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DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO
Case No. 89DR477, Division 10

REPORTER'S TRANSCRIPT

In re the Marriage of:
SANDRA WILFRED,
Petitioner,
and
HARMON WILFRED,
Respondent.

The above-entitled matter commenced on Thursday,
February 22, 1990, before the HONORABLE JOYCE S. STEINHARDT,
District Court Judge.

A P P E A R A N C E S

FOR THE PETITIONER: Elaine Edinburg
Attorney at Law
FOR THE RESPONDENT: Richard Moore
Joseph Rosania

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MORNING SESSION, THURSDAY, FEBRUARY 22, 1990

(The Court was in session, and the following proceedings were had, to wit:)

THIS COURT: This is Judge Steinhardt. This is Wilfred, 89DR477. Counsel, make your appearance for the record, please.

MS. EDINBURG: Good morning, Your Honor. Elaine Edinburg, attorney of record, for the Petitioner, Sandra Wilfred.

MR. MOORE: Good morning, Richard O'Brien Moore, from Fred Epstein's office, appearing on behalf of the Respondent, Harmon Wilfred.

MR. ROSANIA: Joseph Rosania, who is Harmon Wilfred's bankruptcy attorney.

THE COURT: Okay, Ms. Edinburg.

MS. EDINBURG: Your Honor, I filed this motion after I spent some time with Mr. Rosania trying to resolve these issues. Is the Court familiar with the essence of the motion?

THE COURT: Yes, I am.

MS. EDINBURG: If I might, Your Honor, the bankruptcy is about to go forward. There is \$75,000 currently being held in the bankruptcy registry that will be disposed of and given to Mr. Wilfred. There's several hundred thousand dollars worth of marital assets, and I'm asking this Court to

1 order that the \$75,000 be transferred from the bankruptcy
2 registry to the district court's registry, or in the
3 alternative, put it in an interest-bearing account requiring
4 the signature of both parties which will be divided at the June
5 5th and 6th permanent orders hearing.

6 THE COURT: Okay. Mr. Moore?

7 MR. MOORE: Thank you, Your Honor. At present,
8 we're going to be heard, Judge, as is reflected on Exhibit 3 to
9 the emergency motion, at a meeting to dismiss the Chapter 11
10 proceeding. The reason behind the request of dismissal and
11 procedure, after a lot of hard work, Mr. Wilfred and Mr.
12 Rosania have been able to negotiate a number with Mr. Wilfred's
13 major creditors, which I might add are marital creditors.

14 Your Honor, those are essentially a house, cars, which
15 will collapse if Mr. Wilfred does not have the funds available
16 to proceed and work this out. I might add, Your Honor, that
17 contrary to some of the comments that appear in the emergency
18 motion, Mr. Wilfred has been keeping up on his child support
19 and maintenance payments. We would indicate that his current
20 income, I believe, is limited to about fifteen hundred bucks a
21 month.

22 The money that he was given by the bankruptcy
23 court has gone towards paying \$1,750 a month under temporary
24 orders in child support and maintenance. Approximately another
25 \$15,000 of that has gone towards, I believe, redeeming certain

1 real property from a foreclosure which otherwise, I believe,
 2 would have been foreclosed except for the bankruptcy
 3 proceeding, and as a matter of fact, have been matters that
 4 also have gone towards attorney's fees in the bankruptcy
 5 proceeding.

6 Furthermore, Your Honor, I believe there is
 7 approximately about \$10,000 of that money left over. If I
 8 could make one proposal, Your Honor, I had spoken at some
 9 length with Mr. Wilfred and Mr. Rosania last evening, and I
 10 appreciate Mr. Rosania making himself available here because
 11 he might be able to offer some valuable information to the
 12 Court. Mr. Wilfred needs about half of the money that would be
 13 disbursed by the bankruptcy court to take care of some of these
 14 immediate obligations until he works out an agreement.

15 If I could ask the Court to do this, to order that ---
 16 well, again, we're dealing in kind of rough figures. The
 17 number I got from Mr. Wilfred was \$37,500, which was about half
 18 of the approximately \$75,000 remaining with the bankruptcy
 19 court. If that could be disbursed to Mr. Wilfred, Your Honor,
 20 again with the understanding being that that would go towards
 21 paying off these debts, which I believe are joint marital
 22 creditors, pursuant to working out an agreement, and that the
 23 balance of that money be deposited with the district court
 24 registry. I would beg the Court to have a review hearing or
 25 telephone conference, some type of hearing, Your Honor, at

1 least by March 15th.

2 Mr. Wilfred has indicated to me that the \$37,500
3 would last about until March 15th until he's worked an
4 agreement, and then if we could have some type of review at
5 that time, clearly, Your Honor, we would provide full
6 accounting of any disbursement and so forth.

7 Whatever restrictions the Court would wish to place,
8 then, at that time, we could determine how the Court might wish
9 to disburse the balance of the funds. As I said, Your Honor,
10 I'm not aware that the Petitioner in this matter has any
11 outstanding debts which require immediate attention. Mr.
12 Wilfred has been paying a substantial amount in child support
13 and maintenance, and he's up to date on those payments.

14 MS. EDINBURG: May I respond, Your Honor?

15 THE COURT: All right.

16 MS. EDINBURG: First of all, this case was set
17 last February. We had two or three extended hearings before
18 the Honorable Virginia Ware, who is the Referee, that lasted
19 several hours. Mr. Wilfred was found at that time to have
20 monthly income in excess of \$5,000. Shortly before the Court
21 was supposed to enter the final order for the temporary orders,
22 Mr. Wilfred filed this Chapter 11 to stop the Court -- this
23 action, and we've been forestalled proceeding with the
24 completion of the temporary orders hearing or getting any
25 discovery in this case, from basically doing anything.

