

1 DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO
2 Case No. 89DR477, Division 6 for Division 10

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4 REPORTER'S TRANSCRIPT

5 -----

6 IN RE THE MARRIAGE OF:

7 SANDRA WILFRED,

8 Petitioner,

9 and

10 HARMON WILFRED,

11 Respondent.

12 -----

13 The Contempt Citation Hearing in this matter
14 commenced on Wednesday, November 7, 1990, before the
15 HONORABLE KENNETH K. STUART, Judge of the District Court.

16 This transcript contains a record of the proceedings
17 in its entirety.

18

19 A P P E A R A N C E S:

20

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22

23 FOR THE RESPONDENT:

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24

25 GUARDIAN AD LITEM:

Susan Dycus, Esq.
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1 MORNING SESSION, WEDNESDAY, NOVEMBER 7, 1990

2 (The court convened with all parties present,
3 and the following proceedings were had:)

4 THE COURT: Let's return then to the matter of
5 the marriage of Wilfred.

6 MS. EDINBURG: Good morning, Your Honor. I'm
7 Elaine Edinburg, the attorney of record, and I appear this
8 morning with the Petitioner, Sandra Wilfred.

9 MR. FREDERIKSEN: Your Honor, my name is
10 Paul Frederikson, 7603. On, I think, October 16th, I was
11 appointed by Judge Steinhardt to represent Mr. Wilfred in
12 the contempt matter.

13 A transcript of that hearing says the Court
14 saying, "All right, if you cannot afford counsel, the
15 Court will appoint counsel to represent you. You will
16 have to meet the indigency guidelines, however, you will
17 have to submit a financial affidavit to that attorney and
18 that attorney will determine whether you can afford it or
19 not. If you cannot afford counsel, this is a borderline
20 case, then the other way we can go is to have you see
21 several attorneys who will allow you to slow pay,
22 pay out," et cetera.

23 I have met with Mr. Wilfred. He has informed me
24 that he does not want me to represent him. He has not
25 provided me with a financial affidavit, and he's prepared

1 this morning to file a continuance to allow him to
2 continue his negotiations to find other counsel. And
3 Mr. Wilfred has been appearing pro se.

4 THE COURT: Before we proceed, let me put on the
5 record why I'm hearing this case. It is assigned to
6 Division 10. The case has not been reassigned.
7 Judge Steinhardt had other matters scheduled this morning
8 and I had some time at the end of the morning that I could
9 hear this, so I told her I would be willing to hear it
10 today so that it didn't have to be continued because of
11 docket problems. And that's the only reason it's in this
12 division. The case has not been reassigned.

13 MS. DIKUS: Your Honor --

14 THE COURT: Just a moment.

15 MS. DIKUS: Susan Dikus appearing as guardian ad
16 litem for the minor child.

17 THE COURT: Thank you, Ms. Dikus.

18 Mr. Wilfred, did you want to make any statements
19 on the question of who represents you and whether we
20 proceed today?

21 MR. WILFRED: Yes, Your Honor. It is my
22 preference that I continue pro se for the matter and I've
23 got a continuance, a motion for continuance that I would
24 like to approach the bench with. That will explain that,
25 and then I can further explain as we have some additional

1 dialogue, if that's okay with you.

2 THE COURT: Have you served a copy of your
3 motion on the Petitioner in this case?

4 MR. WILFRED: Yes, I have, Your Honor. They
5 both received copies this morning and have had an
6 opportunity to review it.

7 THE COURT: May I see that, please.

8 (The Respondent hands the Court a document.)

9 (Pause.)

10 THE COURT: Mr. Wilfred, do you have any
11 statements you want to make in support of your motion?

12 MR. WILFRED: Yes, Your Honor, I would. Do you
13 mind if I stand at the podium?

14 THE COURT: You may.

15 MR. WILFRED: It will just make it easier.

16 THE COURT: Before you go ahead, let's first
17 address the question of Mr. Frederikson. He was appointed
18 to represent you according to the minute order. From what
19 he's just told me, it seems like that appointment was
20 somewhat contingent on him doing some interviewing and you
21 providing some financial information.

22 MR. WILFRED: Yes, Your Honor.

23 THE COURT: Is it your wish that he represent
24 you today?

25 MR. WILFRED: It is not, Your Honor.

1 THE COURT: Do you understand that I might deny
2 your motion for a continuance, and that means you would
3 have to proceed today to represent yourself and you would
4 be giving up your right to be represented by counsel
5 today?

6 MR. WILFRED: I do understand that, Your Honor.

7 THE COURT: Has anyone promised you anything to
8 get you to proceed pro se in this case?

9 MR. WILFRED: Your Honor, I do have a gentleman
10 here who, as I've mentioned in this continuance, that I
11 have several folks that I've interviewed who are
12 interested in coming into this case, subject to reviewing
13 the transcripts, which, I think, is reasonable.

14 I have Mr. Lynn Watwood here, who is the
15 Colorado chapter president for the Rutherford Institute
16 who is very interested in representing me, provided he
17 could see the transcripts and get a copy of this audit so
18 that he can support me properly. And he is here now to
19 affirm that.

20 THE COURT: That's not really the issue. Who
21 represents you at future proceedings is not something that
22 I'm concerned with right now. The only question right now
23 is whether Mr. Frederikson represents you today. If I
24 grant the request for a continuance, then you'd have some
25 further time to get another lawyer. If I deny it, we're

1 going to proceed today on the contempt proceeding and you
2 will be representing yourself. Do you understand that?

3 MR. WILFRED: I do understand that, Your Honor.
4 Your Honor, there is a further matter, and one of the more
5 important reasons why I feel I can't have Mr. Frederikson
6 as my attorney, there's a -- another complaint, there is a
7 complaint related to this case filed in the Federal
8 District Court against the 18th Judicial District and the
9 judge in this proceeding for the violation of my civil
10 rights.

11 That complaint is outstanding right now. I just
12 didn't feel that it was proper to have the Court that's
13 literally in an adversarial position right now assign me
14 an attorney. I'm frankly not comfortable with that.

15 THE COURT: Your discomfort, then, is not with
16 Mr. Frederikson, himself, but just the fact that he was
17 assigned to you by the Court that you filed a complaint
18 against.

19 MR. WILFRED: Well, that was my initial
20 discomfort. Since we've interviewed, I don't feel that
21 he's taken a position in this thing that's to my best
22 interest, and I do feel that Mr. Watwood has taken a
23 position that can be for my best interest if I'm given the
24 opportunity to review the transcripts and to work with
25 Mr. Watwood. Yes, both of those reasons are germane, Your

1 Honor.

2 THE COURT: Has anyone put any pressure of any
3 kind on you to get you to give up your right to be
4 represented by a lawyer today?

5 MR. WILFRED: No, Your Honor, they have not.

6 THE COURT: Is this a free and voluntary choice
7 on your part?

8 MR. WILFRED: Yes, Your Honor, it is.

9 THE COURT: Do you understand that there are
10 risks involved in representing yourself. Obviously, the
11 biggest risk is that the lawyer would know the law and you
12 might or might not know the law. In fact, you might think
13 you know the law but you might be in grave error as to
14 what the law is and you would therefore make mistakes that
15 a lawyer probably would not make. Do you understand that?

16 MR. WILFRED: I do understand that, Your Honor,
17 and I'm just incapable of representing myself, and I'm in
18 disagreement with having Mr. Frederikson for the reasons
19 that I've stated.

20 THE COURT: What makes you think you're
21 incapable of representing yourself?

22 MR. WILFRED: Well, just for the reasons you
23 just stated, that I may not know the law and I may make
24 major mistakes in trying to interpret the things that are
25 happening in this courtroom and in dealing with the

1 procedures, sir.

2 THE COURT: That creates a little bit of a bind,
3 Mr. Wilfred. I can let you waive your right to counsel if
4 -- and have you represent yourself, but if you're going to
5 tell me that you actually think you're incapable of
6 representing yourself, then we're going to have to proceed
7 with counsel representing you even though you may be
8 somewhat unhappy the way you got counsel or the fact that
9 you think he may not be acting in your best interests.

10 Since you think you are not capable of
11 representing yourself, then the Court will deny the
12 request to have Mr. Frederikson removed from the case at
13 this point. I will hear further from you, though, on your
14 motion to continue, and then I will hear from
15 Mr. Frederikson on that issue.

16 MR. WILFRED: Thank you, Your Honor.

17 What I have here to back up my motion for
18 continuance in terms of evidence of the bankruptcy taking
19 place and the things that I've stated in this motion is I
20 have the last extension, which was a 30 day extension.
21 May I approach the bench, Your Honor.

22 THE COURT: Yes. Have you shown this to counsel
23 for the Petitioner?

24 MS. EDINBURG: No.

25 MR. WILFRED: No.

1 THE COURT: Show -- whatever you present to me,
2 show to her first.

3 MR. WILFRED: Yes, sir. I have two things that
4 I would like to present. What these are, Your Honor, is
5 the last 30-day extension, this audit has been going on
6 for some time. It's not something that just has started.
7 And I also have the bankruptcy trustee here to verify this
8 information. That is the last 30-day extension that takes
9 us to November 9th, which is what we believe to be the
10 time frame that it would take to finish this audit so that
11 I could adequately defend myself.

12 On November the 6th, which was yesterday, these
13 are the last items -- the second item I have just given,
14 the last items that need to be completed in the audit,
15 itself, that I had to sign letters on so they could get
16 all the rest of the information from my banks, that is
17 when Mr. Tincani, who is the auditor in this case, told me
18 that he couldn't finish the audit before January 1.

19 THE COURT: Let me take just a moment to look
20 through what you've given me. Did you give the same thing
21 you have given Ms. Edinburg?

22 MR. WILFRED: Yes, Your Honor, I did.

23 MS. EDINBURG: Your Honor, may I make a comment
24 before the Court reads it or do you want to read these two
25 documents?

1 THE COURT: I want to see what's here first.
2 Then, I have an idea of what he's giving me.

3 MR. WILFRED: Your Honor, these also a letter --

4 THE COURT: Let me look at it, please.

5 MR. WILFRED: I'm sorry.

6 (Pause.)

7 THE COURT: Go ahead, Mr. Wilfred -- oh,
8 Ms. Edinburg, did you want to say something about these
9 documents?

10 MS. EDINBURG: Yes, Your Honor. If it please
11 the Court, I don't understand nor agree with the relevance
12 of these documents. Mr. Jeffrey Hill is the bankruptcy
13 trustee. Mr. Hill happens to be sitting in the back of
14 the courtroom. Mr. Hill has filed a motion or request --

15 THE COURT: You can argue the effect of these in
16 a few minutes. I'm not admitting them as exhibits as
17 purposes for the contested hearing, so you can make your
18 statements in just a minute when I give you an opportunity
19 to respond.

20 Go ahead, Mr. Wilfred.

21 MR. WILFRED: The purpose of these documents,
22 Your Honor, is just to show that the audit has been an
23 ongoing issue, that my financial position right now was a
24 major issue, even in the permanent orders. And that the
25 permanent orders were based on the financial information

1 that was brought out in that trial that was incorrect.

2 And so I ordered an audit in my bankruptcy in
3 order to establish new information for this Court so that
4 I could show that I'm not in contempt, because the
5 information that was used in the Court was irrelevant.
6 That's the only thing, Your Honor.

7 I have been soliciting for an attorney in this
8 case for -- ever since the trial. I ordered the
9 transcripts on July the 20th and I have just gotten half
10 of the transcripts this morning.

11 So -- and it's always been that I could get
12 someone on this case, especially from one of the legal
13 institutes, if they had an opportunity to review the
14 transcripts. That's the only thing that's kept me from
15 walking into this courtroom today with an attorney of my
16 choice. And so I would really like the opportunity to
17 have an attorney of my choice, if it please the Court.

18 THE COURT: Why do you think the transcripts of
19 the trial are necessary to defend against an entirely
20 separate proceeding?

21 MR. WILFRED: Well, again, Your Honor, it's the
22 trial, itself, that established the judgment that the
23 audit and the transcripts will show is not a valid
24 judgment. I mean --

25 THE COURT: Today's proceeding is not at all

1 directed to the validity of that first judgment. I'm not
2 about to set it aside even if you had all the audits and
3 everything to show that it was invalid. I can't do it
4 today.

5 MR. WILFRED: Let me get it down to the issue at
6 hand. I cannot properly show the information to show that
7 I am not in contempt without that audit. That audit has
8 got all the information in there that will show that I had
9 the complete inability to pay that judgment. It will
10 absolutely show that. That's the only defense I have,
11 Your Honor, and going forward without that, I have no
12 defense.

13 And I would just like some more time to produce
14 that defense, and in the meantime, I can also get an
15 attorney to represent me because now the transcripts are
16 finally coming out, and I think it's judicious for an
17 attorney to be able to review transcripts in a situation
18 to know what led up to the contempt.

19 THE COURT: Thank you. You may have a seat.

20 Mr. Frederikson, did you want to add anything to
21 your client's motion for continuance?

22 MS. PORTER: Just briefly, Your Honor. I think
23 that Mr. Wilfred makes a valid point, that his only
24 defense to the contempt citation is inability to make the
25 payments required by the Court. And the best evidence of

1 what his ability to make payments are is the audit that's
2 ongoing. I would prefer to call the trustee to testify on
3 just the continuance motion at this point for a few
4 questions. We could get him on his way.

5 THE COURT: I think it's appropriate to hear
6 from the trustee. I understand that the Petitioner feels
7 it may not be relevant at all, but I have some concerns
8 that perhaps the trustee can answer.

