THAT PARENT, WHETHER THE PARENT IS PRESENT OR ABSENT, IF THERE IS ANY INDICATION THAT THE PARENT IS INTERESTED IN ASSERTING THEIR PARENTAL RIGHTS. IS THAT RIGHT? SO THE NOTICE ISSUE IS NOT REALLY YOUR CONCERN HERE?

IT IS ABSOLUTELY ONE OF MY CONCERNS.

GO BACK TO JUSTICE HARDING. HE SAID 4 -- 48 HOURS OR 72 HOURS, HE IS NOT GOING TO READ THE NOTICE.

THE STATUTE, NOW, FOLLOWS A TWO-STEP PROCEDURE, WHICH IS NOT BEING FOLLOWED IN THIS CASE. FIRST THEY ARE SUPPOSED TO FILE THE PETITION, WHICH MEANS IT WOULD BE MAILED TO HIM. THEN THE CLERK WAS SUPPOSED TO SET THE HEARING, AND THEN HE WAS SUPPOSED TO GET THAT NOTICE WITH THE PETITION ATTACHED, SO IF YOU HAVE THAT THAT SITUATION AND HE HAS RECEIVED THIS AND THEN HE HAS HAD A HEARING, HE IS GOING TO HAVE ADDITIONAL TIME TO DO IT, AND THE STATUTE, ITSELF --

HE DIDN'T GET A NOTICE OF THE HEARING UNTIL SUCH TIME AS HE GETS A NOTICE OF THE HAERLINGING, AND THAT IS WHEN THE -- OF THE HEARING, AND THAT IS WHEN THE CLERK SENDS IT OUT.

THIS WAS NOT SENT OUT BY THE CLERK. THE PETITION WAS FILED, AND THE NEXT DAY IT WAS SERVED WITH THE NOTICE OF HEARING.

IN THE EVENT IT WAS ISSUED BY THE CLERK AND SIGNED BY THE JUDGE.

I SHOULD BY THE CLERK -- ISSUED BY THE CLERK AND SIGNED BY THE DEPARTMENT.

YOU ARE SAYING IF SOMEONE GOT A COMPLAINT AND WAS TOLD THEY WOULD HAVE TO SHOW UP IN COURT THE NEXT DAY, AND IF THEY DIDN'T SHOW UP THE NEXT DAY, THEY WOULD BE DEFAULTED. THERE WAS SOMETHING WRONG WITH THAT PROCEDURE.

WITH LOSING CONSTITUTIONALLY PROTECTED RIGHTS WITHIN 24 HOURS OF THE NOTICE THAT YOU COULD LOSE THEM. THERE IS NO OTHER SITUATION WHICH WE SEE IN THE LAW IN FLORIDA, AND THERE IS CERTAINLY NO OTHER SITUATION IN FEDERAL LAW WHERE YOU CAN GET THAT.

THAT IS FACIALLY, NOT UNCONSTITUTIONAL IN THIS ISSUE, BUT THAT IS FACIALLY BE UNCONSTITUTIONAL?

I WOULD SAY THAT IS FACIALLY UNCONSTITUTIONAL, ACCORDING TO THAT TIME. THIS RULING THAT WE HAVE IN THIS CASE, THE SECOND RULING BY THE DISTRICT COURT OF APPEALS, NOW SETS THAT STANDARD, AND I APPEAL TO THIS COURT FOR THE PURPOSE OF REMOVING AT LEAST THAT STANDARD, BECAUSE THE INFERENCE PREVIOUS TO THIS, I THINK, IN PRACTICE, HAS BEEN AT LEAST 72 HOURS, BECAUSE EVERYONE KNOWS THIS IS A MAJOR HERING, AND ALL -- HEARING, AND ALTHOUGH IT WASN'T IN THE STATUTE, IT IS NOW, AND FOR THE PURPOSE OF DEPENDENCY, I THINK MOST OF THE DEPARTMENTS REPRESENTING ARE INSTRUCTING THAT THEY WILL SERVE TERMINATION PETITIONSS AT LEAST 72 HOURS AHEAD OF TIME, YET HERE WE HAVE SOMETHING IN LAW WHICH IS GOING TO ALLOW THOSE THINGS TO BE SERVED ONLY IN 25 HOURS, AND I KNOW THAT NONE OF MAY CLIENTS WOULD STAND THAT.

-- NONE OF MY CLIENTS WOULD STAND THAT.

WOULD IT MAKE ANY DIFFERENCE, IF HE WERE SERVED WITH A COPY OF THE PETITION FOR TERMINATION PRIOR TO THE SUMMONS TO COME TO COURT?

IT WOULD HAVE MADE A DIFFERENCE IN HIS ABILITY TO PREPARE AND THIS CASE WOULD BE DIFFERENT, I AM SURE, BUT I DON'T THINK IT MAKES THE DEFAULT PROVIDING ANY BETTER. THE DEFAULT POSITION IN THE STATUTE SHOULDN'T STAND.

BUT WOULD IT MAKE A DIFFERENCE IN WHETHER OR NOT 24 HOURS IS SUFFICIENT?

IF HE HAD AN ATTORNEY. ONLY IF HE HAD AN ATTORNEY. I DON'T THINK 24 HOURS IS EVER GOING TO BE SUFFICIENT, BUT IF HE HAD AN ATTORNEY, IF HE WAS SERVED THE PETITION AHEAD OF TIME, 72 IS A REASONABLE STANDARD TO LOOK AT FOR THESE SITUATIONS.

IF YOU WISH TO SAVE SOME TIME FOR REBUTTAL. I DON'T KNOW HOW MUCH YOU HAVE. YOU MAY DO SO. MR. FINKEL.

