

>> THE NEXT CASE ON OUR DOCKET
IS ALDRICH VERSUS BASILE.
>> YOU MAY PROCEED.
>> GOOD MORNING.
MAY IT PLEASE THE COURT.
MY NAME IS JIM TAYLOR.
I REPRESENT THE PETITIONER,
JAMES MICHAEL ALDRICH.
THIS CASE CONCERNS THE
CONSTRUCTION OF THE WILL OF ANN
ALDRICH.
ANN MADE OUT HER WILL IN 2004
USING AN E-Z LEGAL FORM.
IN THE WILL, IN HER OWN HAND
SHE LISTED HER PROPERTY AND SHE
PROVIDED FOR THAT PROPERTY TO
PASS TO HER SISTER, MARY JEAN
EATON, OR IF HER SISTER DIED
BEFORE HER, THEN TO HER
BROTHER, THE PETITIONER HERE,
MR. ALDRICH.
THREE YEARS LATER MISS EATON
DIED AND LEFT HER ESTATE TO
ANN.
ANN DID NOT AT THAT TIME MAKE
OUT A NEW WILL.
SHE DID HOWEVER PREPARE A NOTE
IN HER OWN HANDWRITING WHICH
SHE AFFIXED WITH A PAPER CLIP TO
THE ORIGINAL OF HER 2004 WILL
WHICH SHE REITERATED IN HER WILL.
>> ARE YOU, IS IT YOUR POSITION
THAT HAS ANY LEGAL SIGNIFICANCE
TO IT THIS?
>> FOR THE ISSUE BEFORE THIS
COURT, YOUR HONOR, NO.
>> WE'RE OTHER ON THE ISSUE.
>> IT MAY BE RELATIVE TO A
POINT MADE BY AMICUS.
>> RELEVANT INFORMATION.
>> YES, YOUR HONOR.
WHICH IS PENDING IN THE LOWER
COURT AT THIS POINT.
THE PROBATE COURT HAS DEFERRED
RULING ON THAT PENDING THIS
COURT'S DETERMINATION OF THIS
CASE.
>> IS THERE ANY EVIDENCE, AND
MAYBE IT IS OF AGAIN NO LEGAL
SIGNIFICANCE IN THIS CASE, BUT

I'M LOOKING AT THE, THIS FORM WILL, THAT ANYONE ASSISTED HER IN FILLING OUT THE WILL?

>> THERE IS NO EVIDENCE THAT SHE CONSULTED A LAWYER IN THE PREPARATION OF THE WILL. THE AFFIDAVITS OF THE WITNESSES TO THE WILL THAT WERE FILED IN THE PROBATE COURT, INDICATE SIMPLY THAT THE WILL WAS SIGNED BY ANN IN THE PRESENCE OF THE WITNESSES.

>> I MEAN WHAT I FIND UNFORTUNATE, AND THIS IS JUST FOR THE FUTURE IS THAT THIS, YOU KNOW, ASSUMING THAT SHE HAD NO ASSISTANCE, THIS FORM DOES NOT EVEN ALLOW, OR DOESN'T HAVE A PLACE WHERE THERE WOULD BE A RESIDUAL CLAUSE.

A GOOD EXAMPLE FOR THE REAL, FOR THE LAWYERS TO SAY, YOU KNOW, IT IS REALLY GREAT TO USE A FORM BUT, LOOK WHAT'S GOING TO HAPPEN.

AND YOU KNOW, SO WE REALLY DON'T KNOW WHAT HER INTENT WAS ON RESIDUARY PROPERTY. THERE ISN'T A PLACE WHERE SHE COULD HAVE SAID YES OR NO ON IT.

IS THAT TRUE ABOUT THAT PARTICULAR FORM?

>> THAT IS CORRECT, YOUR HONOR. YOUR HONOR IS CORRECT.

>> IT WOULD BE MUCH, IF THE FORM HAD IT, YES OR NO, THAT WOULD HAVE SORT OF ENDED THE INQUIRY.

>> FORMS CAN BE GOOD AND FORMS CAN BE BAD. THIS IS PROBABLY ONE OF THE BAD ONES.

>> BUT THE PROBLEM HERE IS THAT EVERY, SHE DIDN'T JUST DESCRIBE THIS PROPERTY GENERALLY. SHE WENT INTO SPECIFICS AS TO EACH CATEGORY AS TO WHICH, DIDN'T SAY ALL OF MY BANK ACCOUNTS.

SHE SAID, SHE DESIGNATED WHICH ONES.

ISN'T THAT REALLY THE PROBLEM?

>> I DON'T BELIEVE SO, YOUR HONOR.

ON THE ISSUE BEFORE THE COURT.

>> WELL, OKAY.

>> SO THE ISSUE BEFORE THE COURT THEN IS WHAT? WHAT --

[INAUDIBLE]

WHETHER OR NOT THE WILL

[INAUDIBLE]

>> YOUR HONOR, WE CONTEND, AND I THINK BOTH SIDES AGREE ON THIS POINT, THAT ANN EXPRESSED NO INTENT IN HER WILL REGARDING DISPOSITION OF ANY POTENTIAL AFTER-ACQUIRED PROPERTY.

THE WILL SIMPLY DOESN'T SPEAK TO IT.

SO WHAT WE'RE CONCERNED WITH HERE, I SUBMIT, IS THE STATUTE, SECTION 732.6005, 2.

FLORIDA'S AFTER-ACQUIRED PROPERTY RULE, CODIFIED IN PART 6 OF THE PROBATE CODE, WHICH CONTAINS THE STATUTORY RULES OF CONSTRUCTION THAT THE LEGISLATURE HAS ENACTED THIS. AND WHETHER IN THIS CASE THAT RULE APPLIES TO SUPPLY THE INTENT --

>> DOESN'T THAT RULE START WITH THE INTENTION OF THE TESTATOR FOR THE LEGAL EFFECT --

[INAUDIBLE]

>> YOUR HONOR, I SUBMIT IF WE READ THE ENTIRE SECTION, BOTH SUBSECTIONS OF 732.605, WHAT WE HAVE IS A SCHEME WHICH REQUIRES US TO LOOK TO THE WILL TO DETERMINE A TESTATOR'S INTENT.

IF THERE IS NO INTENT DISCERNABLE IN THAT WILL, AS IT CONCERNS A PARTICULAR MATTER THAT ARISES AT THE TESTATOR'S DEATH, THEN BY REASON OF THE SECOND SENTENCE IN SUBSECTION 1 OF THAT STATUTE, UNLESS THE

WILL INDICATES A CONTRARY INTENT, WE ARE REQUIRED, THE LEGISLATURE HAS MANDATED THAT THESE STATUTORY RULES OF CONSTRUCTION OF WHICH THE AFTER ACQUIRED PROPERTY RULE IS ONE, APPLY TO RESOLVE THE QUESTION. AND IF I MAY, I THINK IT'S, I THINK IT'S IMPORTANT AND I'M GOING TO BORROW FROM DEAN FINN IN HIS COMMENTARY ON THE THEN NEW FLORIDA PROBATE CODE IN 1974.

THIS IS A VERY APT CHARACTERIZATION I SUBMIT. DEAN FINN REFERRED TO THE PART 6 CONSTRUCTION RULES INCLUDING THE AFTER-ACQUIRED PROPERTY RULE, AS CODIFIED SOLUTIONS TO SEVERAL COMMON PROBLEMS THAT ARISE IN WILL DRAFTING, WHETHER THE DRAFTSMAN IS A LAWYER OR A LAYPERSON.

DUE PRIMARILY, DEAN SAID, TO EITHER THE DRAFTSMAN'S LACK OF RECOGNITION OF LIKELY PROBLEMS OR A LACK OF FORESIGHT IN DEALING WITH THEM.

WHAT THAT MEANS IS, I THINK DEAN FINN IS CORRECT.

WHAT THAT MEANS IS, THE LEGISLATURE HAS CHOSEN WITHIN ITS PURVIEW TO ADDRESS ITSELF CERTAIN COMMON PROBLEMS THAT EXPERIENCE SHOWS ARISE IN WILL DRAFTING.