9 Mr. Hill, would you come forward, please, and
10 let's see if we can get you on your way. Have you been
11 waiting here since about 8:30?

12 MR. HILL: Since about 9:00, Your Honor.

13 THE COURT: Would you raise your right hand,
14 please.

15 JEFFREY HILL,

16 called as a witness on behalf of the Respondent, having
17 been first duly sworn, testified as follows:.

18 THE COURT: Mr. Frederikson, go ahead.

19 MR. FREDERIKSEN: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. FREDERIKSEN:

22 Q Please state your full name.

23 A Jeffrey L. Hill.

24 Q And what is your business address?

25 A 2280 South Xanadu Way, Suite 305, Aurora, 80014.

1 Q And are you the bankruptcy trustee in a case
2 filed by Harmon Wilfred?

3 A I am.

4 Q Okay. Is there, at this point, an ongoing audit
5 of Mr. Wilfred's financial affairs?

6 A There is.

7 Q And what period of time does this audit
8 encompass?

9 A Well, it -- I would gather from talking with
10 Joe Tincani, the auditor, basically encompassing a period
11 of time roughly from probably the mid '80s to the current
12 date.

13 Q Okay. And is -- what type of bankruptcy
14 proceeding is this?

15 A It's a Chapter 7 liquidation, it had been a
16 Chapter 11. It was converted to a Chapter 7.

17 Q Okay. So this audit would cover his current
18 financial situation as well as what's led up to it.

19 A Yeah. I mean, as I gather from talking to
20 Tincani, he's -- in order to try to trace various
21 convoluted transactions over the last several years, he
22 feels that it's necessary to take a look at current
23 financial affairs, too, in an attempt to trace assets.
24 That's the primary goal here.

25 There are various transactions that are somewhat

1 questionable, and we don't have the documentation at
2 present to trace them entirely, and so he is, I think, in
3 an effort to locate assets that appear to have been
4 transferred inappropriately, has requested that current
5 financial documents be provided as well as in that effort
6 traceable.

7 Q Do you believe that Mr. Wilfred has a reasonable
8 understanding of what his financial situation is?

9 A He strikes me as being a very sophisticated
10 businessman, and I think he has a pretty good idea of
11 what's going on, yeah.

12 Q Okay. I believe you took his testimony in
13 meeting creditors?

14 A Yes.

15 Q And at that point, what did he testify as to his
16 understanding?

17 A I don't have that transcript presently but
18 basically, we didn't get that far that day because he --
19 he tried to plead ignorance regarding certain assets of
20 his financial affairs and suggested to me that we perform
21 the audit, and rather than take up a lot of time at the
22 meeting of creditors where I had a number of other people
23 waiting on the docket, I took him up on that offer. And
24 we, in fact, got an auditor appointed, and it's been
25 ongoing since I don't know, it seems like it's been since

1 August.

2 Q What is it about Mr. Wilfred's financial
3 situation that requires an audit as opposed to him just
4 being able to testify? What his income and assets are?

5 A Well, the main issue is that he's been -- he set
6 up at least 26 different bank accounts in various
7 different entities' names over the last several years and
8 you'll have fund -- significance funds, \$100,000 here and
9 there going from one account to another, and then all of a
10 sudden, we don't have any ability from the records that
11 have been presented so far to determine where certain
12 funds went.

13 We have a wire transfer on one occasion and then
14 all of a sudden, no other tracing of where the money went
15 to and just miscellaneous things in that respect. And,
16 you know, many of his business records were in storage,
17 um, they were in boxes, and they were not as organized as
18 we would like to have had, and I gather as he should have
19 had for our benefit.

20 I don't know -- you know, basically, all I can
21 say to you is I think he's sophisticated enough to know
22 what's going on but he's acting as if he does not know
23 what's going on, and he's suggesting that rather than take
24 up a lot of time in him testifying, that he's not sure,
25 that we just simply have the audit performed and that we

1 can find out. So that's the appearance I'm getting from
2 him. I don't necessarily believe that he is quite as
3 ignorant of his financial affairs as he might lead us to
4 believe, quite frankly.

5 Q Okay.

6 MR. FREDERIKSEN: I have no further questions,
7 Your Honor.

8 THE COURT: Thank you.

9 Ms. Edinburg, any cross-examination?

10 MS. EDINBURG: Very briefly.

11 CROSS-EXAMINATION

12 BY MS. EDINBURG:

13 Q Mr. Hill, do you recall that the Chapter 7 that
14 Mr. Wilfred initially filed, he requested that it be
15 dismissed?

16 A The Chapter 7 or the Chapter 11?

17 Q I'm sorry. Initially, it was the Chapter 11,
18 you're correct. Do you remember he requested that it be
19 dismissed?

20 A That's correct.

21 Q Are you also aware that there are \$75,000
22 sitting in the bankruptcy court registry and, in fact, the
23 Chapter 11 were it to dismiss, that money was going to be
24 released to Mr. Wilfred; is that right?

25 A At that time.

1 Q Right. And do you recall that Judge Steinhardt,
2 in an emergency hearing precipitated by my motion, that
3 the \$75,000 be transferred from the bankruptcy court to
4 this state court registry to pay for child support and
5 maintenance?

6 A I'm aware that there was such a motion and I
7 wasn't present at the hearing, though.

8 Q But are you aware that there was an outstanding
9 order that Judge Steinhardt issued that if, in fact, the
10 bankruptcy was dismissed, that the \$75,000 was ordered to
11 be transferred from the bankruptcy registry to this
12 registry?

13 A I believe that's basically accurate. I don't
14 recall the exact language of the order.

15 Q Okay. And the next day, Mr. Wilfred hired
16 Mr. Rosania to convert the Chapter 11 to a Chapter 7
17 bankruptcy.

18 A I don't know if that was the next day or not.
19 He did, in fact, hire Rosania, Joe Rosania, and it was, in
20 fact, converted to Chapter 7 on Mr. Wilfred's own
21 voluntary motion, yeah.

22 Q And Mr. Wilfred got \$50,000 from the bankruptcy
23 court for the purpose of hiring Mr. Rosania and for other
24 legal defenses that he needed the money for; is that
25 right?

1 A Not entirely. It was not just for legal
2 defenses. It was for basically his own ongoing business
3 operations. He was in a Chapter 11 at the time.

4 Q But he did get \$50,000?

5 A Yes.

6 THE COURT: Just a moment. Finish your answer,
7 first.

8 A Well, basically, he got the \$50,000 at the order
9 of Judge Brooks in the bankruptcy court, and it wasn't
10 just simply for his legal defense, he was still in a
11 viable Chapter 11 at that time, a debtor in possession,
12 and I guess he convinced Judge Brooks that he needed the
13 money to assist him with his ongoing business ventures.

14 Q (BY MS. EDINBURG) And the \$50,000, as I
15 understand it, came from \$125,000 commission check that
16 Mrs. Wilfred and her bankruptcy attorney, Maria Flohr,
17 found and petitioned the bankruptcy court to escrow as
18 part of the bankruptcy?

19 A Well, it was \$125,000. I don't know if it was
20 ever established that it was a commission check. There's
21 some controversy about that.

22 Q Okay. Mr. Wilfred had not disclosed or reported
23 that \$125,000 check to the bankruptcy court at the time of
24 the filing of the petition, did he?

25 A I -- well, I think to answer that question, I

1 would say that yes, it was not listed on his petition, but
2 I don't recall, though, that it was an existing asset as
3 of the date he filed the Chapter 11. That may have come
4 in to play later on.

5 Q Okay. Just for my understanding, the audit is
6 primarily to trace pre-petition financial records and
7 information; is that correct?

8 A It's the primary goal, yes.

9 Q Okay. Is the audit currently to determine
10 Mr. Wilfred's status from June of 1990 to the present
11 date?

12 A Well, the way I would answer that is that I
13 don't think the goal at all is to determine whether or not
14 he's financially capable of paying child support. That's
15 not the goal whatsoever. It's -- the purpose of looking
16 at current records is to help in assisting the tracing
17 back to the mid '80s of all these convoluted business
18 transactions and may very well be necessary to have
19 current records to help trace those transactions.

20 Q Okay. So the purpose of this audit is more a
21 tracing, as you're saying, than an ability or an inability
22 of him to pay whatever Judge Steinhardt ordered in June of
23 1990.

24 A That certainly was my goal in hiring an auditor,
25 yes.

1 Q And the motion that you filed with the
2 bankruptcy court that I believe Mr. Wilfred has handed
3 Judge Stuart this morning states that you requested an
4 extension in order for you to file a complaint or an
5 objection to his discharge; is that correct?

6 A That's correct.

7 Q And what is the status of that?

8 A Well, that was a second extension, and that
9 deadline is up to him, and I've got to decide between now
10 and today and tomorrow if I'm going to be filing such a
11 complaint to deny his discharge, because I don't think
12 that the Court is going to be inclined to grant a third
13 request for another extension.

14 And I may be -- the way it's looking now is I
15 may very well be filing such a complaint to deny discharge
16 and then as the audit is completed, determine if I should
17 withdraw that complaint or additional claims to it.

18 Q Okay. So am I correct in assuming, then, your
19 inclination right now is to object to Mr. Wilfred's
20 discharge?

21 A Yes, and on the theory only that his financial
22 records are -- have been in such disarray that he's not
23 complied with a certain section of the bankruptcy code
24 that requires a debtor to have his financial records in
25 sufficient organization so that we can understand his

1 financial status as of the date he files bankruptcy.

2 Q You had the opportunity, did you not, to sit and
3 observe some of the permanent orders hearing that took
4 place before Judge Steinhardt in June of this year?

5 A Yes.

6 Q And was, in fact, the fact that the financial
7 records were in such a state of disarray that I was not
8 fully able, during the permanent orders hearing, to
9 accurately determine what the entire marital estate was,
10 another issue that Judge Steinhardt was faced with back in
11 June when she entered these permanent orders?

12 A There's a lot of speculation going on by
13 everybody at that time as to what the assets were. As I
14 recall, Judge Steinhardt's order was that she ordered
15 certain assets to your client, if she could find them, so
16 that the judge, herself, was really unsure from the
17 evidence what was out there, if anything.

18 Q But you are aware that bank records were
19 introduced into evidence at the permanent orders hearing
20 indicating at least a \$300,000 transfer that had been made
21 by Mr. Wilfred out of one of his bank accounts that could
22 not be tracked, one of the witnesses testified that she
23 believed that between three and ten million dollars had
24 been taken by Mr. Wilfred from the shopping centers that
25 he had owned and managed.

1 A I know the one witness so testified. I don't
2 know how credible that was, but that's not for me to
3 determine.

4 Q Um, do you know whether or not Mr. Wilfred is
5 working or doing anything to sort through his own business
6 records and affairs and to earn any income at this time?

7 A Well, all I know is that he's still managing
8 partner in a couple enterprises, Falcon One is one. I
9 wish I had my file with me today. Falcon One, and there's
10 another one that he's involved in as well at this time.

11 And he -- he's got Wilfred Investments, which is
12 basically a management company for some of his properties.
13 I mean, Falcon One is the owner of the building where the
14 primary tenant was Seismograph Corporation, which has
15 recently vacated, I gather, I forget the exact address of
16 that building but it's over here in the Englewood Tech
17 Center area.

18 As I gather, that building may be in
19 foreclosure, though I don't know, or about to be in
20 foreclosure. So, you know, just to answer your question,
21 I don't know what his exact financial income may be, if
22 any at this time, but he's certainly acting as if he's
23 still an ongoing businessman in these ventures, Wilfred
24 Investments and Falcon One at a minimum.

25 Q So the only relevant entity of the Chapter 7 now

1 is Harmon Wilfred personally, not the businesses; is that
2 right?

3 A Well, the businesses do not appear to have any
4 realizable value to the estate. As I said, Falcon One
5 basically is -- it owns the one building and that building
6 is about to go into foreclosure. Wilfred Investments
7 really just -- doesn't really have any assets to speak of.

8 It's kind of -- it's a managing corporation of
9 these other assets, which assets, again, are as far as I
10 have been able to determine so far, to have any net value
11 to the estate.

12 Q Now, you use the word "convoluted transactions."
13 Just describe for us what, in your opinion, you mean by
14 that.

15 A Convoluted from the standpoint that the records
16 are in such disarray, and you will see, I had no idea I
17 was going to be called to testify today, quite frankly, so
18 I don't have any file with me, but you will see, just as I
19 said before, at least 26 different bank accounts and
20 probably close to as many different entities over the
21 years, probably not quite that many, but so many different
22 entities over the years that he has set up a fund going
23 into one account in one name and into the other account
24 under a different name.

25 And then you come to a dead end, with very

1 significant transactions as Tincani, Joe Tincani, the
2 auditor, has told me so far and that's why he's seen it
3 necessary to request releases being assigned by
4 Mr. Wilfred, which he has done, by the way, to obtain
5 additional bank relative to these 26 or so different
6 accounts.

7 So I mean it's convoluted, basically, it's in
8 disarray and they are significant transactions and we've
9 got to come to the -- to a point in time where we can say
10 yes, we can trace "X" number of dollars from this account
11 to this account or if it's not in an account, we can seek
12 cancelled checks to verify it was spent in some fashion,
13 and right now, we have, just my guess is, at least a
14 couple \$100,000 right now that we don't know where the
15 moneys are at.