MAY IT PLEASE THE COURT. I AM CHARLES FINKEL, REPRESENTING THE DEPARTMENT OF CHILDREN AND FAMILIES. TO CLARIFY MATTERS, WHAT HAPPENED THE FIRST TIME THE CASE WENT UP TO THE DISTRICT COURT OF APPEAL, THE DISTRICT COURT OF APPEAL REVERSED AND SENT IT BACK FOR THE PURPOSE OF ALLOWING THE FATHER AN OPPORTUNITY TO FILE A MOTION

TO VACATE THE DEFAULT JUDGMENT, WITH THE ASSISTANCE OF COUNSEL. THE MOTION TO VACATE THE DEFAULT JUDGMENT DID NOT WILLING ALONG -- DID NOT ALLEGE EXCUSEABLE NEGLECT AND DID NOTAL ALONG A MERITORIOUS DEFENSE. ALL IT DID WASAL ALONG THE FIRST CONCLUSION THAT WAS BEFORE THE FIRST DISTRICT COURT OF APPEAL, WHICH IS THAT 24 HOURS WAS TOO SHORT A TIME BETWEEN THE SERVING OF THE SUMMONS AND THE ADVISORY HEARING. A BECAUSE WE ARE LOOKING AT THIS FOR THE FUTURE, I CAN'T HELP BUT GET AROUND THE FACT THAT, IF THE FATHER HAD JUST MAYBE HAD HIS DAY IN COURT, WHICH WOULDN'T HAVE TAKEN VERY LONG, IN 1996, THIS CASE COULD HAVE BEEN DONE AND OVER WITH. NOW, WITH THE NEW LAW, THE NEW RULES, WHAT -- IS THE DEPARTMENT'S POSITION THAT, WHEN THEY CHANGE FROM REUNIFICATION TO TERMINATION, YOU SERVE A PETITION ON -- THAT IS FILED ON OCTOBER 21, THAT IT IS -- THAT 24 HOURS IS OKAY? UNDER CERTAIN CIRCUMSTANCES?

LET ME ANSWER. I AM NOT SURE IF THERE IS TWO QUESTIONS THERE.

THERE ARE GOING TO BE A FEW QUESTIONS.

THE DEPARTMENT'S POSITION IS 24 HOURS IS SUFFICIENT FOR AN ADVISORY HEARING, WHICH IS REALLY A STATUS CONFERENCE.

IT IS REALLY NOT A STATUS CONFERENCE, BECAUSE, REALLY, IF A PERSON DOESN'T SHOW UP AT AN ADD VISZRY HEARING -- ADVISORY HEARING, IT IS OVER FOR THEM.

THE PROBLEM IS REALLY SOLVED, BECAUSE UNDER THE '99 STATUTES, IT REQUIRES THAT AN ATTORNEY BE APPOINTED FOR AN INDIGENT PARENT, AT THE TIME OF THE FIRST SHELTER HEARING, SO 24 -- WITHIN 24 HOURS AFTER WE HAVE REMOVED THE CHILD, ALL THE WAY BACK TO THE BEGINNING OF THE CASE, AN ATTORNEY, IF THE PARENT SHOWS UP AT THE SHELTER HEARING, THEY ARE APPOINTED AN ATTORNEY.

SO YOU ARE SAYING THAT, IF THIS HAPPENED UNDER THE NEW PROCEDURE, THAT HE WOULD HAVE ALREADY HAD AN ATTORNEY.

HE WOULD HAVE HAD AN ATTORNEY ALL WAIT THROUGH THE DEPENDENCY PROCESS. HE WOULD HAVE AN ATTORNEY --

MY QUESTION IS, IF THIS SAME THING HAPPENED UNDER THE NEW PROCEDURE, HE WOULD HAVE ALREADY HAD AN ATTORNEY.

YES, YOUR HONOR.

THE ATTORNEY WOULD HAVE BEEN NOTICED ABOUT THIS.

YES, YOUR HONOR.

IS THAT CORRECT?

YES, YOUR HONOR.

NOTWITHSTANDING THAT, WE HAVE GOT THIS CASE THAT WE HAVE TO WORRY ABOUT HERE. AND PART OF MY CONCERN ABOUT THE DISTRICT COURT'S OPINION, IT, JUST AS YOU DID JUST A MINUTE AGO, AND I WILL -- I AM PARAPHRASING. I APOLOGIZE FOR THAT. SAID IT IS JUST A STATUS HEARING, AS IF IT IS NO BIG DEAL. IT IS JUST A STATUS HEARING, AND THE DISTRICT COURT OPINION SEEMED TO FOCUS ON THAT. THAT IS THEY HAD THIS LENGTHY DISCUSSION ABOUT DUE PROCESS DEPENDS ON YOU KNOW, WHAT THE RIGHTS ARE INVOLVED AND THEN WHAT IS GOING TO HAPPEN AT THE HEARING AND ALL OF THAT KIND OF THING AND THEN SPENDS AN AWFUL LOT OF TIME SAYING THE STATUS CONFERENCE IS NO BIG DEAL. IT IS JUST A

STATUS CONFERENCE. OKAY. BUT THAT IS NOT RIGHT, IS IT? IN FACT, WHAT IS AT-RISK THERE, IN ATTENDING THAT HEARING, IS THAT THIS DEFAULT CAN BE ENTERED, AND THAT IS EXACTLY WHAT HAPPENED HERE, SO IT IS A BIG DEAL. IS IT NOT?

