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Larry W. Mallard vs Charlene G. Mallard

IF THE COURT PROPERLY LOOKS AT STANDARD OF LIVING, IN ORDER TO DETERMINE WHAT THOSE NEEDS ARE, TO PROVIDE ALIMONY. ALIMONY IS SUPPOSED TO PROVIDE THE CURRENT NEEDS OF THE SPOUSE. THE COURT, THIS COURT, IN ROSSIN IN 1997, SAID THAT ALIMONY, PERMANENT ALIMONY, IS DESIGNED TO MEET THE CURRENT NEEDS OF THE SPOUSE, AND IN TAKING INTO CONSIDERATION WHAT THOSE NEEDS ARE, THE COURT LOOKS AT ALL OF THESE FACTORS THAT KANAKARAS SAYS, WHICH INCLUDES A STANDARD OF LIVING, IN ORDER TO -- OF LIVING, IN ORDER TO SEE WHAT THOSE NEEDS ARE, BUT THAT IS TAKEN INTO ACCOUNT BY THE NATURE OF WHAT THOSE NEEDS ARE. ALL OF THAT GOES INTO WHAT WAS DETERMINED AND STIPULATED TO AS TO WHAT HER POST-DISSOLUTION NEEDS WERE, AND THEREFORE THIS IS SOMETHING OVER AND ABOVE THAT WHETHER YOU CALL IT SAVINGS ALIMONY OR WHATEVER YOU CALL IT. AND IT FLIES IN THE FACE OF A WHOLE LOT OF BASIC PRINCIPLES OF FLORIDA MATRIMONIAL LAW. ONE IS THAT IT IS THE CURRENT NEEDS OF THE SPOUSE, AND THAT IS WHAT PERMANENT ALIMONY IS FOR. THE SECOND PRINCIPLE REFLECTED IN THE CASE, AS WE GOT INTO THE BRIEF, A SPOUSE HAS NO RIGHT TO SHARE IN THE OTHER SPOUSE'S FUTURE INCOME, AND THIS IS EXACTLY THE EFFECT OF AN AWARD SUCH AS THIS, BECAUSE THE AWARD GIVES MS. MALLARD A VESTED INTEREST IN MR. MALLARD'S POST DISSOLUTION INCOME.

AREN'T WE, REALLY, TALKING ABOUT -- ARE WE, REALLY, TALKING ABOUT, HERE, ONE OF THE THINGS THAT YOU CAN CONSIDER IS THE LIFESTYLE OF THE PARTIES, DURING THE COURSE OF THE MARRIAGE, CORRECT?

SURE.

AND CAN WE CONSIDER THAT THEIR LIFESTYLE, WHICH, BY SOME DESCRIPTIONS, WAS PRETTY FRUGAL, INCLUDED, WAS THAT WAY, BECAUSE IT INCLUDED THIS SAVINGS ELEMENT AND SO CAN WE CONSIDER THAT, AS PART OF THE OVERALL LIFESTYLE OF THE PARTIES?

IT AFFECTED THE LIFESTYLE. CERTAINLY YOU CAN CONSIDER LIFESTYLE, AS IT REFLECTS INTO THE STANDARD OF LIVING. THE PARTIES, THOUGH, STIPULATED THAT HER HISTORICAL STANDARD OF LIVING, PRESUMABLY THE QUOTE/UNQUOTE FRUGAL, HOWEVER YOU DEFINE THAT, WAS \$5090. THE PARTIES, ALSO, STIPULATED, FOR 20% HIGHER, AS FOR AN ADJUSTED POST-DISSOLUTION, GOING FORWARD, BUT THE POINT, I THINK, IS THAT, BY VIRTUE OF THE SO-CALLED FRUGAL LIFESTYLE, THE PARTIES ACCUMULATED SAVINGS, THERE FOR ACCUMULATING MORE NET WORTH, AS IN THIS CASE, HAD THEY NOT HAD THE SO-CALLED FRUGAL LIFESTYLE AND DIDN'T MAKE SAVINGS, THEN THEY WOULDN'T HAVE HAD ALL OF THESE ASSETS TO DIVIDE UP.

I GUESS -- HE BENEFITED FROM THAT, ALSO. THE SPOUSE BENEFITED EQUALLY. IN OTHER WORDS HE SAID THIS IS HOW WE ARE GOING TO LIVE OUR LIFE, AND THEN IT GAVE HIM, AT THE TIME OF BREAK UP, HALF OF ALL OF THAT THEY HAD ACCUMULATED.

THAT'S RIGHT. YES. CERTAINLY.

SO IT IS NOT JUST SOMETHING THAT SHE BENEFITED FROM, AS FAR AS THE ACCUMULATION.

BOTH PARTIES DIVIDED 50-50. SURE. BUT HAD -- TAKE AN EXAMPLE OF A MAN, SAY, THE BREAD WINNER OF THE FAMILY, AND HE PUTS, SAY, \$30,000 A YEAR OUT OF HIS INCOME INTO A 401(K). AND EACH YEAR HE DOES THAT, ON A CONSISTENT BASIS. IN OTHER WORDS HE -- THEY LIVE

FAIRLY FRUINGLY, IN ORDER THAT -- FRUGALLY, IN ORDER THAT THEY CAN DO. THAT THEY GET DIVORCED. OF COURSE THE OTHER WIFE, THE SPOUSE IN THIS INSTANCE, IS ENTITLED TO HALF OF THAT, HALF OF WHATEVER THE 401(K) IS, BUT UNDER MS. MALLARD'S CONTENTION, HE WOULD HAVE TO CONTINUE TO PAY \$15,000, FROM THEN ON, BECAUSE THAT WAS THE SO-CALLED PATTERN OF LIFESTYLE.