NOT TAKING ACCOUNT OF THE POSSIBILITY OF AFTER-ACQUIRED PROPERTY IS ONE OF THEM.

>> WHAT WOULD BE, WHAT WOULD HAVE BEEN YOUR ARGUMENT IF, WHAT SHE'S LISTED, WE HAVE TO GO OUTSIDE OF THE WILL TO KNOW AS OF THE DATE SHE DRAFTED IT, THAT WAS ALL HER PROPERTY, RIGHT?

THERE IS NO CONTENTION THERE WAS OTHER PROPERTY THAT SHE HADN'T SET FORTH IN THIS LIST?

>> I SUBMIT, YOUR HONOR, THAT

IS HELPFUL IN THE INQUIRY.

IT IS NOT DETERMINATIVE.

>> BUT IS THAT CORRECT, THERE WASN'T ANY OTHER PROPERTY?

>> THE SUMMARY JUDGMENT EVIDENCE BELOW, AND THIS WAS DECIDED ON A SUMMARY JUDGMENT MOTION.

THE SUMMARY JUDGEMENT EVIDENCE BELOW INDICATED THAT THE STRONG INFERENCE WAS THE PROPERTY LISTED IN THE WILL WAS ALL THE PROPERTY SHE OWNED AT THE TIME.

>> IN OTHER WORDS, WOULD IT MAKE A DIFFERENCE?

>> [INAUDIBLE].

A STRONG INFERENCE.

THAT WAS BY REASON OF A AFFIDAVIT SUBMITTED BY A CERTIFIED PUBLIC ACCOUNTANT WHO REVIEWED ALL OF ANN'S FINANCES BEFORE AND AFTER MAKING OF THE WILL, ACTUALLY A QUITE EXHAUSTIVE OF HER STUDY AND HER FINANCES TO REACH TO THE CONCLUSION, ALTHOUGH WE CAN'T KNOW FOR CERTAIN, THE STRONG INFERENCE WAS, THE WILL LISTED EVERYTHING SHE OWNED.

>> I'M STRUGGLING WITH HOW THAT ACTUALLY HAS AN IMPACT ON THE, HOW WE INTERPRET THIS STATUTE?

>> I THINK IT IS HELPFUL, YOUR HONOR, BUT I DON'T THINK IT IS DETERMINATIVE.

I THINK WHAT IS DETERMINATIVE THAT WE FIND THAT WE HAVE A WILL THAT DISPOSES OF PROPERTY, REGARDLESS REALLY OF WHETHER IT WAS ALL THE PROPERTY SHE OWNED AT THE TIME.

BUT IF WE LOOK AT THE STATUTE ACCORDING --

>> SO YOU'RE SAYING IF THERE'S A WILL THAT DISPOSES OF PROPERTY, WHAT FOLLOWS FROM THAT?

>> IF THERE'S A WILL THAT DISPOSES OF PROPERTY, AND THAT WILL SAYS NOTHING ABOUT AFTER

ACQUIRED PROPERTY AND THAT WILL SAYS NOTHING TO SUGGEST THAT AFTER ACQUIRED PROPERTY SHOULD NOT PASS UNDER THE WILL, ALONG WITH THE PROPERTY IDENTIFIED IN IT, THEN THE AFTER ACQUIRED PROPERTY RULE APPLIES TO REQUIRE WE SUPPLY THAT INTENT THROUGH THE CODIFIED SOLUTION, TO PASS THE AFTER ACQUIRED PROPERTY, UNLESS THIS IS THE PLAIN MEANING RULE, UNLESS THAT APPLICATION OF THE PLAIN MEANING RULE RUNS UP AGAINST THIS COURT'S JURISPRUDENCE ON THE ABSURDITY DOCTRINE. THAT IS COULD WE CONCEIVE OF A WILL THAT, TO APPLY THE AFTER-ACQUIRED RULE TO THAT WILL OR THOSE CIRCUMSTANCES MIGHT PRODUCE AN ABSURD RESULT? WE PROBABLY CAN.

>> I GUESS THE REASON, AND I BROUGHT IT UP, THE WAY I WAS SEEING IT, THAT WE'RE TRYING TO EFFECTUATE THE TESTATOR'S INTENT.

IF THE TESTATOR, AND HER INTENT WOULD NOT BE FOR PROPERTY TO PASS BY INTESTATE?

THAT IS CORRECT?

THAT'S WHAT WE'RE LOOKING AT.

>> IN RE SMITH, IN 1950.

>> THE PROPERTY SHE BEQUEATHED TO HER SISTER OR ALTERNATIVE TO, IF THIS WAS HER NEPHEW?

>> MR. ALDRICH IS HER BROTHER.

>> BROTHER.

WAS NOT ALL THE PROPERTY, THEN THE, THAT'S WHY I SAY, IF THERE WAS A RESIDUARY CLAUSE, SEEMS TO ME THAT SHOWS HER INTENT WAS ANYTHING I HAVE IS GOING TO MY SISTER OR MY BROTHER.

SO THAT MAKES A STRONGER CASE IN TERMS OF WHAT'S LIKELY.

THAT THE INTENT IS NOT, FOR PROPERTY TO PASS OUTSIDE THE WILL, RIGHT?

THAT'S WHAT WE'RE LOOKING AT.

>> IF ANN HAD CONSULTED A LAWYER I WOULD LIKE TO THINK, IF ANN HAD CONSULTED A LAWYER OR ANN PERHAPS CHOSEN A DIFFERENT FORM THAT EXPRESSLY INCLUDED A RESIDUARY CLAUSE THIS CASE WOULD NOT BE BEFORE THIS COURT.

SHE DID NOT.

>> THAT'S WHAT I'M ASKING. IF WE KNOW ALL THE PROPERTY IN THERE WAS ALL THE PROPERTY SHE OWNED, WASN'T THAT, WOULD YOU MAKE AN ARGUMENT THAT'S EQUIVALENT TO SHOWING THAT HER INTENT WAS ALL THE PROPERTY SHE HAD WAS TO GO THROUGH THE WILL AND NOT BY INTESTACY?

>> I WOULD MAKE THAT ARGUMENT.

WE HAVE MADE THAT ARGUMENT. THE ONLY POINT I WOULD LIKE TO MAKE, I DON'T THINK THAT IS DETERMINATIVE OF THE ISSUE. I THINK IT HELPS SHOW THE RESULT OF THE AFTER-ACQUIRED PROPERTY RULE APPLYING HERE IS PERFECTLY CONSISTENT WITH ALL WE COULD KNOW ABOUT ANN'S INTENT IF THE WILL IN FACT DISPOSED OF EVERYTHING SHE OWNED AT THE TIME.

>> LET'S ASSUME ON THIS WILL THAT, WHAT BOTHERS ME, THIS MIGHT BE A SIMPLER WILL BECAUSE IT IS ONE PERSON THAT'S LISTED TO GET THE PROPERTY?

IF IN THIS WILL THOSE FOUR OR FIVE ITEMS THAT SHE DESIGNATED WERE GIVEN TO DIFFERENT PEOPLE, THEN WHAT DOES THAT, HOW DOES THAT AFFECT YOUR ARGUMENT? BECAUSE IT SEEMS TO ME IT BECOMES A MUCH MORE DIFFICULT CASE IF WE HAVE FIVE PEOPLE NAMED FOR SPECIFIC ITEMS -- SHE DIES WITH OTHER ITEMS. HOW DOES THAT --

>> I AGREE WITH YOUR HONOR.
THAT'S A MUCH MORE DIFFICULT
CASE.

AND IT MAY IMPLICATE ONE OF TWO
THINGS.

THE STATUTE ITSELF PROVIDES A
BASIS FOR NOT APPLYING THE
AFTER-ACQUIRED PROPERTY RULE.
THAT IS IF THE WILL INDICATES A
CONTRARY INTENTION.

A COURT FACED WITH A WILL SUCH
AS YOUR HONOR IS HYPOTHESIZING
MAY CONCLUDE THAT LEAVING
MULTIPLE PROPERTIES TO MULTIPLE
DIFFERENT BENEFICIARIES IS
ITSELF SUCH AN INDICATION.
ALTERNATIVELY, THIS MAY BE THAT
MAY BE ONE OF THESE CASES WHERE
A COURT WOULD DECIDE THAT WE
HAVE RUN INTO THE ABSURDITY
DOCTRINE.