YES. IT IS A BIG DEAL. BUT THE REQUIREMENT FOR PREVENTING THE DEFAULT AT THAT TIME WAS A MATTER OF PICKING UP THE PHONE AND NOTIFYING THE COURT --

THAT MAY BE TRUE, FOR INSTANCE, IF WE HAVE A CIVIL CASE, WHERE YOU HAVE GOT LIABILITY FOR DAMAGES OR WHATEVER, AND OF COURSE THAT IS ALL YOU HAVE TO DO IS PICK UP THE PHONE, BUT I CAN'T IMAGINE A JUDGE OR A LAWYER IN THE UNITED STATES SUGGESTING THAT 24 HOURS' NOTICE IS ENOUGH FOR YOU TO AVOID A DEFAULT IN A CIVIL CASE, WHERE YOU KNOW, DAMAGES MAY ULTIMATELY BE ENTERED AGAINST YOU. CAN YOU?

24 HOURS --

DO YOU THINK THAT WOULD BE CONSTITUTIONAL IN A CIVIL PROCEEDING?

GIVEN IT WOULD NOT BE A BETTER PRACTICE, BUT GIVEN THE PROVISIONS OF TEN DAYS TO FILE A MOTION FOR REHEARING, GIVEN THE OTHER PROVISIONS OF BEING ABLE TO VACATE A DEFAULT FOR EXCUSEABLE NEGLECT OR MERITORIOUS DEFENSE, THEN BALANCING THE VARIOUS INTERESTS INVOLVED, YES, IT COULD BE CONSTITUTIONAL.

SO YOU WOULD SUGGEST AN EFFICIENT WAY TO DEAL WITH A LOT OF THE CASES THAT WE HAVE IN THE SYSTEM, I SUPPOSE, IS LET'S GET ON WITH THIS STUFF AND JUST SHORTEN ALL THAT NOTICE THERE.

NOT NECESSARILY. I WOULDN'T SAY THAT -- THERE ISN'T A PARTICULAR --

IF THERE IS GOING TO BE SORT OF A RULE, SHOULD IT HAVE TO DO WITH THE IMPORTANCE OF THE RIGHT THAT IS INVOLVED? THAT IS SHOULD THERE BE LESS NOTICE, WHEN THERE IS LESS AT STAKE, AND MORE NOTICE, WHEN THERE IS MORE AT STAKE? WOULD THAT -- DOES THAT MAKE SENSE?

WELL, WHAT WE HAVE AT STAKE ARE TWO COMPETING INTERESTS, ONE OF WHICH IS THE WELFARE OF THE CHILD, AND THE ENTIRE CHAPTER 39 AND THE RULES OF JUVENILE PROCEDURE HAVE BEEN WRITTEN FOR THE PURPOSE OF SPEEDING UP THE PROCESS TO ATTEMPT TO GET --

HOW MANY YEARS DID THE DEPARTMENT -- WAS INVOLVED IN THIS, BEFORE THE DEPARTMENT DECIDED TO GO FOR TERMINATION OF PARENTAL RIGHTS? HOW MANY YEARS WAS THE DEPARTMENT INVOLVED WITH THESE CHILDREN AND HAD THEM EITHER IN THE GRANDMOTHER -- OUT OF THE NATURAL PARENTS' CARE, HOW MANY YEARS BEFORE THEY MADE THIS DECISION?

THE PERIOD OF TIME --

IS THAT A NUMBER? HOW MANY YEARS? EYE CAN'T GIVE --

A ROUGH APPROXIMATION OF HOW MANY YEARS?

TWO TO THREE.

SO I THOUGHT THAT THIS ALL STARTED MANY YEARS BEFORE, WHEN THE DEPARTMENT INTERVENED.

THAT IS WHAT I AM TRYING TO EXPLAIN, YOUR HONOR. THE DEPARTMENT INTERVENED IN 1988. THE CHILD WAS PLACED WITH THE GRANDMOTHER IN 1989, AND THEN IT WAS CONSIDERED AS A

PERMANENT PLACEMENT IN 1990, AND THE DEPARTMENT, THEN, GOT OUT OF THIS FAMILY'S LIFE. THEN, IN 1999, IT WAS DETERMINED THAT THESE CHILDREN WERE BEING SEXUALLY ABUSED IN THE HOME OF THE GRANDMOTHER, BY RELATIVES, SO THE DEPARTMENT GOT --

YOU SAID 1999.

I AM SORRY. 1995, IT WAS DETERMINED THAT THESE CHILDREN WERE BEING ABUSED IN THIS PERMANENT PLACEMENT, AT WHICH TIME THE DEPARTMENT REMOVED THE CHILDREN, GAVE A CASE PLAN, AGAIN, TO THE PARENTS, PROCEEDED FOR THE YEAR FOR THE CASE PLAN TO EXPIRE, AND THEN FILED FOR TERMINATION OF PARENTAL RIGHTS, WITHIN THE 18-MONTH PERIOD THAT WAS PERMITTED BY THE STATUTE AT THAT TIME FOR MOVING THE CHILDREN THROUGH THE FOSTER CARE SYSTEM.

I HAVE ASKED YOU ABOUT THE CIVIL RULE. CAN YOU -- LET ME ASK YOU ABOUT A CRIMINOLOGY. WOULD IT, ALSO, BE CONSTITUTIONAL, IN YOUR OPINION, IF SOMEBODY ACCUSED OF A CRIME WAS NOTIFIED THAT, IF THEY DIDN'T SHOW UP WITHIN 24 HOURS AT A HEARING, THAT A JUDGMENT OF GUILT COULD BE ENTERED AGAINST THEM?