BUT ISN'T THAT EXACTLY WHAT WE ARE LOOKING AT, HERE, IF SOMEBODY HAS WHAT SOME PEOPLE MIGHT BE A WASTEFUL LIFESTYLE, AND THEY SPEND THEIR EXTRA MONEY ON, I GUESS ONE OF THE CASES IS FUR COATS OR SOMETHING THAT, YOU KNOW, VACATIONS HERE, THAT THAT IS WHAT THEY ARE DOING, BUT THIS FAMILY DECIDED THAT THEY ARE GOING TO SPEND THEIR SPARE MONEY ON ACQUIRING THINGS THAT WOULD GIVE SOME SECURITY, SO THAT GOING BACK TO WHAT JUSTICE QUINCE SAYS, PART OF THE LIFESTYLE AND THE EQUITY IN THE SITUATION IS THAT THAT IS WHAT THEY WERE DOING. AND MAYBE SHE DOESN'T WANT TO DO THAT, NOW THAT THEY GET DIVORCED. MAYBE NOW SHE WILL USE THAT PART TO MAKE A BETTER LIFE FOR HERSELF. BUT WHY SHOULD SHE BE DEPRIVED OF THAT, SIMPLY BECAUSE SHE FOLLOWED WITH HER HUSBAND'S REQUEST THAT THEY LIVE THIS MORE FRUGAL LIFESTYLE?

BUT SHE IS NOT BEING DEPRIVED OF THAT. HAD THEY LIVED THIS LAVISH LIFESTYLE THAT YOU HYPOTHECATE, THEY WOULD NOT HAVE HAD THIS MONEY LEFT OVER TO DIVIDE. THE EFFECT, HERE, IS THAT THE WIFE IS DOUBLE DIPPING. IF THEY, REALLY, LIVE A LAVISH LIFESTYLE, THEN THEY DON'T HAVE AS MUCH SAVINGS, AND THERE IS NOT AS MUCH TO DIVIDE. IF THEY LIVE A FRUGAL LIFESTYLE AND SAVE -- SPEND LESS THAN THEY EARN, THEY HAVE GOT MONEY LEFT OVER, AND THEY ACCUMULATE MORE ASSETS.

LET'S LOOK AT SOMETHING A LITTLE SIMPLER, I GUESS. INSTEAD OF ALL OF THE SAVINGS, SHE BOUGHT CLOTHES. AND NOW IT IS TIME FOR THE DIVORCE. WHEN YOU GOT READY TO DETERMINE THE AMOUNT OF ALIMONY, WOULDN'T YOU CONSIDER THE AMOUNT SHE NEEDS FOR CLOTHING, AS A PART OF HOW MUCH THE PERMANENT PERIODIC ALIMONY IS GOING TO BE?

YEAH.

AND SO WHY IS THIS DIFFERENT FROM THAT?

WELL --

WHY IS THIS SAVINGS, INSTEAD OF SPENDING IT ON CLOTHING, DIFFERENT?

WELL, BECAUSE SPENDING IT ON CLOTHING IS PART OF A STANDARD OF LIVING THAT YOU DO TAKE INTO CONSIDERATION. I AGREE YOU DO TAKE THAT INTO CONSIDERATION. THIS IS MUST NOT THAT I IS BEING SET ASIDE, WHICH IS ACCUMULATING NET WORTH. FOR EXAMPLE, LET'S SAY ALMOST EVERY FAMILY, LET'S SAY, HAS A MORTGAGE. AND SO EVERY MONTH, THEY HAVE TO PAY ON THAT MORTGAGE. THAT MEANS THAT THEY -- THEY ARE SPENDING LESS THAN THEIR INCOME. EVERY MONTH THAT THEY PAY ON THAT MORTGAGE, THEY ARE INCREASING THEIR NET WORTH. THEY MAY HAVE TO LIVE FRUGALLY, TO PAY OFF THAT MORTGAGE, BUT AS THEY PAY IT OFF, THEY ARE INCREASING THEIR NET WORTH, AND IF THEY WERE TO GET DIVORCED, THE DEPENDENT SPOUSE AND THE OTHER SPOUSE WOULD GET HALF OF THAT ACCUMULATION, BY VIRTUE OF THAT HAVING LIVED SO CALLED FRUGALLY, BUT THE DEPENDENT SPOUSE SHOULD NOT GET, IN ADDITION, SOME EXTRA SO-CALLED SAVINGS ALIMONY, BUT, RATHER, JUST GET WHAT SHE NEEDS TO CONTINUE HER LIFESTYLE.

MR. GRIMES, IF THIS WERE NOT A SAVINGS ACCOUNT BUT THE PARTIES WERE PAYING FOR SOME TYPE OF INSURANCE POLICY, TO COVER EXTENDED EXPENSES, NURSING HOME EXPENSES, THOSE KINDS OF THINGS, WOULD THAT THROW US INTO A DIFFERENT CATEGORY, OR WOULD IT BE THE SAME? AND IF IT IS DIFFERENT, WHY IS IT DIFFERENT, AND IF NOT, WHY IS IT NOT?

I THINK IT WOULD PROBABLY BE THE SAME. I THINK OF A CASE, AND I AM NOT SURE THIS IS A TOTAL ANSWER TO YOUR QUESTION, JUSTICE LEWIS, BUT IN THE BOYET CASE, WHICH WE CITE IN THE BRIEF, A RECENT CASE THIS MAN HAD A -- HE WAS WORKING I THINK, FOR THE CITY OF ORLANDO AND HE HAD A VESTED RETIREMENT ACCOUNT, AND HE WAS CONTRIBUTING INTO IT. THEY GET DIVORCED BEFORE HE WAS READY TO RETIRE, AND THE ISSUE WAS WHETHER THE WIFE SHOULD GET THE HALF OF THAT RETIREMENT ACCOUNT, BASED ON WHAT IT WAS AT THE TIME OF THE DISSOLUTION, OR WHETHER IT WOULD GET THAT WHICH IT WOULD HAVE BEEN HIGHER, WHEN HE WAS -- WOULD HAVE RETIRED, I THINK IT WAS SEVEN YEARS LATER OR SOMETHING LIKE THAT, AND THIS COURT SAID THAT IT HAD TO BE VALUED AS OF THE TIME OF THE DISSOLUTION, AND IT SAID THAT THE COURT HAS HELD THAT THE VALUATION OF A VESTED RETIREMENT PLAN CANNOT INCLUDE CONTRIBUTIONS MADE AFTER DISSOLUTION, AND THIS IS -- THAT IS ALMOST ON POINT. THAT IS VERY ANALOGOUS TO THIS CASE, BECAUSE, UNDER MS. MALLARD'S THEORY -- UNDER MS. MALLARD'S THEORY, MR. MALLARD IS GOING TO HAVE TO CONTINUE TO PAY HALF OF THE SO-CALLED SAVINGS THAT THEY HAD. THE ONLY DIFFERENCE IS THAT THIS IS A DIFFERENT KIND OF SAVINGS, BUT THAT WAS A RETIREMENT ACCOUNT, AS SUCH.

