D.F. vs Florida Dept. of Revenue & Anderson vs. Anderson

GOOD MORNING. THE FIRST CASE ON THE COURT'S ARGUMENT SCHEDULE THIS MORNING IS CONSOLIDATED CASES OF D.F. VERSUS FLORIDA DEPARTMENT OF REVENUE, AND ANDERSON VERSUS ANDERSON. IT IS MY UNDERSTANDING YOU ALL HAVE WORKED OUT A RATHER INTRICATE WAY THAT WE ARE GOING TO DO THIS ARGUMENT, FOR A ROOKIE IN THIS SEAT. I HOPE YOU KEEP MY STRAIGHT. BUT FIRST WE WILL PROCEED WITH ARGUMENT IN THE FIRST OF THE TWO SCHEDULED CASES, WITH MR. MEROS.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS PETER MEROS, AND I REPRESENT THE PETITIONER, D.F., IN THIS CASE. WE HAVE A VERY LIMITED TIME SCHEDULE. I HAVE TEN MINUTES FOR MY ARGUMENT, SO I WILL BE VERY BRIEF. IT IS UNDISPUTED IN THIS CASE THAT MY CLIENT, THE PETITIONER, IS NOT THE NATURAL BIOLOGICAL FATHER OF THE CHILD IN QUESTION, BUT THAT HE VOLUNTARILY SUPPORTED THIS CHILD FOR A PERIOD OF 12 YEARS, UP TO THE PRESENT DATE. THERE IS NO ISSUE IN THIS CASE OF PATERNITY. THERE IS NO ISSUE IN THIS CASE OF LEGITIMACY. THERE IS NO ISSUE IN THIS CASE RELATING TO ANYONE ATTEMPTING TO IMPUGN THE RIGHT OF A PARENT, SUCH AS EXISTED IN THE PREVAT CASE.

WHAT IS THE EXPLANATION, IF THERE IS AN EXPLANATION ON THE RECORD, AS TO WHY THE HUSBAND HAS WAITED THIS LONG TO RAISE THE ISSUE OF THE CHILD'S PARENTING?

THE EXPLANATION IS, YOUR HONOR, THAT, FIRST OF ALL, THE RECORD IS VERY SPARSE, AND SO I WILL DEAL WITH JUST WHAT IS ON THE RECORD, THAT, IN FACT, THIS ACTION BEGAN AS AN ATTEMPT BY THE DOR, TO INCREASE THE SUPPORT THIS GENTLEMAN HAD AGREED TO PAY YEARS AGO. AT THAT TIME, HE AND THE MOTHER OF THE CHILD, HIS FORMER WIFE, VOLUNTARILY AGREED, IN OPEN COURT, WITH BOTH PARTIES HAVING COUNSEL PRESENT, TO REVISIT THE ISSUE OF PATERNITY.

WELL, SO, YOU ARE TELLING ME ACTUALLY WHAT HAPPENED. YOU ARE NOT GIVING ME AN EXPLANATION OF WHY THE DELAY OF 12 YEARS. IS THERE AN EXPLANATION?

ON THE RECORD, THE ONLY EXPLANATION THAT I COULD TELL THE COURT WOULD BE THAT, AT THAT TIME, HE, THIS GENTLEMAN DECIDED THAT, IF, IN FACT, THEY WERE SEEKING TO INCREASE SUPPORT, SOMETHING THAT HE VOLUNTARILY AGREED TO DO, THAT, IN FACT, HE WOULD HAVE THE RIGHT, AS HE DID, TO REACH A NEW AGREEMENT WITH HIS WIFE, CONCERNING THE PATERNITY ISSUE. THAT IS EXACTLY WHAT WAS DONE.

SO HE WANTED TO CHANGE HIS MIND, IN ESSENCE, BECAUSE THE AMOUNT OF CHILD SUPPORT MIGHT BE RAISED. IS THAT A FAIR APPRAISAL OF THAT?

NO, SIR. YOUR HONOR, IT IS NOT. AT NO TIME DID HE SEEK TO CHANGE HIS MIND, WITH REGARD TO ANY ASPECT OF THIS.

I THOUGHT THAT IS WHAT YOU JUST GOT THROUGH SAYING, THAT THE DECISION CAME BECAUSE OF THIS REQUEST FOR AN INCREASE IN SUPPORT.

HE SOUGHT, FOR THE FIRST TIME, TO HAVE THE ISSUE OF PATERNITY DETERMINED.

WHAT WAS THE BASIS, BY THE WAY, OF HIS CLAIM, WITH REFERENCE TO NOT BEING FATTER OF

THE CHILD?

-- THE FATHER OF THE CHILD?

THE BASIS FOR HIS CLAIM WAS UNDISPUTED, THAT, IN FACT, HE WAS NOT THE FATHER OF THE CHILD. THE BASIS WAS THE DNA TESTING WHICH WAS DONE THAT CONCLUSIVELY DETERMINED THAT HE WAS NOT THE FATHER OF THE CHILD.

BUT HE KNEW AT THE TIME THAT HE MARRIED HIS WIFE, WHO WAS, AT THAT TIME, PREGNANT, WAS SHE NOT, THAT HE HAD NOT HAD ANY SEXUAL RELATIONS AND THAT HE COULD NOT BE THE FATHER OF THIS CHILD.

YES, YOUR HONOR. THAT'S CORRECT.

HE KNEW THAT, AT THE TIME WHEN THE DIVORCE DECREE WAS ENTERED, AND WHEN HE ACKNOWLEDGED, ON THE BIRTH CERTIFICATE, HE IS LISTED AS THE FATHER, AND AT THE TIME THAT THE DIVORCE DECREE WAS ENTERED. WHY ISN'T THE PRINCIPLE OF RACE ADJUDICATA, FOR -- OF REST ADJUDICATA, FOR A CASE -- OF RES ADJUDICATA, FOR A CASE LIKE THIS, NOT ONLY IN THE FINAL JUDGMENT BUT, ALSO, IN THE STABILITY OF THE LIVES OF THE CHILDREN THAT WILL BE AFFECTED?

FROM A POLICY POINT OF VIEW, WHAT OCCURRED HERE IS THAT A GENTLEMAN, AS MORE OFTEN IS THE CASE IN THESE DAYS, IN A SITUATION WHERE HE MET AND MARRIED A WOMAN WHO HAD A CHILD BORN BY ANOTHER PERSON -- CONCEIVED BY ANOTHER PERSON, VOLUNTARILY AGREED, AS A KINDNESS, TO TAKE THIS CHILD AS HIS CHILD, AND TO, IN FACT, PAY SUPPORT VOLUNTARILY FOR THAT CHILD, FOR A PERIOD UP-TO-DATE, OF 12 YEARS. AS FAR AS STABILITY IS CONCERNED, THERE IS NOTHING ON THE RECORD OF THIS CASE, INDICATING THAT THERE IS NOTHING MORE STABLE ABOUT THIS RELATIONSHIP THAN MIGHT HAVE BEEN STABLE -- MIGHT HAVE BEEN WITH REGARD TO THE ACTUAL FATHER IN THIS CHILD.

WHAT IS THE LEGAL PRINCIPLE, UPON WHICH YOU BASE YOUR CLAIM THAT HE SHOULD -- THAT WE SHOULD, NOW, DETERMINE HE IS NOT THE FATHER AND NOT LIABLE FOR SUPPORT?

MY PRINCIPLE IS VERY NARROW, AND I AM ATTEMPTING TO STICK, EXCHRUFL, TO THAT. THE SECOND DISTRICT SPECIFICALLY RULED THAT THE ONLY BASIS -- THAT THIS CASE HAS COME BEFORE THIS COURT, IN DENYING OUR PETITION, WAS THE DOCTRINE OF RES ADJUDICATA. THE DOCTRINE OF RES ADJUDICATA SIMPLY DOES NOT AND DOES NOT APPLY TO THE FACTS OF THIS CASE. THE DISTRICT'S SUBSEQUENT DECISION, IN THE MLS CASE, SIX MONTHS AFTER MY CASE, DETERMINED THAT, IF THERE HAS NOT BEEN A CONCLUSIVE DETERMINATION OF PATERNITY ON THE FACTS OF THE CASE, THAT, IN FACT, RES ADJUDICATA DOES NOT APPLY. IN THIS CASE RES ADJUDICATA WAS NEVER RAISED, NEVER PLED, WAS NOT A PART OF THE ORIGINAL PETITION. THE SITUATION WAS ONE WHERE NEITHER OF THESE PEOPLE HAD CUSTODY. THERE WAS NO FINDING, AS RELATED TO PATERNITY. THE WIFE'S PARENTS HAD PHYSICAL CUSTODY OF THE CHILD. THERE WAS NO TRIAL ON THAT ISSUE. THE CHILD WAS NOT A PARTY TO THE CASE. THERE WAS NOT A GUARDIAN AD LITEM. IN FACT --

WHAT HAPPENS IN A CASE WHERE THEY ALLEGE THAT THERE WAS ONE CHILD BORN OF THE MARRIAGE AND THAT CHILD'S NAME IS JOHN, AND THE CHILD IS PRESENTLY TWO YEARS OLD, AND THEN, IN ESSENCE, THAT CASE GOES BY DEFAULT. ISN'T THAT THE CIRCUMSTANCE OF THIS CASE?

THAT IS THE CIRCUMSTANCE OF THIS CASE, AND THE ISSUE IS --

IF YOU ALLEGE THAT THERE IS A CHILD BORN OF THE MARRIAGE, AND IT GOES BY DEFAULT, THEN HASN'T THERE BEEN A LEGAL PRECOLLUSION, THEN, OF RELITIGATING THAT ISSUE?

NO, YOUR HONOR, THERE HAS NOT, AND THAT IS --

WHAT IS THE WHOLE PURPOSE, THEN, OF HAVING THE DIVORCE PROCEEDINGS AND THE ALLEGATION THAT THERE HAS BEEN A CHILD BORN OF THE MARRIAGE?

BECAUSE IN 99% OF DIVORCE CASES, PATERNITY IS NOT AN ISSUE -- EXCUSE ME -- I AM SORRY --

GO AHEAD.

AND NEVER BECOMES AN ISSUE.

I DON'T UNDERSTAND WHAT YOU MEAN, WHEN YOU SAY THAT IT IS NOT AN ISSUE. IF SOMEBODY ALLEGES THAT A CHILD IS BORN OF THE MARRIAGE, HAVEN'T THEY PUT THE OTHER SIDE ON NOTICE THAT IT IS THEIR CLAIM THAT THIS CHILD IS BORN OF THAT MARRIAGE, AND THAT IF THEY DON'T COME FORWARD AND ANSWER THAT, ESPECIALLY IF THEY HAVE FACTS AND THEY WANT TO ASSERT A CLAIM THAT THE CHILD IS NOT BORN OF THIS MARRIAGE, THAT THEY HAVE AN OBLIGATION TO ALLEGE THAT? I DON'T UNDERSTAND WHAT YOU SAY, WHEN YOU SAY, IN 99% OF THE CASES, WE ARE NOT HERE ON 99% OF THE CASES. WE ARE HERE ON THIS CASE. RIGHT?

CORRECT.

AND THERE WAS AN ALLEGATION IN THIS CASE THAT THIS CHILD WAS BORN OF THIS MARRIAGE.

THERE WAS A STATEMENT, IN BOTH THE PETITION AND IN THE MARITAL SETTLEMENT AGREEMENT.

WHAT HAPPENS WHEN A FINAL JUDGMENT, THEN, IS ORDERED, APPROVING THAT STATEMENT, OR ADMITTING THE TRUTH OF THAT?