THAT TO APPLY THE STATUTE,
ACCORDING TO ITS PLAIN MEANING,
TO THAT PARTICULAR WILL LEADS
TO AN ABSURD RESULT THAT THE
COURT FEELS CONFIDENT THE
LEGISLATURE COULD NOT HAVE
INTENDED.

BUT NEITHER ONE OF THOSE
SITUATIONS IS PRESENT HERE.

>> BUT I GUESS, IT SEEMS
SOMEWHAT -- [INAUDIBLE]

I GUESS THE SAME PRINCIPLE TO
ME BECAUSE SHE SAID WHAT THE LIST
OF PROPERTY IS BASICALLY.

THEN SHE GOES ON TO LIST THEM
EACH SPECIFICALLY AS OPPOSED TO
SAY, MY BANK ACCOUNTS.

WHICH SHE LISTS, THE BANK
ACCOUNTS THAT ARE IN THE
M&S BANK.

SHE ACTUALLY PUTS THE NUMBERS
IN THEM.

SHE TALKS ABOUT HER VEHICLE
THAT ACTUALLY DELINEATES A
SPECIFIC VEHICLE.

AND SO IT JUST SEEMS IT ME
THAT, I MEAN I'M STRUGGLING
WITH WHY IT DOES NOT INDICATE,
THESE ARE THE PROPERTIES I WANT

SPECIFICALLY TO GO TO THIS PERSON AND WE HAVE NO INDICATION REALLY THAT SHE WANTS THAT PEOPLE TO GET ANYTHING ELSE.

LEAVING ASIDE WHETHER THIS WAS ALL OF THE PROPERTY OR NOT BECAUSE I THINK IT BECOMES MORE DIFFICULT IF THERE WAS OTHER PROPERTY.

>> YOUR HONOR, THAT SHE CHOSE TO LIST SPECIFIC PROPERTY, THAT SHE CHOSE TO LIST IT WITH SOME FAIR DEGREE OF SPECIFICITY SAYS NOTHING ABOUT WHETHER SHE INTENDED OTHER PROPERTY SHE MAY HAVE ACQUIRED AFTERWARDS WHICH SHE LIKELY NEVER EVEN CONSIDERED.

>> NEITHER ONE OF THOSE SITUATIONS IS PRESENT HERE.

>> BUT I GUESS IT SEEMS SOMEWHAT, I GUESS, THE SAME PRINCIPLE TO ME BECAUSE SHE SAID THE LISTED PROPERTIES, BASICALLY.

AND THEN SHE GOES ON TO LIST THEM EACH SPECIFICALLY AS OPPOSED TO SAYING "MY BANK ACCOUNTS," WHICH SHE LISTS LIKE THE BANK ACCOUNTS THAT ARE IN THE M AND S BANK. SHE ACTUALLY PUTS THE NUMBERS IN THEM.

SHE TALKS ABOUT HER VEHICLE AND ACTUALLY DELINEATES A SPECIFIC VEHICLE.

SO IT JUST SEEMS TO ME THAT, I MEAN, I'M STRUGGLING WITH WHY DOES THAT NOT INDICATE THESE ARE THE PROPERTIES I WANT SPECIFICALLY TO GO TO THIS PERSON, AND WE HAVE NO INDICATION REALLY THAT SHE WANTED THESE PEOPLE TO GET ANYTHING ELSE?

AND LEAVING ASIDE WHETHER THIS WAS ALL OF THE PROPERTY OR NOT, BECAUSE I THINK IT BECOMES MORE DIFFICULT IF THERE WAS OTHER

PROPERTY.

>> YOUR HONOR, THAT SHE CHOSE TO LIST SPECIFIC PROPERTY, THAT SHE CHOSE TO LIST IT WITH SOME FAIR DEGREE OF SPECIFICITY SAYS NOTHING ABOUT WHETHER SHE INTENDED OTHER PROPERTY SHE MAY HAVE ACQUIRED AFTERWARDS, WHICH SHE LIKELY NEVER EVEN CONSIDERED THE POSSIBILITY.

>> BUT ISN'T THE POINT THIS, TO -- WE'VE GOT TO LOOK AT THE WILL TO DETERMINE FROM IT WHAT THE EXPRESSED INTENT IS, ISN'T THAT CORRECT?

I MEAN, THIS IS ABOUT THE INTERPRETATION OF THE WILL AND A LOT OF THESE STATUTORY PROVISIONS.

ALL WE KNOW FROM LOOKING AT THE WILL IS WHAT IT SAYS ABOUT THOSE CATEGORIES OF PROPERTY THAT ARE REFERRED TO THERE.

WE CAN'T TELL ANYTHING BEYOND WHAT SHE SAID IN THE WILL ABOUT THOSE CATEGORIES OF PROPERTY. NOW, THE STATUTE, IT SEEMS TO ME, WOULD MEAN IF SHE ACQUIRED PROPERTY AFTER THE WILL THAT FALLS INTO ONE OF THOSE CATEGORIES -- LIKE SHE PUTS THE MONEY INTO ONE OF THE BANK ACCOUNTS SHE'S DESCRIBED -- THEN, OBVIOUSLY, THAT'S GOING TO PASS.

BUT IF SHE ESTABLISHES A SEPARATE BANK ACCOUNT OR GOES AND BUYS A PLANTATION IN THOMASVILLE, THAT'S -- WE CAN'T TELL ANYTHING ABOUT WHAT SHE INTENDED FROM THE WILL ABOUT THAT KIND OF PROPERTY.

NOW, WHY ISN'T THAT RIGHT?

>> WE CANNOT TELL WHAT SHE INTENDED.

THE WILL DOES NOT INDICATE WHAT SHE INTENDED WITH REGARD TO THE POSSIBILITY OF AFTER-ACQUIRED PROPERTY.

THAT IS ABSOLUTELY CORRECT.

>> WELL --
>> BUT THE --
>> BUT WAIT A SECOND, BUT THAT'S
NOT --
>> -- THE STATUTE IMPLIES THE
INTENT.
>> BUT YOU HAVE, AGAIN, THE
MAJORITY OPINION SPECIFICALLY
SAYS -- AND THAT'S WHAT GIVEN
THE SPECIFICITY OF THE DEMISE
AND THE BEQUEST INCLUDING THE
HOME ADDRESS ACCOUNT NUMBERS,
THE INVOCATIONS OF 732.60052 AS
A BASIS FOR CONSTRUING THE WILL
TO DISPOSE OF THE PROPERTY IN
PUTNAM COUNTY IN AN ACCOUNT NOT
IDENTIFIED AS UNWARRANTED.
NOW, THAT'S REALLY THE NUB OF
IT, IS THE SPECIFICITY OF ALL OF
THE PROPERTY.
IF SHE HAD BEEN GENERAL IN HER
DESCRIPTION, WE'D BE IN A
DIFFERENT SITUATION, WOULDN'T
WE?
>> I WOULD PUT IT THIS WAY, YOUR
HONOR, DOES THAT SPECIFICITY
INDICATE AN INTENTION THAT ANY
POSSIBLE AFTER-ACQUIRED PROPERTY
WOULD NOT PASS UNDER THE WILL?
I SUGGEST IT DOES NOT.
AND, THEREFORE --
>> IT SEEMS TO ME, I'M WILLING
TO BE EDUCATED WITH WHERE YOU'RE
GOING WITH THIS, BUT IT SEEMS TO
ME THAT THROUGHOUT THE HISTORY
OF FLORIDA LAW AND OUR
JURISPRUDENCE WITH REGARD TO
TRUSTS AND ESTATES AND THE WILLS
THAT IT'S NOT THE SUBJECTIVE
INTENT, BUT IT IS THE OBJECTIVE
INTENT AS EXPRESSED IN THE WILL
THAT WE'VE ALWAYS GONE UNDER.
I MEAN, IT'S, YOU KNOW, I
REMEMBER BACK IN LAW SCHOOL THAT
THEY HAD SOME KIND OF STATUTE
THAT WAS PASSED THAT CERTAIN
PROPERTIES COULD BE LISTED
DIFFERENTLY MAYBE.
I DON'T KNOW IF WE STILL HAVE
THAT STATUTE.