16 Q Thank you.

17 MS. EDINBURG: I have nothing further of
18 Mr. Hill, Your Honor. Thank you.

19 THE COURT: Mr. Hill, let me ask you this
20 question, and I realize you haven't had a chance to review
21 the file, so just give me your best recollection in
22 approximating some dates. When was this bankruptcy filed?

23 THE WITNESS: It was in June of '89, that would
24 have been the original Chapter 11.

25 THE COURT: Do you know when it was converted?

1 THE WITNESS: It would have been converted, let
2 me see, I want to say the original meeting of creditors
3 after the conversion was scheduled in August of '90, so it
4 was probably converted sometime in June of '90, I would
5 imagine. Mr. Wilfred is shaking his head.

6 MR. WILFRED: May I comment on that, Your Honor?

7 THE COURT: No.

8 MR. WILFRED: Okay.

9 THE COURT: I will hear from your attorney in a
10 few minutes.

11 THE WITNESS: I think it was around June of '90,
12 but I may be off by a month or so.

13 THE COURT: When was this \$75,000 deposited in
14 the bankruptcy account?

15 THE WITNESS: That went into a bankruptcy
16 account -- first of all, into the registry account, see, I
17 wasn't involved in the case then, that money is in my --
18 is in the estate's account.

19 Now, I've got that money, and it's in an
20 interest bearing account on behalf of the bankruptcy
21 estate, so I would have obtained that money shortly after
22 I got involved. If I could back up for a second now,
23 Your Honor, I do recall that it could not have been in
24 June of '90 because I think the first meeting of creditors
25 was scheduled in June of '90, so it was probably converted

1 in April of '90.

2 THE COURT: When was the \$75,000 deposited to
3 the estate? In anyone's account, yours or --

4 THE WITNESS: Into my account, it would have
5 been shortly after my appointment, I would imagine
6 probably by no later than May of '90, it's been sitting in
7 the separate account designated as the bankruptcy estate
8 of Wilfred.

9 THE COURT: Did you receive it from the
10 bankruptcy registry?

11 THE WITNESS: I did.

12 THE COURT: How long had it been there?

13 THE WITNESS: It had been there for, I would
14 think, probably back in the fall of '89, thereabouts.

15 THE COURT: When was the \$50,000 released?

16 THE WITNESS: At the same time that he -- that,
17 in fact, the 75,000 was put into the Court's registry. He
18 obtained the \$50,000, as I gathered, from Judge Brooks in
19 bankruptcy court.

20 THE COURT: Right now, you're holding, then, in
21 that account \$25,000.

22 THE WITNESS: No, no, I'm holding 75,000 plus
23 whatever interest has accrued on that account since I've
24 had that money from about May of 1990.

25 THE COURT: As far as this one particular

1 commission check is concerned, was there \$125,000
2 deposited and 50 released?

3 THE WITNESS: Correct.

4 THE COURT: Okay. What instruction -- let me
5 get another factual date. When did this whole audit
6 process start?

7 THE WITNESS: As I think I said earlier, it
8 started probably right around August, late August of '90,
9 maybe early September.

10 THE COURT: The motion that I've been handed
11 here says there was an August 10th order granting
12 extension of time for employment of an auditor. Does that
13 mean it started about August 10th?

14 THE WITNESS: Could I see that, Your Honor?

15 (The Court hands the witness a document.)

16 THE WITNESS: That's probably a good estimate,
17 then, because I would have filed this motion or rather --
18 the original motion seeking the extension of time was
19 filed, then, in August and so that would have been about
20 the same time as I employed the auditor. It's probably
21 accurate, then.

22 THE COURT: What instructions did you give or
23 did someone else in the bankruptcy process give the
24 Defendant in terms of providing records or providing
25 releases, that sort of thing, in August?

1 THE WITNESS: Well, in August, I mean,
2 basically, the understanding was that he had always told
3 us all along, and I believe he's been pretty faithful in
4 that respect, that he will cooperate with the auditor, and
5 I believe he has.

6 And I believe what happened was originally, I
7 had a lot of records obtained from Mr. Wilfred
8 voluntarily, and this goes back into, like, June, as well
9 as from Ms. Edinburg's office that she had obtained during
10 the divorce proceeding.

11 I had several boxes of records that I presented
12 to Mr. Tincani when he was first hired, so he spent a lot
13 of time going through those records, and then only
14 recently, then, has Mr. Tincani come to an impass where he
15 says hey, I need more records. Yeah.

16 Let me also add there were records in storage at
17 a substorage facility and Mr. Wilfred did, in fact, gather
18 those records together, brought them to his house.
19 I believe Mr. Tincani met Mr. Wilfred at his house and
20 obtained more records at that time, probably sometime into
21 September, I would imagine, maybe early October, so, you
22 know, in terms of exact instructions to Mr. Wilfred, I
23 mean, instructions were to cooperate and he's done so, so
24 far, as far as I can tell.

25 THE COURT: You said he did provide the releases

1 which were requested. Do you know when those were
2 provided?

3 THE WITNESS: That was just within the last few
4 days, yesterday.

5 THE COURT: All right. Thank you.

6 Did you have any further questions,
7 Mr. Frederikson?

8 MR. FREDERIKSON: Just real briefly, if I may
9 approach the witness.

10 THE COURT: Yes.

11 REDIRECT EXAMINATION

12 BY MR. FREDERIKSEN:

13 Q Does that document look familiar to you?

14 A Yes, it does.

15 Q Looking at that, does that refresh your
16 recollection concerning when the case was converted from
17 11 to 7?

18 A March 2nd of 1990 is what it says, and I'm sure
19 that this is accurate. It appears to be the actual order,
20 a copy of the order from Judge Brooks.

21 Q In your investigation to this date, has there
22 been any evidence of wrongdoing by Mr. Wilfred?

23 A Wrongdoing?

24 MS. EDINBURG: Your Honor, I'm going to object
25 at this time.

1 THE COURT: I am going to sustain the objection.
2 I think you're asking him for an opinion that's well
3 beyond the scope of the testimony we're getting here
4 today, and he hasn't really been qualified to give that
5 kind of opinion.

6 MR. FREDERIKSEN: Okay. I have no further
7 questions, Your Honor.

8 THE COURT: Any recross-examination?

9 MS. EDINBURG: No.

10 THE COURT: Is there any objection to Mr. Hill
11 being excused?

12 MS. DYCUS: None, Your Honor.

13 MS. EDINBURG: I have none.

14 THE COURT: Mr. Hill, you may step down, then.
15 You will be excused.

16 Mr. Frederikson, anything further on the motion
17 to continue?

18 MR. FREDERIKSON: Your Honor, I don't have
19 anything further on the motion to continue.

20 THE COURT: All right. Thank you.

21 Ms. Edinburg?

22 MS. EDINBURG: Your Honor, the -- with the
23 Court's indulgence, I want to very quickly go through this
24 case --

25 THE COURT: No, please don't. I just want to

1 hear about the motion to continue. I have looked through
2 the file. I have a sense of the case, although,
3 obviously, I haven't participated in anything previous to
4 today.

5 MS. EDINBURG: Right, and that's why I just want
6 the Court to be aware that this is Mr. Wilfred's style.
7 We are constantly dealing with 11th hour attempts to delay
8 the case.

9 We were set for a permanent orders hearing on
10 June 5th. Mr. Wilfred filed a action in Federal District
11 Court against Judge Steinhardt, myself, Mrs. Wilfred, and
12 the guardian ad litem for 20 million dollars, asking the
13 Federal District Court to stop the proceeding. That was
14 denied by Judge Finesilver and the trial went forward on
15 June 5th.

16 I filed a contempt citation on August 6th and
17 got an October 15th court date. Mr. Wilfred had been
18 served the beginning -- I'm sorry, the end of August, and
19 had sufficient time to prepare for the October 15th court
20 date.

21 On October 12th, Mr. Wilfred took a writ to the
22 Colorado Supreme Court, asking the Court prohibit and stop
23 Judge Steinhardt and myself from proceeding with the
24 contempt citation on October 15th. That writ was denied
25 by the Supreme Court.

1 On October 15th, he came to court and he filed a
2 motion for Judge Steinhardt to recuse herself in another
3 11th hour attempt to stop the contempt proceedings. He
4 filed another motion for continuance. Judge Steinhardt
5 denied the motion for recusal, ordered that the case would
6 go forward, granted Mr. Wilfred a continuance until
7 today's date and appointed him counsel so that he could be
8 adequately represented at today's hearing.

9 Judge Steinhardt made it very clear to
10 Mr. Wilfred there were not going to be any continances,
11 that this contempt was going forward, that the permanent
12 orders that she entered on June 7th were in full force and
13 effect.

14 No appeal was ever taken. No motion for new
15 trial was ever requested. And her orders we -- remain in
16 full force and effect. Mr. Wilfred has not paid one penny
17 of child support since June 7th. Mrs. Wilfred's house is
18 five months in arrears, she's facing foreclosure. Her car
19 is three months in arrears, it's facing repossession.

20 She's living off the food of the day care center
21 where she's working at minimum wage so that her child and
22 she can eat. Your Honor, please don't grant this man one
23 more continuance. What he has done now is such an abuse
24 of process, he goes to Federal District Court, he goes to
25 the Colorado Supreme Court, he has filed motions and

1 written letters to CNN news, the FBI, Channel 4, Rocky
2 Mountain News, The Denver Post, making all kinds of
3 absolutely incredulous statements about myself,
4 Ms. Wilfred, the guardian ad litem, Judge Steinhardt, all
5 in an effort to diffuse one thing, Mr. Wilfred doesn't
6 obey court orders.

7 He needs to pay the money that he was ordered to
8 pay, and we need to get -- we need to get this Court to
9 enforce the Court's orders and we need not to have any
10 more continuances and delays.

11 This audit is not for the purpose of proving
12 whether or not he has the financial ability to pay his
13 child support. Judge Steinhardt already made that finding
14 on June 7th when she entered these orders. And all we're
15 asking the Court to do is please allow us the access of
16 this Court that we're entitled to to have someone who's
17 ordered to do something on June 7th that he just refuses
18 to do, be held accountable for his behavior.

19 And I think the problem with Mr. Wilfred is he's
20 very sophisticated. He's very bright. He's very
21 articulate, and he's used every resource available to him,
22 including going to the Supreme Court, going to Federal
23 District Court, to stop this proceeding. And this
24 proceeding needs to go forward for the benefit of the
25 child and the Petitioner. Thank you.

1 THE COURT: Thank you. Ms. Dycus, did you did
2 you want to make any statement on the request for a
3 continuance?

4 MS. DYCUS: Just a short one, Your Honor. As I
5 understand the argument here, Mr. Wilfred is requesting a
6 continuance because he does not have full financial
7 information from the records which have been in his
8 possession since the time of the separation.

9 Had he complied with the discovery requests that
10 were served on him in March of 1989, which he was later
11 compelled to supply and which were never supplied; had he
12 participated in permanent orders, either by presenting
13 evidence or at minimum, by testifying when ordered to do
14 so, but he refused; had he sought an attorney in August
15 when he was served with this citation and started to
16 develop this information, he would have it now.

17 Had he started back in October, when we were in
18 front of Judge Steinhardt, to collect this information, he
19 would have the information now.

20 The question is not whether or not the permanent
21 orders should be appealed. The question is whether or not
22 he has the current ability to pay, and if Mr. Wilfred has
23 made his own decision not to develop the information to
24 bring into this Court to show that, that, I'm afraid, is
25 his problem.

1 His ability to pay at the time of the order is
2 res judicata at this point, Your Honor. This child is not
3 getting what she needs -- he needs, I'm sorry, in terms of
4 minimal support. I would ask the Court to not grant this
5 continuance.

6 THE COURT: Thank you.

7 Mr. Frederikson, anything further?

8 MR. FREDERIKSON: Real briefly, Your Honor.

9 The key issue here in the contempt hearing which we're
10 asking to be continued is Mr. Wilfred's current ability to
11 pay. We've had testimony that a CPA who has been working
12 on this case since August has still not figured out what
13 the current financial situation is.

14 I don't think it's unreasonable to ask for a
15 continuance, and I think it's very unreasonable to expect
16 Mr. Wilfred, who is not a CPA, to figure out what his
17 financial situation is in less time than it's taking a CPA
18 to do it.

19 THE COURT: All right. Thank you.

20 It is not unreasonable to request a continuance,
21 and it would not be unreasonable to grant one under the
22 circumstances, however, the Court will deny the request.
23 I think we should proceed.

24 I deny it for several reasons, one is the
25 history of the case. It has been in existence for a very

1 long time, and the Defense -- or the Respondent has
2 therefore had an opportunity for a very long time to
3 conduct audits and assemble financial records and
4 determine that information and apparently that has not
5 been done.

6 The audit has been underway in the bankruptcy
7 court. There are funds available in the bankruptcy court.
8 The -- I have not heard any mention of efforts by the
9 Respondent to obtain more of those funds and having those
10 efforts to obtain those denied by the bankruptcy court.

11 He's had an opportunity to obtain legal counsel.
12 I see a request from the accountant to provide items for
13 the bankruptcy dated October 9th, and yet, releases are
14 not provided by the Respondent until November 6th.
15 There's about a month worth of time which now seems to
16 necessitate an additional continuance in the bankruptcy
17 court. It does not appear appropriate to the Court at
18 this time to continue this proceeding, and we will go
19 ahead.