CASES HAVE DEALT WITH THAT. ALL OF THE CASES HAVE DEALT WITH THAT, AND IN FACT HAVE DETERMINED THAT, IF PATERNITY IS NOT AN ISSUE, AND BY THAT, I MEAN RAISED IN THE PLEADINGS AND DETERMINED ON THE MERITS OF THE CASE, THE FACTS, NOT THE AGREEMENTS OF THE PARTIES, THAT THERE IS NO CONCLUSIVE DETERMINATION AND NO ENTITLEMENT TO THE DOCTRINE OF RES JUDY CAT A NOW, IN ANSWER -- OF RES ADJUDICATA. NOW, IN ANSWERING YOUR QUESTION MORE SPECIFICALLY THAN THAT, THAT PATERNITY CAN NEVER BE ESTABLISHED, IN A SITUATION SUCH AS THIS, WITHOUT THE CHILD BEING REPRESENTED, WITHOUT THEIR BEING SOME TYPE OF NOTICE TO THE NATURAL FATHER OF THE CHILD. WE ARE DEALING, HEAR, WITH A SITUATION, WHERE MY CLIENT VOLUNTARILY AGREED TO SUPPORT THE CHILD. HE NEVER AGREED THAT THE CHILD WAS HIS. PATERNITY WAS NEVER ESTABLISHED AND COULDN'T POSSIBLY BE ESTABLISHED IN THE ABSENCE OF THE PROCEDURAL SAFEGUARDS OF EITHER HAVING A GUARDIAN AD LITEM OR, IN FACT, INVOLVING THE NATURAL FATHER OF THE CHILD.

JUSTICE HARDING HAS A QUESTION.

AREN'T YOU, REALLY, SAYING THAT, IN ALL DIVORCE PROCEEDINGS, FROM THIS TIME, FORWARD, IF WE RULE IN YOUR FAVOR, DNA AND THE CHALLENGE TO PATERNITY, WILL BE A PART OF THAT PROCEEDING? OTHERWISE THIS WILL NEVER BE ABLE TO BE BROUGHT UP?

I AM SAYING THAT, IN A FINAL JUDGMENT OF DISSOLUTION THAT IS ENTERED, WHERE PATERNITY IS NOT SPECIFICALLY AN ISSUE, AND DETERMINED ON THE FACTS OF THE CASE, THAT, IF A PATERNITY ISSUE EXISTS DOWN THE ROAD, THAT, AS A SAFEGUARD TO EVERYONE INVOLVED, THAT RES ADJUDICATA WILL NOT AND SHOULD NOT APPLY.

WHAT POLICY IN FAVOR OF A CHILD WOULD THIS ESTABLISH?

WELL, I DON'T THINK EITHER RESULT NECESSARILY FAVORS OR DISFAVORS THE CHILD. WHETHER, IN THE INSTANT CASE, IT TURNS OUT, DOWN THE ROAD, THAT SOMEONE IS ACTUALLY THE FATHER, IT IS CERTAINLY CONCEIVABLE THAT THAT SITUATION WAS ONE THAT WOULD BE MORE FAVORABLE TO THE FATHER. THERE ARE MAN EXAMPLES, EXAMPLES SUCH AS VERY SHORTLY AFTER, IN THE DANIEL CASE AND THE MLS CASE, MANY CASES WHERE, SHORTLY AFTER THE MARRIAGE, THE MOTHER MOVES BACK IN WITH THE NATURAL FATHER. THERE ARE MANY, MANY INSTANCES, AND IF WE ARE LOOKING FOR PUBLIC POLICY ARGUMENTS, THE ONLY REASONABLE RESPONSE TO THAT IS THAT THERE IS NO GUARANTEE THAT EITHER RESULT IS FAVORABLE TO THE CHILD. THE FINANCIAL RESOURCES OF THE NATURAL FATHER VERSUS THE FINANCIAL RESOURCES OF THE LEGAL FATHER. AGAIN WE HAVE TO CONSIDER PATERNITY, ALSO, DETERMINES INHERITANCE RIGHTS, AND IF IT IS NEVER --

IN THIS SITUATION, WHERE THE CHILD HAS BEEN LEAD THAT THIS MAN IS THE FATHER FOR 12 YEARS OR MORE, SHOULDN'T WE TAKE THAT INTO CONSIDERATION, OR IS THAT A FACTOR THAT WE SHOULD CONSIDER IN THIS SITUATION? AND WHAT DOES THE RECORD SHOW, IN THIS CASE, ABOUT THIS MAN'S RELATIONSHIP WITH THE CHILD?

THE RECORD SHOWS NOTHING ON THAT, YOUR HONOR, WHATSOEVER. THE RECORD ALLEGES WHO THE NATURAL FATHER IS. THE RECORD DOES NOT ESTABLISH ANY LONG-TERM RELATIONSHIP BETWEEN THE CHILD AND THE FATHER.

BUT AS A PART OF THE DIVORCE DECREE, WASN'T THERE SOME SHARED PARENTAL RESPONSIBILITY IN THIS CASE?

YES. THE RULING WAS SHARED PARENTAL RESPONSIBILITY WITH A PHYSICAL CUSTODY OF THE CHILD BEING WITH THE WIFE'S PARENTS. THERE IS NOTHING TO ESTABLISH THAT THE FATHER HAD ANY CONTACT WHATSOEVER WITH THE CHILD, AFTER THE FINAL JUDGMENT.

SO CONVERSELY, THERE IS NO EVIDENCE THAT HE DID NOT.

THAT IS CORRECT.

MAINTAIN THE RELATIONSHIP WITH THIS CHILD.

THAT'S CORRECT, AND FROM A PUBLIC POLICY POINT OF VIEW, AGAIN, THAT CAN CUT BOTH WAYS IN EVERY INSTANCE, AND IT IS FACT-DRIVEN, TO DETERMINE WHETHER OR NOT IT IS OR ISN'T IN THE BEST INTEREST OF THE CHILD.

YOU ARE IN YOUR REBUTTAL.

I AM. THANK YOU VERY MUCH.

MISS TUTT, I UNDERSTAND THAT YOU AND MR. WARNER ARE GOING TO SPLIT YOUR TIME HERE.

YES, YOUR HONOR. I AM GOING TO TAKE 12 MINUTES AND THEN MR. WARNER IS GOING TO TAKE THREE OF MY MINUTES, BUT HE IS GOING TO ACTUALLY SPEAK FOR SIX, BECAUSE HE IS, ALSO, TAKING THREE FROM THE ANDERSON RESPONDENT.

YOU ALL NEED TO KEEP TRACK OF YOUR TIME, BECAUSE THAT IS TOO COMPLICATED FOR THIS HEAD OF MINE.

IT MORE THAN COMPLICATED FOR US AS WELL. WE ARE GOING TO DO OUR BEST. MAY IT PLEASE THE COURT. I AM DIANE TUTT ON BEHALF OF THE DEPARTMENT OF REVENUE. I MUST CORRECT SOMETHING THAT COUNSEL FOR THE PETITIONER STATED, REGARDING THE CASE LAW. HE

STATED THAT THE CASE LAW CASE THAT IT IS PATERNITY IS NOT RES ADJUDICATA, IS NOT ESTABLISHED IN AN ORDINARY DIVORCE DISSOLUTION OF MARRIAGE CASE, WHERE THE MATTER HAS NOT BEEN LITIGATED. I MUST DISAGREE WITH THAT PROPOSITION. THERE ARE MANY, MANY CASES FROM THE DISTRICT COURTS OF APPEAL, THAT HOLD JUST TO THE CONTRARY. THESE CASES ARE COLLECTED QUITE NICELY ON PAGE SIX OF THE SOLICITOR GENERAL'S BRIEF IN THIS CASE. ONE OF THEM, NOT PAGE 6. PAGE 14. EXCUSE ME. ONE OF THE CASES IS THE RIGHT CASE, WHICH SPECIFICALLY STATES THAT, IN A DISSOLUTION OF MARRIAGE CASE, THE DETERMINATION OF A FINAL JUDGMENT OF DISSOLUTION IS A DETERMINATION OF PATERNITY.

IF, IN THIS SITUATION, THE DEPARTMENT OF REVENUE'S INTEREST IN THIS IS TO OBTAIN MONEY. CORRECT?

THAT IS CORRECT. NOT NECESSARILY FOR THE STATE, HOWEVER.

NOW, IF THE -- IF, IN STHIINGS, THE DEPARTMENT OF REVENUE KNEW THAT THE BIOLOGICAL FATHER WAS A MILLIONAIRE, AND THIS FATHER, REALLY, HAD NO MONEY, WOULD THE DEPARTMENT OF REVENUE'S POSITION STILL BE THE SAME? IN OTHER WORDS FOR THE STABILITY OF THE SITUATION, THIS IS WHAT IT HAS TO BE, OR SHOULD WE BE LOOKING TO SEE, OVERALL, WHAT ARE ALL OF THE DIFFERENT INTERESTS INVOLVED? WHAT HAS BEEN THE QUALITY OF THE RELATIONSHIP, WITH, BETWEEN THIS PERSON AND HIS CHILD? WHAT WAS THE RELATIONSHIP BETWEEN THE BIOLOGICAL FATHER, WHAT ARE THE DIFFERENT RESOURCES. WHAT IS THE REASON THAT THERE SHOULD BE AN ONE-SIZE-FIT-ALL FOLLOWY IS AND HOW DOES THAT -- POLICY AND HOW DOES THAT HELP THE DEPARTMENT OF REVENUE?

THERE SHOULD ONLY BE AN ONE-SIZE-FITS-ALL POLICY AT THIS STAGE, BECAUSE OF THE PRINCIPLE OF RES ADJUDICATA. THE SITUATION THAT YOUR HONOR JUST STAGED WOULD BE APPROPRIATE TO DISCUSS AND CONSIDER, IN THE INITIAL DISSOLUTION OF MARRIAGE CASE, SHOULD ONE PARTY OR THE OTHER, PRESUMABLY THE HUSBAND, CHALLENGE THE PATERNITY AT THAT TIME.

IT IS THE CHILD'S BIRTHRIGHT, IF THE CHILD'S FATHER, AGAIN, HYPOTHETICALLY, WAS A MULTIMILLIONAIRE, AND THE HUSBAND AND WIFE HAD JUST DECIDED, FOR WHATEVER REASON, THAT THEY, DURING THAT TIME, DID NOT WANT THAT FACT KNOWN, BUT THEY KNEW IT, BUT THEY WERE -- THEY HAD DECIDED THIS IS THE PERSON THAT IS GOING TO BE HIS FATHER. WHAT ABOUT THE INTEREST OF THE CHILD IN THAT SITUATION?

WELL, MY POSITION WOULD BE MONEY ISN'T EVERYTHING, AND I THINK THAT IS ONE CONSIDERATION THAT COULD BE LOOKED AT, BUT THERE ARE OTHER CONSIDERATIONS. IN THIS CASE, PARTICULARLY, AND THIS KIND OF SCENARIO DOES COME UP IN THE CASE LAW, WHERE THERE IS A PERIOD OF YEARS, FOR WHATEVER REASON, THE PARTIES HELD THIS MAN OUT AS THE FATHER. THE CHILD -- THE RECORD DOES NOT SHOW IF THERE WAS ANY RELATIONSHIP, BUT CERTAINLY THE CHILD KNEW THAT THIS WAS HIS FATHER, AND THAT IS AN ESTOPPEL TYPE OF AN ISSUE, BUT IT IS, ALSO, AN ISSUE LIKE YOU ARE TALKING ABOUT. WHAT IS -- IT IS A FACTOR TO BE CONSIDERED IN THE BEST INTEREST OF THE CHILD. HOWEVER, IT IS OUR POSITION, FROM THE STANDPOINT OF LAW, AND THAT IS WHY I THINK THIS CASE IS SO IMPORTANT, THAT RES ADJUDICATA OUGHT TO BE REAFFIRMED BY THIS COURT AS A VALID PRINCIPLE IN THESE KINDS OF CASES.

WHAT ABOUT THE SITUATION, THOUGH, THAT YOUR OPPONENT ALLUDES TO, WHEREBY LOGICAL FATHER IS -- WHERE BIOLOGICAL FATHER IS A HIGH-INCOME-EARNER AND IS 12 YEARS AFTER THIS DETERMINATION, KILLED IN AN AUTOMOBILE ACCIDENT, AND THE CHILD SEEKS TO MAKE A WRONGFUL-DEATH CLAIM? WHAT IS GOING TO HAPPEN THERE?

I THINK THAT, AGAIN, MONEY ISN'T EVERYTHING, AND I THINK THAT THE STABILITY OF THE FAMILIAR AND THE KNOWLEDGE THAT A CHILD HAS OR DOESN'T HAVE REGARDING WHO HIS

PARENT AGE IS, FROM THE VERY BEGINNING, IS THE MOST CRITICAL.