HYPOTHETICALLY, NO, BUT THE WAY THE PROCEDURE --

WHY NOT?

BECAUSE GENERALLY THE INDIVIDUAL IS ARRESTED AND SHOWS FOR THE FIRST APPEARANCE THE NEXT MORNING OR THEY ARE APPOINTED A PUBLIC DEFENDER TO PREVENT THAT ISSUE.

MR. FINKEL, ISN'T THERE A REQUIREMENT THAT, IF COUNSEL IS REQUESTED OR WAS NOT THERE A REQUIREMENT AT THIS TIME, IF COUNSEL REQUESTED AT ANY HEARING, THEN THE COURT WOULD APPOINT COUNSEL?

THAT IS CORRECT.

AND AT THIS HEARING, THE ADJUDICATORY HEARING, WHERE HE CAME IN AND ASKED FOR COUNSEL, THE COURT DID NOT APPOINT COUNSEL.

THE COURT DID NOT APPOINT COUNSEL.

AND DID NOT APPOINT COUNSEL TO THE CONCLUSION OF THE ADJUDICATORY HEARING.

THAT'S CORRECT.

WHY WAS THAT NOT ERROR?

WELL, IT WAS ERROR, AND THAT WAS WHY THE REASON -- THAT IS WHY THE CASE WAS REVERSED, AND FOR THE APPELLATE COURT SAID IT WAS ERROR, THAT THE COURT SHOULD HAVE APPOINTED COUNSEL, AND THAT IS WHY IT WAS REVERSED, FOR THE FUNT FOR HIM TO -- FOR THE OPPORTUNITY FOR HIM TO GO BACK AND GIVE THE TRIAL COURT THE REASON WHY HIS ORIGINAL DEFAULT, 42 DAYS BEFORE THE ADJUDICATORY HEARING SHOORTION BE VACATED. HE GOES BACK, AND HE DOESN'T GIVE THE TRIAL COURTNEY REASON WHY THAT PARTICULAR REASON SHOULD BE DEFAULTED. HE DOESN'T SAY I HAVE GOT SOMETHING TO PROCEED TO TRIAL ON. HE DOESN'T SAY I HAVE GOT SOME DEFENSE. ALL HE SAID IS I HADN'T READ THE SUMMONS, SO I DIDN'T SHOW UP.

HE DOESN'T HAVE TO SHOW A DEFENSE. WE ARE NOT TALKING -- HE HAS GOT -- IT IS HIS CHILD. HE -- THE BURDEN IS ON THE DEPARTMENT, TO SHOW, BY CLEAR AND CONVINCING EVIDENCE, THAT HE IS -- IS THAT THE STATUTE?

CLEAR AND CONVINCING EVIDENCE.

SO IN TERMS OF SETTING ASIDE A DEFAULT, IF WE ARE GOING TO EVEN HAVE SUCH A NOTION, WHICH APPARENTLY WE DO, IF THE PARENT, IF THE CHILD, WHAT IS THE FATHER SUPPOSED TO HAVE TO SHOW? THAT I AM FIT? SHOW THE POSITIVE? WHAT KIND OF PROOF WOULD THE DEPARTMENT WANT TO SEE?

AT LEAST, AT THAT POINT, A REPRESENTATION THAT HE HAD COMBLIND WITH SOME OF THE -- COMPLIED WITH SOME OF THE ALLEGATIONS IN THE COMPLAINT, BECAUSE HE IS NOW SEEKING TO OVERTURN A DEFAULT.

SO THE FACT IS, BECAUSE WHETHER IT IS 24 OR 48 HOURS, DOESN'T HAVE AN ATTORNEY, HE HAS GOT A NINTH GRADE EDUCATION, AND ONCE THAT DEFAULT GETS ENTERED AGAINST HIM, HIS ABILITY TO OVERCOME THAT DEFAULT IS NOT LIKE -- IT NOT A CAKEWALK. IT SOUNDS LIKE THAT IS A VERY DIFFICULT BURDEN TO OVERCOME. SO WE ARE REALLY, ALREADY, PUTTING HIM, ALTHOUGH IT GETS AN ATTORNEY FOR THE ADJUDICATORY HEARING, HE CAN'T, EVEN IF HE DID, HE COULDN'T SAY ANYTHING, BECAUSE HE HAS ALREADY HAD A DEFAULT, AND SO ISN'T THERE SOMETHING WRONG WITH THAT PROCEDURE BACK THEN? NOW, YOU SAY IT WOULDN'T HAPPEN TODAY, BECAUSE HE WOULD HAVE HAD THIS ATTORNEY, BUT BACK IN -- BY MAY OF 1996, OR BACK IN' 95?

GIVEN THE HISTORY OF THIS CASE, WHICH IS NOT UNLIKE OTHER CASES, NO, I DON'T BELIEVE THERE IS A PROBLEM WITH THE -- THIS PROCEDURE FOR THIS REASON. THIS FATHER WAS ORDERED, BY THE JUDGE, IN 1989, TO DO SOME TASKS. AS OF 1996, WHEN THE GOAL WAS CHANGED, HE HAD STILL DONE NONE OF THESE TASKS. HE HAD NOT DONE --

FOR THE JUDGE, 42 DAYS LATER, WHAT WOULD BE THE PROBLEM FOR THE JUDGE JUST TO HEAR HIM OUT, HAVE HIS ATTORNEY AND GET BACK TO THE MERITS OF THE ISSUE AND GET IT RESOLVED.

HE COULDN'T HEAR IT THAT DAY. HE WOULD HAVE TO HAVE HIS ATTORNEY, AND THE ATTORNEY WOULD HAVE TO PREPARE, SO THERE IS A DELAY.