SO YOUR BASIC, THE BOTTOM LINE THAT YOU ARE SUGGESTING IS THAT THERE IS SOMETHING INHERENTLY DIFFERENT ABOUT SAVINGS AND BUILDING OF ASSETS, THAN THERE WOULD BE, IF YOU TAKE THAT SAME MONEY AND USE IT ON A DISPOSABLE ITEM?

IF YOU USE IT ON A DISPOSABLE ITEM, IF THE STANDARD OF LIVING, IF THEY SPENT ALL OF THEIR MONEY ON DISPOSABLE ITEMS, THEY DON'T HAVE ANY -- AS MUCH ASSETS LEFT OVER, AND THEREFORE THERE IS NOT MUCH TO DIVIDE, BUT HERE, BY VIRTUE OF HAVING -- BY VIRTUE OF HAVING SAVED THAT MONEY, THEY BUILT UP THAT ESTATE, BUT TO GIVE THE WIFE, ALSO, A SAVINGS ALIMONY, OVER WHAT PERMANENT ALIMONY IS, ALLOWS THE WIFE TO GET THE BENEFIT OF THIS SITUATION.

LET ME TAKE THE FLIP SIDE. WHAT IF, IN A SITUATION LIKE THIS, THEY HAD BEEN NOT FRUGAL, AND THEY HAD BEEN USING ALL OF THIS MONEY AND BUYING CARS AND JUST, JEWELRY FOR THE WIFE, AND SO THE NEEDS WERE, REALLY, UP THERE, UP THERE WHERE THE COMBINATION OF THE SAVINGS AND THE NEEDS ALIMONY IS. THE WIFE, THEN, GETS A DIVORCE, AND SHE REALIZES, NOW, SHE HAS GOT THE REST OF HER LIFE. IS SHE ALLOWED TO TAKE THAT, TO USE THAT MONEY, IN TERMS OF TO INVEST IN THINGS, OR DOES SHE HAVE TO, LIKE, USE IT EXACTLY THE WAY SHE WAS USING IT BEFORE? DOES SHE HAVE TO CONTINUE TO HAVE A LAVISH LIFESTYLE OR ELSE SUFFER A REDUCTION OF ALIMONY?

NO. I THINK SHE COULD USE IT THE WAY SHE WANTS TO. SURE. ONCE THEY -- USE IT THE WAY SHE WANTS TO. SURE. ONCE THERE HAS BEEN A DIVORCE THERE, IS AN ECONOMIC DEPARTURE FROM THEN ON.

SO THAT PERSON WOULD, REALLY, BE BETTER, DIVORCE LAWYERS WOULD BE TELLING THEIR CLIENTS GO AHEAD AND BE AS LAVISH AS YOU CAN WHILE THE MARRIAGE IS GOING ON, BECAUSE YOU ARE GOING TO BE IN BETTER SHAPE WHEN YOU GET DIVORCED.

YOU MIGHT GET MORE ALIMONY, BUT YOU WON'T HAVE AS MANY ASSETS TO DIVIDE.

YOU WILL GET THE ASSETS ON THE BACK END, IN ANY EVENT, IT JUST SEEMS THAT WE ARE ASSUMING A STATIC SITUATION HERE, AND -- WHERE SOMEBODY COULD HAVE SPENT MORE, BUT THEN AFTERWARDS BE ABLE TO USE THAT SAME MONEY TO SAVE. WE ARE NOT GOING TO GIVE THE SAME ADVANTAGE TO THE FLIP SIDE?

YOU DON'T SEE THAT?

I DON'T SEE THAT AT ALL, JUDGE, WITH ALL DUE RESPECT. IF THIS COURT CONCLUDES, WELL, LET ME SAY AT THE OUTSET, THAT BY AWARDING WHATEVER YOU CALL, IT SAVINGS ALIMONY, IT

MAY EVEN BE A DISINCENTIVE TO SAVE, BECAUSE THEY WILL WANT TO SPEND ALL THEIR MONEY, SO IF THERE IS A LAVISH LIFESTYLE, THERE WOULDN'T BE ANY SAVINGS ALIMONY. IF THIS COURT UPHOLDS THIS DECISION, IN ALMOST EVERY CASE, YOU ARE GOING TO HAVE TO BE EXPECTING TO HAVE A CLAIM OF SOME SORT OF, WHETHER THEY CALL IT THAT OR NOT, SAVINGS ALIMONY, BECAUSE ALMOST ALL FAMILIES ACCUMULATE SOMETHING OVER THE COURSE OF TIME, AND HOW THEY DO IT IS THAT THEY SPEND LESS MONEY THAN THEY EARN, WHICH IS, QUOTE, SAVINGS.

LET ME ASK YOU, BEFORE YOU SIT DOWN, REALIZING THE LIGHT IS ON, HERE, FOR YOUR BREAK. YOU STARTED OUT BY SAYING THAT THIS WAS A SHARP DEVIATION FROM PRIOR LAW. COULD YOU ADDRESS THE ISSUE FROM THAT STANDPOINT? THAT IS BECAUSE, AS I PERCEIVE YOUR ARGUMENT, YOU ARE SAYING THAT, REALLY, THE WAY THAT WE HAVE DEFINED AND DEVELOPED ALIMONY AND SUPPORT IN THIS CONTEXT, DOES NOT INCLUDE THIS. IT INCLUDES SOMETHING LIKE NECESSITIES. NECESSITIES MAY BE BASED ON LIFESTYLE AND THEREFORE A LOT FOR SOME PEOPLE AND LOWER AMOUNTS. WOULD YOU TELL US WHAT DEVIATION WE WOULD BE MAKING FROM OUR LAW AND WHERE IS IT WRITTEN AS TO DEFINING SUPPORT HERE, IN THIS CONTEXT, AND ALIMONY IN THIS CONTEXT?

ALIMONY HAS, ALWAYS, BEEN TO SUPPORT THE CURRENT NEEDS OF THE DEPENDENT SPOUSE. THIS COURT HAS SAID IT MANY TIMES. ALL THE COURTS IN THE UNITED STATES, ALMOST, ALMOST. WE COULD ONLY FIND TWO CASES IN THE UNITED STATES WHERE THIS HAD EVER BEEN RAISED BEFORE, TO CREATE AN EXTRA ALIMONY, OVER AND ABOVE THAT WHICH IS REQUIRED FOR THE CURRENT NEEDS.