THAT WORKS VERY MUCH TO THE DETRIMENT OF THE CHILD, THOUGH, CORRECT? BECAUSE THE CHILD HASN'T HAD -- HAS HAD NO ABILITY TO OR REASON, I GUESS, AT THIS POINT IN TIME, BY REASON OF THE MINORITY, TO STEP IN AND ASSERT A POSITION, AND SO, IF WE SAY THAT, FROM A LEGAL STANDPOINT, THAT RES ADJUDICATA IS GOING TO CUTOFF EVERYONE'S ARGUMENT, TEN THEN THAT WORKS IN THAT TYPE OF INSTANCE, TO THE DETRIMENT OF THE CHILD.

I THINK WHAT THAT WOULD DO IS TO MAKE THESE KINDS OF ISSUES LITIGATED, IN THE DISSOLUTION OF MARRIAGE CASE. I AM NOT SURE WE WANT TO OPEN UP THIS ISSUE IN EVERY DISSOLUTION CASE, BUT I THINK THAT IS THE MESSAGE THAT WOULD BE SENT. INSTEAD OF LETTING THESE KINDS OF CASES BE REOPENED AT ANY TIME IN THE FUTURE, THE BEST WAY TO HAVE IT DECIDED WOULD BE AT THE DISSOLUTION LEVEL.

EXCUSE ME. I UNDERSTOOD YOUR OPPOSING COUNSEL TO SAY THE ISSUE OF RES ADJUDICATA WAS NOT RAISED IN THE TRIAL COURT.

HERE IS WHAT HAPPENED, YOUR HONOR. IN THE PINELLAS COUNTY CASE, WHERE THE PETITIONER CHALLENGED PATERNITY, 12 YEARS AFTER THE CHILD WAS BORN, THERE WAS A DEFAULT ENTERED AGAINST THE MOTHER, BECAUSE ALTHOUGH SHE WAS BEING REPRESENTED BY THE DEPARTMENT OF REVENUE, IN THE PASCO COUNTY CASE, WHICH IS WHERE THE DIVORCE OCCURRED, THE ATTORNEY FOR THE DEPARTMENT OF REVENUE DID NOT BELIEVE THAT HE HAD THE POWER, LEGISLATIVELY, TO ENTER AN APPEARANCE IN THE PINELLAS CASE, WHICH IS WHERE THE PATERNITY WAS BEING ESTABLISHED. A DEFAULT WAS ENTERED, AND THEREFORE NO ACTUAL DEFENSES WERE RAISED BY THE MOTHER, IN THE PINELLAS COUNTY CASE. THE TRIAL JUDGE, HOWEVER, TOOK IT UPON HERSELF TO REVIEW BOTH CASES. SHE REVIEWED THE PASCO COUNTY DIVORCE FILE, AND SHE REVIEWED THE PINELLAS COUNTY PROCEEDING, AND DETERMINED THAT, BASED UPON THE FINAL JUDGMENT AND THE FACT THAT THE FATHER WAS THE PROPONENT OF THIS SETTLEMENT AGREEMENT AND HAD AGREED, AT THAT TIME, IT TO PAY THIS CHILD SUPPORT, AND HAD BEEN PAYING IT EVER SINCE, THAT RES ADJUDICATA WAS AN APPROPRIATE REASON, ON THE FACE OF THE PLEADINGS, TO DENY HIS RELIEF.

IF THERE -- IF THIS NATURAL FATHER DIED, AND WAS INTESTATE, AND THERE WAS ONLY THE CHILD, THIS CHILD, REMAINING, BUT WOULD THE CHILD'S RIGHTS TO THAT ESTATE BE CUTOFF?

WELL, THERE IS, REALLY, NO CASE LAW SAYING THAT IT WOULD BE CUTOFF OR THAT IT WOULD NOT BE CUTOFF. I THINK THERE IS A CASE OUT OF THE THIRD DISTRICT, AND I DON'T RECALL THE EXACT -- COTINO, I BELIEVE, SAYS THAT THERE WOULD BE NO RIGHT TO HAVE A BLOOD TEST IN THE PROBATE PROCEEDINGS, BECAUSE THAT IS WHAT -- AT THIS POINT, WE DON'T KNOW WHO THE BIOLOGICAL FATHER IS. HE HASN'T BEEN ESTABLISHED. WE DO KNOW THAT D.F. IS NOT THE BIOLOGICAL FATHER, AND HE KNEW THAT AT THE TIME OF THE DISSOLUTION, OBVIOUSLY. WE HAVE AN ALLEGATION, AT THIS POINT, IN THIS CASE, THAT THIS OTHER INDIVIDUAL IS THE BIOLOGICAL FATHER. WE DON'T KNOW THAT TO BE THE CASE. SO I THINK WHAT YOU ARE SAYING IS, IF THAT INDIVIDUAL DIED, WHAT WOULD BE THE RIGHTS OF THE CHILD.

IT JUST OCCURS TO ME THAT THERE ARE ALL SORTS OF SITUATIONS THAT ARE FLOATING AROUND OUT THERE THAT ARE HARD TO GET A HANDLE ON THAT YOU COULD HAVE A SITUATION IN WHICH THE CHILD'S INTEREST WAS, REALLY, IN CONFLICT WITH THE STATE'S INTEREST, IF YOU ARE TALKING ABOUT A LARGE AMOUNT OF MONEY THAT OTHERWISE WOULD ACHIEVE TO THE STATE.

LET ME DECLARE THAT IT IS THE MOTHER THAT HAS THE CHILD SUPPORT IN THIS CASE. THIS IS A NONASSISTANCE CASE. THE SECOND DISTRICT SAID THAT THEY WEREN'T SURE WHETHER THIS WAS AN ASSISTANCE CASE, BUT IF YOU LOOK AT THE PLEADINGS, THIS IS A NONASSISTANCE

CASE, MEANING THAT THE DEPARTMENT OF REVENUE IS ACTING ON BEHALF OF THE MOTHER HERE IN CHILD SUPPORT.

SO ON THIS CASE, KNOWING HOW FAR WE NEED TO GO OR NOT GO, WE ARE INTO A NEW AREA OF WHAT THIS PERSON NEEDS TO BE CALLED, FOR ALL PURPOSES OF PROBATE OR EVERYTHING ELSE. RIGHT NOW, WHAT YOU SAY IS THAT, FOR THE PURPOSES OF PROVIDING MONETARY IS UP FORT THIS CHILD, BECAUSE HE HAD AN OPPORTUNITY TO RAISE THIS AT THE TIME OF THE ORIGINAL DISSOLUTION OF MARRIAGE AND DID NOT, AGREED TO PAY SUPPORT AND WASN'T DEFRAUDED IN ANY WAY BY THE MOTHER, THAT HE SHOULD BE, FOR THE PURPOSES OF CHILD SUPPORT, REQUIRED TO CONTINUE TO PAY FOR THIS CHILD SUPPORT. IS THAT --

CERTAINLY THAT WOULD BE AWAY TO LIMIT THE ISSUES IN THIS CASE, YES.

NOW, WITH THAT OBLIGATION, DOES IT -- DOES HE HAVE, THEN, THE RIGHT TO VICEGATION -- TO VISITATION? IN OTHER WORDS BECAUSE HE IS BEING ESTABLISHED AS THE SUPPORTER, DOES HE HAVE THE SAME RIGHTS AS ANY FATHER OR PARENT WOULD HAVE WHO IS SUPPORTING THEIR CHILD, TO HAVE REASONABLE VISITATION?

YES.

AND SO THAT IS NOT --

HE IS THE DAD. AT THIS POINT, BY VIRTUE OF THE WAY THIS CASE ARE A ROZ PROCEDURALLY AND FACTUALLY, HE -- AROSE PROCEDURALLY AND FACTUALLY, HE IS THE DAD.

IS IT IN THE RECORD, THOUGH, THAT THE MOTHER IS NOW LIVING WITH SOMEBODY THAT HAS CLAIMED TO BE THE ACTUAL FATHER OF THE CHILD?

I DON'T KNOW LIVING WITH. I KNOW THERE IS A CLAIM THAT THERE IS A NATURAL FATHER OUT THERE, THAT THERE IS A BIOLOGICAL FATHER WHO HAS BEEN NAMED. THERE OBVIOUSLY HAS BEEN NO BLOOD TEST OR DETERMINATIVE FACT ON THAT MATTER.

YOU SAID THE MOTHER WAS THE KEY PERSON HERE. HOW APPROPRIATE IS IT FOR THE TRIAL JUDGE, ON HER OWN VIOLATION, TO RAISE THIS ISSUE, THAT -- ON HER OWN VOLITION, TO RAISE THIS ISSUE CORRECTLY? IF I UNDERSTAND, THE MOTHER AGREED WITH THE PETITIONER, HERE, TO HAVE THE BLOOD TEST, AND THEN THE MOTHER DEFAULTED IN THE CLAIM THAT HE WAS NOT THE FATHER, AND THEREFORE WOULD NO LONGER BE LIABLE FOR SUPPORT. HOW APPROPRIATE IS IT FOR A TRIAL COURT, THEN, TO INTERJECT THEMSELVES INTO THAT SITUATION, IF, INDEED, THE MOTHER IS THE APPROPRIATE REPRESENTATIVE AND PARTY THERE, AND THE MOTHER HAS DEFAULTED ON THAT SITUATION, AND FOR INSTANCE THERE MAY BE A SCENARIO WHERE THE MOTHER HAS DECIDED THAT IT IS BETTER TO MAKE A CLEAN BREAST OF THINGS, THAT SHE HAD A RELATIONSHIP WITH THE NATURAL FATHER SOMETIME AGO, AND THE CHILD IS ENTITLED TO KNOW WHO THE NATURAL FATHER IS, AND SHE IS GOING TO TRY TO GET EVERYTHING WORKED OUT, AND PART OF WORKING IT OUT, PART OF THE PIECE OF THE PUZZLE IS TO ADMIT THE HUSBAND'S CLAIM, HERE, AND NO LONGER HOLD HIM RESPONSIBLE FOR SUPPORT. HOW APPROPRIATE --

LET ME CLARIFY THE FACTS HERE, FIRST. THIS MOTHER DID NOT STIPULATE THAT THIS MAN COULD GET OUT OF PAYING SUPPORT.

SHE DID DEFAULT, THOUGH. IS THAT CORRECT?

SHE DID DEFAULT, BUT THERE WAS A CONFUSION AS TO HER REPRESENTATION. SHE WAS BEING REPRESENTED, IN THE PASCO COUNTY CASE, BY A DEPARTMENT OF REVENUE ATTORNEY. WE DON'T KNOW IF SHE ASSUMED THAT HE WOULD BE REPRESENTING HER IN THE PINELLAS CASE,

BUT IT IS CLEAR THAT SHE DOESN'T HAVE PRIVATE COUNSEL.

SHE HAS NEVER ASSERTED RES ADJUDICATA, HAS SHE?

NO, SHE HAS NOT, BUT I WANT TO CLARIFY ONE THING THAT COUNSEL DID SAY. SHE DID NOT STIPULATE THAT THIS MAN COULD NO LONGER PAY CHILD SUPPORT AND, IN FACT, SHE HAS NOT DIRECTED THE DEPARTMENT OF REVENUE TO CEASE THESE PROCEEDINGS AT ALL.

ISN'T THAT AN AFFIRMATIVE DEFENSE?

IT IS, AND THE TRIAL JUDGE DEALT WITH IT THIS WAY. THE TRIAL JUDGE SAID, A, ON THE FACE OF THE PLEADINGS, THIS DEFENSE OR THIS PRINCIPLE ARISES, BECAUSE THE PETITIONER, THE FATHER, ATTACHED THE FINAL JUDGMENT TO IT, AND, B, I HAVE A DUTY, UNDER CHAPTER 61, TO LOOK OUT FOR THE BEST INTEREST OF THE CHILD, AND THEREFORE I AM GOING TO LOOK AT THIS PROCEEDING --

AREN'T YOU SAYING, THOUGH, THAT IF THE TRIAL COURT PERCEIVES IT THAT WAY, THAT EVEN IF THE MOTHER AND THE HUSBAND, FORMER HUSBAND, AND THE NATURAL FATHER, ALL, WORK THIS THING OUT, AND SAY, NO, WE HAVE DECIDED THAT THE BEST THING IS FOR THE CHILD TO KNOW WHO THE REAL FATHER IS, THE REAL FATHER HAS, NOW, COME AROUND AND WANTS TO SUPPORT THE CHILD, THAT IN ESSENCE, THE TRIAL COURT HAS THE AUTHORITY TO VETO THAT, ON THE BASIS OF THIS RES ADJUDICATA PRINCIPLE.