JUST BEING PENNY WISE AND POUND FOOLISH, IF WE ARE GOING TO BE APPOINTING ATTORNEYS AND DOING THIS AND, YET, SAYING WE WANT THIS TO BE EXPEDITED, SHOULDN'T WE ERR ON THE SIDE OF LETTING PEOPLE GET HURT, IF THEY HAVE GOT ENOUGH INTEREST TO SHOW UP? ALL YES. HOWEVER, YOU HAVE THE OTHER PART OF THE PROBLEM. IF YOU HAVE -- IF THE COURT KNOWS IT IS GOING TO HAVE A CONTESTED TRIAL, WHICH WAS THE PURPOSE OF THE ADVISORY HEARING, THEN A DAY IS SET ASIDE. IF IT IS GOING TO BE AN UNCONTESTED TRIAL, WHERE ALL YOU HAVE TO DO IS PUT ON A PRIMA FACIE CASE OF THE GROUNDS, YOU HAVE AN HOUR SET ASIDE.

SHOULDN'T THE JUDGE, LOOKING AT THIS, SAY WHEN WAS MR. SO-AND-SO SERVED? HE WAS SERVED YESTERDAY? AND YOU ARE EXPECTING HIM TO BE HERE TODAY? I MEAN I JUST -- I UNDERSTAND THESE ARE, WE ARE CERTAINLY HAVING MORE AND MORE OF THESE CASES FILED, SO I AM CERTAINLY SYMPATHETIC TO THE PLIGHT OF JUDGES. I AM JUST THINKING THAT JUST WHAT WE ARE TALKING ABOUT HERE, A RULE THAT SAYS THAT 25 HOURS IS OKAY, JUST SEEMS TO BE FUNDAMENTALLY UNFAIR.

WELL, THE OTHER SIDE OF THE RULE REQUIRES THIS HEARING BE HELD WITHIN TWO WEEKS OF THE SERVICE OF OR WITH THE FILING OF THE PETITION. NOW, THE ORIGINAL PETITION WAS FILED OCTOBER 7 AND DECIDED SCHEDYULED FOR A -- AND SCHEDULED FOR AN OCTOBER 23 HEARING.

WAS HE SERVED WITH THAT?

NO. AND THERE WAS ONE ADDRESS FOR HIM IN THAT ORIGINAL PETITION. THE AMENDED PETITION HAD A SECOND ADDRESS, AND THAT WAS FILED OCTOBER 21.

IS THERE SOME POLICY REASON THAT THE DEPARTMENT HAD TO HAVE THIS HEARING WITHIN 24 HOURS? I MEAN WHAT WAS BEING -- WHAT GOOD WAS BEING SERVED HERE? BY HAVING THE HEARING THE VERY NEXT DAY.

THAT WASN'T WHAT HAPPENED. WHAT HAPPENED WAS, ON OCTOBER 23, WHEN THE MOTHER HAD BEEN SERVED BUT THE FATHER HAD NOT BEAN SERVED, THE DEPARTMENT NOUBS ANNOUNCED -- ANNOUNCED THEY HAD ANOTHER ADDRESS, A THIRD ADDRESS, IN A PERIOD OF THREE WEEKS, FOR THE FATHER, AND THE JUDGE RESCHEDULED THE ADVISORY HEARING FROM THE 23th TO THE 30th, SO THE JUDGE RESCHEDULED IT, THEN THE SUMMONS WAS PREPARED, AND SERVED, AND WAS UNABLE TO BE SERVED UNTIL THE DAY BEFORE THE HEARING. THAT IS WHAT OCCURRED. THE JUDGE HAD SET, JUDGE DECKER HAD SET THE HEARING, OCTOBER 30 HEARING, AT THE OCTOBER 23 PREVIOUS ADVISORY HEARING THAT WAS CONTINUED, AND ALL OF THIS IS IN THE ORDERS AND IN THE RECORD. SO IT IS NOT A MATTER OF THE DEPARTMENT RACING IN TO DO THIS. IT IS A MATTER OF THE COURT FOLLOWING THE RULES, WHICH WERE REQUIRED THAT THIS HEARING BE HELD WITHIN TWO WEEKS OF FILING THE PETITION.

DID THE MOTHER COME TO THE HEAR SOMETHING.

THE MOTHER CAME TO THE ADVISORY HEARING, ASKED FOR AN ATTORNEY, WAS APPOINTED AN ATTORNEY, AND THEN SHE -- THEN THE MOTHER FAILS TO SHOW UP AT THE ADJUDICATORY TRIAL, SO YOU HAVE THE ATTORNEY SITTING THERE WITH NO CLIENT.

DOES THE RECORD SHOW ANY ACTIVITY BY THE FATHER, FROM THE TIME THAT HE GOT THIS PAPER? THIS SERVICE, BEFORE THAT ADVISORY HEARING, UNTIL THE ADJUDICATORY HEARING?

SALUTELY NONE. IN FACT -- ABSOLUTELY NONE. IN FACT JUDGE DECKER WAS VERY EXPLICIT IN HER ORDERING DENIG -- DENYING THE MOTION TO VACATE, SAYING THAT HE HAD DONE NOTHING FOR 42 DAYS, WITH REFERENCE TO THIS CASE, BUT MERELY SHOWED UP AT THE HEARING.

IS THE FATHER ALLOWED TO FILE A RESPONSE?

HAD JUDGE DECKER BEEN HANDLING THIS MATTER FOR SOME TIME?