THAT IS YOUR MAIN ISSUE, IF I UNDERSTAND IT, THEN, IS THAT THIS IS A VARIATION FROM CASE LAW THAT RECEIPTS TO NEEDS.

UNDER -- COURTS HAVE DISCRETION WITHIN THE CONFINES OF MATRIMONIAL LAW, BUT MATRIMONIAL LAW DICTATES THAT ALIMONY IS TO MEET CURRENT NEEDS AND TO ALLOW THE SAVINGS ALIMONY IS GOING, IF YOU THINK IT THROUGH, WILL ALLOW THE WIFE TO RECOVER TWICE.

ON THE OTHER SIDE OF THAT POLICY ISSUE, THOUGH, WHY WOULDN'T US APPROVING SOMETHING LIKE THIS ACTUALLY, THEN, ENCOURAGE SAVINGS, AND IF IT ENCOURAGED SAVINGS, IT, REALLY, WOULD BENEFIT THE HUSBAND, IN THIS INSTANCE, BECAUSE THE WIFE WOULD BE BETTER ABLE TO TAKE CARE OF HERSELF AS SHE GOT OLDER, YOU KNOW, BY SETTING ASIDE THIS, AS OPPOSED TO HAVING TO BE DEPENDENT ON THE HUSBAND LATER.

YOUR HONOR, I DON'T BELIEVE IT WOULD ENCOURAGE SAVINGS, BECAUSE IN THIS INSTANCE, IF THEY HADN'T SAVED, THE HUSBAND WOULDN'T BE SADDLED WITH THIS EXTRA PAYMENT, AND IT IS ONLY BECAUSE HE DID SAVE THAT IT WOULD ACTUALLY DISCOURAGE SAVINGS. EXCUSE ME. IF I COULD, I HAVE GOT ABOUT A MINUTE LEFT.

YES. YOU MAY.

THANKS.

MR. ALLEN. -- MR. ALLEY.

CHIEF JUSTICE HARDING. MEMBERS OF THE COURT. I AM RAY ALLEY. I AM HERE WITH JOY ANN DEEM AS FROM MY OFFICE. -- DEMAS FROM MY OFFICE. I HAVE REPRESENTED MRS. MALLARD FROM THE BEGINNING OF THE CASE. WE WERE UNABLE TO AGREE AS TO WHETHER OR NOT SAVINGS WOULD BE INCLUDEABLE AS A COMPONENT OF THE ALIMONY AWARD. THUS WE COULD AGREE ON EVERYTHING ELSE, BUT WE COULD NOT AGREE THAT THAT WAS INCLUDED.

MR. ALLEY, DO YOU AGREE WITH THE ANALYSIS OF YOUR OPPONENT THAT, WHAT WE ARE BASICALLY DEALING WITH IS WHAT IS ALIMONY OR WHAT IS INCLUDED IN ALIMONY ALIMONY? THAT IS THE FUNDAMENTAL QUESTION.

ABSOLUTELY AN ALIMONY CASE, AND WHEN THE LEGISLATURE AMENDED THE STATUTE, THEY INCLUDED LANGUAGE THAT BROADENED THE DEFINITION FROM JUST NEEDS AND ABILITY TO PAY, TO INCLUDE STANDARD OF LIVING AND WHATEVER IT TOOK TO DO --

SO YOUR DISAGREEMENT IS BASICALLY THAT A CORRECT CONSTRUCTION OF 61.08, IS THAT NEEDS ARE NOT WHAT ALIMONY IS CURRENTLY ABOUT. IS THAT RIGHT?

CORRECT. YOU DON'T NEED A VACATION EVERY YEAR. YOU DON'T NEED A NEW CAR EVERY TWO YEARS. YOU DON'T NEED \$3,000 WORTH OF CLOTHES, BUT IF THAT IS PART OF WEIGHT THESE PEOPLE LIVED, THOSE ARE EXPENDITURES, I LIKE TO USE THE TERM EXPENDITURES, EXPENDED BY THE FAMILY, TO MAINTAIN THIS LIFESTYLE THAT THEY ENJOY.

LET ME -- I THINK THAT THE USE OF EXPENDITURES, PROBABLY, IS SOMETHING THAT MAKES SENSE TO ME, IN TERMS OF ALIMONY, BUT ISN'T THAT THE ANITHESIS OF SAVINGS, THAT SAVINGS IS AN ACCUMULATION CONCEPT, WHEREAS NEED, WHETHER IT BE EXPENDED FOR WHATEVER KIND OF LIFESTYLE, IS AN EXPENDITURE, AS OPPOSED TO AN ACCUMULATION?

WELL, ANY ALIMONY AWARD, UNLESS THE WIFE SPENT IT ALL, IN OTHER WORDS, IF SHE DIDN'T SPEND ALL THE ALIMONY SHE GOT, THERE WOULD BE SOME ACCUMULATION.

WELL, BUT I AM TALKING ABOUT THE CONCEPT. WE HAVE GOT THIS EQUITABLE DISTRIBUTION OF ASSETS, WHICH IS IN ONE CATEGORY, AND THEN WE HAVE 61.08, WHICH PROVIDES FOR SOMETHING THAT, IN MY ANALYSIS, TO DATE, AS ALWAYS, I HAVE THOUGHT, THAT THAT HAD TO DO WITH SOMETHING THAT WAS GOING ON CURRENTLY, TO BE EXPENDED, TO TAKE CARE OF THE LIFE'S NEEDS, ON A DAILY BASIS, OF WHICHEVER SPOUSE IS AWARDED ALIMONY, AND SO WE ARE LOOKING AT SOMETHING THAT IS IN THE NATURE OF SOMETHING TO COVER CURRENT EXPENDITURES. IS THAT NOT CORRECT?