FIRST OF ALL, THAT IS NOT WHAT WE HAVE HERE, YOUR HONOR. WE DO NOT HAVE SOME STIPULATION BETWEEN ALL OF THESE PARTIES THAT THIS A LEGED BIOLOGICAL FATHER WILL COME IN AND TAKE THE PLACE OF D.F.. WE DON'T HAVE THAT. ALL WE HAVE IS A NAME AT THIS POINT. SO YOUR HONORS ARE NOT, REALLY, CALLED UPON IN THIS CASE TO DECIDE WHETHER THAT COULD HAPPEN, YOU KNOW, WHETHER THE PARTIES COULD COME IN WITH A STIPULATED ORDER FOR EXAMPLE. IT MAYBE THAT -- IT MAY BE THAT THEY COULD COME IN WITH A STIPULATED ORDER, BUT WE DON'T HAVE THAT HERE. ALL WE HAVE, HERE, IS D.F. AND HIS ATTEMPTS TO GET OUT OF THE CHILD SUPPORT ALLEGATION. I WANT TO CITE A SECOND DCA CASE, CITED IN THE BREEFERS, AF VERSUS D -- IN THE BRIEFS, AND THAT CASE STIPULATED THAT THE MOTHER COULD STIPULATE THAT THAT WAS THE FATHER, BUT THE --

DO WE KNOW THAT THE MOTHER IS IN AGREEMENT OF THESE PROCEEDINGS?

ALL WE KNOW IS THAT THE MOTHER WAS TOLD THERE COULD AND BLOOD TEST. ALL SHE SAID, WAS A COMMENT, FOR WHATEVER LEGAL EFFECT IT MAY HAVE, AND THEN SHE HAS NOT ADVISED THE DEPARTMENT OF REVENUE TO CEASE THESE PROCEEDINGS.

DON'T WE NEED TO KEEP TRACK OF YOUR TIME?

WE DO.

THEN WE HAVE A MISSING PIECE OF THE PUZZLE, DO WE NOT?

IF IT IS IMPORTANT, THEN A REMAND IS IN ORDER, BUT I DO THINK FOR STATEWIDE APPLICATION OF THESE KINDS OF CASES, THAT THIS IS REALLY, AN APPROPRIATE KIND OF CASE FOR THIS COURT TO DETERMINE THAT RES ADJUDICATA AND EQUITABLE ESTOPPEL AND CONTRACT PRINCIPLES ARE GROUNDS TO KEEP THE NONBIOLOGICAL FATHER PAYING, AS AN EXCEPTION TO THE DANIEL CASE, AND I WOULD ASK THE COURT TO DO THAT. THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. TOM WARNER, SOLICITOR GENERAL OF FLORIDA, AMICUS CURAE. HARD CASES MAKE BAD LAW. PARDON THE CLICHE, BUT I THINK IT APPLIES NOT ONLY TO THESE TWO CASES BUT TO SO MANY OF THE CASES THAT WERE DECIDED BEFORE THIS

CASE. CLEARLY WHAT AND -- WHAT APPEARS TO BE AN ISSUE IN ONE MATTER, A DECISION IS WRITTEN, AND IT SUDDENLY BECOMES A RULE OF LAW THAT DIVORCE ATTORNEYS AND TRIAL COURTS ALL OVER THIS STATE ARE TRYING TO APPLY. I WOULD SUGGEST TO YOU THAT THERE ARE AT LEAST FOUR ISSUES IMPLICATED IN THESE CASES THAT NEED SOME RESOLUTION BY THIS COURT. FIRST, IS THERE -- IS THE CHALLENGE PROPERLY BEFORE THE COURT AND TIMELY MADE? I CANNOT DETERMINE, FROM SOME OF THESE CASES, WHETHER THE CHALLENGES ARE BEING BROUGHT POST-DIVORCE, FOR INSTANCE, UNDER RULE 1.540, OR WHETHER THEY ARE BEING BROUGHT UNDER CHAPTER 61.13, WHICH ALLOWS PETITION FOR MODIFICATION. CLEARLY THERE IS SOME INTERPLAY, IN A POST DIVORCE SITUATION. IF THE MATTER IS BROUGHT UP IN THE DIVORCE PROCEEDINGS THAT, IS NOT AN ISSUE AND IT IS NOT A PROBLEM, BUT POST-DIVORCE, MUST THERE BE GROUNDS SHOWN, UNDER RULE 1.540, OR CAN YOU JUST PETITION TO MODIFY? WELL, IT MENTIONS CHANGE OF CIRCUMSTANCES, AND THAT, I THINK, INCORPORATES RES ADJUDICATA. IT, ALSO, MENTIONS THE BEST INTEREST OF THE CHILD, UNDER A PETITION TO MODIFY. THAT ISSUE IS IMPLICATED, WHEN COMPARING THESE CASES TO DAN RELY -- DANIEL AND MANY OTHER CASES OF THIS COURT. SECONDLY, IS THERE A CHALLENGE AND BASIS TO RAISE THE ISSUE OF PATERNITY, PARTICULARLY POST-DIVORCE, AGAIN? THE ADVENT OF DNA, NOW, SOMEBODY CAN GO AND GET A TEST AND NOW WE KNOW. IN THE OLD DAYS, YOU HAD TO BRING FORTH SOME BASIS IN THE EVIDENCE TO EVEN RAISE THE ISSUE AND CHALLENGE IT, AND CERTAINLY IN PREVAT, THERE WAS A MENTION THAT, WELL, MAYBE WE OUGHT TO FIND OUT WHETHER WE SHOULD EVEN GO DOWN THIS ROAD, IT IF WE DO. CLEARLY IN SOME CASES PEOPLE WILL JUST GO OUT AND GET THE TESTS, AND THEY ARE GOING TO WANT TO ADMIT THEM INTO EVIDENCE. SHOULD THAT BE A MATTER OF COURSE IN ANY DIVORCE OR POST-DIVORCE PROCEEDINGS, IN ANY COURT, SHOULD YOU ADMIT THEM AND THAT IS ENOUGH? THAT IS SOMETHING THAT WE HAVE THE TO STRUGGLE WITH.

ARE YOU SAYING THAT, IF HE HAD RAISED IT IN THE DIVORCE CASE, EXACTLY, OUR PRIOR CASES, DO THEY SPEAK SUFFICIENTLY TO IT, OR WOULDN'T THAT BE JUST DICTA IN THIS CASE, TO FIGURE OUT EXACTLY WHAT PROCEDURE, NOW, IS TO BE USED IN EACH AND EVERY DIVORCE CASE, BECAUSE IF WE RULE IT IS RES ADJUDICATA, THEN IT IS GOING TO HAVE TO BE RAISED IN EVERY DIVORCE CASE, OR ELSE ALL LAWYERS WILL KNOW THAT --

IF THAT WOULD BE THE EFFECT OF YOUR RULING, IT WOULD BE A SAD DAY, I THINK, THAT, IF EVERYONE IS ENCOURAGED TO GO AND GET A DNA TEST IN EVERY DIVORCE CASE.

WHEN SHOULD THEY DO THAT?

I AM SORRY?

WHEN SHOULD THEY DO THAT? WITHIN A YEAR OF THE BIRTH OF THE CHILD?

I SHOULD HOPE THERE WOULD BE SUBSTANTIAL GROUNDS AND REASONS TO BE BROUGHT BEFORE THE COURT TO CHALLENGE PATERNITY AND LEGITIMACY IN THOSE CASES, AND I WOULD HOPE THAT THE COURT WOULD LOOK INTO WHETHER IT IS THE BEST INTEREST OF THE CHILD, TO ALLOW IT TO BE REOPENED. I THINK YOU CAN DREAM UP A SCENARIO WHERE IT MAY NOT BE IN THE BEST INTEREST. YOU CAN DREAM UP A SCENARIO WHERE MAYBE THAT IS NOT AN ISSUE. MAYBE THE CHILD IS SIX MONTHS OLD OR 12 MONTHS OLD.

WHY WOULDN'T THAT BE IN THE BEST INTEREST OF EVERYBODY, IF IT IS BROUGHT UP AT THE APPROPRIATE TIME AND EVERYTHING, FOR THE TRUTH TO BE KNOWN, WHATEVER THE FACTS ARE, THAT EVERYBODY CAN HANDLE THAT, WHOEVER THE FATHER IS, OR IF IT IS BROUGHT UP AT THE APPROPRIATE TIME.

I AM NOT AN EXPERT ON IT. I DON'T KNOW THAT THERE IS ANYTHING IN THE RECORD TO PROVE. I AM NOT READY TO SIGN ON THAT THE TRUTH IS ALWAYS THE BEST TO BE KNOWN, PARTICULARLY WITH REGARD TO FAMILY AND CHILDREN.

YOU CAN SEE THAT ADOPTIONS ARE BECOMING UNRAVELED OUT THERE, AND THERE IS A GREAT DEBATE, IF ALL OF THE STATES, NOW -- IN ALL OF THE STATES, NOW, WHETHER OR NOT CHILDREN HAVE THE RIGHT TO GO BACK AND FIND OUT WHO THEIR NATURAL -- AND WHY -- WOULDN'T WE BE AVOIDING THAT, IN ALL OF THESE SITUATIONS, IF WE SAID THAT THERE SHOULD BE THE TRUTH UP-FRONT?

YOU KNOW, I CAN'T GIVE YOU ANY GUIDANCE ON THAT. I GUESS THAT THE COURT WOULD HAVE TO RESOLVE THAT, ITSELF. I AM NOT PREPARED TO ARGUE EITHER SIDE OF THAT. I HAVE HEARD ARGUMENTS THAT IT IS BEST THAT EVERYBODY KNOW. IF YOU CARRY THAT TO THE LOGICAL CONCLUSION, THEN THERE SHOULD BE A DNA TEST, WHEN EVERY CHILD IS BORN IN THE MARRIAGE.

MR. WARNER, YOUR TIME HAS EXPIRED. I AM GOING TO GIVE YOU ONE MORE MINUTE, SO PLEASE GIVE US YOUR OTHER TWO POINTS.

CLEARLY WE HAVE TALKED ABOUT THE BEST INTEREST OF THE CHILD ISSUE AND IF RES ADJUDICATA SHOULD BE APPLIED. I HAVE TWO COMMENTS TO MAKE, BOTH STATED WELL IN THE BRIEF. ONE THIS CASE HAS NOT BEEN SETTLED. IT CITES FOUR OR FIVE DCA CASES, SOME OF WHICH PATERNITY WAS NOT AN ISSUE, AND AN AM-JUR CASE, WHERE IT PARTICULARLY RELATED TO THE CHILDREN. WE DO NOT THINK IT SHOULD BE BLINDLY, PER SE, APPLIED TO DIVORCE SITUATIONS AND POST-DIVORCE SITUATIONS. SECONDLY, IN DANIEL, THERE IS A STATEMENT THAT YOU CAN SEPARATE PATERNITY AND LEGITIMACY. LEGITIMACY IS NOT JUST A CHILD'S NAME. IT IS A LEGAL RELATIONSHIP OF SERVICES AND SUPPORT AND PROPERTY AND INHERITANCE, WRONGFUL-DEATH. MANY THINGS ARE IMPLICATED IN LEGITIMACY OF A CHILD. IF IT IS DECLARED LEGALLY, THAT THIS PERSON IS NOT THE CHILD'S FATHER, THAT HAS LEGAL IMPLICATIONS FAR BEYOND THE NAME, WHERE THE SUPPORT OBLIGATIONS IMPLICATED IN THE DIVORCE OR POST-DIVORCE PROCEEDINGS, AND I BELIEVE THIS COURT NEEDS TO REVISIT THE STATEMENT THAT YOU CAN SEPARATE PATERNITY AND LEGITIMACY. WE DON'T THINK THAT THAT IS LEGALLY CORRECT, AND THE COURT NEEDS TO ADDRESS THOSE ISSUES. THANK YOU.

ISN'T THIS A MATTER, TOO, THAT NEEDS SOME CONSIDERATION OF THE LEGISLATURE?