WELL, COINCIDENTALLY, SHE HAD BEEN AN ACTING CIRCUIT JUDGE BACK IN 1989, WHEN SHE ENTERED A DISPOSITION ORDER AND ORIGINALLY ORDERED THIS FATHER TO GO THROUGH SOME DRUG EVALUATIONS, AND THEN, WHEN SHE BECAME CIRCUIT COURT JUDGE, SHE TOOK OVER THE DEPENDENCY BENCH, SO BACK IN 1996 AND '95, YES, SHE WAS THE JUDGE, SO SHE WAS FAMILIAR WITH THIS FAMILY FROM 1989, ALTHOUGH SHE WAS NOT A DEPENDENCY COURT JUDGE ALL THE WAY THROUGH. IT JUST HAPPENED, ON THIS CASE, SHE WAS.

JUSTICE ANSTEAD.

IS THE -- ARE THE PARENTS ALLOWED TO FILE WRITTEN RESPONSES TO THE PETITION?

THEY ARE ALLOWED BUT NOT REQUIRED, BUT THE RULE, ALSO, SAYS THEY MAY BRING UP ANYTHING THAT THEY WANT TO BRING UP, ORALLY IN COURT, SO THAT YOU CAN --

IF HE HAD -- IN OTHER WORDS WAS HE ALLOWED TO FILE SOME KIND OF A WRITTEN RESPONSE? AND NOT ATTEND THE STATUS HEARING?

YES. IN FACT HE COULD HAVE EVEN CALLED THE CLERK'S OFFICE AND SAID, BECAUSE ALL IT SAYS, ALL THE RULES SAID AT THAT TIME WAS THAT YOU HAD TO JUST NOTIFY THE COURT OF

YOUR -- HE COULD HAVE WRITTEN A LETTER TO THE COURT AND NOTIFIED THE COURT OF HIS INTENT TO CONTEST.

R. THE RULE WAS PRETTY LOOSE AT THAT TIME. I AM NOT FINDING THE EXACT RULE RIGHT AWAY, BUT BASICALLY ALL HE HAD TO DO WAS MAKE HIS INTENT KNOWN TO THE COURT, AND HE DIDN'T EVEN DO THAT WITHIN THE --

LET ME ASK YOU, COMMON SENSE --

TIME PERIOD.

-- WHAT WOULD BE THE REACTION OF THE DEPARTMENT, IF IT RECEIVED AN ONE-DAY'S NOTICE THAT THERE WAS AN IMPORTANT HEARING TO TAKE PLACE THE NEXT DAY IN A CASE? WOULD THE DEPARTMENT ROUTINELY AGREE THAT THAT IS SUFFICIENT NOTICE?

IT WOULD DEPEND UPON THE CASE. THERE HAVE BEEN A NUMBER OF TYPES THAT I HAVE BEEN CALLED BY THE COURT TO SHOW UP THE NEXT DAY.

ONE OF THE REASONS I AM ASKING YOU THAT, IS IT IS STRANGE HOW THE COINCIDENCE OF THESE THINGS HAPPEN, BUT ANOTHER CASE THAT WE HAVE ON THE DOCKET THIS WEEK, THAT WE HEARD EARLIER IN THE WEEK, INVOLVED A CASE WHERE ONLY A DAY'S NOTICE OR SO WAS GIVEN OF A COURT HEARING OR A DEPOSITION, AND THE TRIAL COURT ACTUALLY ENTERED AN ORDER SANCTIONING THE LAWYER FOR ONLY GIVING THE ONE DAY NOTICE, AND, OF COURSE, WE HAVE THAT SANCTION BEFORE US. IN A CIVIL PROCEEDING.

BUT, SEE, THIS IS NOTHING THAT WAS REALLY WITHIN THE CONTROL OF THE DEPARTMENT. THE COURT HAD SENT THE -- THE FATHER HAD MOVED AND HAD THREE DIFFERENT ADDRESSES, NONE OF WHICH HE HAD VOLUNTARILY MADE KNOWN TO THE DEPARTMENT, AND AS SOON AS THEY COULD, WE GOT HIM SERVED, AFTER WHE HAD THE RIGHT ADDRESS -- AFTER WE HAD THE RIGHT ADDRESS, WITHIN THE WEEK'S TIME THAT THE COURT HAD SET THE ADVISORY HEARING.

WHERE WAS IT THAT THE FATHER WAS GIVEN THE OPPORTUNITY TO PROVIDE THESE CURRENT ADDRESSES OR WHATEVER. IN OTHER WORDS WAS THAT SOLICITED FROM HIM BEFORE?

IT IS THE FATHER'S RESPONSIBILITY TO WORK AND STAY IN CONTACT WITH THE DEPARTMENT. THE DEPARTMENT CERTAINLY ISN'T IN THE BUSINESS OF TRYING TO HAVE TO HUNT DOWN SOMEBODY TO COME VISIT THEIR KIDS. AND THE TESTIMONY THAT IS IN THE SHORT TRANSCRIPT INDICATES THAT THE FATHER HAD NOT BEEN IN CONTACT WITH THE DEPARTMENT SINCE JANUARY OF THAT YEAR. THIS IS -- IT HAD BEEN ALMOST A YEAR BETWEEN THE DECEMBER HEARING AND THE TIME THAT THE FATHER HAD LAST BEEN IN CONTACT WITH THE DEPARTMENT, AND THE DEPARTMENT WAS ATTEMPTING TO GET THE, WHATEVER ADDRESSES IT COULD ON THE FATHER.

LET ME ASK YOU THIS. NOW, AGAIN, UNDER THE CURRENT PROCEDURE, WHEN THERE IS A DECISION TO CHANGE TO TERMINATION, A PETITION FOR TERMINATION HAS TO BE FILED. CORRECT? STILL.