20 I have reviewed the citation, so I know what the
21 issues are. Let's just get to testimony.

22 MS. EDINBURG: Thank you, Your Honor. I would
23 call Ms. Wilfred to the stand.

24 THE COURT: Would you come forward, please.
25 Raise your right hand.

1 SANDRA ALLEN,
2 called as a witness on behalf of the Petitioner, having
3 been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. EDINBURG:

6 Q Please state your full name, and spell your last
7 name for the record.

8 A Sandra Allen, A-l-l-e-n.

9 Q And you were formerly known as Sandra Wilfred;
10 is that right?

11 A That's correct.

12 Q Mrs. Wilfred, you are familiar with Judge
13 Steinhardt's permanent orders of June 7th that were signed
14 by her on June 27th?

15 A Yes, I am.

16 MR. FREDERIKSON: Your Honor, we will stipulate
17 to the contents of the permanent orders.

18 MS. EDINBURG: Thank you.

19 THE COURT: The Court will take judicial notice
20 of the court file, and in there are the permanent orders,
21 although I will tell you I have not read those in any
22 detailed review.

23 MS. EDINBURG: Okay. Well, you've read the
24 contempt citation, so you know what the issues are.

25 Q (BY MS. EDINBURG) Mrs. Wilfred, you have signed

1 a contempt citation requesting that this Court serve
2 Mr. Wilfred with a citation to show cause why he should
3 not be held in contempt.

4 A Yes, that's correct.

5 Q Will you please tell Judge Stuart when was the
6 last time you received any money from Mr. Wilfred.

7 A Um, the last day of our hearing before
8 Judge Steinhardt, um, we had possession of some of his
9 checkbooks, and, um, Judge Steinhardt ordered him that the
10 child support was an amount of money that needed to be
11 paid first before any other bills because he was advising
12 her he had no funds available and he had other bills to be
13 paid.

14 So she requested that he write a check from the
15 checkbook that he had in his possession, so I received
16 \$600 the first part of June, which was for a delinquency
17 in May's child support. I was informed on Mother's Day
18 that -- that would have been May of 1990, that he didn't
19 have the ability to pay child support.

20 Q Do you recall what the balance in that checkbook
21 was that we obtained?

22 A I'm sorry, I don't. Um, it was --

23 Q Was it in excess of \$600?

24 A Oh, yes.

25 Q Was it in excess of \$2,000?

1 A I believe it was.

2 Q And was that the Falcon One, Ltd. checkbook?

3 A Yes, it was.

4 Q Now, since June 7th, have you received any
5 money?

6 A Um, he had mentioned that he mailed a \$500 check
7 also for the May delinquency, and that it was in the mail.
8 I didn't receive that until after our hearing. It showed
9 up because he had put his zip code on the envelope instead
10 of mine, so -- so it was going through the mail service so
11 I did receive \$500 again, the delinquency for May, but I
12 haven't received anything since then, nothing.

13 Q What is the status of your home in terms of
14 payments?

15 A This month, it will be five months delinquent.

16 Q And are you facing foreclosure?

17 A Yes, I have been able to talk to them and they
18 haven't filed any of the documents yet, but -- however, if
19 I don't come up with the full amount this month, it will
20 be in foreclosure.

21 Q And do you know how much you owe them?

22 THE COURT: It's not really relevant. The
23 question is not whether she has other bills to pay.
24 That's a given, so let's go on.

25 MS. EDINBURG: All right.

1 Q (BY MS. EDINBURG) Do you believe that
2 Mr. Wilfred has the ability to pay you the moneys that
3 were ordered by Judge Steinhardt?

4 A Yes, I do.

5 Q Why?

6 A That I believe there are sizable amounts
7 unaccounted for. Um, I feel that if he truly didn't have
8 any money, he would be seeking employment instead of
9 spending all the time in the court system trying to delay
10 everything. I really do.

11 I believe he does have the funds. And yet, if a
12 CPA hasn't been able to find it, we weren't able to find
13 it before our trial either before our hearing before
14 Judge Steinhardt.

15 Q Did Mr. Wilfred, during the marriage, did he
16 ever indicate to you what he called war chest or moneys
17 set aside from the shopping centers that the two of you
18 owned during the marriage?

19 A Yes. Um, he had had a habit of collecting rents
20 and setting them aside in other accounts and not paying
21 the lender, and then utilizing those funds to hire
22 attorneys. He called them war chests. And then he would
23 hire attorneys to fight the lenders with their own money.

24 Q And do you have a recollection of what the
25 amount of money we were able to at least track that were

1 unaccounted for at the time of the permanent orders?

2 A At that time, we came up with, I believe,
3 \$890,000 that was unaccounted for, and that, I think, a
4 lot of that could have possibly been traced but
5 Mr. Wilfred would not provide any information to us. We
6 had to subpoena all the bank records ourselves.

7 It was very costly to do that and then try to
8 sort through all of this by ourselves, it was very
9 difficult. I think if he would have answered the
10 interrogatories, maybe some of that money would have been
11 traced, but we -- we were unable to find 890,000.

12 Q And as Mr. Wilfred continues to reside in the
13 family residence?

14 A Yes.

15 Q And is it --

16 A As far as I know.

17 Q Is that a nice home?

18 A Oh, yes. The original price on the warranty
19 deed, I believe, was 175,000.

20 Q Has he continued to drive his car?

21 A As far as I know, yes.

22 Q And do you know what the monthly expense on that
23 car was?

24 A It was right around \$600. It was a lease. And
25 last time I saw the vehicle, it still had the car

1 telephone. I've heard he had a private gardener, he had a
2 gentleman come and --

3 THE COURT: Excuse me just a moment. I'm not
4 interested in what you've heard from someone else.

5 THE WITNESS: Okay.

6 Q (BY MS. EDINBURG) Do you know how much money he
7 was receiving from the Seismograph building in rents?

8 A In rents, um, boy, I wish -- it was in excess of
9 50,000, I believe. I believe the report payment was 43.

10 Q The rents were in excess ever \$50,000 a month?

11 A Yes.

12 Q So that would give him, approximately, \$7,000 a
13 month.

14 A His income from that property, he had a cash
15 flow of 1500, which was his income, and I believe he took
16 several thousand in management fees and additional fees,
17 so I would say just for that property alone, between
18 Mr. Wilfred and the company that he owned 100 percent,
19 we're talking about maybe five thousand a month in income,
20 just from that one property.

21 Q And based upon your knowledge of all of his
22 various financial dealings, do you believe that he
23 currently has the ability to pay you the sum of 4,000 a
24 month alimony and \$1,000 a month child support?

25 A I believe he does.

1 Q Have you incurred attorneys fees in order to
2 bring this contempt citation?

3 A Yes, I have.

4 MS. EDINBURG: Your Honor, I have an attorney
5 fee affidavit. Does the Court want it marked?

6 THE COURT: No. That's not necessary. Make
7 sure that they've seen it.

8 Q (BY MS. EDINBURG) Mrs. Wilfred, I am handing
9 you the attorney fee affidavit for the time charged by
10 myself and my office since the permanent orders in order
11 to bring this contempt citation, and are those true and
12 accurate time charges? Are those true and accurate time
13 charges that have been billed to you?

14 A Yes, they are.

15 Q And were those fees necessary in order to
16 represent you in bringing this contempt citation?

17 A Yes, they were.

18 Q And are you requesting that the Court order that
19 Mr. Wilfred be solely responsible for these attorneys
20 fees?

21 A Yes, I am.

22 Q Mr. Wilfred was also ordered to pay attorneys
23 fees in the amount of \$20,000 to me for all of the work at
24 permanent orders; is that right?

25 A That's correct.

1 Q And do you know whether he's made any efforts or
2 any payments have been received on that account as well?

3 A As far as I know, he has not made any attempt to
4 pay.

5 Q Thank you.

6 MS. EDINBURG: Your Honor, I would move for the
7 admission of the attorney fees affidavit and I have no
8 further questions of the Petitioner.

9 THE COURT: All right. Thank you.

10 Any cross-examination?

11 MR. FREDERIKSON: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. FREDERIKSEN:

14 Q Do you go by Ms. Allen or Mrs. Allen?

15 A Ms.

16 Q Ms. Allen, do you know what your husband's
17 expenses for the operation of his businesses are?

18 A No, I don't. But I assume that they're minimal.

19 Q Okay. You just need to answer yes or no. I
20 don't want to hear your assumptions.

21 Now, you've testified to large dollar amounts of
22 money. Do you have any knowledge of any funds that
23 Mr. Wilfred actually has?

24 A It was submitted into the Court were bank
25 proceeds.

1 Q That's a yes or no question.

2 MS. EDINBURG: Your Honor, she's answering the
3 question.

4 THE COURT: No, you can answer that question yes
5 or no. If you can, please do so.

6 A Could you restate the question, please.

7 Q (BY MR. FREDERIKSEN) Do you have any knowledge
8 of amounts of money or funds that Mr. Wilfred actually has
9 or has access to?

10 A As of this moment, I have no idea.

11 Q Okay.

12 MR. FREDERIKSEN: I have no further questions,
13 Your Honor.

14 THE COURT: Any redirect?

15 MS. EDINBURG: Very briefly.

16 REDIRECT EXAMINATION

17 BY MS. EDINBURG:

18 Q Do you know where Mr. Wilfred is currently
19 operating his business?

20 A His business is operated out of the home. And
21 the last time I verified with World Savings, that house
22 was in foreclosure because of non-payment. So there would
23 be no rental expense for the business, and the last I
24 heard or the last I knew of, he had one employee, so --

25 Q Now, when you testified on direct, you had

1 knowledge at the time of permanent orders that some
2 \$890,000 was unaccounted for; is that right?

3 A That's correct.

4 Q Now, do you still believe that that money is
5 unaccounted for and in Mr. Wilfred's possession and
6 control?

7 A I believe that if not the full amount, at least
8 a large portion of it is in his control.

9 Q The \$125,000 that was obtained and placed in the
10 bankruptcy court registry, how did that money get there?

11 MR. FREDERIKSON: Objection, that's beyond the
12 scope of cross-examination.

13 THE COURT: The objection is sustained.

14 MS. EDINBURG: I have nothing further, Your
15 Honor.

16 THE COURT: Any recross-examination?

17 MR. FREDERIKSON: No, Your Honor.

18 THE COURT: All right. Thank you, Ms. Allen.
19 You may step down.

20 Any other witnesses?

21 MS. EDINBURG: I would call Mr. Wilfred for
22 cross-examination.

23 THE COURT: Mr. Wilfred, would you come forward,
24 please. Raise your right hand.

25 HARMON WILFRED,

1 called as a witness on behalf of the Petitioner, having
2 been first duly sworn, testified as follows:

3 THE COURT: You are not calling him for
4 cross-examination, you are calling him for direct
5 examination, but you are permitted to question him by
6 leading questions.

7 MS. EDINBURG: Thank you, Your Honor.

8 THE COURT: There's a major difference as to
9 what the scope of your inquiry can be if you call him for
10 cross-examination since there has been no direct
11 examination.

12 MS. EDINBURG: I understand.

13 DIRECT EXAMINATION

14 BY MS. EDINBURG:

15 Q Mr. Wilfred, you are Harmon Wilfred; is that
16 correct?

17 A That is correct.

18 Q And you have been served with a contempt
19 citation,?

20 A That is correct.

21 Q It is true, is it not, that you have not made
22 one payment for child support, maintenance, property
23 settlement, or attorneys fees since June 7th, 1990; is
24 that correct?

25 A I believe that's correct.

1 Q You continue to reside in the former family
2 residence?

3 A That is correct.

4 Q You continue to drive the car?

5 A That is correct.

6 Q What is your car?

7 A It is a '87 Jeep Wagoneer.

8 Q And is it leased or owned by you?

9 A It is leased.

10 Q And what is the amount of the lease payment?

11 A It's a little over 400 right now. It was just
12 extended.

13 Q Okay. And your car phone in that car --

14 A There was a phone in it, yes.

15 Q And you make the monthly payments on the car
16 phone,?

17 A I do, yes.

18 Q And you have, um, a gardener, as I understand
19 it, or some landscape person who helps you and assists you
20 with the lawn during the summer months?

21 A That is incorrect.

22 Q Did you have one since June 7th of 1990?

23 A I have had a gentleman come over and help me
24 with the yard but I have not had a gardener.

25 Q How many times did the gentleman come and help

1 you with the yard?

2 A Um, probably half a dozen to a dozen times
3 altogether.

4 Q And was he paid for his time?

5 A Yes, he was.

6 Q How much was he paid?

7 A I don't recall.

8 Q Who paid him?

9 A I think I paid him \$15 whenever he came over and
10 helped me.

11 Q Okay. Have you paid utilities each month for
12 your house?

13 A I have, yes.

14 Q Have you paid your secretary that comes and
15 types for you?

16 A I no longer have a secretary.

17 Q Did you pay the secretary that was helping you
18 the month of August and September and October?

19 A On a part-time basis as I could afford her, yes,
20 I did.

21 Q Have you recently hired a gentleman named Rod
22 Snow as an attorney to represent you in some other
23 litigation that you wish to bring?

24 A I have not hired -- it's Mr. Ron Snow, to
25 represent me, no, that is incorrect.

1 Q Have you discussed with any attorney to
2 represent you in any matter, including this matter?

3 A I have discussed with a number of attorneys to
4 represent me in this matter, as I talked about in talking
5 about the continuance.

6 Q Have you paid any attorney any money to
7 represent you in this or any other matter?

8 THE COURT: Let's be specific about the time
9 period.

10 MS. EDINBURG: Okay.

11 Q (BY MS. EDINBURG) From June 7th, 1990, to the
12 present date and time, have you paid any attorney any
13 money to represent you?