THIS IS NOT THAT KIND.
I MEAN, THAT'S NOT BEING ARGUED.
BUT WE'RE BEING ASKED TO
CONSTRUE THIS PARTICULAR WILL IN
A FASHION THAT YOU'RE PULLING
SOME KIND OF STATUTE ON TOP OF
IT THAT EVEN THE STATUTE DOES
NOT REALLY SAY THAT.

ARE THERE OTHER STATES THAT HAVE
THIS KIND OF STATUTORY SCHEME?

>> THE STATUTORY SCHEME I SUBMIT
IN 732.60051 AND 2 IS, YES, WE
LOOK TO THE WILL TO DETERMINE
INTENT.

IF THE WILL SAYS NOTHING ABOUT A
PARTICULAR MATTER THAT'S COVERED
BY THE PART SIX CONSTRUCTION
RULES, SAYS NOTHING TO INDICATE
THAT THAT PARTICULAR
CONSTRUCTION RULE WAS NOT
INTENDED TO APPLY, THAT RULE
APPLIES.

THAT IS THE LEGISLATURE'S
CODIFIED SOLUTION --

>> IS THERE ANOTHER, AGAIN,
LET'S GO -- IS THERE ANOTHER
STATE THAT HAS SIMILAR STATUTE
THAT'S INTERPRETED THE WAY THAT
YOU'RE ARGUING?

>> YOUR HONOR, THE FLORIDA
PROBATE CODE, THESE PARTICULAR
SECTIONS, ARE VERSIONS OF WHAT
AT THAT TIME WERE UNIFORM
PROBATE CODE.

>> ALL RIGHT.

AND IS THERE ANOTHER STATE
THAT'S INTERPRETED --

>> I HAVE -- SORRY TO INTERRUPT.

>> I'M JUST TRYING TO GET TO
THAT POINT.

I'VE BEEN ASKING THREE OR FOUR
TIMES, IS THERE A CASE IN
ANOTHER STATE THAT APPLIES TO
THIS KIND OF -- TO SAY, OKAY,
YOU'RE RIGHT.

>> I HAVE NEVER FOUND A CASE IN
ANY JURISDICTION THAT APPLIES
THE AFTER-ACQUIRED PROPERTY TO A
WILL LIKE THIS ONE.

SAYING WHETHER IT DOES OR

DOESN'T APPLY.

>> I UNDERSTAND.

>> ONE OF THE QUESTIONS I
HAVE --

>> PARDON ME, YOUR HONOR?

>> DIDN'T SHE HAVE TWO YEARS IN
WHICH TO REVISE HER WILL TO
INCLUDE THE AFTER-ACQUIRED
PROPERTY?

>> SHE DID.

>> WELL, ISN'T THAT AN
INDICATION THAT SHE DIDN'T?
DOESN'T THAT INDICATE TO US THAT
SHE DID NOT MEAN TO INCLUDE IT?

>> I THINK THE NOTE THAT SHE
LEFT THOUGHT THAT, PERHAPS, THAT
WAS SUFFICIENT, AND IT WASN'T.

>> YOU'RE IN YOUR REBUTTAL TIME.

>> THANK YOU.

I WILL RESERVE THE REST OF MY
TIME.

THANK YOU.

>> MAY IT PLEASE THE COURT, I'M
J. KANEY HERE ON BEHALF OF THE
RESPONDENTS, OF COURSE.

ALSO HERE IS ROBERT GOLDMAN WHO
IS THE AUTHOR OF THE AMICUS
BRIEF FILED BY THE REAL
PROPERTY, UM, I CALL IT
"REPTILE," THE REAL PROPERTY
PROBATE AND TRUST SECTION OF THE
FLORIDA BAR.

>> THIS IS A GOOD CASE FOR AN
ADVERTISEMENT GET A LAWYER, HUH?

>> SOUNDS LIKE ONE, DOESN'T IT?

[LAUGHTER]

>> [INAUDIBLE]

>> I REALLY DON'T HAVE A WHOLE
LOT TO ADD TO MY BRIEF, BUT
UNTIL I START FIELDING
QUESTIONS, I'D LIKE TO START --

>> LET ME ASK YOU THIS.

AS I UNDERSTAND MR. TAYLOR'S
ARGUMENT HE IS SAYING THAT, UM,
THE AFTER-ACQUIRED PROPERTY RULE
IS APPLICABLE UNLESS A CONTRARY
INTENT IS SHOWN IN THE WILL?

WHAT IS YOUR RESPONSE TO THAT?

>> WELL, FIRST, YOUR HONOR, IT'S
NOT AN AFTER-ACQUIRED PROPERTY

RULE.

UM, IF YOU LOOK BACK AT
SUBSECTION 2 --

>> THE RULE THAT SAYS IT'S
INCLUDED IN THE WILL --

>> THAT IS THE AFTER-ACQUIRED
LANGUAGE IN SUBSECTION 2 OF
732.6005 IS AN ILLUSTRATIVE
CLAUSE AT THE END OF THE PHRASE.
THE FIRST PART OF THE SENTENCE,
THE MAIN CLAUSE OF THAT SENTENCE
SPEAKS TO ALL PROPERTY
IRRESPECTIVE OF WHETHER IT WAS
ACQUIRED PRIOR TO EXECUTION OF
THE WILL OR THEREAFTER.

SO THAT'S WHY I SAY IT'S NOT AN
AFTER-ACQUIRED PROPERTY RULE.

I THINK THAT RULE MEANS ONLY
WHAT IT'S EVER MEANT AS I
OUTLINED IN THE ANSWER BRIEF,
UM, WHICH WAS TO OVERTURN THE
OLD FLORIDA STATUTE OF WILLS
STATUTE FROM 1832, I BELIEVE,
AND THE LEGISLATURE DID THAT IN
THE 1890s.

AND WHAT THEY DID WHEN THEY
CREATED WHAT WAS THE
PREDECESSOR -- AND IT'S CHANGED
NUMBERS OVER THE YEARS, AND THEN
IN THE REWRITE IN '04 CHANGED
SOME LANGUAGE, AND -- NOT '04,
'74 -- AND IN '75 BECAME THIS
SPECIFIC SECTION.

BUT ALL THAT STATUTE EVER DID
WAS CHANGE THE OLD WILL WHERE BY
ONLY DISPOSED OF PROPERTY AT THE
TIME OF EXECUTION OF THE WILL.
IT WAS TIME OF DISJOINTED AND
THEN THE PERSONAL PROPERTY CAME
LATER.

THIS COURT --

>> AS AN EXAMPLE, WHAT IF IN THE
FORM WILL INSTEAD OF SAYING
"HOUSE AND CONTENT," THEY HAD
SAID "ALL REAL PROPERTY"?
IF THAT HAD BEEN SAID, THEN THE
LAND IN PUTNAM COUNTY WOULD BE
PASSED UNDERNEATH THAT AS
AFTER-ACQUIRED PROPERTY.