THAT'S CORRECT, YOUR HONOR.

AND THAT HAS TO BE SERVED.

THAT'S CORRECT.

SO IT WOULD BE SERVED, BUT THERE WOULD, ALSO, BE AN ATTORNEY IN PLACE, SO THERE WOULD BE NOTICE TO THE ATTORNEY, AS WELL AS SERVICE OF THE PETITION?

YES, YOUR HONOR.

AND SO THEREFORE IT IS ONLY -- WOULD ONLY BE NECESSARY FOR THE ATTORNEY TO SHOW UP AT THE ADVISORY HEARING, TO SAY MY CLIENT DOES OR DOES NOT WANT TO CONTEST THE TERMINATION. IS THAT -- I JUST WANT TO SEE IF WE AT LEAST HAVE IT SOLVED FOR THE FUTURE, BECAUSE CERTAINLY YOU KNOW, THEN, THE IDEA OF WHETHER IT IS 24 OR 48 HOURS, IF YOU HAVE THE ATTORNEY AND YOU GIVE REASONABLE NOTICE, REASONABLE NOTICE HAS TO BE, CERTAINLY --

WITH ALL DUE CANDOR, I DON'T THINK IT IS GOING TO BE SOLVED, IN THE FUTURE, WITHOUT SOME MORE LITIGATION. THERE IS -- THE STATUTE NOW READS THAT THE PERSON HAS TO MAKE A -- THAT THE PARENT HAS TO MAKE AN APPEARANCE. NOW --

AT THE ADVISORY.

RIGHT. BUT THAT IS INCONSISTENT WITH THE SECOND DCA'S RULING AND, ALSO, WITH, I THINK, THE COURT'S ADMINISTRATIVE RULE, WHERE THE ATTORNEY CAN MAKE AN APPEARANCE, BUT THAT IS THE WAY IT IS WRITTEN RIGHT NOW, SO WITHOUT THAT THING LITIGATED IN THE FUTURE, IT IS NOT QUITE A DEAD ISSUE.

BUT WE ARE NOT GOING TO SOLVE THAT IN THIS CASE.

WE ARE NOT GOING TO SOLVE THAT TODAY AND IT IS NOT BEFORE THE COURT TODAY.

THANK YOU.

THANK YOU.

REBUTTAL, MS. DOVE.

I WOULD, FIRST, LIKE TO CLARIFY THAT IN OLD CASES -- IN NEW CASES, WHAT MR. FINKEL IS EXPLAINING ABOUT THE APPOINTMENT OF AN ATTORNEY IS TRUE, BUT IN AN OLD CASE LIKE THIS, WHERE THE CHILDREN COME BACK INTO THE SYSTEM, AND THERE ARE A LOT OF THEM HAPPENING, NOW, WITH THE WELFARE CHANGES AND THINGS WHICH ARE HAPPENING, CERTAINLY, WITH SOME OF THE CRIMINAL AND DRUG COURTS THAT ARE HAPPENING, JUST IN THIS COUNTY, THE SHELTER REQUIREMENT WOULD NOT BE NECESSARY, BECAUSE WHEN THEY SHELTER FROM GRANDPARENTS OR SHELTER FROM OTHER PLACES OR CHANGE THE PLACEMENT OF THE CHILDREN IN A LONG-TERM SITUATION, THE SHELTER DOESN'T NECESSARILY APPLY. THEY COULD HAVE A SHELTER HEARING AT WHICH THE PARENTS WOULD BE NOTIFIED AND THEN THEY WOULD GET AN ATTORNEY, BUT IT IS REQUIRED.

WAS IT DONE HERE?

IN THIS CASE, NO. NO. THERE WASN'T --

SO WHEN DID THE PARENT KNOW THAT -- I UNDERSTAND THE DEPENDENCY CASE WAS OVER, AND THEN THE CHILDREN COME BACK INTO THE SYSTEM.

THAT IS WHAT HAPPENED. YES.

SO WHEN DID THE PARENTS KNOW THAT THE CHILDREN WERE BACK IN THE SYSTEM AND NOW IT WAS TIME FOR THEM TO DO SOMETHING ELSE WITH THE DEPARTMENT?

I CAN SAY THE FATHER KNEW AS SOON AS THEY LEFT THE GRANDMOTHER'S HOME. HE KNEW THEY WERE NOT WITH THE GRANDMOTHER ANY LONGER.

AND THERE IS APPARENTLY, BETWEEN THE TIME THEY WENT BACK INTO -- WHEN THEY CAME BACK INTO FOSTER CARE, THERE WERE AT LEAST, THE RECORD SAYS, SEVEN HEARINGS, AND THE FATHER DIDN'T SHOW UP FOR SIX OUT OF THE SEVEN HEARINGS.

THAT IS TRUE. THAT IS CORRECT. BUT THE MOTHER SHOWED UP FOR SIX OUT OF SEVEN AND DIDN'T SHOW UP FOR THE ONLY SUBSTANTIVE HEARING ON THE MATTER, AND THE DEPARTMENT HAD THE BURDEN OF CLEAR AND CONVINCING EVIDENCE THAT THEY HAD TO PUT ON, EVIDENCE WHICH WAS CLEAR AND CONVINCING, WHICH HAD TO BE FOUND BY THE TRIAL COURT TO BE SO, TO TERMINATE.

WERE THE MOTHER AND FATHER IN COMMUNICATE -- COMMUNICATION WITH EACH OTHER? EYE CAN'T SAY.