WELL, THERE, POSSIBLY, ARE SOME POLICY IMPLICATIONS HERE THAT COULD BE RESOLVED BY THE LEGISLATURE, BUT IF THEY ARE NOT GOING TO BE RESOLVED IMMEDIATELY, THEN, CERTAINLY, THE IMPORT OF CASES LIKE DANIEL AND PREVAT, DURICCO, OUT OF THE THIRD DCA, AND THESE CASES NEED DIRECTION OF THE COURT, AT LEAST TO HOW YOU HARMONIZE RULE 1.540 AND 114 AND SOME OF THESE OTHER CASES.

WE WILL GIVE MR. MEROS TWO ADDITIONAL MINUTES.

VERY BRIEFLY, ADDRESSING SPECIFICALLY THE COURT, FIRST OF ALL, JUDGEALITY ENBORN -- JUDGEALITY ENBURN'S ART -- JUDGE ALTENBURN'S ARTICLE DEALT WITH THE NEED FOR LEGISLATION IN THIS CASE AND CITED THE CASE. IT IS A COMPLICATED ONE THAT I DON'T HAVE TIME TO DEAL WITH, BUT IN FACT, IT IS AN ABSOLUTE MUST, SO THAT PEOPLE KNOW WHERE THEY STAND IN THESE SITUATIONS. THIS IS BECOMING MORE AND MORE COMMON IN EVERY DISTRICT THROUGHOUT THE STATE, THAT PEOPLE ARE IN THESE SITUATIONS, AND THE LEGISLATION IS ABSOLUTELY NECESSARY. AS FAR AS ALLEGATIONS ARE CONCERNED, THE ONLY ALLEGATIONS BEFORE THE COURT, CONCERNING THESE PEOPLE, ARE STATED IN THE PETITION, WHICH IS THAT THE LEGAL FATHER, MICHAEL BUCKLEY, HAS ESTABLISHED A RELATIONSHIP WITH JASON, AND IS MORE THAN CAPABLE OF SUPPORTING HIM. IT IS IN THE BEST INTEREST OF JASON THAT MICHAEL BUCKLEY BE ESTABLISHED AS THE FATHER OF THE CHILD. THOSE ARE THE ONLY ALLEGATIONS IN THIS CASE, AND A DEFAULT WAS ENTERED. THERE WERE NO AFFIRMATIVE DEFENSES. THERE WERE NO CLAIMS OF RES ADJUDICATA. THERE WERE NO CLAIMS OF ANY

NATURE, WHICH IN ANY WAY AFFECTED THOSE ALLEGATIONS IN THIS CASE. FOR A COURT, FOR A JUDGE, BASED ON NO FACTS WHATSOEVER, BASED ON NO TESTIMONY, TO ESTABLISH, IN THIS CASE, THAT RES ADJUDICATA APPLIED, SIMPLY IS INCORRECT, AND IT IS CONTRARY TO DUE PROCESS. IF YOU DON'T PLEAD SOMETHING AND IF YOU DON'T OFFER ANY EVIDENCE IN SUBSTANTIATION OF IT, THE COURT SHOULDN'T RULE, BASED ON THAT. WITH REGARD --

LET ME ASK --

GO RIGHT AHEAD.

LET ME ASK WHAT WOULD BE THE STATUS OF THIS CHILD, IF THE BIOLOGICAL FATHER FILED SOME KIND OF ACTION FOR PATERNITY? TO ESTABLISH PATERNITY? AND THE EXHUSBAND OF THE MOTHER, STILL, WANTED TO MAINTAIN THE RELATIONSHIP WITH THE CHILD? HOW WOULD THE DIVORCE DECREE, WHERE WE HAVE SAID THERE WAS ONE CHILD BORN OF THE MARRIAGE, PLAY INTO THAT KIND OF SITUATION?

WELL, THE ANSWER TO THAT DIRECT QUESTION IS THAT THAT WOULD, CERTAINLY, NOT BE RES ADJUDICATA. THERE IS A CASE, WHICH SAYS THAT THERE IS A ISSUE AS TO WHETHER THE LEGAL OR THE NATURAL FATHER WOULD HAVE STANDING, BUT THE STANDING ISSUE IS A SEPARATE ONE THAT HAS NOT YET BEEN DECIDED BY THIS COURT, BUT, CERTAINLY, WHEN THE NATURAL FATHER WAS NOT ON NOTICE OF THE PROCEEDING, MAY HAVE HAD NO REASON, WHATSOEVER, TO KNOW THAT IT WAS EVEN HIS CHILD. THAT FINAL JUDGMENT COULD NOT POSSIBLY BE RES ADJUDICATA, BECAUSE HE WAS NOT A PARTY, AND AS A MATTER OF LAW IT WOULDN'T BE. THE LAST COMMENT IS, ON PAGE 6 OF THE TRANSCRIPT IN THIS CASE, THIS LADY APPEARED, IN OPEN COURT, WITH COUNSEL, AFTER BEING WARNED AND ADVISED THAT, IN FACT, IF SHE WENT FORWARD WITH THIS, THAT NOT ONLY MIGHT SHE NOT HAVE TO PAY SUPPORT BUT THAT HE MIGHT EVEN SEEK BACK SUPPORT FROM HER. BASED ON THAT, SHE AGREED TO HAVE THE BLOOD TEST FOR WHATEVER REASON, MAYBE TO CLEAR HER MIND, MAYBE TO CLEAR THE ISSUE, AND SHE SPECIFICALLY AGREED TO ABATE THE PROCEEDINGS, PENDING THE DETERMINATION OF THAT BLOOD TEST. THAT IS WHAT IS UNIQUE ABOUT THIS CASE. IF THE FIRST AGREEMENT TO PAY SUPPORT WAS VALID AND BINDING, THEN THE SECOND AGREEMENT TO TEST THE PATERNITY AND TO EVALUATE THOSE ISSUES WAS VALID AND BINDING. EITHER BOTH ARE OR NEITHER IS.

THANK YOU.

THANK YOU FOR YOUR TIME.

WE WILL PROCEED, NOW, TO THE NEXT CASE, ANDERSON VERSUS ANDERSON.

GOOD EVENING. I AM TOM ELLIOTT, HERE ON BEHALF OF MICHAEL ANDERSON. MICHAEL ANDERSON MARRIED CATHY ANDERSON, AFTER SHE SAID SHE WAS PREGNANT WITH HIS CHILD. SHE, UNEQUIVOCALLY TOLD HIM HE WAS THE FATHER DURING THE DIVORCE PROCEEDINGS. NOW THAT HE KNOWS THAT IS NOT TRUE, SHOULD HE BE FORCED TO PAY ANOTHER 15 YEARS OF CHILD SUPPORT? HE MOVED PROMPTLY, UPON LEARNING FROM DNA TESTS, THAT HE WAS NOT THE FATHER. HE DID THIS WITHIN SIX MONTHS OF THE DISSOLUTION OF JUDGMENT, AT A TIME WHEN THE CHILD WAS THREE YEARS OLD.

HOW WAS THE ISSUE RAISED IN THE DIVORCE? DID HE QUESTION IT, DURING THE DIVORCE?

HE INQUIRED OF HER, DIRECTLY, DURING THE DIVORCE, IS THAT MY CHILD?

BUT IN A PLEADING?

NO. NO. HE INQUIRED, VERBALLY, OF HER, AND THIS IS UNDISPUTED, BECAUSE SHE ADMITS SHE ANSWERED --

AND THEN SOMEBODY'S SISTER BECAME INVOLVED.

ACTUALLY THE SISTER, I THINK, CAME BEFORE THAT. THE SISTER RAISED AN ISSUE, APPAREL TOLD MR. ANDERSON THAT THE WIFE HAD BEEN MARRIED ONCE BEFORE, ONE MORE TIME THAN SHE HAD TOLD HIM BEFORE. THAT DID NOT PUT HIM ON NOTICE THAT THE CHILD WAS NOT HIS. HE INQUIRED OF THE WIFE, ABOUT THE CHILD, SPECIFICALLY, IS SHE MY CHILD? TO WHICH THE WIFE ANSWERED UNEQUIVOCALLY, YES, AND THAT IS UNDISPUTED. THAT IS ON THE RECORD. SHE ADMITS SHE SAID THAT. IT WAS UNEQUIVOCAL, AND AS WE NOW KNOW, THAT WAS NOT A TRUE STATEMENT. THE TRUE ANSWER --

IS IT IN THE RECORD THAT SHE KNEW THAT THAT WAS A FALSE STATEMENT?

SHE HAD TO KNOW, YOUR HONOR, BECAUSE THE TRUE ANSWER, HE DIDN'T ASK HER DO YOU THINK THAT IS MY CHILD? DO YOU BELIEVE THAT IS MY CHILD? HE ASKED IS SHE MY CHILD, AND SHE SAID YES. THE TRUE ANSWER, WHEN SHE DOESN'T KNOW, BECAUSE SHE HAS HAD RELATIONS WITH SOMEBODY ELSE, IS I DON'T KNOW OR I AM NOT SURE. THAT IS THE TRUE ANSWER. THE TRUE ANSWER IS NOT YES.

BUT THE FACTS HAD DETERMINED THAT THEY HAD HAD SEXUAL RELATIONS ABOUT THE TIME OF THE CONCEPTION OF THE CHILD. ISN'T THAT RIGHT?

YES.

ISN'T THAT A FINDING BY THE HEARING OFFICER?

YES. IT IS UNDISPUTED THAT THEY HAD RELATIONS. IT IS, ALSO, NOW, UNDISPUTED THAT SHE, OBVIOUSLY, HAD TO HAVE RELATIONS WITH SOMEBODY ELSE, AND SHE DIDN'T TELL HIM THAT, WHEN SHE WAS ASKED, POINT-BLANK, IS SHE MY CHILD. THERE IS A TRUE ANSWER. IF YOU DON'T KNOW, IF SHE IS HAVING RELATIONS WITH MORE THAN ONE PERSON, THEN SHE CANNOT KNOW THAT THAT IS HIS CHILD THEN. THE TRUE ANSWER IS I DON'T KNOW.

ARE THESE ISSUES TO BE DECIDED UNDER THE RULE OF PROCEDURE OR UNDER THE STATUTE OR BOTH? UNDER 61 -- THE POINT THAT MR. WARNER RAISES AS TO 61.13.

I AM NOT SURE I UNDERSTAND HIS POINT ON THAT, YOUR HONOR. IF -- ONE OF OUR POINTS IS THAT, IF THE HUSBAND ASKS THE DIRECT QUESTION, DURING THE DISSOLUTION PROCEEDING, IS THAT MY CHILD, AND THE WIFE UNEQUIVOCALLY SAYS YES, HE IS ENTITLEED TO RELY UPON THAT. HE SHOULD NOT HAVE TO GO OUT -- AND THINK --

YOUR POSITION IS, BECAUSE YOU FALL WITHIN THE YEAR PERIOD --

THAT IS ANOTHER DIFFERENCE. CERTAINLY. WE ARE WITHIN THE YEAR. BUT IT WOULD -- IF SHE HAD SAID -- IF HE ASKED HER, IS THAT MY CHILD, AND SHE SAYS, I DON'T KNOW, OR I THINK SO, THAT IS A DIFFERENT SITUATION. MAYBE, THEN, HE SHOULD GO OUT AND PURSUE IT, BUT THE HUSBAND SHOULD BE ABLE TO RELY ON THE WIFE, SAYING, YES, THAT IS YOUR CHILD.

EVEN IN THE FACE OF EVIDENCE THAT THAT MAY NOT BE YOUR CHILD?

THERE WAS NO EVIDENCE THAT IT WASN'T HIS CHILD, YOUR HONOR.

DIDN'T HE HAVE, AT LEAST SOME INDICATION, FROM SOMEPLACE, THAT SHE HAD BEEN MARRIED BEFORE AND THAT THIS MAY NOT BE HIS CHILD?

NO. HE HAD INDICATION THAT SHE HAD BEEN MARRIED BEFORE, BUT NO ONE CAME -- THERE WAS -- HE ASKED --

THE SISTER WHO GAVE HIM THAT INFORMATION DIDN'T, ALSO, SAY THIS MAY NOT BE YOUR CHILD, OR SOMETHING TO THAT EFFECT?