>> THAT WOULD BE AN APPLICABLE

GENERAL DEVISE.
BUT ACCORDING TO YOUR
QUESTION -- THAT IS, THE WAY I
SEE IT -- WHY THE LANGUAGE WAS
OMITTED IN '74 DURING THE
ADOPTION OF THE MODEL CODE.
BECAUSE BY THEN CASE LAW
INCLUDING CASES FROM THIS COURT
HAD CLEARLY SHOWN THAT NOT ONLY
COULD AFTER-ACQUIRED PROPERTY
PASS THROUGH A RESIDUARY CLAUSE
IF THERE WAS ONE, BUT ALSO IT
COULD PASS THROUGH APPLICABLE
GENERAL DEVISES, LIKE ALL BANK
ACCOUNTS, IF SHE HAD SAID THAT.
OR TO YOUR POINT ABOUT ALL REAL
PROPERTY.
WE HAVE NO GENERAL DEVISES HERE,
I DON'T THINK THAT'S IN DISPUTE.
>> SO IF THOSE DESCRIPTIONS HAD
BEEN ALL REAL PROPERTY, ALL BANK
ACCOUNT --
[INAUDIBLE]
WOULDN'T BE HERE.
>> IF THE FIDELITY ACCOUNT AND
ALSO THE REAL PROPERTY WHICH WAS
LIQUIDATED PURSUANT --
>> I THOUGHT, I MAY BE WRONG,
BUT WAS THE FIDELITY ACCOUNT
THE -- ONE OF THEM, ANYWAY --
THE ACCOUNT THAT SHE HAD ANOTHER
SIGNATORY ON IT, AND IT PASSED
TO THE DAUGHTER OF THE
PETITIONER?
>> THERE WAS TWO FIDELITY
ACCOUNTS.
THAT'S PROBABLY WHAT'S
GENERATING YOUR CONFUSION.
THE SECOND OF THEM, WHICH WE'VE
BEEN CALLING THE Z ACCOUNT, PUT
THE PROCEEDS OF CASH THAT THE
DECEDENT IN THIS CASE INHERITED
FROM HER SISTER.
THERE WAS OTHER STUFF THAT
PASSED EITHER OUTSIDE OF PROBATE
OR THROUGH.
FIRST OF ALL, THE DECEDENT DID
NOT STILL HAVE ALL THE STUFF SHE
LISTED, AND SHE DID, IN FACT,
HAVE OTHER STUFF THAT SHE'D

ACQUIRED THEREAFTER.
BUT THERE WAS, THERE'S TWO
ACCOUNTS.
THE PROPERTY AT ISSUE HERE --
>> THE PROPERTY THAT SHE, THE
MONEY THAT SHE INHERITED FROM
HER SISTER WAS PUT INTO AN
ACCOUNT THAT THE NIECE OF THIS
PETITIONER ENDED UP WITH BECAUSE
IT PASSED OUTSIDE OF THE WILL OR
NOT?

>> NO, NO.

>> NOT?

OKAY.

>> THE CASH AND ALSO THE CASH
THAT BECAME OF THE REAL PROPERTY
AFTER IT WAS LIQUIDATED -- I
DIDN'T SAY THAT RIGHT, BUT I
KNOW WHAT I MEANT -- THOSE
AMOUNTS ARE STILL AT ISSUE IN
THIS CASE.

>> THAT'S WHAT THE ESTATE --

>> RIGHT.

IF THEY PASS PURSUANT TO THE
WILL EVEN THOUGH THERE'S NO
DISTRIBUTIVE PROVISION IN THE
WILL THROUGH WHICH THEY CAN
PASS, BUT IF THEY OTHERWISE PASS
THROUGH THE WILL PURSUANT TO THE
ARGUMENT ADVANCED BY THE
PETITIONER, THEN HIS CLIENT GETS
ALL OF THAT OTHER PROPERTY.

>> LET ME ASK YOU A QUESTION ON
THIS, THESE RULES OF
CONSTRUCTION.

I ALWAYS THOUGHT AND, BOY, IT'S
BEEN A LONG TIME SINCE --

[INAUDIBLE]

WHATEVER --

>> WELL, YOU'VE BEEN HERE A
WHILE.

>> WHAT WAS THAT?

>> YOU'VE BEEN HERE A WHILE.

>> I'VE BEEN HERE A WHILE.

THAT THE, THE IDEA IS THAT WHEN
SOMEONE MAKES A WILL, THAT THEY
ARE ATTEMPTING TO AVOID THE
OTHER RULES OF INTESTACY, THAT
THEY WANT THEIR -- THEIR WILL IS
THAT THEIR PROPERTY PASSES AS

THEY INTEND.

AND SO I GUESS, AND I'M NOT, YOU KNOW, AGAIN, I THINK THIS IS A TOUGH CASE BECAUSE THE TRIAL COURT FOUND, THE JUDGE BELIEVED THAT WHERE SOMEBODY IS DISPOSING OF ALL THEIR PROPERTY AT THE TIME THAT THE WILL IS DRAFTED, THAT THEY DO NOT HAVE AN INTENT FOR IT TO GO THROUGH INTESTACY; THAT IS, WHERE IT'S, YOU KNOW, IN THIS CASE THERE WERE RELATIVES, BUT IT COULD BE THAT MAYBE THERE ARE NO RELATIVES, AND ALL OF A SUDDEN IT'S GOING TO, YOU KNOW, SOMEPLACE, YOU KNOW, SOMEPLACE ELSE.

SO I, UM, WHAT DO YOU SAY ABOUT THAT, THAT CONCERN THAT IS THAT WE DO WANT TO TRY TO CONSTRUE WILLS AND THE INTENT OF THE TESTATOR TO EFFECTUATE WHAT SHE WANTS, NOT WHAT A ABSTRACT PRINCIPLE OF LAW IS IMPOSING?

>> I THINK I UNDERSTAND THE QUESTION.

IF I DON'T, I'M SURE YOU'LL LET ME KNOW.

BUT THE, UM, THAT PRESUMPTION IS ONE OF MANY RULES OF CONSTRUCTION.

THERE WERE RULES OF CONSTRUCTION ARGUED IN THEIR BRIEF AND ALSO IN MINE.

>> SO THE PRESUMPTION OF, AGAINST INTESTACY?

>> PRECISELY.

THAT IS ONE OF MANY RULES OF CONSTRUCTION.

>> WHERE DOES THAT FIT INTO THIS?

>> IT DOESN'T, YOUR HONOR.

YOU DON'T GET TO THOSE RULES OF CONSTRUCTION UNLESS YOU NEED THEM TO RESOLVE SOME SORT OF AMBIGUITY IN THE WILL ITSELF, AS I THINK JUSTICE CANADY CAN POINTED OUT.

AND YOU LOOK TO THE FOUR CORNERS OF THE WILL ITSELF --

>> SO IS IT IRRELEVANT THAT SHE AT THAT TIME WAS DISPOSING OF ALL THE PROPERTY THAT SHE OWNED?

>> I DON'T --

>> IS THAT --

>> I DON'T THINK SO.

I, FIRST, AGREE IT'S NOT DISPOSITIVE IN ANY WAY, BUT IT IS, IT COULD CREATE THAT PRESUMPTION, BUT IT ALSO COULD CREATE THE PRESUMPTION THAT, NO -- I MEAN, LOOK, THAT WHOLE ARGUMENT I THINK THAT FACT, IF TRUE, PROVES ENTIRELY TOO MUCH AT LEAST FOR THE PURPOSES THAT IT'S OFFERED.

AND I CAN'T, I CAN'T -- I'M NOT HERE TO TESTIFY ABOUT ANYTHING, NOR COULD I SPEAK FOR THE HUMAN EXPERIENCE GENERALLY.

BUT IN MY EXPERIENCE THERE'S NEVER BEEN A SINGLE DAY OF MY LIFE WHERE I THOUGHT I WAS DONE ACQUIRING PROPERTY.

I'VE NEVER KNOWN ANYONE EXCEPT, PERHAPS, IF THEY WERE ON THEIR DEATH BED --

>> LET ME.

>> -- WHO -- GO AHEAD, YOUR HONOR.

>> IT MIGHT BE IMPORTANT AS TO WHETHER OR NOT THE WILL CONTAINS ALL OF THE PROPERTY THAT THE TESTATOR HAD.

I MEAN, IF WE ASSUME, FOR EXAMPLE, THAT THE TESTATOR -- IF THE TESTATOR HAD NOT PUT IN THE OTHER BANK -- SHE HAS THREE BANK ACCOUNTS FROM MS BANK LISTED HERE.

AND IF SHE HAD JUST PUT IN ONE OF THOSE BANK ACCOUNTS, THAT DOESN'T MAKE A DIFFERENCE?

I MEAN, DOES THAT OTHER TWO BANK ACCOUNTS UNDER THE PETITIONER'S THEORY WOULD STILL GO TO THE SAME PERSON, WOULDN'T IT?

AND WOULDN'T SHOW ANY CONTRARY INTENT THAT THAT PERSON WOULD HAVE?