14 A I paid a hundred dollars for some advice, yes.

15 Q And no --

16 A That's all I had to pay. I mean, I paid a
17 hundred dollars to cover some expenses.

18 Q Now, Mr. Lynn -- what is his last name?

19 A Watwood.

20 Q What is the amount of money that Mr. Watwood is
21 requesting as a retainer for you to represent him?

22 A He's not requesting a retainer at this time.

23 Q He's going to enter his appearance without any
24 retainer?

25 A No. He is the president and -- chapter

1 president for the State of Colorado for the Rutherford
2 Institute of -- Christian institute that represents people
3 for religious issues. They would be providing a grant to
4 represent me, if he should come into the case.

5 Q Okay. Now, you have stated in your pleadings
6 under oath that you provided the court reporter \$1,000 in
7 cash to prepare the transcripts of the permanent orders
8 hearing; is that correct?

9 A That is correct.

10 THE COURT: Excuse me just a moment. Where is
11 this pleading under oath filed? Is that in this case?

12 MS. EDINBURG: It was filed in this case, Your
13 Honor, in the motion for recusal. It was filed in the
14 writ to the suspect and it was filed in the federal court
15 action that was recently filed against Judge Steinhardt.

16 THE COURT: All right. Thank you.

17 Q (BY MS. EDINBURG) You obtained a thousand
18 dollars of cash and gave that to the court reporter.

19 A I had, yes.

20 Q Okay. Have you bought food for yourself for the
21 last two weeks?

22 A I certainly have.

23 MS. EDINBURG: I have nothing further, Your
24 Honor.

25 THE COURT: Any cross-examination?

1 MR. FREDERIKSEN: I can do cross or recall him
2 as my own witness, Your Honor. I don't know how the Court
3 wants to proceed.

4 THE COURT: If you have no cross, you can
5 certainly call him later.

6 MR. FREDERIKSEN: I will recall him as my
7 witness. I have no recross at this time.

8 THE COURT: Thank you, Mr. Wilfred. You may
9 step down.

10 Any other witnesses? Ms. Dycus, I haven't given
11 you a chance to question the witnesses. Did you want to
12 question Ms. Allen?

13 MS. DYCUS: No, I didn't, and Mr. Wilfred will
14 be back up, so I'll just wait.

15 THE COURT: Excuse me.

16 MS. EDINBURG: I have no further witnesses, Your
17 Honor.

18 THE COURT: All right. Mr. Frederikson?

19 MR. FREDERIKSON: I'd call Mr. Wilfred.

20 THE COURT: Mr. Wilfred, now that you've had
21 your exercise, you can have a seat again.

22 HARMON WILFRED,
23 called as a witness on his own behalf, having been
24 previously sworn, testified as follows:

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DIRECT EXAMINATION

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BY MR. FREDERIKSEN:

Q I remind you you are still under oath.

A Yes.

Q Okay. When did you make the payment to the court reporter?

A When I ordered the transcript. I didn't actually make it directly to the reporter. Because I was under a restraining order at the time and not having any real legal advice on what was appropriate, I ordered it through an attorney's office, a friend of mine, who was willing to do that without actually charging me any legal fees to do so.

THE COURT: Excuse me, Mr. Frederikson. I neglected to tell everybody that we will take a short recess before we started with another witness and I forgot that because it was the same witness, but we do need to take a short break for the sake of the court reporter. We will be in recess for a few minutes.

(A recess was taken from 10:57 a.m. to 11:03 a.m.)

MS. DYCUS: Your Honor, I have a concern prior to Mr. Wilfred testifying any further. I believe that he should probably be advised of his right to remain silent, and I would ask that if he chooses to exercise that right,

1 that the prior testimony by him be stricken and not
2 considered in the Court's judgment on the contempt.

3 THE COURT: Mr. Wilfred, since you have a
4 lawyer, I didn't advise you of that, but you do have a
5 right to remain silent. You do not have to take the
6 witness stand and testify. Do you understand that?

7 MR. WILFRED: I do, Your Honor.

8 THE COURT: This is a civil proceeding, however,
9 the sanction the Court could impose is very criminal in
10 nature. You could be fined, you could be imprisoned in
11 jail or the Court could impose whatever other orders might
12 be appropriate. So it is criminal in nature, even though
13 it is a civil proceeding, and therefore, you do have a
14 right to remain silent. You do not have to take the
15 witness stand. I will not hold it against you if you do
16 not testify. Do you understand that?

17 MR. WILFRED: I do understand, Your Honor.
18 Since that's an issue that's just come up, may I have a
19 few minutes to confer with my attorney about that?

20 THE COURT: Yes, you certainly may.

21 MR. WILFRED: Could I do that now?

22 THE COURT: Yes, go ahead.

23 (A discussion was had between Mr. Wilfred and
24 his counsel.)

25 (Pause.)

1 THE COURT: Have you had an ample opportunity
2 now to talk with your lawyer?

3 MR. WILFRED: Yes, Your Honor.

4 THE COURT: I guess that wasn't a very well
5 phrased question. Have you had sufficient opportunity?

6 MR. WILFRED: Yes, Your Honor.

7 THE COURT: Have you made a decision as to
8 whether you wish to testify or not in this case?

9 MR. WILFRED: I do wish to testify, Your Honor.

10 THE COURT: Do you understand that by doing
11 that, you give up your right to remain silent and you then
12 are subject to cross-examination by the other parties in
13 this case.

14 MR. WILFRED: I do understand that, Your Honor.

15 THE COURT: Has anyone promised you anything to
16 get you to give up your right to remain silent?

17 MR. WILFRED: No, Your Honor.

18 THE COURT: Has anyone put any pressure of any
19 kind on you to get you to do this?

20 MR. WILFRED: No, Your Honor.

21 THE COURT: Is this a free and voluntary choice
22 on your part?

23 MR. WILFRED: Yes, it is, Your Honor.

24 THE COURT: The Court will accept the
25 Defendant's waiver of his right to remain silent.

1 You may proceed, Mr. Frederikson.

2 MR. FREDERIKSEN: Thank you, Your Honor.

3 Q (BY MR. FREDERIKSEN) There's been testimony
4 before the Court today concerning your financial records
5 and their state, as far as being confused and people
6 having trouble figuring out what's really going on. Can
7 you explain to the Court why that's the situation?

8 MS. EDINBURG: Your Honor, I'm going to object.
9 I don't know what relevance that has to the Court today or
10 whether or not he's able to pay child support and
11 maintenance. It's --

12 THE COURT: I will overrule the objection. It
13 may not be terribly relevant but the inferences the
14 Petitioner has asked me to draw certainly are contrary to
15 the inferences that I think the Respondent is going to ask
16 me to draw based on this question, so I will overrule the
17 objection.

18 Q (BY MR. FREDERIKSEN) You can answer.

19 A Um, I have been involved in, as has been
20 testimony given, up to 26 bank accounts with a number of
21 corporations and entities, which is not unusual for a
22 developer.

23 Being in the real estate business, for me to
24 know everything that's happened in all those entities,
25 especially at one point that I had 26 employees and a full

1 accounting department, I don't think is reasonable. I've
2 done the best I could to cooperate with the trustee,
3 however, part of the disarray of those records was because
4 my house was entered during the trial and all of my
5 records were ransacked. My entire home was gone through,
6 everything --

7 MS. EDINBURG: Objection --

8 A -- was disturbed.

9 THE COURT: Just a moment, please. Let me hear
10 the objection.

11 MS. EDINBURG: Your Honor, I am going to object
12 at this point in time because Mr. Wilfred is misstating
13 the evidence, and I want this Court to understand exactly
14 what happened. If we're going to get into what happened
15 the night the Judge Steinhardt gave myself and
16 Mrs. Wilfred an order to go to the home and get documents,
17 that we did and we brought to the Court --

18 THE COURT: At this point, I don't need
19 argument. I need an objection. The objection is that
20 he's misstating the objection. The objection will be
21 overruled. He's testifying at this point, and later on,
22 we can sort out what kind of clarification I might need to
23 better understand that.

24 Q (BY MR. FREDERIKSEN) Continue.

25 A Many of those documents were in disarray, a lot

1 of them were taken from my home, including attorney/client
2 privilege information, and entered into the Court record
3 at the time. But the key to that is my records were in
4 incredible disarray after that event.

5 Q Okay. When did you get those records back?

6 A I got them back, oh, probably 30 to 45 days
7 after that, at which time I literally had to go open up
8 new bank accounts because I couldn't even get my
9 checkbooks back.

10 Q Okay. Who has the remaining records you didn't
11 get back?

12 A That would be the bankruptcy trustee. I agree
13 that all those records should be turned over immediately
14 to the bankruptcy trustee.

15 Q Okay. Now, your wife has testified that you
16 have a substantial monthly income from the various
17 businesses you operate. Is it true that in the past, in
18 1987, 1988, that you did have a substantial income?

19 A Prior 1988, during part of 1988, I did have a
20 substantial income, yes.

21 Q Okay. And that's happened to your business
22 ventures since that time?

23 A The business ventures basically involved
24 properties here in Denver, shopping -- couple of shopping
25 centers, partial interest in shopping centers and a

1 partial interest in an office building, all of which at
2 this time have either gone through foreclosure and been
3 given back to the lender or if -- the final office
4 building that's left, which is the final property, has
5 been vacated as of September. It's two months behind,
6 going on the third month now, and its mortgage payment --
7 and it's approaching foreclosure as well, and there's
8 income coming from it.

9 Q When was the last time you received income from
10 that property?

11 A Um, I believe October.

12 Q Okay. And do -- say -- let's take from before
13 October, between June and the start of October, what
14 income did you have from the operation of your businesses
15 that was left over after payment of secretaries and
16 mortgage payments and those kinds of things?

17 A There was a \$1500 a month general management fee
18 that I received, and that was entirely mine. And there
19 was a \$2,700 a month property management fee to Wilfred
20 Investments wherein after expenses, I received -- it
21 varied, depending on the expenses, but approximately a
22 thousand dollars a month, sometimes considerably less than
23 that, again, depending on the expenses.

24 Q Okay. So what you're saying is between 1500 and
25 2500?

1 A That's correct.

2 Q Okay. Now, what is your income today?

3 A My income effectively today, and -- is
4 effectively zero, and the reason I say that is because my
5 only source of income has been from that property which is
6 now vacated. The tenant is no longer paying rent, and
7 that was also Wilfred Investments' sole source of income.
8 And so at the moment, I'm searching. I'm looking for
9 other opportunities.

10 Q Do you have any funds on an account that you
11 have access to anywhere?

12 A I have my own personal checking account.

13 Q How much is in that personal checking account?

14 A Right now, probably about a hundred dollars,
15 probably less than less than a hundred dollars.

16 Q Do you have access to any other funds, whether
17 they're in accounts or safe deposit boxes or stuffed under
18 a mattress or under the floorboards, do you have access to
19 any other funds?

20 A The only other account right now that I operate,
21 there's two accounts, the Wilfred investment account,
22 which has probably \$150 or so in it, and the Falcon Ltd.
23 No. 1 account, which is -- the partnership that owns the
24 office building, and it's down to about 150 to \$200 right
25 now.

1 Q Okay.

2 A Those are the only accounts I have access to.

3 Q Okay. Now, do you have some kind of interest in
4 the funds in bankruptcy court; is that correct?

5 A Well, it's my understanding that once I file
6 Chapter 7, that money is completely removed from me. When
7 I was in the Chapter 11, I had some interest and some
8 control over those dollars. That's why I went to the
9 judge, Judge Brooks, and asked for \$50,000, to continue to
10 operate the operation.

11 Once it was filed Chapter 7, that money went
12 completely out of my control, went to the trustee. I have
13 no opportunity to touch it. It all belongs to my
14 creditors.

15 Q Okay. Do you have creditors who have claims in
16 that proceeding in excess of \$75,000?

17 A Oh, absolutely.

18 Q Okay. Is your wife one of those creditors?

19 A Uh, well, my wife is claiming to be a creditor
20 at this point for the amount that's owed in this contempt
21 proceeding.

22 Q Okay. All right.

23 THE COURT: Since I don't have anything about
24 the personal history of the Respondent, I assume you meant
25 his ex-wife?

1 A I'm sorry, my ex-wife.

2 MS. EDINBURG: Thank you.

3 MR. FREDERIKSEN: I apologize.

4 Q (BY MR. FREDERIKSEN) So what you're testimony
5 is today is that since March of 1990, you have had no
6 access or control over the \$75,000 that are remaining in
7 that account?

8 A That is correct.

9 Q Okay. Now, there was also testimony about a
10 \$50,000 amount that you were allowed to withdraw as a
11 debtor in possession to use to operate the business. When
12 was that withdrawal made?

13 A I'm going to say October of '89, but I'm not
14 sure.

15 Q Okay.

16 A That's a guess.

17 Q Okay. So approximately a year ago?

18 A Yes.

19 Q Okay.

20 A September, October of '89, that's a guess.

21 Q Now, since June, since the permanent orders in
22 this case, have you expended any other amounts related to
23 this case?

24 A I have expended a thousand dollars with a doctor
25 of psychology. I have expended a thousand dollars with a

1 doctor of psychology, which was also the requirement in
2 the permanent orders in orders for me to see my son. It's
3 a gentleman named Dr. Erlick out of Fort Collins,
4 Colorado, that I've traveled to weekly in order to obtain
5 a full psychological evaluation to have the right to visit
6 my son.