I THINK PARTIALLY CORRECT. I DON'T THINK THAT I AGREE WITH YOU ENTIRELY ON THAT. IN FACT, THE EXPENDITURES, THE LAST CASE, FOR EXAMPLE, SAID THAT A FAMILY, WHEN THEY DIVORCED, THE SPOUSES OUGHT TO BE PUT IN THE SAME OR SIMILAR POSITIONS, AS CLOSE AS THEY CAN BE, GIVEN THE ECONOMICS OF THAT. MRS. MALLARD, BECAUSE SHE LIVED A FRUGAL LIFESTYLE, AT THE INSTANCE OF HER HUSBAND, IS WHAT THE TRIAL COURT FOUND, WILL THUS BE PENALIZED. THERE IS NOTHING IN HER BUDGET FOR NEW CARS. THERE IS NOTHING IN HER BUDGET FOR NEW CLOTHES. THERE IS NOTHING IN HER BUDGET FOR LAVISH VACATIONS. THE ONLY THING IN THERE IS FOR SAVINGS, BECAUSE THAT IS WHAT THEY DID.

BUT DIDN'T YOU AGREE ON THE AMOUNT THAT SHE WOULD NEED?

WE AGREED ON THE AMOUNT THEY HISTORICALLY HAD SPENT. WE DID NOT AGREE ON WHAT THEY NEEDED. THE STIPULATION IS THIS IS WHAT STANDARD OF LIVING WAS DURING THE MARRIAGE, BASED UPON WE COULDN'T CHANGE IT. THAT IS WHAT THE FACTS WERE. BUT THEY DID NOT INCLUDE WHAT THEY DID, AND WHAT THEY DID WAS SAVE MONEY.

HOW WOULD YOU DISTINGUISH THE BOYET CONCEPT THAT YOU CAN NOT ADD CONTRIBUTIONS FOLLOWING THE DISSOLUTION FOR DETERMINATION OF WHO GETS WHAT?

I DON'T THINK BOYET IS APPLICABLE HERE. BOYET IS A CASE OF WHETHER OR NOT YOU TREATED AN ASSET AS AN INCOME STREAM OR YOU TREATED IT AS AN ASSET TO BE DISTRIBUTED.

BUT IS THE ARGUMENT NOT -- DOES IT NOT HOLD TRUE HERE, THAT IF WE HAVE MAINTAINED

SOME TYPE OF SAVINGS PLAN, A 401(K) THAT, THIS CONCEPT WOULD REQUIRE THE SPOUSE WHO HAD THAT ACCOUNT, BE IT THE MAN OR THE WOMAN, TO CONTINUE THAT FOR THE BENEFIT OF THE OTHER SPOUSE?

NO, SIR. I DON'T THINK SO.

WHY NOT?

BECAUSE THE WAY THIS TRIAL JUDGE RULED, IN THIS CASE, WAS THAT LOOKING AT THE HISTORY OF THIS FAMILY, IF YOU DIDN'T INCLUDE 401(K), SHE DIDN'T INCLUDE BONUSES. SHE SAID THIS IS WHAT THEY DID. SHE DIDN'T REQUIRE HIM TO KEEP CONTRIBUTING TO A 401(K) FOR HER HER.

WHY WOULD IT NOT BE DIFFERENT THOUGH, IF WE ARE SAYING IT ONLY TAKES THIS AMOUNT FOR THE 401(K) AND WE ARE GOING TO SAVE THAT AMOUNT, HOW WOULD THAT BE DIFFERENT THAN, WELL, WE ARE GOING TO SAVE THIS OTHER AMOUNT? THAT IS WHAT I AM HAVING DIFFICULTY WITH.

I THINK THERE IS A DIFFERENCE. I THINK THE DIFFERENCE IS 401(K) THE JUDGE TREATED LIKE THAT IS A BUSINESS. THAT IS PART OF YOUR JOB. THAT IS PART OF WHAT YOUR EMPLOYMENT IS, BUT THE RESULT OF WHAT THESE PEOPLE SPENT, SHE WILL NO LONGER BE ABLE TO LIVE THE SAME LIFESTYLE, UNLESS SHE WAS GIVEN A SAVINGS COMPONENT. SHE IS EXPECTED AND REQUIRED TO EXPEND THE INCOME SHE RECEIVES OFF OF HER ASSETS TO MAINTAIN HER LIFESTYLE, SO UNLESS SHE RECEIVES THIS SAVINGS COMPONENT, SHE WILL NO LONGER BE ABLE TO SAVE, AFTER A 27-YEAR MARRIAGE.

WHERE HAVE WE, IN THE PAST, THOUGH, AS JUSTICE WELLS HAS INDICATED, IN TRYING TO COME TO THESE FUNDAMENTAL DEFINITIONS, IDENTIFIED ACCUMULATIONS, ESPECIALLY FINANCIAL ACCUMULATIONS, AS PART OF LIFESTYLE? THAT IS THAT USUALLY, WHEN WE TALK ABOUT LIFESTYLE, WE ARE TALKING ABOUT QUALITY OF LIFE. THAT IS THAT THERE ARE EXPENDITURES THAT ESTABLISH A STANDARD AND A QUALITY OF LIFE, SO I THINK YOU NEED TO CONFRONT THAT, CLEARLY, THIS IS SOMETHING THAT IS NOW UNIQUE HERE. AND THAT ONE OF THE OTHER OF YOU HAS TO MAKE THE CONVINCING CASE OF WHY WE, NOW, I THINK, TO A GREAT DEGREE, SHOULD EXPAND FLORIDA LAW TO INCLUDE THIS, BECAUSE IT IS A GOOD IDEA, BUT NOT BECAUSE IT IS SOMETHING THAT WE HAVE ROUTINELY DONE IN THE PAST, AND SO I WOULD LIKE TO HEAR YOUR ARGUMENTS ON WHY THIS IS A GOOD IDEA. THAT IS WHY WE SHOULD ACCEPT THIS PROPOSITION, AND I AM NOT SURE HOW YOU APPROACH IT FROM THAT, BUT I WOULD APPRECIATE IT, IF YOU WOULD TELL US. WHY IS THIS A GOOD THING?

BECAUSE JUST GO BACK TO THE HISTORY AND THE KANAKARIS CASE. IT IS A NEW CONCEPT. THERE ARE NO OTHER CASES OUT HERE. THERE IS THE WINTERS CASE OUT OF CALIFORNIA.

I APPRECIATE YOUR CANDOR.