>> WELL, THE INTELLIGENT --
>> ALL OF IT IN?
>> THE INTENT AS EVIDENCED BY
THE DOCUMENT ITSELF, WHICH IS
NOT AMBIGUOUS, THERE IS NO
AMBIGUITY TO LAUNCH INTO THESE
OTHER RULES OF CONSTRUCTION, AND
THAT'S IN THE WILL.
BEFORE YOU EVEN GET TO
SUBPARAGRAPH 2.
BUT IF THIS WILL HAD A GENERAL
BEQUEST OF ALL BANK ACCOUNTS,
THEN WE WOULDN'T BE TALKING
ABOUT --
>> WELL, I'M TALKING ABOUT A ONE
THAT LISTED, JUST ONE OF THOSE
NUMBERS.
IT SAYS, IT DIDN'T SAY "ALL BANK
ACCOUNTS" AT WHATEVER BANK.
IT JUST SAID "MY BANK ACCOUNT AT
MS BANK" AND JUST LISTING ONE OF
THOSE NUMBERS FOR ONE OF THOSE
BANK ACCOUNTS.
I MEAN, AND THEN WE WOULD FIND
OUT THAT SHE HAD OTHER ACCOUNTS
AT THAT BANK THAT DIDN'T FALL
UNDER THAT NUMBER.
>> WELL, IT MIGHT BE THAT THAT
WOULD, COULD CREATE AN AMBIGUITY
IN THE WILL, AND, OF COURSE,
THAT'S NOT THIS WILL.
AND THAT MAY ALLOW YOU TO GET
INTO THE OTHER RULES OF
CONSTRUCTION.
>> DOES IT MATTER THAT THIS
WILL, WHICH IS A FORM WILL, DOES
NOT HAVE A SPACE OR, FOR A
RESIDUARY CLAUSE?
BECAUSE GOING BACK TO THE ISSUE
OF TRYING TO EFFECTUATE HER
INTENT, AGAIN, I CAN'T, YOU
KNOW, LOOKING AT WHAT JUDGE VAN
ORTWICK SAID, TELL ME WHAT'S
WRONG WITH IT.
ALTHOUGH THERE'S NOTHING ON THE
FACE OF THE WILL INDICATING THAT
THE ITEMS SO DEvised CONSISTED
OF THE DECEDENT'S ENTIRE ESTATE.
THERE'S ALSO NOTHING INDICATING
THAT THE INTENT WAS ANYONE OTHER

THAN THE SISTER OR HER BROTHER
RECEIVE ANYTHING UNDER THE WILL.
IN SHORT, THERE WAS NO
EXPRESSION OF CONTRARY INTENTION
BY THE DECEDENT THAT THE
AFTER-ACQUIRED PROPERTY THAT
WOULD NOT PASS UNDER THE WILL.
WHAT'S WRONG WITH THAT
REASONING?

>> WELL, A COUPLE THINGS, YOUR
HONOR.

FIRST OF ALL, HE'S SAYING THAT
IN THE CONTEXT OF WHAT HE AND
THE PROBATE COURT BELIEVES
SECTION 732.6005 SUBPARAGRAPH 2
SAY, AND I ADDRESS THAT ON BRIEF
AND AM HAPPY TO ANSWER ANY MORE
QUESTIONS ABOUT THAT.

BUT THAT'S NEVER BEEN THE LAW IN
FLORIDA.

THERE'S NO CASE THAT SAYS WHAT
THEY SAY ABOUT THAT CASE UNLESS
YOU COUNT THE WITHDRAWN OPINION
BELOW FROM APRIL OF 2011.

IN WHICH --

>> [INAUDIBLE]

>> I'M SORRY?

>> COULD YOU KEEP YOUR VOICE UP?

>> I'M SORRY.

>> YOU SAID THERE WAS A PRIOR
OPINION IN THIS CASE?

THAT WENT THE OTHER WAY?

>> THERE WAS, ACTUALLY, AN
OPINION IN APRIL OF 2011 IN
WHICH THE CHIEF JUDGE BELOW,
JUDGE BENTON, WAS THE DISSENTER,
AND VAN ORTWICK AND I THINK IT
WAS THOMAS --

>> JUDGE WEBSTER RETIRED.

AND HE WAS REPLACED ON
REHEARING.

>> THANK YOU, JUDGE.

I'M SORRY.

AND SO I'D MOVE FOR REHEARING,
REHEARING ON BOND CERTIFICATION
AND ALL THAT.

THAT WAS GRANTED.

AND AFTER THE RETIREMENT AND THE
SUBSTITUTION OF THE NEW JUDGE,
THE OPINION THAT IS ON REVIEW

HERE CAME OUT, I BELIEVE, IN
AUGUST OF 2011.

BUT I WOULD SAY IN RESPONSE TO
YOUR QUESTION OR IN RESPONSE TO
HIS POSITION WHAT JUDGE BENTON
SAID BELOW, WHICH IS THAT THE
RULES OF CONSTRUCTION ARE NOT
DESIGNED TO CREATE AN AMBIGUITY
OR MANUFACTURE AN AMBIGUITY
WHERE NONE OTHERWISE EXISTS,
THEY'RE DESIGNED TO BE USED
WHERE THERE IS AN AMBIGUITY IN
THE DOCUMENT.

AND THIS DOCUMENT HAS NO
AMBIGUITY.

YOU ASKED MR. TAYLOR THE SAME
THING YOU JUST ASKED ME, ABOUT
THE ABSENCE OF THIS RESIDUARY
CLAUSE, AND I DON'T THINK THAT
MATTERS.

SHE KNEW SHE COULD SAY WHATEVER
SHE WANTED AS EVIDENCED UNDER
THE VERY FIRST LINES UNDER
BEQUEST WHERE SHE MADE
PROVISIONS FOR HER OWN FUNERAL
AND THE ARRANGEMENTS FOR HER
PETS.

>> WHAT DOES THE PART SAY WHERE
SHE FILLED IN THE SPECIFICS?
WHAT DOES THE FORM TELL HER TO
DO?

>> LIKE I WAS JUST SAYING, YOUR
HONOR, ROMAN NUMERAL THREE SAYS
"BEQUESTS."

IT DOESN'T SAY "GENERAL," IT'S
JUST "BEQUESTS."

NOW, THE VERY FIRST THING, SHE
WAS NOT CONSTRAINED BY THE
ABSENCE OF ANYTHING BECAUSE THE
FIRST REQUEST SHE MAKES IS,
QUOTE, MY BODY CREMATED AND
ASHES SCATTERED, COMMA, NO
SERVICES.

>> THE LANGUAGE AFTER "BEQUESTS"
BEFORE "MY BODY," --

>> WHAT DOES IT SAY?

>> I'M SORRY.

I CAN READ THAT WITH THIS.

"I DIRECT THAT AFTER PAYMENT OF
ALL MY JUST DATES COME ON MY

PROPERTY BE BEQUEATHED IN THE FOLLOWING MANNER."
AND THEN SHE MAKES ARRANGEMENTS FOR HER CREMATION.

>> I GUESS WHAT I SEE AS THE PROBLEM, AGAIN, I KEEP ON FOCUSING ON THIS BEING A FORM WILL, IS THAT "BEQUEST" TO A NORMAL PERSON WOULD MEAN I HAVE TO LIST EVERYTHING.

AS OPPOSED TO, WELL, THEY DON'T KNOW THERE CAN BE GENERAL AND SPECIFIC BEQUESTS.

BECAUSE HER INTENTION IS THAT EVERYTHING OR IF SHE HAD SAID, I GUESS, ALL MY POSSESSIONS ARE BEQUEATHED WITH THAT SAYING LISTED ABOVE, RIGHT?

THAT WOULD HAVE CREATED THE AMBIGUITY.

BUT SHE DOES FOLLOW THAT BY SAYING "ALL MY POSSESSIONS ARE BEQUEATHED" SO THAT'S WHY I KEEP ON SAYING IF IT WAS ALL MY POSSESSIONS AT THE TIME SHE DIRECTED THAT WILL, TO ME IT INDICATES SHE DIDN'T WANT ANYTHING TO GO BY INTESTATE, WHICH IS WHAT'S HAPPENING HERE.

>> IT DOESN'T SAY THAT, YOUR HONOR.

>> BUT SHE WAS SO CLEAR.

WHY IS THERE ANY INDICATION THAT SHE'D WANT THIS TO GO IN A WAY THAT SHE WOULDN'T CONTROL?