7 Q Okay. Are you current on your lease payments on
8 the Wagoneer?

9 A Yes, I am.

10 Q Okay. Are you current on the rest of your
11 business-related expenses?

12 A Well, the Wilfred Investment expenses are
13 current. My personal residence is three months, going on
14 four months, behind. They already have gone in for relief
15 in stay in the bankruptcy to foreclose, and there's a
16 condo in Vail that's also between four and five months
17 behind, and they've also come in to foreclose and to take
18 the property. I'm still residing --

19 Q All right. I was trying to limit you to the
20 business expenses at this point.

21 A Oh, I see. Well, help me define -- define what
22 you mean by "business expenses." To me, business expenses
23 are Wilfred Investment Inc. expenses.

24 Q Okay. Those expenses that are related to you
25 generating income, such as \$1500 a month?

1 A Okay. Repeat the question, now.

2 Q Are any of those expenses behind? Do you owe
3 anybody business-related debts other than those that are
4 already in the bankruptcy?

5 A No.

6 Q Okay.

7 A No. As I understand the question, no, now,
8 again, I keep relating it to Wilfred Investments.

9 Q Who owns the family home?

10 A Um, uh, it's a joint tenancy ownership between
11 my ex-wife and myself.

12 Q Okay. So Wilfred Investments doesn't own that.

13 A No.

14 Q And how far behind is that?

15 A It's three, going on four, months.

16 Q Okay. And do you know whether relief from stay
17 has actually been granted on that property?

18 A I have not seen a document that's granted it but
19 I've seen the relief from stay document.

20 Q Okay. Have you been notified of the foreclosure
21 action starting?

22 A Not as yet.

23 Q Okay. What's the status regarding foreclosure
24 of the Vail condo?

25 A Again, a relief from stay has been put in and I

1 have not seen a foreclosure action as yet.

2 Q Okay. How long ago were those two motions for
3 relief from stay filed?

4 A Um, I would say both in the last 60 to 90 days.

5 Q Okay. Have you filed an objection to either of
6 those motions for relief from stay?

7 A No, I haven't.

8 Q Do you think you have a legal basis for
9 objecting to relief from stay from either of those?

10 A No, I don't.

11 MS. EDINBURG: I am going to object. I don't
12 know if this is within the scope of this witness's
13 knowledge.

14 THE COURT: I understood from his previous
15 statements that he felt he was not qualified to represent
16 himself, so I agree, that he does not have the legal
17 background to give me an informed opinion but I think it
18 is lay opinion as to his legal basis is relevant. I will
19 overrule the objection.

20 Q (BY MR. FREDERIKSEN) Is it also your
21 understanding that if no objection to those motions are
22 filed, they will be granted as a matter of course under
23 Rule 23 of the bankruptcy rules?

24 A Well, the reason I know that is because I've
25 gone through a relief from stay action by the same

1 mortgage companies in the last 12 months, and during this
2 time when I received the 50,000 that I received earlier, I
3 was given permission by the bankruptcy court to cure those
4 things, so I saw the whole process from relief from stay
5 to foreclosure and the opportunity to cure, so if this is
6 a second round of all that stuff going on --

7 Q Okay. Have you had an opportunity to see your
8 son since the permanent orders?

9 MS. EDINBURG: Objection, Your Honor. It's
10 irrelevant.

11 THE COURT: What is the relevance of this?

12 MR. FREDERIKSON: To how he's expending his
13 money, what little funds he has.

14 THE COURT: Why would he have expenses relating
15 to seeing his son?

16 MR. FREDERIKSON: Well, he's already testified
17 that he's spent a thousand dollars relating to just
18 getting the right to see his son.

19 THE COURT: And that came in appropriately so
20 without objection. Are you expecting that he will say he
21 would have to spend a thousand dollars a visit to see his
22 son or something like that?

23 MR. FREDERIKSON: I'm just trying to clarify if
24 there would be an expense related to that.

25 THE COURT: The objection to the question as

1 asked is sustained.

2 Q (BY MR. FREDERIKSEN) Mr. Wilfred, you don't
3 want me to represent you in this matter; is that correct?

4 A I have chosen, as I said earlier, to work with
5 an attorney who is present here as soon as they have an
6 opportunity to review the transcripts, so the answer to
7 that is yes, that's correct.

8 Q Okay. Is there any fact that you would like to
9 bring before the Court that I haven't asked you a question
10 about, that I haven't asked a question to bring out?

11 MS. EDINBURG: I am going to object to the broad
12 basis of this question. I think it's -- you know, I don't
13 think it's a proper question for direct examination. It's
14 just a fishing expedition.

15 THE COURT: I would normally sustain that
16 objection, however, because we have had some statements by
17 the Respondent about his concern with present counsel, I
18 will permit an open-ended question in this case.

19 Q (BY MR. FREDERIKSEN) It's really not an
20 open-ended question, it's a yes or no question. Are there
21 any other facts that you would like to bring before the
22 Court that I haven't asked you about?

23 A Yes.

24 Q Okay. Could you state those facts to the Court.

25 A Your Honor, as this entire proceeding is based

1 on the permanent orders that were complete as of -- toward
2 the end of June, after that, after that permanent orders
3 hearing, the related lawsuit that's been filed in Federal
4 District Court complains about my rights having been
5 violated. I stand on that still and will continue to
6 pursue that.

7 One of the reasons that I have continued -- and
8 I believe this is something that my ex-wife testified to,
9 one of the reasons that I've continued not to seek other
10 employment is because up to now, I have been employed by
11 this office building situation, that's now gone.

12 I have not made very much money. I so believe
13 that my rights have been violated in this that I have
14 continued to pursue this, as Ms. Edinburg has
15 appropriately pointed out, with as many possibilities as
16 possible in order to expose this problem that I have.

17 I am not the kind of person who goes around
18 making trouble for people. I enjoy my business and I
19 enjoy getting on with my life, but my son has been removed
20 from me. I have a judgment against me that's based on
21 irrelevant data that came through a trial that I wasn't
22 properly represented in. And all I can say is, Your
23 Honor, I am going to continue to stay in that position and
24 continue to fight this. I have not seen my son now for
25 six months. And I just completed a psychological

1 evaluation with a doctor of psychology who's not only
2 stated that --

3 MS. EDINBURG: Objection to what any doctor
4 stated, that's hearsay.

5 THE COURT: The objection is sustained.

6 A Well, I'm not sure I know what else to say. I
7 attended a hearing yesterday, and adversary hearing with a
8 gentleman named Tom Jones who is in a bankruptcy fraud
9 situation that I filed against him, and while that was
10 filed, Tom Jones was permitted by Ms. Elaine Edinburg
11 during this --

12 MS. EDINBURG: Your Honor, I am going to object
13 again.

14 A -- to go into my house and take information --

15 THE COURT: Just a moment, please. Just a
16 moment. Let me hear the objection.

17 MS. EDINBURG: I don't know what relevancy this
18 has to the contempt citation. I mean, he's just going off
19 on a tangent.

20 THE COURT: The only relevance I can guess is
21 you've mentioned the name of the attorney involved in
22 representing the Petitioner. What relevance does the
23 Tom Jones case have to this one?

24 A Because Mr. Jones was a part of the search and
25 seizure in my house and at the time, I had a suit filed

1 against him.

2 THE COURT: The objection will be sustained.
3 That's not relevant to today's proceeding.

4 A I don't want to go on. Your Honor, I just want
5 to say that I don't have the money nor have I had the
6 money to make these payments. And that the judgment was
7 based on means that never existed.

8 MR. FREDERIKSEN: I have just a couple more
9 questions, Your Honor.

10 Q (BY MR. FREDERIKSEN) Mr. Wilfred, in the time
11 period we're discussing, June through today's date, what
12 were your monthly expenses to meet your basic living
13 needs?

14 A That depends on whether you include my house
15 mortgage, and the mortgage --

16 Q Let's talk about the expenses you actually paid.
17 Let's not talk about the ones that --

18 A Okay. Okay. I have been making, as I stated
19 earlier, about 1500 to \$2500 a month depending on what the
20 expenses were for the business. My monthly expenses,
21 without my home mortgage, without the Vail condo mortgage,
22 and without sometimes even my car payment, although I've
23 managed to make that, has amounted to somewhere between
24 1300 and \$1800 a month, and that's without any variable
25 expenses or unexpected things like car insurance coming

1 up, which tends to eat the rest of that up.

2 Since I've had to pay for psychologists to see
3 my son, for transcripts to try to defend myself in this
4 proceeding, all of -- any additional that I've had has
5 been totally expended. And I've been squeaking, so to
6 speak, financially through this whole procedure.

7 Q Okay.

8 MR. FREDERIKSEN: I have no further questions.

9 THE COURT: Thank you.

10 Ms. Edinburg, any cross-examination?

11 MS. EDINBURG: Yes.

12 CROSS-EXAMINATION

13 BY MS. EDINBURG:

14 Q Mr. Wilfred, what was the rent payment on the
15 Seismograph building, what was the amount of the rent
16 payment?

17 A Approximately 42,000.

18 Q Rent paid each and every month to you?

19 A Yes.

20 Q Total rents due?

21 A That was the gross rent by the tenant monthly.

22 Q \$42,000?

23 A That's correct.

24 Q And you received that payment in August,
25 \$42,000?

1 A That's correct.

2 Q You received that payment in September, \$42,000?

3 A In September, I did not receive a payment.

4 Q You testified on direct that you received the
5 payment through October.

6 A Well, the tenant counted that toward their
7 security deposit, so we considered that a wash.

8 Q Did you receive \$42,000 in September?

9 A No, it was a credit towards their security
10 deposit. So in effect, it was a payment towards their
11 security deposit that washed.

12 Q And did you receive any money in October?

13 A No.

14 Q No rents?

15 A No, they moved out in September.

16 Q Well, I believe on direct, you said that they
17 vacated sometime in September and the last payment I made
18 was in October.

19 A No. The last payment -- the last amount that I
20 received as an income, because there's still a balance in
21 the account, was October.

22 Q How much did you receive in October?

23 A \$1500.

24 Q Isn't it true that after you filed the
25 bankruptcy, one of the receipts that was found in the home

1 was that you purchased a ruby and diamond pendant for your
2 new girlfriend from May D and F, yes or no?

3 A That young lady was not a girlfriend.

4 Q Did you --

5 THE COURT: Excuse me just a moment. You can
6 answer that question yes or no, but what's the relevance
7 of that?

8 MS. EDINBURG: That he has money available.

9 THE COURT: When was the purchase? Was this
10 prior to June?

11 MS. EDINBURG: Yes.

12 THE COURT: Let's proceed. That's irrelevant.

13 MR. WILFRED: Thank you, Your Honor.

14 Q (BY MS. EDINBURG) How much money did you pay to
15 file the writ to the Supreme Court in October for the
16 filing fee?

17 A I believe it was \$120.

18 Q How much money did you pay to file the complaint
19 in Federal District Court?

20 A I believe that was also \$120.

21 Q And are you paying for all your typing and
22 expenses for photocopying?

23 A I'm doing all that myself but yes, I am paying
24 for the paper and the copying, yes. I mean, I have a
25 copier.

1 MS. EDINBURG: I have nothing further, Your
2 Honor.

3 THE COURT: Ms. Dycus, did you have any
4 questions?

5 CROSS-EXAMINATION

6 BY MS. DYCUS:

7 Q I may be a little bit confused on dates,
8 Mr. Wilfred. When was the -- what was your income that
9 you're now saying was your income at the time of the
10 permanent orders hearing?

11 A The net amount that I've received varies from
12 Wilfred Investments, but it generally is around a thousand
13 dollars a month, plus \$1500 as a managing general partner
14 on that property. So again, somewhere between 1500 and
15 2500, depending on what the expenses of Wilfred Investment
16 are and whether those expenses ate up the amount -- any
17 additional amount that I could receive.

18 Q Okay. And how did your income change between
19 June and July of 1990?

20 A I don't understand what you mean, how did it
21 change.

22 Q Was it any different at all in July from what it
23 was in June?

24 A I don't recall that it was any different from
25 June but I can't recall that. I can tell you that the --

1 previous to the trial -- and I don't know how many months
2 previous to that -- I had a higher income that started
3 dissolving quickly because of the properties in
4 foreclosures and the other things that were going on.

5 Q So as far as you know, there was no change in
6 your income between June and July of 1990.

7 A I can't say right now without going back and
8 looking at it.

9 Q Okay. So your memory is similar between June
10 and August of 1990?

11 A Well, again, I have to go back and look at the
12 records, but generally speaking, I believe my income has
13 been pretty much what I've already stated.

14 Q Okay. So your testimony is that at least in
15 June, July, and August of 1990, that your income did not
16 change?

17 A Again, it's variable depending on the expenses.

18 Q I'm sorry, Mr. Wilfred. Would you please answer
19 the question yes or no.

20 A It's not a yes or no answer. It's -- it was
21 variable depending on the expenses.

22 Q Okay. Then if it was variable depending on the
23 expenses, would you please give the Court the range of
24 your income for July and August?

25 A Generally, it has been 1500 to \$2500 a month. I

1 don't recall specifically what it was at that time.

2 Q Okay. And that's what you were saying it was in
3 June as well?

4 A Again, I don't recall exactly.

5 Q But was --

6 A Generally, that's -- I'm saying I don't
7 remember.

8 Q Okay. It was generally in the range of 15 --
9 I'm sorry, a thousand to 2500 in June of 1990.

10 A Again, I don't recall. Everything that
11 happened --

12 THE COURT: Just a moment. You've answered the
13 question. We've gone over this ground about four times.
14 Let's move on, please.