THERE IS A CASE OUT OF MISSOURI THAT THEY HAVE QUOTED, AND THEN THERE IS THE MESSINA CASE AND THEN THERE IS THIS CASE. BUT IN 1980, THIS COURT SAID, IN KANAKARIS, THE TRIAL JUDGE OUGHT TO BE EMPOWERED TO DO JUSTICE BETWEEN THE PARTIES. THE TRIAL COURT OUGHT TO -- THE APPELLATE COURTS SHOULD NOT MAKE HARD AND FAST RULES THAT GOVERN EVERY CASE, BECAUSE EVERY DIVORCE IS DIFFERENT, IN EFFECT, IS WHAT THEY SAID, SO THIS TRIAL JUDGE, UNDER THE KANAKARIS, AND UNDER THE STATUTES, SAYS I LOOK AT THESE PEOPLE. I SEE THIS IS THE WAY THEY LIVE, AND IF I DON'T GIVE THIS MONEY TO MRS. MALLARD, SHE IS SHORTCHANGED. SHE CAN NO LONGER LIVE IN THE SAME MANNER SHE HAD BEEN LIVING. SHE WILL NO LONGER BE ABLE TO SAVE, IN EFFECT. SO SHE SAYS, GIVEN THESE FACTS, ON THESE SPECIFIC FACTS, THAT IS WHAT MESSINA SAYS, ON THESE SPECIFIC FACTS, ON THIS CASE, THE TRIAL JUDGE'S RULING WAS, BASED UPON THESE FACTS, BASED UPON THE FACT THAT I NEED TO DO EQUITY AND JUSTICE BETWEEN THESE PARTIES, I FIND THAT SAVINGS, THERE WAS AN

ULTIMATE OR THE GREAT PART OF THEIR LIFESTYLE THIS. IS WHAT THEY DID. IF I DON'T GIVE HER THIS MONEY --

HOW DO YOU ANSWER JUSTICE LEWIS'S QUESTION, THOUGH, AND IT IS ISN'T NECESSARILY BAD, BUT I KNOW I, FOR ONE, TOO, HIM HAVING DIFFICULTY DISTINGUISHING THIS SITUATION BETWEEN ONE WHERE THERE IS A 401(K) OR WHATEVER. CLEARLY WHILE THE PARTIES ARE MARRIED AND ARE SATISFIED WITH ONE ANOTHER AND THE FAMILY LIFE IS STABLE, ARE ANTICIPATING THAT IF THEY ARE PUTTING MONEY INTO, FOR INSTANCE, A 401(K), THAT THAT IS FOR LATER, THAT IS GOING TO BE SHARED BY BOTH OF THEM, AND SO IN THE SAME WAY THAT IF THEY SET ASIDE A SAVINGS ACCOUNT OR A STOMACH COUNT OR WHATEVER, THAT LATER THAT IS GOING TO BE USED FOR THE BENEFIT OF BOTH OF THEM. WHEN DIVORCE COMES ALONG, OF COURSE, NOW, THAT PREMATURELY DOES THAT, AND IN THE PAST, WHAT WE HAVE DONE IS SIMPLY TRY TO VALUE THOSE THINGS,, AS THEY HAVE ACCUMULATED, SO I DO HAVE DIFFICULTY SEEING HOW, IN THE FUTURE, WE WOULD BE ABLE TO LIMIT A SITUATION LIKE THIS, TO JUST CASES WHERE, WELL, YEAH, THERE WAS A 401(K) OR, YEAH, THERE WAS A STOMACH OCCUPANT, BUT THE PARTIES JUST HAD -- OR THERE WAS A STOMACH COUNT, BUT -- A STOCK ACCOUNT, AND VARIOUS THINGS. IT SEEMS TO ME THIS IS DRAMATIC AND PARTIES ARE GOING TO BE SAYING OUR 401(K) IS JUST LIKE THE PARTIES IN THE MALLARD CASE, WHEN THEY HAD A SAVINGS, AND THAT MAY AND GOOD IDEA.

I APPRECIATE YOUR COMMENT, BECAUSE IT IS TRUE THAT IS A NEW CONCEPT, AND HERE IS WHAT I THINK, PRIMARILY, IT S INCIDENTAL SAVINGS ARE NOT WHAT WE ARE TALKING B THE FACT THAT THE FAMILY SAVED SOME MONEY DURING THE YEAR OR CONTRIBUTED TO A 401(K) IS NOT THE TEST. THE TEST IS, AS THE CERTIFICATION THIS COURT, WAS WHERE THE HISTORY, AND I WILL JUST -- WHERE THE HISTORICALLY DEMONSTRATED, THE PARTIES HISTORICALLY DEMONSTRATED THE REGULAR AND CONSISTENT PATTERN, SO I THINK THE KEY, IN THIS CASE IN THE DISTINGUISHING FEATURE OF THIS CASE, WAS IN THIS CASE, THEY HAD A CONSISTENT PATTERN OF SAVINGS. AND THE COURT FELT, AGAIN, IN THIS PARTICULAR CASE, THAT TO DO JUSTICE BETWEEN THE PARTIES, SHE NEEDED TO GIVE AN AWARD OF A COMPONENT OF SAVINGS IN THE AWARD. EVERY CASE THAT-KNOW WHICH THERE ARE SAVINGS, I DON'T THINK, LENDS ITSELF TO MESSINA OR A MALLARD-TYPE RULING, AND THIS IS OBVIOUSLY, A NEW FRONTIER, IN THE ISSUE OF ALIMONY. BUT --

HOW WOULD WE LIMIT, IF WE HELD THAT THIS WAS APPROPRIATE, HOW WOULD WE WRITE AN OPINION THAT WOULD LIMIT THE USE OF THIS AS YOU SUGGEST?

FIRST OF ALL, THE LANGUAGE IS -- HAS GOT TO BE THE INCIDENTAL SAVINGS IS NOT INCLUDEABLE. IT IS WHERE THERE IS AN HISTORICAL PATTERN, A CONSISTENT PATTERN. I BELIEVE IT, ALSO, MIGHT INCLUDE WHERE THEY FOREGO OR FORE WENT OTHER THINGS IN FAVOR OF SAVINGS, BECAUSE THAT IS WHAT THEY DID. THE FACTS ARE UNDISPUTED THAT THAT IS WHAT THEY DID.

EXCUSE ME. I AM SORRY.

THAT'S ALL RIGHT.

WAS THERE ANY ANALYSIS AS TO THE CHANGE IN THE EQUATION BECAUSE OF THE DIVORCE AND THE AVAILABILITY OF FUNDS TO DO THIS BY THE TRIAL COURT?