MS. DOVE, WERE THE RULES ABOUT SETTING ASIDE THE CONSENT OR THE DEFAULT, THE SAME AS THE RULES OF CIVIL PROCEDURE?

NO. THEY ARE NOT. I THINK THAT THE PROBLEM WITH US, IN DEPENDENCY COURT RIGHT NOW, IS THAT THE CONSENT BY DEFAULT IS NOT DEFINED AS WELL. THERE IS NO NEED TO PROVIDE A DEFENSE TO ANY PETITION WHICH IS, BY RULE, AND IF YOU LOOK AT ANY OTHER RULE, THE RULE WHICH WAS CITED, FOR INSTANCE, BY THE DEPARTMENT --

THERE IS A RULE IN EFFECT AS TO WHAT PROCEDURES ARE REQUIRED TO SET ASIDE A CONSENT IN.

NO. THERE IS NO RULING IN PLACE, NOT AT ALL. A DEFAULT, AND A CONSENT BY DEFAULT, THE RULING HAS BEEN IN THE PAST THAT THAT PARTY NO LONGER HAS STANDING TO COME TO THE COURT. THEY HAVE BEEN DEFAULTED. SO UNLIKE YOU HAVE IN A CIVIL PROCEEDING.

BUT GRANTED, BUT IF A PERSON IS DEFAULTED AND THEREFORE CONSENTS, THAT CAN BE SET ASIDE. THAT IS CONTEMPLATED WITHIN THE SCHEME, IS IT NOT?

I CAN'T FIND A MECHANISM FOR IT. I WAS, OF COURSE, TASKED WITH THAT JOB IN 1998, TO DO SO. I DISAGREED WITH COUNSEL THAT WE SHOULD GO TO THE RELIEF FROM A JUDGMENT RULE, AND I WENT, INSTEAD, TO THE DEFAULT, THE HISTORY OF DEFAULT, IN THE PRESS DEBT DENT OF THE COURT -- IN THE PRECEDENT OF THE COURT, AND THE MAIN DEFAULT CASE, NORTH SHORE VERSUS BARBER, THERE IS A STRONG PRECEDENT FOR CASES TO BE DECIDED ON THEIR MERIT, AND I ARGUED, THOUGH THE STANDARD IS LESSER, AS IS STATED IN GARCIA INSURANCE AGENCY, THAT A STANDARD IS LESSER TO HAVE THAT REMOVED THAN IT IS IF THE MOTION WAS GRANTED, AND SO I THOUGHT THAT NOT HAVING AN ATTORNEY WAS ENOUGH, ACTUALLY, ALTHOUGH I LISTED A COUPLE OF OTHER THINGS AND ARGUED A COUPLE OF OTHER THINGS. I HAD ANOTHER COUNSEL THERE BUT WE ARGYAUD A COUPLE OF OTHER THINGS. I REALLY FELT THAT NOT HAVING AN ATTORNEY, AS WAS REQUIRED BY THE STATUTE AND AS HAS BEEN SAID IN THE DISTRICT COURT OF APPEALS, WAS ENOUGH TO GET US TO ADJUDICATORY, AND I WAS WRONG.

YOU MAY MAKE YOUR CONCLUDING REMARK.

I WANT TO EMPHASIZES TO THE COURT THAT THESE CASES HAVE A DEFAULT, ITSELF. AT THE TIME THAT OUR CASE WAS PENDING IN THE DISTRICT COURT OF APPEALS, FROM THE FIRST APPEAL TO THE JUDGMENT BEING WRITTEN, THERE WERE FIVE CASES ON DEFAULT ALONE, INVOLVING 19 CHILDREN IN THIS DISTRICT. 19 CHILDREN, ALL OF THOSE DEFAULT CASES STILL SENT BACK FOR WHATEVER REASONS. THIS ONE, OF COURSE, IS STILL ON APPEAL. IT INVOLVES FOUR CHILDREN. THAT IS A TOTAL OF 23 CHILDREN WHO, ON THE DEFAULT PROVIDING ALONE, HAVE BEEN DELAYED IN THEIR PERMANENCY, AND I CAN SPEAK TO THIS AS A CHILD ADVOCATE,

WHEN YOU LOOK AT THE CIRCUMSTANCES, 15 JUDGES SIT ON THE COURT DURING THAT TIME PERIOD. 14 OF THEM REVERSED DEFAULTS. 14 OF THE SECOND DISTRICT COURT OF APPEALS JUDGES REVERSE AND REMAND ON THE DEFAULT PROVIDING A -- PROVISION ALONE, IN FOUR CASES.

ARE YOU TALKING ABOUT THE SECOND DISTRICT OR THE FIRST DISTRICT?

ONLY -- I AM SORRY, YOUR HONOR. OUR SECOND OPINION. THIS DISTRICT. THIS DISTRICT COURT OF APPEALS. THIS FIRST DISTRICT COURT OF APPEALS. YES, SIR. EXCUSE ME.

FIRST?

YES. THAT, ALONE, IS IMPACTFUL, THAT THAT HAPPENED. IN OUR CASE, THIS MONTH, IT IS IMPORTANT TO RECOGNIZE, SENDING THIS BACK FOR ADJUDICATORY, IS NOT A MAJOR BURDEN ON THE GEPT, BECAUSE PENDING THIS -- ON THE DEPARTMENT, BECAUSE PENNED HAD GONE THIS MONTH THERE ARE EIGHT TERMINATION OF PARENTAL RIGHTS AND WE SHOULD PROCEED ON THIS CASE ON CLEAR AND CONVINCING STANDARD.

THANK YOU.