THE -- I THINK THE SUGGESTION MAY HAVE BEEN YOU OUGHT TO INQUIRE ON THAT, BUT THE TEST, THE RECORD IS VERY CLEAR. I BELIEVE IT IS AT PAGE 145-146 OF THE TRANSCRIPT. CATHY ANDERSON, THE WIFE, SAID SHE HADN'T TALKED TO HER SISTER IN YEARS, SO HER SISTER COULD NOT CLAIM TO KNOW, FROM HER, THAT CATHY ANDERSON HAD SAID, I HAVE TRICKED HIM. HE IS NOT THE FATHER. CATHY ANDERSON DID NOT TESTIFY THAT. SHE SAID, IN FACT, I DID NOT TALK TO MY SISTER.

WE ARE NOT HERE TO WEIGH THE FACTS. WHAT I AM CONCERNED ABOUT, IN THIS CASE, IS THAT YOU HAVE NO QUARREL WITH THE RIGHT THAT YOU HAD THE RIGHT TO RAISE THIS THROUGH A 1.540 MOTION, WHICH YOU DID, AND ATTEMPT TO ESTABLISH FRAUD OR MISREPRESENTATION, WHICH YOU DID. WHAT I HAVE A PROBLEM, BECAUSE WE ARE HERE, AT THIS COURT, IS THAT YOU HAVE A HEARING OFFICER THAT MADE FINDINGS OF FACT, AND NOW, WHAT YOU ARE REALLY ASKING US TO LOOK AT IS TO REWEIGH THE FACTS. IF THE PRINCIPLE OF LAW IS THAT THERE IS A MISREPRESENTATION OF MATERIAL FACT, THEN THAT IS SOMETHING THAT THE JUDGE OR, IN THIS CASE, I GUESS, THE HEARING OFFICER, DETERMINES. BUT FOR YOU -- FOR US TO ESTABLISH A BLANKET RULE, WHICH WOULD BE, WELL, IF IT SAID THIS WAY, THAT IS A MISREPRESENTATION. IF IT IS THAT WAY, IT IS NOT, I THINK, WOULD BE UNPRECEDENTED, IN 1.540 JURISPRUDENCE.

WELL -- YOUR HONOR, I THINK WE ARE HERE ON A LEGAL QUESTION. WE ARE NOT HERE TO REARGUE.

WHAT IS THE LEGAL QUESTION?

THERE ARE A COUPLE OF THEM. ONE, OF COURSE, IS SHOULD A MAN WHO IS NOT THE FATHER BE REQUIRED TO PAY CHILD SUPPORT, WHEN HE MOVES PROMPTLY, WITHIN A YEAR, UPON LEARNING THAT HE IS NOT THE FATHER, TO RELIEVE HIMSELF OF THAT OBLIGATION.

UNDER 1.540 THERE ARE SPECIFIC PROVISIONS FOR EITHER FRAUD OR MISREPRESENTATION THAT WOULD APPLY TO ANY FINAL JUDGMENT, AND IT IS A WELL-RECOGNIZED EXCEPTION TO THE FINALITY OF JUDGMENT, SO THAT PRINCIPLE OF LAW HAS NOT BEEN DONE, TOO, HAS IT?

OR NEWLY-DISCOVERED EVIDENCE. AND HE HAS ALL OF THOSE. SHE INTERFERED WITH HIS CHILD VISITATION, WHICH GAVE HIM A GROUND TO QUESTION IT, AS HE INDICATES. HE WENT TO GET THE DNA TEST DONE TO SHOW SHE IS MY CHILD, SO QUIT DISTURBING MY VISITATION RIGHTS. QUIT INTERFERING WITH MY VISITATION RIGHTS. TO HIS SURPRISE, IT TURNED OUT SHE WAS NOT. BY THAT, HE, ALSO, LEARNS, THEN, THAT SHE HAS BEEN UNTRUTHFUL TO HIM. THAT IS ADDITION NEW EVIDENCE.

YOUR CLIENT, HIS REAL INTEREST WAS TO WANT TO ESTABLISH A MEANINGFUL RELATIONSHIP WITH HIS CHILD?

AT THAT TIME, WHEN HE THOUGHT IT WAS HIS CHILD, UNTIL HE LEARNED IT WAS NOT, AND HE HAS NOT SEEN HER SINCE THEN.

THAT WAS UNDER HIS OWN VIOLATION. THAT IS HIS DECISION.

YES, SIR.

BUT HE IS ESTABLISHED TO BE THE LEGAL FATHER, AND HE WOULD THOSE RIGHTS AND RESPONSIBILITIES TO BE ENTITLED TO VISITATION. WOULD HE NOT?

HE WAS ALREADY EXPERIENCED IN SOME INTERFERENCE, AND ONCE IT WAS ESTABLISHED HE WAS NOT THE FATHER, THAT MAY RAISE SOME OTHER QUESTIONS AS TO WHETHER THERE SHOULD BE OVERNIGHT VISITATION AND THAT TYPE OF THING. THAT WAS ONE OF THE PROBLEMS HE WAS STARTING TO EXPERIENCE. IN TERMS OF THE MAGISTRATE'S OR THE MASTER'S FINDINGS, SO-CALLED FINDINGS, I AM NOT TRYING TO ARGUE FACTS, BUT IT IS A LITTLE BIT LIKE THE EMPEROR'S CLOTHES.

I WERE LOOKING AT THESE FACTS, I WOULD PROBABLY SAY THIS IS A MISREPRESENTATION. I THINK THIS SOUNDS, IN YOUR CASE, THAT THIS IS A MISREPRESENTATION. I AM HAVING TROUBLE WITH HOW WE SAY, AS A MATTER OF LAW, THIS IS A MISREPRESENTATION.

I THINK THE PROBLEM IS IN THE SAME AS THE DER ICO DISSENT. THIS MAN SAID, WELL, IF SHE DIDN'T KNOW THAT SHE WAS TELL AGO LIE, THEN SHE IS NOT LYING. THAT IS SIMPLY WRONG. IT IS NOT CORRECT, AS A MATTER OF LAW. AS AN EXAMPLE IN MY BRIEF, IF A CLIENT ASKS ME HOW MUCH MALPRACTICE COVERAGE DO I HAVE AND I SAY I HAVE GOT A MILLION BUCKS BECAUSE I THINK I HAVE GOT A MILLION BUT I REALLY DON'T. I DIDN'T LOOK BACK AT THE POLICY. I HAVE GOT $500,000. I AM WRONG. THE FACT THAT I BELIEVED I HAD A MILLION DOESN'T MAKE MY STATEMENT TRUE. JUST BECAUSE SHE CLAIMED, SUBJECTIVELY, THAT SHE BELIEVED IT, DOESN'T MAKE HER STATEMENT TRUE. IT IS A MISREPRESENTATION AND THAT IS CLEAR. QUITE FRANKLY, THAT IS THE MASTER, AS THE DER ICO DEFENSE, SOMEBODY MISSED THE BOAT ON. THAT WE CERTAINLY DON'T DEFER TO WRONG FACTUAL FINDINGS. IF HE HAD MADE A FACTUAL FINDING THAT THE SUN RISES IN THE WEST, THAT WOULD BE WRONG, TOO. IT SIMPLY, WHEN SOMEBODY SAYS, AS AN ABSOLUTE MATTER, YOU ARE THE FATHER, YES, THAT IS A MISREPRESENTATION, WHEN SHE KNOWS THAT MAY NOT BE THE CASE. THE -- IN THE DANIEL CASE, THE 70 DECISION OF THIS COURT, MR. DANIELS WAS TOLD UP-FRONT YOU ARE NOT THE FATHER. HE WAS TOLD THE TRUTH, AND HE DOES NOT HAVE TO PAY CHILD SUPPORT. MICHAEL ANDERSON IS TOLD THE TRUTH, AND HE DOES HAVE TO. THAT IS A WRONG RESULT. AND SHE KNEW HER ABSOLUTE STATEMENT WAS NOT TRUE. HER REAL ARGUMENT COMES DOWN TO YOU SHOULD HAVE CAUGHT ME LYING SOONER. THAT IS THE REAL ARGUMENT THAT CATHY ABDERSON IS -- ANDERSON IS MAKING HERE. HER OTHER ARGUMENT IS YOU SHOULD HAVE INQUIRED ABOUT PATERNITY DURING DISSOLUTION. HE DID ASK THE WIFE. HE DID QUESTION. HE ASKED THE WIFE AND HE WAS ABLE TO DETERMINE ON. THAT THINK ABOUT PUBLIC POLICY. THINK ABOUT WHAT THAT MEANS, IF THE HUSBAND CAN'T RELY ON THE WIFE AND HE HAS TO GET THE DNA TEST DURING THE DISSOLUTION, ONE OF THE THINGS THAT PEOPLE HOPE FOR, IS INAPPROPRIATE CIRCUMSTANCES DURING A DISSOLUTION, THERE MAY BE A RECONCILIATION.

LET ME ASK, DOES IT MAKE A DIFFERENCE, IF SHE HONESTLY BELIEVED THAT HE WAS THE FATHER OF THE CHILD, BECAUSE DURING THAT TIME, SHE HAD PROTECTED SEX WITH SOMEONE ELSE, AND SO SHE HONESTLY BELIEVED THAT THIS PERSON COULD NOT HAVE BEEN THE FATHER. DO WE HAVE TO GET INTO THOSE KINDS OF --

I DON'T THINK TO HERE, BECAUSE THERE IS NO TESTIMONY TO THAT IN THIS CASE. SHE CLAIMS THAT, HE HAVE THEN THE HEARING, SHE CONTINUED TO TESTIFY THAT SHE DID NOT HAVE RELATIONS WITH ANYBODY ELSE. WE KNOW THAT IS LIMPLY WRONG. THE DNA SPECIFICALLY PRECLUDES HIM FROM BEING THE FATHER. IT IS NOT A QUESTION OF SHE CAME IN AND SAID I REALLY BELIEVED IT, BECAUSE THE OTHER TIMES -- SHE DENNIS THERE ARE OTHER -- SHE DENIES THERE ARE OTHER TIMES.

IS IT YOUR POSITION THAT THIS IS SOME TYPE OF FRAUD, HER ANSWER THAT FRAUD UPON THE COURT, INTRINSIC, OR IS IT JUST A MISSTATEMENT?

YOUR HONOR, IT IS BOTH. IT IS A MISREPRESENTATION AND IT IS FRAUD. WE DON'T EVEN HAVE TO GET TO THE FRAUD LEVEL. EVEN AN INNOCENT MISREPRESENTATION, EVEN AN INNOCENT ONE IS SUFFICIENT FOR 1.540 FOR THE PURPOSE OF THE CASES WE HAVE CITED, AND I WOULD

SUGGEST THAT, WHEN THE STATEMENT YOU ARE GIVING, THAT YOU ARE THE ABSOLUTE FATHER OF MY CHILD, IS, EVEN IF NOT INTENTIONAL, IF IT IS AN INNOCENT MISREPRESENTATION, WE HAVE CITED SEVERAL CASES THAT SAY THAT IS SUFFICIENT TO SET ASIDE A JUDGMENT, UNDER 1.540. IT IS SUFFICIENT TO SET ASIDE A REGULAR CONTRACT. IT, CERTAINLY, OUGHT TO BE SUFFICIENT TO RELIEVE MR. ANDERSON OF PAYING 15 MORE YEARS OF CHILD SUPPORT.

DON'T YOU HAVE TO, LEGALLY, GET IT INTO A FRAUD, TO DO THAT? IN THE CATEGORY OF A FRAUD?

NO, YOUR HONOR. THE CASES WE HAVE CITED IN OUR BRIEF SAY MISREPRESENTATION. REMEMBER 1.540 SAYS FRAUD, MISREPRESENTATION OR NEWLY-DISCOVERED EVIDENCE H THERE ARE THREE CATEGORIES. MISREPRESENTATION IS EASIER TO PROVE THAN FRAUD AND AN INNOCENT MISREPRESENTATION IS SUFFICIENT TO PROVE TO SET ASIDE THE JUDGMENT.

ANY QUALIFIED ANSWER WOULD -- ANY FALSE ANSWER WOULD QUALIFY, IS THAT WHAT YOU ARE SAY SOMETHING.