>> ALL IT SAYS IS "ALL MY POSSESSIONS LISTED ARE BEQUEATHED."

IT DOESN'T SAY ALL HER POSSESSIONS.

JUST THE ONES LISTED.

>> DOES THE RECORD REFLECT ANY PROPERTY PASSED OUTSIDE OF, OUTSIDE OF PROBATE?

SEPARATE BANK ACCOUNT THAT HAD SOMEBODY ELSE --

[INAUDIBLE]

ANY OTHER PROPERTY?

>> AT THE TIME SHE PASSED?

>> YES.

>> UM, I APOLOGIZE, YOUR HONOR, I'M NOT PREPARED TO ANSWER THAT QUESTION SPECIFICALLY, BUT GENERALLY -- I'M SORRY.

>> I THOUGHT THERE WAS A NIECE WHO GOT SOMETHING --

>> WELL, THERE -- YES.

GENERALLY, I WAS GOING TO START TO ANSWER THAT QUESTION.

GENERALLY, THERE WAS SOME PROPERTY THAT WAS DISPOSED OF OUTSIDE THE CONTEXT OF THIS WILL.

>> SO NOT ALL OF HER PROPERTY PASSED BY THE WILL.

>> WELL, BUT THAT MAY BE BEGGING THE QUESTION THAT JUSTICE PARIENTE'S ASKING ABOUT WHEN SHE ACQUIRED THE PROPERTY WHICH I SEE AS NOT RELEVANT TO THE ISSUE HERE.

I MEAN, I THINK THE --

>> WELL, THAT'S A LEGAL QUESTION.

JUSTICE LABARGA MADE THE POINT SHE HAD TWO YEARS TO FIGURE OUT WHAT TO DO WITH HER WILL IF SHE WANTED TO MAKE A CHANGE, RIGHT?

>> THAT'S CORRECT.

ROUGHLY TWO YEARS.

>> SO IF THERE WAS PROPERTY THAT PASSED OUTSIDE THE WILL, SHE PUT SOMEBODY ELSE ON THE BANK ACCOUNT, PERHAPS ISN'T THAT ADDITIONAL INTENT THAT NOT ALL OF HER PROPERTY WAS TO BE DISPOSED OF BY THE WILL BECAUSE SHE PUT THEM ON THE BANK ACCOUNT?

>> I THINK SO.

NOW, I DON'T WANT TO LAUNCH OFF OF MY POSITION THAT THIS WILL IS NOT AMBIGUOUS SO WE DON'T LOOK AT ALL THIS STUFF --

>> I UNDERSTAND.

>> BUT, YEAH, I AGREE WITH THAT.

>> [INAUDIBLE]

WHAT WAS THE PROPERTY THAT PASSED THROUGH THE NIECE BECAUSE HER NAME WAS ON THE ACCOUNT?

>> SUBJECT TO BEING CORRECTED BY MR. TAYLOR, I THINK IT WAS CASH IN AN ACCOUNT.

BUT, UM, HE'LL BE BACK UP --

>> CASH IN ANOTHER BANK ACCOUNT?

>> THAT'S MY UNDERSTANDING --

>> THE BANK ACCOUNT THAT WAS OR THAT IS LISTED -- THAT IS LISTED HERE OR IS NOT LISTED HERE?

>> I, I DON'T WANT TO SPECULATE, YOUR HONOR.

WHICH I, BY THE WAY, LEADS ME TO A POINT I'D LIKE TO MAKE ABOUT, UM, A LOT OF THE QUESTIONS THAT WE'RE -- AND ANSWERS THAT WE'VE BEEN DISCUSSING INVOLVES SPECULATION ABOUT THE INTESTATOR'S INTENT.

AND IF YOU LOOK AT THE WILL, FIRST AND FOREMOST, IF THERE'S NO AMBIGUITY, GO WITH THAT.

AND THE STATUTE ITSELF HAS NEVER OPERATED THE WAY --

>> I'D LIKE TO ASK YOU A QUESTION ABOUT THE STATUTE AND YOUR INTERPRETATION OF SUBSECTION 2 OF 732.6005.

>> THAT'S A MOUTHFUL.

>> DOES THAT HAVE ANYTHING TO DO WITH ANYTHING OTHER THAN AFTER-ACQUIRED PROPERTY?

>> IT HAS TO DO WITH ALL PROPERTY, YOUR HONOR.

THAT'S THE VERY FIRST CLAUSE IN SUBPARAGRAPH 2.

ALL PROPERTY, COMMA, INCLUDING AFTER-ACQUIRED PROPERTY WHICH, AGAIN, IS THE PURPOSE FOR THAT STATUTE GOING AUTOMATIC WAY BACK TO 1892, ITS ORIGINAL VERSION.

>> I'M JUST TRYING TO FIGURE OUT WHAT IT'S TALKING ABOUT HERE OTHER THAN AFTER-ACQUIRED PROPERTY, WHAT IT'S DOING THAT WOULD FALL WITHIN THE SCOPE OF SOMETHING THAT'S COVERED BY A CATEGORY IN THE WILL.

WHAT ELSE IS IT TALKING ABOUT?

WHAT OTHER PROPERTY WOULD IT BE? I MEAN, BECAUSE I UNDERSTOOD YOU

TO SAY IT'S GOT SOME MEANING
OTHER THAN AFTER-ACQUIRED
PROPERTY, BUT I'M STRUGGLING TO
UNDERSTAND THAT.

>> WELL, I'M JUST -- I MEAN, I
DIDN'T WRITE THE STATUTE, BUT
WHAT IT SAYS IS SUBJECT TO
THE --

>> I'M ASKING WHAT YOUR
INTERPRETATION.

I KNOW YOU DIDN'T WRITE IT.
I DIDN'T WRITE IT EITHER, BUT
I'M -- YOU HAVE SUGGESTED IN A
WAY WHICH I THINK IS ACTUALLY
INCONSISTENT WITH YOUR MAIN
POINT HERE THAT THIS HAS, IS NOT
LIMITED TO AFTER-ACQUIRED
PROPERTY, AND I'M STRUGGLING TO
UNDERSTAND WHAT IT'S DEALING
WITH OTHER THAN AFTER-ACQUIRED
PROPERTY.

>> WELL, I GUESS I DON'T KNOW
THE ANSWER TO THAT QUESTION,
YOUR HONOR.

IT MAY NOT.

>> COULD IT INCLUDE PROPERTY NOT
LISTED IN THE WILL?

I MEAN, IF WE ASSUMED THAT SHE
HAD OTHER PROPERTY THAT'S NOT
LISTED IN THIS WILL, WOULD THAT
SUBSECTION INCLUDE THAT PROPERTY
THAT'S NOT INCLUDED IN THE WILL?

>> WELL --

>> YOU SAID IT SAYS "ALL
PROPERTY," AND THEN IT GOES ON
TO SAY "INCLUDING AFTER-ACQUIRED
PROPERTY."

SO I'M ASKING YOU ABOUT PROPERTY
THAT WAS NOT AFTER-ACQUIRED BUT
WAS NOT INCLUDED --

>> I THINK THE FIRST CLAUSE, AND
I'M SPECULATING.

I WASN'T TRYING TO BE SMART WITH
THAT, BUT IT'S -- I THINK THE
FIRST CLAUSE IS RECOGNIZING THE
PRESUMPTION AGAINST INTESTACY
RULE, AND THEN THE COMMA
INCLUDING "AFTER-ACQUIRED
PROPERTY" CONTINUES SINCE 1892
CODIFICATION OF THE CHANGE WHERE

PRIOR TO THAT WILLS IN FLORIDA DID NOT OPERATE TO -- WERE NOT EFFECTIVE, RATHER -- TO PASS PROPERTY THAT WAS NOT KNOWN BY THE TESTATOR AT THE TIME THE WILL WAS EXECUTED.

UM, BUT AT ANY RATE, UM, I CONTINUE TO BELIEVE --

>> BUT ISN'T IT ALSO REASONABLE TO READ THIS AS, ESSENTIALLY, WHEN IT SAYS "SUBJECT BEFORE GOING," IT'S BASICALLY SAYING THAT A WILL IS CONSTRUED TO PASS ALL PROPERTY DESCRIBED IN THE WILL OR REFERRED TO IN THE WILL WHICH THE TESTATOR OWNS AT DEATH.