-- ANY ANALYSIS? EVERY -- I HAVE SAT ON HUNDREDS OF DIVORCES, AND WHEN PEOPLE GET DIVORCED, LIFESTYLE DOES NOT NORMALLY CONTINUE FOR BOTH OF THEM AS IT WAS WHEN THEY LIVED TOGETHER.

IN THIS CASE, YES, YOUR HONOR. THE HUSBAND'S EARNINGS WERE \$425,000. THE WIFE EARNINGS, WITH THE IMPUTED INCOME, WERE \$1600 A MONTH. THE HUSBAND MADE \$700,000 SOME-ODD IN

190S. IN 1970, THE WIFE EARNED ABOUT -- IN THE 1970s. IN 1970, THE WIFE EARNED ABOUT 14,000 DOLLARS. WHEN HE HAD PAID ALL OF HIS NEEDED EXPENSES, WHICH INCLUDED \$14,000 IN TITHING, HE HAD \$16,000 LEFT OVER, UNDER OUR ANALYSIS, AND THE COURT'S RULING WAS THIS CERTAINLY -- I TAKE THAT BACK. IT WAS NOT NAEKT EXACTLY A -- IT WAS NOT EXACTLY A RULING ON THAT BUT IT WAS CLEAR FROM THE EVIDENCE ON THE RECORD THAT THERE WAS SUFFICIENT MONEY. HE WOULD BE ABLE TO CONTINUE TO SAVE, IN OTHER WORDS. THAT IS THE LIFESTYLE THEY HAD LIVED FOR 27 YEARS.

SO IN ORDER TO DO THIS ON A YEAR BY YEAR BASIS, REALLY, THE FOCUS IS NOT OF THIS PARTICULAR ALIMONY, WOULD NOT BE ON HER NEEDS BUT WOULD BE ON HIS INCOME INCOME.

NOT NECESSARILY.

WELL --

WE ARE NOT LOOKING INTRO SPECS.

WHAT IF HE LOST HIS JOB OR HE MADE THE DECISION THAT HE WASN'T GOING TO SAVE ANYMORE?

THAT IS GOOD. IN DOING LIFESTYLES, WE HAVE TO LOOK AT WHAT HAPPENED BEFORE. BUT IN THE FUTURE, IF HE QUILTS WORK, HE LOSES HIS JOB, MODIFICATION. THE SAME AS ANY OTHER ALIMONY. THIS IS NOT SAVINGS ALIMONY. IT IS A COMPONENT OF WHAT HER STANDARD OF LIVING WAS.

LET ME GIVE YOU, ASK YOU ANOTHER HYPOTHETICAL. IF THE PARTIES HAVE DECIDED, IN INSTEAD INSTEAD OF SAVING THERE, HAVE DECIDED THAT THEY ARE GOING TO ACQUIRE HOUSES AROUND THE COUNTRY AND IN EUROPE AND THOSE HOUSES WENT UP, THOSE HOUSES WOULD BE SUBJECT TO EQUITABLE DISTRIBUTION, BUT THERE WAS MORTGAGES ON THOSE HOUSES. HOW WOULD THAT BE HANDLED, UNDER THE CURRENT STATE OF THE LAW? WOULD THE WIFE RECEIVE ALIMONY SUFFICIENT TO COVER HER PORTION, OR IS THAT BECAUSE THAT IS PART OF EQUITABLE DISTRIBUTION AND NOT HER OWN, YOU KNOW, HOUSE TO LIVE IN, BEYOND HER NEEDS? HOW -- WHAT IS YOUR FEELING ON HOW THAT WOULD BE?

IF YOU ARE TALKING ABOUT EXTRA HOUSES NOT THE MARITAL HOME?

RIGHT.

I, REALLY, HADN'T THOUGHT OF THAT QUESTION, BUT I WOULD ASSUME THAT, UNDER EQUITABLE DISTRIBUTION, THAT IT WOULDN'T BE A REAL FACTOR, BECAUSE YOU WOULD DO INEQUITABLE DISTRIBUTION, OF COURSE, IS TO TAKE ASSETS MINUS LIABILITIES RESPECT AND IF SHE ENDED UP WITH SOMETHING, HER HALF, SHE WOULD NOT BE ENTITLED TO GET THE MONEY FROM HIM TO KEEP PAYING FOR HER HALF.

ISN'T THAT ANALOGOUS TO THIS SITUATION?

I DON'T THINK SO. I DON'T THINK SO. I THINK THIS IS A SITUATION IN WHICH AN ORDER FOR --

SHE WANTS MONEY TO CONTINUE TO ACQUIRE ASSETS. THAT IS, REALLY, WHAT THIS IS ABOUT. IT MAY, AGAIN, GOING BACK TO THE QUESTIONS, IT MAY SEEM LIKE A VERY FAIR THING TO DO, BUT IN TERMS OF LOOKING AT OTHER SITUATIONS, LIKE, AGAIN, TO ME THE HOUSE SITUATION, THAT IS -- WOULD BE WHY NOT GIVE THE PERSON ALIMONY TO CONTINUE TO PAY THE MORTGAGE, IF THAT IS WHAT WAS BEING DONE IN THE PAST?

WELL, I THINK THERE IS -- I DON'T THINK THAT WOULD BE THE CASE. I DON'T THINK THE IDEA OF

GIVING HER MONEY TO SAVE, TO ACQUIRE ASSETS, THE CALIFORNIA CASE, YOU CAN BUY STOCKS OR YOU CAN BUY FURS, BUT IN THIS CASE, TO GIVE HER MONEY IN THE FUTURE, TO CONTINUE TO BUY ASSETS, I DON'T THINK THAT IS WHAT THE COURT MEANT, AND I DON'T THINK THAT WOULD BE APPROPRIATE, UNDER OUR CURRENT LAW.

WELL, THEN, WHAT IS THIS MONEY, WHAT IS THE EXTRA MONEY DESIGNATED FOR, IF NOT TO CONTINUE TO BUY ASSETS OR SAVE OR WHATEVER YOU ARE GOING TO CALL IT?

TO SAVE.

AREN'T ALL SAVINGS, INVESTMENTS IN ASSETS? THAT IS --

THAT'S TRUE.