ANY FALSE ANSWER ON THIS PARTICULAR QUESTION, NOT JUST ANY FALSE ANSWER, BUT A FALSE ANSWER ON THIS PARTICULAR QUESTION OF PATERNITY, YES, AND THAT IS WHAT WE HAVE HERE.

THE TIMING, YOU SAID, EVEN IF HE HAD REASON TO BELIEVE THIS WASN'T HIS CHILD, DURING THE DISSOLUTION, TO QUESTION IT, BECAUSE THEY MIGHT RECONCILE, BUT IN TERMS OF THE RULE OF LAW THAT WE ARE ESTABLISHING. LET'S SAY IT ISN'T ONE YEAR AFTER BUT FIVE YEARS AFTER THAT SHE STARTED TO INTERFERE WITH THE VISITATION AND HE, THEN, GOES AND GETS THE DNA TEST, ARE YOU SAYING THAT SHOULD THE LAW BE THE SAME, THAT EVEN THOUGH THE ONE YEAR, RECOGNIZED BY THE RULE 1.540 IS PASSED, THAT HE WOULD, STILL, BE ENTITLED TO, AT THE TIME THAT HE DECIDES TO CHALLENGE IT, TO CHALLENGE IT, OR IS THERE -- IS YOUR ARGUMENT ONLY FOR THIS WINDOW PERIOD THAT IS RECOGNIZED, UNDER THE CURRENT RULES OF THE CIVIL PROCEDURE THAT ARE INCORPORATED IN THE FAMILY LAW RULES?

FOR THE PURPOSE OF MY CASE, I ONLY NEED TO ARGUE WITHIN THE WINDOW.

WELL, THEN, THE POLICY ABOUT IT IS NOT A GOOD IDEA FOR HIM TO CHALLENGE IT DURING THE DIVORCE PROCEEDINGS MAKES NO SENSE, BECAUSE IT WAS SERENDIPITIOUS THAT SHE INTERFERED WITH HIS VISITATION, AND THEN HE DECIDED TO GO OUT AND GET THIS TEST, CORRECT? THAT IS NOT BECAUSE THERE IS ANY POLICY ABOUT THAT IS A GOOD TIME TO DO IT, SIX MONTHS AFTER, RATHER THAN SIX MONTHS BEFORE.

IF I HAD MORE TIME, I WOULD LIKE TO GET INTO THAT. I THINK THERE ARE SERIOUS ISSUES, WHEN YOU MOVE BEYOND THE YEAR, IN TERMS OF WHERE IS THE REAL FATHER? THAT IS A PERSON WE HAVEN'T TALKED ABOUT HERE. WHAT ABOUT HIS RIGHTS? MAYBE HE WOULD LIKE TO KNOW ABOUT THIS. MAYBE HE WOULD LIKE TO ESTABLISH A RELATIONSHIP WITH THIS CHILD THAT IS ABOUT, BOTH, FINANCIAL AND PARENTAL, BECAUSE SHE DOESN'T HAVE THAT, NOW, FROM MR. ANDERSON AND NEVER WILL, AND THE FATHER AND HIS RIGHTS TO ESTABLISH A RELATIONSHIP WITH THE REAL FATHER HAVE BEEN DENIED HERE.

YOU ARE INTO YOUR REBUTTAL.

YES. THANK YOU, SIR.

MR. CASPER.

MAY IT PLEASE THE COURT. MY NAME IS TOM CASPER. I REPRESENT CATHY ANDERSON, WHO IS THE WIFE, FORMER WIFE AND APPELLEE IN THESE PROCEEDINGS. IT APPEARS TO ME THAT THE ULTIMATE DECISION IN BOTH THESE CASES IS WHAT IS THE APPLICATION OF DANIEL, IN POST

POST-JUDGMENT PROCEEDINGS?

LET ME ASK YOU, DO YOU, OR DO YOU HAVE ANY QUARREL WITH THE SECOND DISTRICT'S STATEMENT THAT, IN ITS OPINION, SAYS THE GENERAL MASTER CONCLUDED THAT, CHILES WHILE THE DN -- THAT, WHILE THE DNA TEST RESULTS WERE SUFFICIENT TO FORM THE BASIS FOR THE RULE 12.-- 12.540 QUESTION, THE COURT BEGGED THE QUESTION OF WHETHER MICHAEL COULD LEGALLY CHALLENGE THE PRESUMPTION CREATED BY THE FINAL JUDGMENT? IN OTHER WORDS THE GENERAL MASTER ACCEPTED THE DNA RESULTS, FOR PURPOSES OF THE MOTION, BUT, THEN, MADE WHAT I WOULD INTERPRET THE SECOND DISTRICT AS SAYING A LEGAL JUDGMENT, ROLLING, AS A MATTER OF LAW -- RULING, AS A MATTER OF LAW, THAT IT WAS INSUFFICIENT TO OVERCOME THE FINAL JUDGMENT?

TWO THINGS OCCURRED. THE TEST WAS ATTACHED TO THE MOTION, AND THE GENERAL MASTER DETERMINED THAT THE -- I MOVED TO STRIKE. THE GENERAL MASTER LEFT IT IN, ON THE GENERAL BASIS THIS IS THE PRIMA FACIE BASIS BY WHICH THE MAN WANTS TO CHALLENGE THE CASE. THE TESTS, THEMSELVES, WERE NEVER ADMITTED INTO EVIDENCE, NOT BECAUSE THE JUDGE DENIED THEM ON A LEGAL BASIS. THEY WEREN'T ADMITTED INTO EVIDENCE, BECAUSE THE EXPERT WITNESS COULDN'T LAY THE FOUNDATION AND THEY DIDN'T HAVE EXPERT WITNESS TO TESTIFY TO THE RESULTS. HE, LATER, SAID THAT, EVEN IF THEY HAD BEEN ADMITTED, HE PROBABLY WOULD HAVE STRICKEN IT, BECAUSE THEY SHOULDN'T BE ALLOWED TO FORM THE BASIS OF PROVING HIS CASE, SO I DON'T NECESSARILY AGREE WITH THE LATTER PART THAT YOU HAVE READ TO ME, BUT GOING JUST ONE STEP FURTHER, THEY WERE NOT ADMITTED INTO EVIDENCE BECAUSE HE DIDN'T LAY THE FOUNDATION TO GET THE RESULTS IN, SO THEY DIDN'T BECOME PART OF THE RECORD.

THE REASON THAT I ASK THE QUESTION IS PARTIALLY TRYING TO UNDERSTAND THE ANSWER TO JUSTICE PARIENTE'S QUESTION, AS TO WHETHER THE ISSUE, HERE, IS, REALLY, A QUESTION OF FACTOR A QUESTION OF LAW, AND, IF IT IS A QUESTION THAT THE DNA RESULTS ARE ACCEPTED BUT FOR LEGAL REASONS THEY DON'T MAKE ANY DIFFERENCE, THEN, IT SEEMS TO ME, THAT IS A DIFFERENT QUESTION. THAT IS A LEGAL QUESTION.

WELL, I AM NOT SURE HE COULD EVER GET TO THAT POINT, SINCE HE NEVER ADMITTED INTO EVIDENCE, BUT I AGREE IT IS A MATTER OF FRAUD AND MISREPRESENTATION, BOTH, REQUIRE KNOWLEDGE. NOW IT IS EASY FOR EVERYBODY TO SAY AND CONCLUDE THAT, IF SHE DENNIS THE TEST -- DENIES THE TEST, HE IS LAYING. MAYES VERSUS TWIG. IT IS EASY TO POINT THAT OUT TO THE PARENT. THAT IS A LARGE LEAP TO THAT CONCLUSION THAT, IF THERE IS A NEGATIVE TEST, POSITIVE STATEMENTS BY THE WIFE ARE ALLOWED, BECAUSE THERE ARE JUST TOO MANY OTHER EXPLANATIONS. PARTICULARLY IN THIS CASE, THE TEST COULD HAVE BEEN FAULTY GIVEN. WE DON'T KNOW WHETHER IT WAS.

IT SEEMS THE SUGGESTION THAT THE EX-WIFE IS, NOW, LIVING WITH THE BIOLOGICAL FATHER AND THE CHILD IS WITH THE BIOLOGICAL FATHER, IS THAT CORRECT IN ONE OF THESE CASES WE ARE DEALING WITH TODAY?

I BELIEVE THAT MAY BE, IN D.F..

LET ME ASK YOU THIS QUESTION. WHERE IS THE JUSTICE? AT THE END OF THE DAY, SOMEWHERE WE HAVE TO FIND WHERE THE JUSTICE IS. CAN YOU HELP ME UNDERSTAND WHERE THE JUSTICE WOULD BE, IN THE D.F. CIRCUMSTANCE, IF HE HAD NO KNOWLEDGE, AS THE HUSBAND IN YOUR CASE HAD NO KNOWLEDGE OF HIS LACK OF BIOLOGICAL RELATIONSHIP, IS STILL REQUIRED TO SUPPORT THAT CHILD, IN A DIFFERENT FAMILY? AND HELP ME UNDERSTAND THAT.

OKAY. LET ME SAY YES. I THINK THAT IS THE RESULT. IT IS UNFAIR APPEARING. IT DOESN'T SEEM TO ME JUSTICE, BUT THERE HAS BEEN CIRCUMSTANCES IN CASE LAW, JUST A LONG HISTORY OF RIGHTS, STARTING WITH THE COMMON LAW THAT THEY IMPOSE THAT BURDEN UNDER

CIRCUMSTANCES. PUT ASIDE RES ADJUDICATA AND PUT ASIDE ESTOPPEL. IS IT FAIR? I THINK CONSISTENCY IN THE LAW IS ONE THING THAT IS IMPORTANT. I THINK WHAT YOU ALL ARE TRYING TO DO IS YOU HAVE GOT TWO BADLY COMPETING INTERESTS, THE CHILDREN AND THE PARENTS, OR THE FATHER WHO IS NOT THE PARENT. SOMEWHERE IN THERE YOU ARE TRYING TO STRIKE A BALANCE. ATTEMPTING TO DO IT IN DANIEL WAS, I THINK, PERFECT FOR DAN YELL, BECAUSE -- DANIEL, BECAUSE IT WAS DONE AT THE TRIAL LEVEL. BUT IN THIS CASE, THAT IS POST-JUDGMENT. MY POINT IS TRULY THERE IS SOMETHING MORE REQUIRED THAN GETTING A TEST UNDER DANIEL, AT THE TRIAL LEVEL, OR SIMPLY COMING BACK SIX MONTHS AFTER FINAL JUDGMENT, WITH A TEST, AND GETTING THE SAME RESULT. THERE HAS TO BE AN ADDITIONAL BURDEN, FOR THE PURPOSE OF LIMITING THE LITIGATION. SECONDLY, IT IS AN INVITATION YOU ARE CONCERNED ABOUT WHETHER THEY WILL BRING IT AT EVERY CASE, NOW, WHETHER DNA SHOULD BE A PART OF THE INITIAL TRIAL WORK. TO HOLD OTHERWISE IN THESE TWO CASES IS NOT TO SAY DO IT AT TRIAL. IT IS TO SAY DO IT AT ANY TIME IN THE NEXT 17 YEARS, COME BACK IN, SO WHERE DO YOU DRAW THE LINE? I THINK YOU DRAW THE LINE AT 1.540. I THINK YOU SHOW THEM THAT, IF YOU ARE GOING TO RAISE THIS ISSUE AND HAVE ANY BASIS FOR RAISING IT, DO IT AT THE TRIAL LEVEL, OR YOU HAVE AN ADDITIONAL BURDEN OF PROVING, I CALL IT FRAUD IN MY BRIEF, OR HAVING THE ADDITIONAL KEY ELEMENT THAT IS KNOWLEDGE. SHE TESTIFIED THAT SHE DID NOT HAVE RELATIONS WITH ANOTHER MAN, THAT HE WAS THE FATHER, AND THAT IF THERE WAS A MISTAKE, IT WAS IN THE TESTING ITSELF. THAT IS HER TESTIMONY, UNREBUTTED. EVEN MR. ANDERSON ACKNOWLEDGED THAT, IF SHE KNEW THAT HE WASN'T THE FATHER OF THE CHILD, SHE HID IT VERY WELL, OR SOMETHING TO THAT EFFECT, SO EVERYBODY IS GOING IN THINKING THAT HE IS THE DAD, AND YOU ALL WANT TO PROVIDE SOME RELIEF THERE. THE PRICE OF THE RELIEF, THOUGH, IS AT THE EXPENSE OF THE CHILDRENANT LAW, ITSELF. I THINK THE LAW, ITSELF, HAS GOT TO BE CONSISTENT. YOU ARE GOING TO HAVE TO FIND A RULE OR A LINE. I THINK POST JUDGMENT OR AFTER POST-JUDGMENT, THAT THAT IS THE PLACE TO DEFINE THAT LINE.