>> RIGHT.

NOW, WE'RE USING THE WORD "LISTED" EARLIER, BUT IT DOESN'T HAVE TO BE LISTED --

>> I UNDERSTAND.

IT DOESN'T HAVE TO BE SPECIFICALLY LISTED, BUT IT'S GOT TO BE ENCOMPASSED IN SOME WAY.

THERE'S GOT TO BE SOME REFERENCE TO IT.

>> OR RESIDUAL DEVISE.

>> I UNDERSTAND.

ALL OF THOSE THINGS.

BUT ISN'T THAT REALLY WHAT IT'S TALKING ABOUT HERE?

>> WELL, HOW COULD IT, HOW COULD IT TALK ABOUT PROPERTY INCLUDED IN THE WILL IF IT'S OWNED AT THE TIME OF DEATH?

THAT MEANS IT'S NOT INCLUDED.

I MEAN, WHY WOULD THEY NEED TO INCLUDE PROPERTY THAT'S ALREADY INCLUDED IN THE WILL IF IT WASN'T ALREADY THERE PRIOR TO THE DEATH?

>> I DON'T KNOW, YOUR HONOR.

I KNOW THAT PRIOR TO THE PREDECESSOR OF THIS STATUTE IF YOU DIDN'T OWN IT AT THE TIME YOU EXECUTED YOUR WILL, THE WILL WAS NOT EFFECTIVE TO PASS IT, AND THAT'S WHAT THIS STATUTE WAS

INTENDED TO DO.

>> THEY'RE JUST MAKING DOUBLY SURE THAT ALL AFTER-ACQUIRED WILL -- IF IT'S NOT IN THE WILL, IT DOESN'T MATTER, BUT --

>> I DON'T THINK SUBPARAGRAPH 2 CHANGES THE OVERRIDING RULE THAT A WILL MUST HAVE SOME SORT OF DISTRIBUTIVE PROVISION THROUGH WHICH PROPERTY CAN PASS.

I MEAN, IF THEY'RE -- IF ALL PROPERTY PASSED UNDER A WILL, THEN 732.101 WOULD BE A NULLITY, BUT IT'S NOT.

THAT STATUTE OPERATES TO PASS BY INTESTACY.

NOW, THAT'S BEEN A STATUTE SINCE THE MODEL REWRITE, BUT THAT'S BEEN A LAW -- STEPHENS OUT OF THIS COURT IN 1940 SAID THAT.

>> YOU'RE OUT OF TIME, BUT YOU MAY RESPOND TO JUSTICE CANADY'S QUESTION.

>> I'M NOT SURE I HAD A QUESTION -- AN ANSWER.

[LAUGHTER]

>> THAT'S FINE.

I THINK I UNDERSTAND YOUR POSITION.

>> REBUTTAL?

>> THANK YOU.

THE SUMMARY JUDGMENT EVIDENCE SHOWED THAT IN THE WEEK BEFORE SHE DIED ANN PUT MR. ALDRICH'S DAUGHTER, SHEILA SHOE, ON HER CHECKING ACCOUNT AND SAVINGS ACCOUNT, BOTH OF WHICH HAD MODEST BALANCES.

THE SUMMARY EVIDENCE WAS THAT SHE DID THAT BECAUSE MR. ALDRICH WAS THEN IN POOR HEALTH, SHE DIDN'T WANT HIM TO HAVE TO BE BURDENED WITH HER FINAL EXPENSES.

SHE WANTED THE DAUGHTER TO BE ABLE TO HANDLE THOSE WITH IMMEDIATE FUNDS.

>> [INAUDIBLE]

LISTED HERE IN THIS WILL?

>> IT IS TWO OF THE THREE

ACCOUNTS THAT WERE LISTED THERE,
YOUR HONOR.

>> SO THOSE PASSED OUTSIDE THE
WILL THEN?

>> THEY DID.

>> BY OPERATION OF LAW?

>> THEY DID.

THAT IS CORRECT, YOUR HONOR.

FIRST, A FEW POINTS.

THE STATUTORY RULES OF
CONSTRUCTION IN PART SIX DON'T
REQUIRE A FINDING OF AMBIGUITY
IN THE WILL BEFORE THEY APPLY.
THERE'S NOTHING IN THE STATUTE
THAT SAYS THAT.

>> DOESN'T THAT MAKE SENSE?

I MEAN, IN OTHER WORDS, USUALLY
RULES OF CONSTRUCTION EXIST WHEN
SOMETHING IS AMBIGUOUS.

I MEAN, TO SAY THAT IT --

>> THAT IS --

>> -- APPLIES NO MATTER WHAT --

>> THAT IS THE CASE WITH COMMON
LAW RULES OF CONSTRUCTION, BUT
THE LEGISLATURE HAS NOT CHOSEN
TO ENACT AS A CODIFIED SOLUTION
TO A GIVEN PROBLEM, A GIVEN
FAILURE TO ANTICIPATE A FUTURE
EVENT.

THE STATUTORY RULES OF
CONSIDERATION, ACCORDING TO THE
PLAIN LANGUAGE OF THE STATUTE,
APPLY UNLESS AND ONLY UNLESS THE
WILL EXPRESSES A CONTRARY
INTENT.

SO WE DON'T -- THE STATUTE
DOESN'T REQUIRE A FINDING OF
AMBIGUITY.

UM, YOUR HONORS ARE CORRECT.
IF ANN HAD HAD THE LEGAL SAVVY
TO SAY "ALL MY REAL PROPERTY" OR
"ALL MY ACCOUNTS," THIS CASE
WOULD NOT BE BEFORE THIS COURT.
AND I SUBMIT THAT SUCH NICETIES
THAT WE SHOULD EXPECT OF
ESTATE-PLANNING LAWYERS, SUCH
NICETIES DO NOT SERVE OUR POLL
STAR WHICH IS THE ATTEMPT TO
ASCERTAIN ANN ALDRICH'S INTENT.

>> BUT WE CAN'T HAVE ONE BODY OF

LAW FOR WILLS DRAFTED BY LAWYERS
AND ANOTHER BODY OF LAW FOR
WILLS THAT ARE FORMED.

SOMEBODY MAY, OKAY, IT'S GOING
TO DEPEND WHATEVER FORM YOU GO
TO EZ FORM ON THE COMPUTER.

>> I'M NOT SUGGESTING THAT, YOUR
HONOR, AND I APOLOGIZE IF IT WAS
READ THAT WAY.

EVEN IF A LAWYER HAD PREPARED
THIS WILL, IT IS STILL
DEFICIENT.

THAT SHOULD NOT HINDER THE COURT
IN ATTEMPTING TO ASCERTAIN ANN'S
INTENT AIDED BY THE STATUTORY
RULES OF CONSTRUCTION.

TO DO SO --

>> YOU MAKE A WONDERFUL JURY
ARGUMENT, YOU KNOW?

I'M WITH YOU.

I SEE THAT THIS IS WHAT THIS
LADY INTENDED, BUT WE CAN'T, I
MEAN, WE JUST CAN'T START GOING
OFF IN THIS AREA AND CREATING
NEW LAW.

THAT'S WHAT I AM STRUGGLING
WITH.

AND I'M TRYING TO LEARN FROM
YOU.

>> I THINK IT'S SOMETHING THE
LEGISLATURE NEEDS TO STRUGGLE
WITH, BECAUSE THE LEGISLATURE
ENACTED THE STATUTE.

THE STATUTE PLAINLY APPLIES
HERE.

AND IF THE LEGISLATURE DID NOT
INTEND IT TO APPLY HERE, THEN
THE SECTION OR SOMEBODY ELSE
NEEDS TO BRING THIS TO THE
LEGISLATURE'S ATTENTION.

IT'S NOT FOR THIS COURT TO
LEGISLATE AN INTENT IN THE
STATUTE THAT THE LEGISLATURE DID
NOT PLACE THERE.

>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT WILL BE IN RECESS FOR
TEN MINUTES.

>> ALL RISE.

>> ALL RISE.