15 MR. WILFRED: Thank you, Your Honor.

16 Q (BY MS. DYCUS) Could you tell me what efforts
17 you have made to find a job.

18 A As I've stated earlier, I've had a job with this
19 one building with the income stated. I could not ignore
20 my responsibilities in --

21 THE COURT: Mr. Wilfred, please answer the
22 question. She didn't ask you to explain why you had or
23 had not, she asked you to --

24 MR. WILFRED: Thank you, Your Honor.

25 A (BY MR. WILFRED) No, I have not made any

1 additional efforts beyond that position.

2 Q (BY MS. DYCUS) Have you, among the other things
3 you've filed, filed a motion to modify your support?

4 A No, I have not. I have not been aware that that
5 was available.

6 Q Okay. How long has your income been zero?

7 A Well, just since the last payment that I
8 received in October, meaning there's no other available
9 funds right now for income.

10 Q Okay. So you've had no income since October,
11 have you had any savings or other sources of cash since
12 October?

13 A No, nothing but credit cards which I'm reluctant
14 to use because that's what got me in a problem with the
15 bankruptcy stuff in the first place.

16 Q Okay. Is there any equity in the marital home?

17 A No, not to my knowledge.

18 Q Okay. Would you describe to the Court what your
19 participation was in the permanent orders hearing.

20 THE COURT: What's the relevance of that?

21 MS. DYCUS: Your Honor, it goes to the issue of
22 res judicata. He is saying that he was not properly
23 represented there.

24 THE COURT: Let's move on. That's irrelevant.

25 MS. DYCUS: Okay. I have nothing further, Your

1 Honor.

2 THE COURT: Each side can say a lot of things.
3 That doesn't make them relevant. They just came in
4 without objection. That's all.

5 THE COURT: Any redirect?

6 MR. FREDERIKSON: None, Your Honor.

7 THE COURT: Any recross-examination based on the
8 other questions?

9 MS. EDINBURG: One moment.

10 (A discussion was had between the Petitioner and
11 her counsel.)

12 MS. EDINBURG: No. I have nothing further, Your
13 Honor.

14 THE COURT: All right. Thank you, Mr. Wilfred.
15 You may step down.

16 MR. WILFRED: Thank you.

17 THE COURT: Mr. Hendrickson, any other
18 witnesses?

19 MR. FREDERIKSON: No further witnesses.

20 THE COURT: Any rebuttal testimony?

21 MS. EDINBURG: No, Your Honor.

22 THE COURT: All right.

23 Ms. Edinburg, any statements?

24 MS. EDINBURG: Thank you, Your Honor. It's
25 clear from the evidence that the permanent orders were

1 entered by Judge Steinhardt June 7th. They remain in full
2 force and effect. No appeal has been taken. No motions
3 for new trial have been filed. No motions to modify child
4 support or maintenance has been filed on behalf of
5 Mr. Wilfred. Mr. Wilfred is a very astute and
6 sophisticated businessman and has been doing most of his
7 own litigation.

8 The orders remain in full force and effect and
9 he has, by his own admission, failed and refused to pay
10 any amount of money for child support or maintenance in
11 almost four months, four months today.

12 He has made --

13 THE COURT: I'm missing something. It's five
14 months.

15 MS. EDINBURG: You're right. I'm sorry, five
16 months. Thank you.

17 He has paid his lease payment for his automobile
18 of \$400. He's continued the car telephone. He has bought
19 food. He has paid a thousand dollars in cash for the
20 transcript. He has paid money for a psychologist,
21 although we have seen no reports that have been filed with
22 the Court.

23 He has continued to live, and he has had
24 anywhere between 1500 and \$4,000 a month, by his own
25 testimony, to have available as monthly income from the

1 Seismograph building.

2 Your Honor, it is clear that Mr. Wilfred fails
3 and refuses to obey this Court's order. Now if he can't
4 pay the \$5,000 a month that Judge Steinhardt ordered him
5 to pay, that's one issue, but to pay nothing for five
6 months is inexcusable.

7 Judge Steinhardt sat on June 7th and told
8 Mr. Wilfred that his first priority each and every month
9 was his son and his ex-wife. Mr. Wilfred still doesn't
10 understand those are his priorities. And please, I urge
11 this Court to impose sanctions on Mr. Wilfred and find
12 that he has willfully and intentionally failed to obey
13 this Court's order and impose sanctions against him.

14 THE COURT: Excuse me just a moment. Let me
15 just tell all parties involved that the way I proceed in
16 this kind of a hearing is first, I decide the issue raised
17 by the citation, which whether he is in contempt or not,
18 and then I will ask each side to make any suggestions
19 about sanctions, if I find he's in contempt.

20 If I don't find he is in contempt, I never need
21 to hear about those. So if you have suggestions, you will
22 get a chance to make those if I find he's in contempt.

23 MS. EDINBURG: Okay. Your Honor, I think the
24 evidence is clear he has made no payments and he certainly
25 has had income to do so since permanent orders, June 7th.

1 You know, I think that's very simple. By his own
2 admissions, he's had between 1500 and \$4,000 a month of
3 income each and every month and has made no payments.
4 That's contempt in my book.

5 And I think that certainly shows an ability to
6 do something. Maybe not 100 percent, but certainly to do
7 something. Thank you.

8 THE COURT: All right. Thank you.

9 Mr. Frederikson, I will give you the choice
10 whether you wish to argue now or let Ms. Dycus argue
11 first. Technicially, she's not an advocate for either
12 side in this case, she's an advocate for the children, but
13 it sounds to me that she's relatively upset at the
14 Respondent for his failure to make child support payments
15 and therefore, you may want to argue after her, so I will
16 give you the choice.

17 MR. FREDERIKSON: I will defer to the GAL.

18 THE COURT: Ms. Dycus?

19 MS. DYCUS: I can be very short, Your Honor.

20 Your Honor, as I've indicated before, to
21 Mr. Wilfred's ability to pay this child support is res
22 judicata. As of the time of the hearing in June, I
23 question him concerning his ability to pay then, and now
24 is very much like punching a marshmellow.

25 There is the indication now that although he was

1 rather specific at times in his direct testimony about the
2 amount of income he has, that he is not even sure whether
3 there was a change in what he now says was income between
4 June, July, and August of 1990.

5 Your Honor, he's now claiming he has no income
6 at all but he's done nothing to find a job. I do have to
7 second Ms. Edinburg's opinion that to make no effort
8 whatsoever under these circumstances is just blatant
9 contempt and it is seriously harming this child.

10 THE COURT: Thank you.

11 Mr. Frederikson?

12 MR. FREDERIKSON: Thank you, Your Honor.

13 The question is whether or not Mr. Wilfred has
14 had ability to make the payments ordered by the Court.
15 What the Court has before it is Ms. Allen's beliefs that
16 there's all this money running around. And Mr. Wilfred's
17 testimony that, in fact, he's basically been living hand
18 to mouth.

19 His business has been continuing the downward
20 slide that started several years ago, and since -- between
21 June and October, his monthly expenses, not counting the
22 extra amounts he's paid in attempting to comply with the
23 Court's order concerning the psychological evaluation,
24 have been approximately equal to his income.

25 That he's been paying the bills that he needed

1 to pay to keep any kind of income at all, to keep his
2 business running. He hasn't been paying anything else.
3 There's been no testimony that he's been going on trips to
4 Hawaii. There's been no testimony that he's been spending
5 money on anything other than his bare necessities.

6 And on those numbers, he simply has not the
7 money left over to pay the maintenance and the child
8 support amounts ordered by the Court. And that was the
9 situation before his last remaining source of income
10 vacated the premises and he's now faced with going out and
11 looking for something else.

12 Mr. Wilfred has been trying to comply with the
13 Court's order as far as the psychological evaluation so he
14 could have a contact with his child. He certainly hasn't
15 been squandering money in any way. He simply hasn't the
16 money to make the child support payments or the
17 maintenance payments, and therefore, the Court should not
18 find him in contempt.

19 THE COURT: All right. Thank you.

20 Any rebuttal argument?

21 MS. EDINBURG: Only, Your Honor, that
22 Judge Steinhardt made a very specific finding in the
23 permanent orders on Page 3 under Paragraphs 8 and 9 that
24 the Court found that the Respondent earns between 10 and
25 \$20,000 per month and certainly is able to make

1 maintenance payments to the Petitioner and therefore award
2 her \$4500 a month as maintenance, and did a retroactive
3 award of maintenance for 12 months totaling \$45,000.

4 Judge Steinhardt found, in Paragraph 9, that the
5 Respondent's gross monthly income exceeded \$10,000 per
6 month, and therefore, the child support of \$1,000 was
7 ordered.

8 Your Honor, Judge Steinhardt spent three days
9 listening to some 10 witnesses presented by us, various
10 bank statements, documents and records, and made these
11 findings. And I agree with Ms. Dycus, that the issue of
12 Mr. Wilfred's ability to pay is somewhat res judicata
13 because permanent orders determined what his ability to
14 pay was, and appropriate orders were entered at that time.

15 And now to come in and say I don't have the
16 money to pay them -- and he's done nothing to file motions
17 to modify or whatever -- is inappropriate. He's not made
18 payments.

19 The findings were made of what his income was
20 based upon documents presented to the Court at permanent
21 orders. I think it's unfortunate that this Court is not
22 in a position of having heard all of that evidence as
23 Judge Steinhardt would have been had she heard this
24 contempt this morning. And clearly, Mr. Wilfred's in
25 contempt. Thank you.

1 THE COURT: All right. Thank you.

2 MR. FREDERIKSEN: Your Honor, since that
3 rebuttal raised issues that certainly haven't been even
4 alluded to in testimony today, may I speak just for a
5 moment?

6 THE COURT: Go ahead.

7 MR. FREDERIKSEN: I was not counsel at permanent
8 orders, I have only representations by other counsel and
9 my client as to what happened. But it's clear to me that
10 Mr. Wilfred's rightfully or wrongfully, at the time of
11 permanent orders, believed that his civil rights were
12 being violated, and he basically--

13 MS. DYCUS: I'm sorry, Your Honor, I have to
14 object. I was not permitted to question along these
15 lines, so I'm --

16 THE COURT: Your objection is overruled. I'm
17 just going to hear. This is argument. This is not
18 evidence.

19 MR. FREDERIKSEN: That what happened at
20 permanent orders is that the Petitioner presented their
21 side and the Respondent, believing that he had other
22 remedies, chose not to the present his side. So I think
23 that the argument based on what Judge Steinhardt
24 determined is basically irrelevant. This Court has got to
25 come back to a determination based on the evidence it has

1 before it today of what Mr. Wilfred's current ability to
2 pay is.

3 THE COURT: All right. Thank you.

4 Let me take just a moment to go through what I
5 have here and then I am going to rule from the bench in
6 just a couple of minutes.

7 (Pause.)

8 The Court has reviewed the testimony presented
9 in this case. I have taken judicial notice of the prior
10 orders issued by the Court as contained in the court file.
11 Let me preface my findings and conclusions by the -- by a
12 statement about the June 1990 proceedings in this case.

13 As both parties have stated, I have not been
14 involved in those, I was not present. I don't have any
15 background concerning what went on except what's in the
16 court file.

17 It is possible that the proceedings were the
18 absolute model of propriety and fairness and the judgment
19 of the Court is the best judgment ever rendered. It is
20 also possible that the Defendant's rights were grievously
21 violated and it was a terribly unfair hearing.

22 It is not for me to decide either of those
23 issues. There is a presumption of regularity which
24 attaches to prior court proceedings. This Court
25 therefore finds that the orders issued by the Court in

1 June are the ones which are in effect and which are issued
2 by a court which had jurisdiction over both the parties
3 and the subject matter.

4 Those orders have not been appealed. There has
5 not been a motion to modify, and I'm not going to make any
6 assumptions that they were, in fact, anything other than a
7 proper proceeding.

8 On June 7th, 1990, the Defendant was present.
9 He was aware of all orders entered by the Court. On that
10 day, the Court ordered him to pay \$4,500 per month
11 maintenance starting June 1st, 1990, and continuing for
12 each month thereafter until further order of the Court.

13 The Court also had had the Respondent to pay
14 \$1,000 per month in child support starting June 1st, 1990;
15 to pay that amount each month thereafter until further
16 order of the Court or emancipation of the minor child.

17 According to the permanent orders finding, the
18 minor child is almost three years old, therefore, the
19 Court concludes the minor child has not been emancipated
20 and the obligation to pay child support still continues.
21 Those were the orders of the Court that the Respondent was
22 aware of and had full knowledge of.

23 The evidence shows that he has made two payments
24 toward that obligation, both of which were made at the
25 approximate time of the permanent orders hearing. Those

1 two payments totaled \$1,100, and those payments were
2 applicable to an arrearage. Therefore, there have been no
3 payments paid -- those payments made toward the
4 maintenance ordered or the child support ordered as of
5 June 1st, 1990.

6 Since five months have passed, that means that
7 the Defendant -- excuse me, the Respondent has failed to
8 pay \$22,500 in maintenance and \$5,000 in child support.
9 As stated by Respondent's counsel, the real issue here is
10 whether or not Respondent had the ability to pay that.
11 The facts concerning his failure to pay are really not in
12 dispute.