DO YOU AGREE THAT MR. ANDERSON HAS, NOT ONLY THE RESPONSIBILITIES BUT, ALSO, THE RIGHTS, WHICH WOULD BE TO HAVE MEANINGFUL VISITATION? IS THAT PART OF THE BUNDLE THAT COMES WITH THE RESPONSIBILITY?

YES. I, ALSO, AGREE AND FEEL THAT, IF THE MILLIONAIRE BIOLOGICAL FATHER IN THERE WANTS TO COME IN AND TRY TO DO SOMETHING, HE CAN'T! THAT WAS PREVAT, BUT, YES, I THINK HE HAS THAT RIGHT AND RESPONSIBILITY, AND LIKE A LOT OF FATHERS, HIS IS GOING TO BE A MUCH BIGGER BURDEN, BECAUSE HE IS NOT GOING TO FEEL THAT BLOOD IN HIS MIND, BUT UNDER THE LAW, WE ARE SAYING YES, YOU ARE. IT IS FICTION, JUST LIKE ADOPTION MAKES THEM LEGAL BLOOD HAIRS. IT IS A -- HEIRS. IT IS LEGAL FICTION, BUT IF YOU DO AWAY WITH THE TEST, EVERYTHING ELSE SEEMS ALIVE.

HOW DO YOU DO AWAY WITH THE TEST? THERE IS A RULE AT THAT POINT. IF THERE IS A MISREPRESENTATION, THEN HE HAS TO COME BACK WITHIN A YEAR.

I THINK HE HAS TO PROVE THE MISREPRESENTATION. WHICH I DON'T THINK HE HAS IN THIS CASE. I DON'T THINK HE HAS SHOWN THE KEY ELEMENT OF MISREPRESENTATION, WHICH IS FRAUD. THE EVIDENCE IS ALWAYS THERE. IT IS NOT NEW EVIDENCE.

WHAT WOULD BE THE MAGNITUDE OF THE MISREPRESENTATION THAT WOULD QUALIFY?

ONE, GET THE TEST RESULTS INTO EVIDENCE. TWO, BRING THE SISTER IN AND HAVE HER SAY SHE TOLD ME SHE WASN'T THE MOTHER. NOW YOU SHOW SOME KNOWLEDGE ON HER PART. SEE, THERE WAS NOTHING AFTER FINAL JUDGMENT, OTHER THAN TEST RESULTS THAT WEREN'T ADMITTED. TEST RESULTS. THAT IS IT! THERE WAS NOTHING KNEW.

BUT -- NOTHING NEW.

BUT HOW MUCH MORE PROFOUND CAN MISREPRESENTATION BE THAN WHEN THE QUESTION IS ASKED IS THIS CHILD MINE, AND THE WIFE SAYS YES. AND IT ISN'T.

JUSTICE QUINCE POINTED THAT OUT. WHAT IF SHE DID BELIEVE IT, WHICH SHE TESTIFIED SHENi DID. SO THAT IS WHAT I AM GETTING AT. I DON'T THINK YOU CAN MAKE THAT CONCLUSIONARY LEAP. THIS CHILD ISN'T MINE, SO YOU MUST BE LYING. I JUST DON'T THINK -- THAT IS WHAT I THINK IS REQUIRED EXTRA POST-JUDGMENT THAT WOULDN'T BE REQUIRED DURING TRIAL, UNDER DANIEL.

ISN'T THE REQUIREMENT, WITH REGARD TO NEW EVIDENCE, NOT NEW EVIDENCE, NEWLY-DISCOVERED EVIDENCE?

NEWLY-DISCOVERED EVIDENCE?

YOU MADE THE STATEMENT THAT IS NOT NULL EVIDENCE. WE DISCUSSED THAT. BUT WHY ISN'T IT NEWLY-DISCOVERED EVIDENCE? WHY ISN'T THAT WHAT JUSTICE SHAW SAID WOULD BE A MISREPRESENTATION, AS TO MATERIAL FACT?

BECAUSE IT WAS AVAILABLE BEFORE TRIAL.

EVIDENCE IS ALWAYS AVAILABLE. IT WAS THERE. THAT IS THE POINT. IT HAS BEEN NEWLY-DISCOVERED, THOUGH, HASN'T IT?

THAT IS CERTAINLY THE OPPORTUNITY. NOW WE ARE GETTING BACK INTO ESTOPPEL AND RES ADJUDICATA AND THAT WHOLE THING. THAT IS THE POINT, YOUR HONOR. YOU HAVE TO ESTABLISH THAT THERE IS A TIME LIMIT ON THIS THING. YOU HAVE -- YOU WANT TO SAY OR THE ALTERNATIVE WOULD BE THAT YOU HAVEco UP TO ONE YEAR TO CHALLENGE PATERNITY, FATHERS, AND ALL YOU HAVE TO DO IS, ON YOUR OWN, DON'T BOTHER GETTING COURT APPROVAL. GO OUT AND GET A DNA TEST AND YOU ARE GOING. THE SAME RESULT WOULD HAVE HAPPENED DURING TRIAL, BUT WE ARE GOING TO LEAVE THAT ADDITIONAL OPEN FOR ONE YEAR. I DON'T THINK IT BRINGS FINALITY. I THINK THE RATIONALE THAT INTENT, KNOWLEDGE, INTENT IS REQUIRED FOR MISREPRESENTATION AND FRAUD.

WHAT HAPPENED, WE MOVED PAST THIS QUEST FOR FINALITY WITH DANIELS. HAVEN'T WE MOVED AWAY FROM THAT? WE HAD IT PRIOR TO THAT. THERE WAS A PRESUMPTION OF LEGITIMACY, AND WE SEEM TO HAVE MOVED FROM THAT.

YOU HAVE MOVED. I THINK IT WAS IN THE RIGHT DIRECTION. I THINK THE FATHERS DO NEED SOME RELIEF. I AM NOT SURE IT NEEDS TO GO AS FAR AS THE TWO APPELLANTS WANT IT TO GO. IN OTHER WORDS I WOULD MAKE THEM DRAW THE LINE, IF THERE IS A OPPORTUNITY AVAILABLE BEFORE TRIAL, EITHER EXERCISE IT, AS THEY SAID IN LATHROP, OR YOU HAVE LOST YOUR OPPORTUNITY, OR YOU HAVE A HIGHER BURDEN, THE HIGHER BURDEN BEING THE KNOWLEDGE AND INTENT. SOME OTHER POINTS. THIS IS THE PROOF OF FRAUD POINT. WITH THE GENERAL MASTER IN THE SECOND DISTRICT, BASICALLY, WAS SAYING WAS YOU CAN'T TAKE INFORMATION AVAILABLE TO YOU BEFORE FINAL JUDGMENT, USE THAT, AFTER FINAL JUDGMENT, TO PROVE YOUR CASE. THAT IS RES ADJUDICATA. YOU HAD THE OPPORTUNITY TO LITIGATE. THERE WAS ANOTHER --.

IS THAT A GOOD POLICY THOUGH? AND I GUESS THIS IS WHERE I AM HAVING A PROBLEM. SHOULD THE RULE BE DIFFERENT, BECAUSE, HERE, HE GOT MARRIED TO HER AND SHE WAS ALREADY PREGNANT. SHOULD THE RULE BE DIFFERENT, IF THEY ARE MARRIED AND, YOU KNOW, WITHIN -- AT SOME POINT DURING THE MARRIAGE, IS A CHILD, AND THERE IS NO REASON, IN THAT SITUATION, TONi EVER QUESTION OR MAYBE THEY HAVE NO REASON TO KNOW THERE HAS BEEN ANY OTHER RELATIONSHIPS? SHOULD IT BE DIFFERENT THAN HERE, WHERE THE CLIENT, THE HUSBAND, GOT MARRIED TO HER AND SHE WAS ALREADY PREGNANT? IS THAT A REASONABLE

DISTINCTION? JUDGE ALTENBURN, IN HIS ARTICLE, SEEMS TO THINK THAT IS A DISTINCTION THAT NEEDS TO BE MADE, AND SO THEREFORE, IN TERMS OF FOR YOUR CASE, THAT, BECAUSE MR. ANDERSON KNEW THAT SHE WAS, ALREADY, PREGNANT, AND THEN HAD REASON TO BELIEVE, AND THIS IS, I GUESS, WHAT YOU ARE SAYING, SORT OF AN EQUITABLE ESTOPPEL, THAT HE HAD REASON TO BELIEVE THAT HE WASN'T THENi FATHER, THAT IS HOW WE -- AND THEREFORE HE CAN'T LITIGATE IT POST-JUDGMENT? IRS.

FIRST OF ALL LET ME ADD ONE. THAT BRINGS THE SISTER TO MIND. THE SISTER SAID SHE WAS MARRIED BEFORE AND SHE HAD A BABY BEFORE.

IS THAT A FALSE ISSUE?

EXCEPT THE ONE PART HERE. ARE YOU SURE THAT CHILD IS YOURS, SHE ASKED HIM? SHE DIDN'T SAY IT WAS THE MOTHER'S. SHE JUST SAID ARE YOU SURE THAT CHILD IS YOURS? AND HE WENT AWAY WITH Th: IN HIS MIND, SIX MONTHS BEFORE FINAL JUDGMENT. ACTING UPON IT, SIX MONTHS AFTER FINAL JUDGMENT.

AND THE SISTER DIDN'T TESTIFY.

DID NOT TESTIFY.

NOW, MR. CASPER, YOUR TIME IS UP.

THANK YOU.

REBUTTAL?

MICHAEL ANDERSON PROCEDURALLY COMPLIED WITH RULE 1.540. THE RESULTS SHOW HE WAS THE VICTIM OF A MISREPRESENTATION, BE IT INNOCENT OR NOT, UNDER THE RULE OF THE CASE LAW.

WHAT ABOUT MR. CASPER'S POINT THAT THE DNA WAS NOT ESTABLISHED IN THIS RECORD?

YOUR HONOR, AT PAGE 102 OF THE TRANSCRIPT, THE DNA EVIDENCE IS ADMITTED TO SHOW THAT MR. ANDERSON HAD A BASIS TO BELIEVE HE HAD BEEN THE VICTIM OF FRAUD. THE COURT DID NOT, LATER, THEN, ADMIT IT -- I DON'T KNOW HOW YOU WOULD ADMIT IT FOR ONE PURPOSE. HE DIDN'T, THEN, SAY, OKAY, NOW I AM SAYING I DON'TED -- I ADOPTED. I AM GOING TO SET IS YOU FREE. BUT THERE -- SET YOU FREE. BUT THERE IS ONE QUESTION, AT 35I7B8ING PAGE 102 -- AT PAGE 102, WHETHER THE PERSON COULD IDENTIFY AT THE CLINIC, AND PAGE 109, CATHY CANNEDER -- ANDERSON -- CATHY ANDERSON, SAYING I DID NOT QUESTION IT. BUT FOLLOWING THE RULES REACHED, IN OTHER WORDS THE MASTER SAID, I HIM GOING TO SET IT ASIDE. BUT IT IS SHOWN EVIDENCE OF FRAUD.

WE ARE HAPPY TO GO BACK AND DO THE TEST AGAIN. THEY SUGGESTED IT BELOW. WE ARE HAPPY TO GO BACK AND DO IT AGAIN. WE ARENi CONFIDENT HERE. THERE IS NO MAYES VERSUS TWIGG SWITCH. THEY CAN HAVE THE MOTHER TEST WITH THE CHILD AND THEY WILL SEE THAT IT WAS HERS. THERE IS NO QUESTION ABOUT RAPE. ARE THERE ANY QUESTIONS?

WE THANK ALL COUNSPELL FOR HELPING THE COURT WITH THIS VERY IMPORTANT MATTER. WE WILL BE IN RECESS FOR 15 MINUTES.