LET'S SAY THE PARTIES HERE, IF THEY WERE SAVING THIS PARTICULAR AMOUNT AND THEY HAD THAT DISCIPLINE, AND THEY ALWAYS GAVE IT TO JOE SMITH, THEIR BEST FRIEND, WHO WAS A FINANCIAL ADVISOR, AND JOE SMITH PUT IT INTO THESE HOUSES AROUND THE WORLD, BECAUSE HE THOUGHT THAT WAS THE ONE THAT WOULD RETURN THE MOST, SO WHEN THE PARTIES ENDED UP SEPARATE OR DIVORCING, THEY WOULD END UP -- SEPARATING OR DIVORCING, THEY WOULD END UP WITH ALL OF THESE HOUSES THAT WE TALKED ABOUT BEFORE. IN OTHER WORDS ALL SAVINGS, REALLY, ARE JUST AN ACCUMULATION OF ASSETS. ARE THEY NOT?

THAT IS TRUE. BUT I THINK, WHERE THERE IS A DIFFERENCE HERE, IS THAT WHAT YOU HAVE DONE, WITHOUT THIS ELEMENT IN THIS PARTICULAR AWARD IN THIS PARTICULAR CASE, HER LIFESTYLE, IN EFFECT, DROPS BACK. SHE CANNOT CONTINUE TO DO WHAT SHE HAS DONE FOR 27 YEARS. THAT IS ENJOY --

THAT IS ONE OF THE THINGS. YOU INDICATED, AT THE VERY BEGINNING, THAT THERE WAS A STIPULATION AS TO HER NEEDS.

HER NEEDS WITHOUT SAVINGS. YES, SIR.

AND YOU STIPULATED THAT HER NEEDS DID NOT INCLUDE A CAR? THE USE -- DID THEY HAVE CARS DURING THE COURSE OF THE MARRIAGE?

1971 VOLVO AND 1970-SOMETHING. THEY DIDN'T SPEND ANY MONEY. THEY WERE VERY FRUGAL.

I UNDERSTAND THAT, BUT EVEN SO, YOU DID NOT STIPULATE THAT SHE NEEDED SOME SORT OF TRANSPORTATION, IN HER NEEDS?

THERE WAS SOME TRANSPORTATION EXPENSES, YOUR HONOR, BUT I DON'T REMEMBER EXACTLY WHAT THE \$5900 WAS MADE UP OF.

BUT THEN, SO, YOU STIPULATED THAT SHE COULD LIVE ON THIS AMOUNT OF MONEY, BUT THIS IS IN ADDITION TO THAT, FOR THE PURPOSE OF SAVINGS.

THAT'S RIGHT.

THIS THAT IS IN ISSUE HERE.

THAT'S RIGHT.

AND IT WILL NOT AFFECT HER LIFESTYLE. I MEAN ACCORDING TO YOU,, I MEAN SHE DOESN'T NEED IT FOR AN ENHANCEMENT OF HER LIFESTYLE.

SHE DOESN'T NEED IT, FROM THE STANDPOINT THAT SHE HAS TO HAVE IT EVERYDAY TO GO TO

THE GROCERY STORE. THE ANSWER IS NO. DOES SHE NEED IT FOR WHATEVER SHE WANTS TO SPEND IT ON IN THE FUTURE? YES.

IF SOMEBODY HAD, DURING THE COURSE OF THIS MARRIAGE, HE HAD GIVEN HER A CERTAIN SUM OF MONEY EVERY MONTH TO BUY JEWELRY, AND JEWELRY WHICH, YOU KNOW, EXPENSIVE JEWELRY, WOULD THAT BE SOMETHING INCLUDED IN AN ALIMONY AWARD?

YES, MA'AM.

SO ARE YOU SEEING THIS AS SIMILAR TO THAT?

YES, MA'AM. I THINK WHAT YOU SPEND YOUR MONEY ON, WHEN A WIFE COMES IN TO YOUR OFFICE ON A DIVORCE CASE, YOU SIT DOWN WITH HER AND YOU LOOK AT WHAT SHE HAS SPENT, AND THIS IS WHAT YOU ARE GOING TO GET, IF THERE IS ENOUGH MONEY. HOW SHE SPENDS IT AFTER THAT IS ANOTHER THING, BUT IF SHE SPENT IT ON JEWELRY AND SHE WANTS TO CONTINUE TO SPEND IT ON JEWELRY AFTER THE DIVORCE, THAT IS HER -- IS INCLUDED IN THE STANDARD OF LIVING.

BUT IF SHE WANTS TO TAKE THAT MONEY THAT HER HUSBAND GAVE HER TO SPEND ON JEWELRY AND USE IT TO BUY ASSETS AFTER THE DIVORCE, NOTHING PRECLUDES HER FROM DOING THAT.

ABSOLUTELY NOT, BECAUSE WE DON'T KEEP TRACK OF THAT. IT GETS TO BE, MOST PEOPLE THINK IT IS A CONTROL FACTOR, BUT THAT IS THE WAY IT IS THAT SHE CAN SPEND IT HOWEVER SHE WANTS TO, BUT WE BASE IT UPON WHAT SHE SPENT DURING THE MARRIAGE.

THANK YOU VERY MUCH.

THANK YOU.

MR. GRIMES. I WANT TO POINT OUT THAT THEY HAVE --

I WANT TO POINT OUT THAT THEY HAVE STIPULATED TO THE HISTORICAL STANDARD OF LIVING, BUT THEY HAVE, ALSO, STIPULATED TO THAT THE ADJUSTED HISTORICAL STANDARD OF LIVING IS HIGHER THAN THAT WHICH WAS AWARDED. I POINT OUT THAT YOU COULDN'T LIMIT THE NATURE OF HOLDINGS. THERE ARE ALL NATURES OF ALL FAMILIES, AND YOU COULDN'T LIMIT THIS HOLDING. TO AFFIRM THIS CASE WOULD SIMPLY OPEN A PANDORA'S BOX, WITH RESPECT TO NEW CASES MAKING CLAIMS OF SO-CALLED SAVINGS ALIMONY, OVER AND ABOVE THE NEEDS OF THE DEPENDENT SPOUSE, SO WE REQUEST THAT THE COURT REVERSE THE DECISION BELOW BY ELIMINATING THE AWARD OF SAVINGS ALIMONY. THANK YOU.

THANK YOU. THANKS TO BOTH OF YOU FOR YOUR ASSISTANCE IN HELPING US RESOLVE THIS MATTER.