13 During that five-month period, the Respondent
14 has continued in the same business he was in at the time
15 of permanent orders. That business has been declining.
16 It is difficult for the Court to determine what the
17 Respondent's income actually is. That that apparently was
18 difficult at the time of permanent orders as well and will
19 continue to be difficult until such time as either the
20 audit is finished or the business affairs are tidied up or
21 some other event of that kind.

22 I am not at this time entering any finding as to
23 what the Respondent's real income actually is. I am only
24 making findings as to what the evidence shows his income
25 is, and the evidence I refer to is the evidence presented

1 for today's hearing.

2 To start with, the evidence consists of the
3 permanent orders that the Court has taken judicial notice
4 of. Those permanent orders contained a finding by the
5 judge hearing the permanent orders that the Respondent
6 earned more than \$10,000 per month and less than \$20,000
7 per month. Since the hearing took place in early June and
8 the findings were made June 7th, the Court will accept
9 that finding as the law of the case for the month of June,
10 1990, and the Court then finds that the Respondent had
11 income greater than \$10,000 for the month of June, 1990.

12 The evidence does not show that he continued to
13 have income in that amount. It shows that he had income
14 for July, August, and September '90 in the approximate
15 amount of \$2,500. This is not a business income. This is
16 personal income to the Respondent.

17 The evidence further shows that he had regular
18 monthly expenses in the approximate amount of \$1300, at a
19 minimum, up to \$1800, at a maximum. Other expenses would
20 come up occasionally which would increase the amount of
21 monthly expenses.

22 The evidence shows that he spent \$1,000 on a
23 psychologist. In the permanent orders, the trial judge
24 suspended the Respondent's visitation rights pending a
25 complete mental health examination.

1 Part of the welfare of the child certainly
2 includes an opportunity to have visitation with his
3 adoptive father. Therefore, it is a very legitimate
4 expense that the Respondent has incurred for the
5 psychologist. \$1,000 to a psychologist spread over the
6 five months amounts to approximately \$200 per month.

7 I realize the evidence does not show when that
8 payment was made so I will just average it out to
9 determine the average expenses and therefore, the Court
10 adds another \$200 per month to the 13- to \$1800 figure
11 quoted by the Respondent.

12 There are certainly other expenses which will
13 come up. I recognize the lack of detail that we've had
14 today concerning financial affairs. According to the
15 Respondent, he's had somewhere between 1500 and 2000 per
16 month expenses at a minimum. It is probably reasonable to
17 conclude that there are extra expenses per month. Those
18 could be another dollar or they could be several hundred
19 dollars. If the Court were to allow an extra 10 percent,
20 we still have expenses from 1650 to \$2,200 per month.

21 During that time period, the Respondent has made
22 some payments on the home. He has made apparently one
23 payment on the Vail condominium, he may have made as many
24 as two payments on the residence. He did pay the business
25 expenses for Wilfred Investments, Incorporated. He paid

1 money for a lawyer for legal advice.

2 He paid \$1,000 to a court reporter to obtain
3 transcripts for use in other legal matters relating to
4 this case. He paid somewhere between 90 and \$180 to a
5 lawn care person to assist him with working around the
6 house on the lawn. He has paid over \$400 each month on a
7 car lease. He has paid payments for a car phone. He has
8 paid utilities from the evidence presented today -- oh,
9 strike that. There was one other finding I wanted to make
10 and that concerned the priority of his payments.

11 At the time of the permanent orders, the trial
12 judge ordered the Respondent to pay maintenance and child
13 support obligations as the first priority each month.
14 From those facts, the Court concludes that the Defendant
15 has not had the ability in July, August, September, and
16 October of 1990 to pay the combined amount ordered of
17 5,500 per month. He has, however, the ability to pay, at
18 a maximum, \$1,000 per month up to a minimum of, perhaps,
19 \$300 per month.

20 Since the Respondent has had the ability to make
21 payments and has not done so, has not done so in full
22 knowledge of the Court's order that he make those payments
23 as a first priority, the Court concludes that his failure
24 to make maintenance and child support payments has been
25 willful.

1 The Court concludes the Respondent has willfully
2 violated the order of Court and the Court finds the
3 Respondent to be in contempt.

4 Are there any suggestions from any parties as to
5 the sanction to be imposed?

6 MS. EDINBURG: Your Honor, on behalf of the
7 Petitioner, I would request that the Court enter a
8 remedial sentence here. It is not the Petitioner's desire
9 that Mr. Wilfred be punished for this. The remedy that
10 we're asking this Court to do is to get the money to the
11 Petitioner and the child.

12 One of the concerns that I had was if the
13 bankruptcy is dismissed or Mr. Hill, the bankruptcy
14 trustee, if he files the complaint and the bankruptcy is
15 dismissed, the \$75,000 will be returned to Mr. Wilfred.

16 One thing that I think this Court can do is
17 enter an order ordering that Mr. Wilfred immediately, upon
18 receipt of the \$75,000 in the bankruptcy registry,
19 deposit that in this court registry for not only the
20 current arrears but the arrears that had accrued up to
21 permanent orders and for payment of the outstanding
22 guardian ad litem fees, the outstanding fees for the
23 visitation supervisor that Mr. Wilfred had hired during
24 the permanent orders, for payments of my fees, and payment
25 for future fees. I think that's one order that the Court

1 can enter in terms of some remedial sentence.

2 With respect to a sentence, I think the Court
3 has the powers to sentence Mr. Wilfred to some jail term
4 until such time as he makes the payments that are due and
5 owing. Now, while he may not have the ability to make all
6 the payments, some money has to immediately go to
7 Mrs. Wilfred given her desperate status. And I apologize
8 for the lack of the detail that we have in this case,
9 Your Honor. That's been our biggest problem for the last
10 year and a half is we don't have detail because
11 Mr. Wilfred won't give us the detail.

12 But I think that clearly, an order that
13 immediately \$5,000 is paid to Mrs. Wilfred within the
14 next, you know, two hours or Mr. Wilfred goes down to the
15 Arapahoe County Jail and sits there until such time as he
16 makes arrangements for \$5,000 or more, if this Court
17 desires more is a more appropriate amount be paid to her
18 and the minor children for their support.

19 The situation is critical and we need the money
20 immediately, and that's the sentence that I would ask of
21 this Court to impose, as well as the attorneys fees that I
22 filed in my attorney fee affidavit be imposed on
23 Mr. Wilfred for causing the problem that we had to come
24 back to court and bring this contempt and that he should
25 be responsible for those fees. Thank you.

1 THE COURT: Thank you.

2 Ms. Dycus, do you have any suggestions as to the
3 sanctions?

4 MS. DYCUS: Your Honor, I believe the Court
5 needs to get Mr. Wilfred's attention. Frankly, I'm not
6 sure whether even jail would do that. I would ask that
7 the Court order him to make up the child support
8 immediately. If any jail sentence is imposed, I would ask
9 that he be given the option of work release so that he can
10 go out and try to get a job so that he can pay his child
11 support.

12 THE COURT: Mr. Frederikson?

13 MR. FREDERIKSON: Your Honor, I think the Court
14 has Mr. Wilfred's attention. I think that a jail sentence
15 would be extremely counterproductive. I think that a jail
16 sentence conditioned on Mr. Wilfred's making payments that
17 he clearly doesn't have the current ability to make, such
18 as \$5,000 within the next couple of hours, is also
19 counterproductive.

20 Mr. Wilfred has indicated to me that he thinks
21 that in most months, he could probably make \$300 a month
22 payments, and I think. You know, if there's going to be
23 some sanction conditioned on his payments, I think the
24 condition should be realistic in light of the evidence
25 before the Court today.

1 THE COURT: Let me ask Mr. Frederikson a factual
2 question. In reviewing the permanent orders, I came
3 across Paragraph 15 where Judge Steinhardt found the
4 Respondent in contempt and ordered him held in the
5 Arapahoe County Jail. Did he actually spend time in the
6 Arapahoe County Jail and if so, how long?

7 MR. FREDERIKSON: Yes, he did. Your Honor,
8 six --

9 MR. WILFRED: Six days, Your Honor.

10 THE COURT: All right. Thank you.

11 First of all, the Court will enter an order that
12 the Respondent pay to counsel for the Petitioner the sum
13 of \$2,084.80 in attorneys fees and costs incurred in
14 bringing this contempt proceeding --

15 MR. FREDERIKSEN: Excuse me, Your Honor, I
16 hadn't really responded to that. I have only one problem
17 with it. There seems to be no --

18 THE COURT: In the interest of time, since we're
19 already after 12:00, I think your point is well taken,
20 Mr. Frederikson. I did not let you examine on this or get
21 into the question of whether these fees were necessary or
22 reasonable. The Court will simply enter an order that the
23 Respondent must pay to the Petitioner the reasonable and
24 necessary attorneys fees incurred in bringing this
25 contempt proceeding.

1 The Court will also enter an order that the
2 Respondent must pay to the Court the costs for
3 court-appointed counsel for this proceeding, and I will
4 defer entering any finding on the amount of either of
5 those attorneys fees subject to any further hearings that
6 might take place. Any hearings as to the amount of
7 attorneys fees would be back in the court to which this
8 case is assigned.

9 I am simply finding the Respondent is
10 responsible for paying them without deciding how much they
11 are. The evidence in this case showed that there is still
12 the sum of \$75,000 being held by the bankruptcy trustee.

13 This Court has no authority to direct that the
14 bankruptcy trustee do anything with that money. The
15 bankruptcy trustee will disburse those funds as directed
16 by the bankruptcy court. Those funds might go to the
17 Respondent's creditors, or it is possible that they would
18 be returned to the Respondent.

19 The Petitioner in this case might be one of the
20 creditors to receive some of those funds or she might not
21 be, depending on the orders of the bankruptcy court. As a
22 sanction for the contempt in this case, the Court will
23 direct the Respondent to file with the bankruptcy court in
24 no later than five days from today's date an assignment of
25 his rights to receive any of those funds should the

1 bankruptcy be discharged.

2 This assignment will be in favor of the registry
3 of the Arapahoe County District Court. Those funds can
4 then be disbursed in payments of any obligations incurred
5 in this case, if there are any funds left over after the
6 maintenance and child support and attorneys fees
7 obligations have been satisfied. Those funds would be
8 returned to the Respondent.

9 There will be an assignment of the funds to the
10 registry of the Arapahoe County District Court for the
11 benefit of the Petitioner, Sandra Wilfred. Since it
12 appears that the arrearage in maintenance is approximately
13 \$60,000, since it appears that the attorneys fees owed are
14 over \$20,000, and since it appears that the arrearage in
15 child support is over \$5,000, or at least \$5,000, the
16 Court will require that the entire \$75,000 be assigned.
17 If those figures are incorrect, the balance can be
18 refunded then to the Respondent if any of it is ultimately
19 paid into the Court.

20 That's the first sanction. The second one is
21 that the Court will simply require the Defendant to
22 continue to pay child support and maintenance as
23 previously ordered by this Court. If the Respondent is
24 not able to pay the amounts ordered by the Court, he is
25 ordered to pay some moneys toward child support and

1 maintenance every month, in a minimum amount of \$500.

2 The Court expressly finds he has the continuing
3 ability to pay those amounts. It also appears from the
4 Court's finding that the Respondent had a great deal of
5 money in June 1990 in excess of his expenses. He has had
6 a minimum of \$300 per month for the past four months in
7 excess of his expenses.

8 The Court will require the Petitioner -- excuse
9 me, the Respondent to pay to the Petitioner through the
10 registry of the Court the sum of \$1,500 by no later than
11 5 o'clock tomorrow, November 8th, 1990.

12 The Court will sentence the Respondent to 60
13 days in the Arapahoe County Jail. That will be suspended
14 on the condition that the \$1500 payment is made by
15 5 o'clock tomorrow, and suspended on the condition that at
16 least another \$500 is paid during the month of November
17 and that the Respondent then otherwise continues to comply
18 with the orders of the Court.

19 Is there anything further at this time by the
20 Petitioner?

21 MS. EDINBURG: Just a point of clarification.
22 So the Court is not making an order for modification,
23 you're leaving --

24 THE COURT: I am not, in any way, modifying the
25 previous orders of the Court. That would have to be the

1 subject of an entirely separate hearing.

2 MS. EDINBURG: I understand. So if Mr. Wilfred
3 makes the \$2,000 a month payment for November and doesn't
4 complete the other award, then your jail sentence would
5 then be imposed?

6 THE COURT: The orders of the Court today as a
7 sanction for him to cure the contempt is to make the
8 payment in the minimum amount of \$500 per month, so if he
9 pays the 2,000 for November and pays at least \$500 for
10 December and months thereafter, then the 60 days continues
11 to be suspended.

12 MS. EDINBURG: I understand.

13 THE COURT: That's not a modification of the
14 prior orders. That's simply a way to -- for him to solve
15 the contempt problem.

16 MS. EDINBURG: Okay.

17 THE COURT: Any further matters by the
18 Respondent?

19 MR. FREDERIKSON: Nothing, Your Honor.

20 THE COURT: By the guardian ad litem?

21 MS. DYCUS: Nothing, Your Honor.

22 THE COURT: All right. I think we probably
23 should have this reduced to writing. Since the history of
24 this case tells me there will probably be future hearings,
25 it would be helpful for the next judge to have this in

1 writing, so please, if you will, Ms. Edinburg, prepare a
2 form of order, submit it to both other counsel, and get it
3 back to the Court within ten days.

4 MS. EDINBURG: I shall.

5 THE COURT: The Court will be in recess.

6 (A luncheon recess was taken at 12:13 p.m.)

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