1 Mrs. Wilfred had to hire a bankruptcy attorney and
 2 had to incur the debt of several thousands of dollars. Mr.
 3 Wilfred got this \$125,000 commission check. He did not list it
 4 on his bankruptcy filing nor did he list it on his financial
 5 affidavit. There was money that we found after doing extensive
 6 discovery and working with one of his creditors, and these were
 7 marital assets that was not meant to be used to live off of.
 8 This was money that was going to be used to help him get out of
 9 his bankruptcy. This was almost called a gift or, you know,
 10 a pot of gold that we found. We'd like to preserve this asset.

11 The bankruptcy court has given Mr. Wilfred already
 12 \$50,000 of this money, so Mr. Wilfred has had \$50,000 of the
 13 \$125,000. Now, Mr. Wilfred wants another \$37,500. That would
 14 give him \$87,500 of the original \$125,000. Mrs. Wilfred is
 15 expected to live on \$1750 a month and support herself and their
 16 child. She's been forced to go back into a townhouse in
 17 Denver. This was a very wealth family that lived in Arapahoe
 18 County and lived quite an extravagant lifestyle.

19 She has had to cut back significantly making ends
 20 meet and take care of the child on the basis that he's made a
 21 generous offer that he get another \$37,500 and the Court keep
 22 \$37,500. When we get to permanent orders, he's going to want
 23 to split the \$57,000 with her. Mrs. Wilfred would then end up
 24 with less than 25 percent. We're asking the Court to hold off
 25 on that so that it can't be dissipated further.

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Mrs. Wilfred is more than willing to split the balance of the \$75,000, but she wants half so she can have the ability to pay some of her fees and debts that she's incurred. We've had to go to court and file a bankruptcy to preserve that \$125,000, so I think what Mr. Moore is saying to you is not entirely accurate.

Mr. Wilfred had initially Mr. Seagall represent him in the divorce case. He hired Mr. Seagall, then he hired Mary Kelly. He fired Mary Kelly and he hired Mr. Hinds and Mr. Epstein. Mr. Hinds withdrew from the case, and Mr. Epstein did appear at two of the temporary orders hearings. Mr. Wilfred had four different lawyers appearing in the bankruptcy court. Mr. Wilfred did not like what was happening, so then he now has new Counsel. He seems to have had more than sufficient money to do that while Mrs. Wilfred is clearly put in a disadvantage.

She has had no access to money to pay for her attorney's fees and for anything other than her bear minimum expenses. We don't believe Mr. Wilfred has necessarily done very much to work something out with his creditors. We believe Mr. Wilfred is using the money and dissipating the marital assets.

It's essential that the Court preserve what we found, at least, the balance of the \$75,000 and divide it equally right now, but not give Mr. Wilfred \$57,500 to do what

1 he wants to do and then preserve another \$57,000 that can later
2 be divided. We'd ask the Court not to do adopt Mr. Moore's
3 position because it's clearly not appropriate. That's not fair
4 at this time to the Petitioner. She's clearly been at a
5 disadvantage for almost a year by Mr. Wilfred's bankruptcy
6 filing.

7 MR. ROSANIA: Your Honor, may I address something?

8 THE COURT: Are you the bankruptcy attorney?

9 MR. ROSANIA: Yes.

10 THE COURT: Okay.

11 MR. ROSANIA: Just briefly, Your Honor, I didn't
12 become involved in the case until after Mr. Wilfred did his
13 settlement which led to the source of the \$125,000. I can
14 recommend to the Court that it was ambiguous as to how the
15 settlement funds were paid to him personally or Wilfred
16 Investments with respect to the \$50,000 that Judge Brooks has
17 made available to Mr. Wilfred. It's been used largely for the
18 default on the home, and a large part has been used to pay for
19 the support.

20 My fees have gone to bankruptcy, and we've
21 investigated claims, we've looked at claims concerning Mr.
22 Wilfred and with regard to certain business transactions in the
23 amount of \$5,000 plus. He's got two separate businesses that
24 we think we have part ownership to and a claim in regard to the
25 bankruptcy where we've investigated assets.

1 Mr. Wilfred has entered into and worked out some
2 compensation with his creditors. I can't comment on his
3 earlier activities, but at least since November 1989 when I got
4 involved, Mr. Wilfred has followed very strictly the bankruptcy
5 requirements. Furthermore, Judge, I don't think he filed
6 his bankruptcy last January only to stay the divorce action
7 pending here. He was being sued personally by City Federal.
8 Both of his partnerships were fighting over receivable losses
9 because the bankruptcy was not filed.

10 With respect to the other issues, I have no comment
11 except to say that he needs funds requested by Mr. Moore to
12 work this out in which I'm involved.

13 MS. EDINBURG: Your Honor, this is Elaine Edinburg.
14 I'll tell Mr. Rosania and Mr. Moore because they weren't
15 involved in this case last year, I received a letter from Mr.
16 Epstein in June of 1989, basically setting forth a settlement
17 or he would file bankruptcy to stop the proceedings in the
18 domestic case, so Mr. Wilfred did use the bankruptcy to stop
19 the divorce.

20 Mr. Hinds was aware of that. We negotiated a
21 settlement the day Mr. Wilfred filed bankruptcy. We were
22 stopped from going on with temporary orders after we produced
23 significant evidence that Mr. Wilfred had already disposed of
24 over \$100,000 of various assets and accounts that I had traced.
25 We never got to the conclusion of that hearing and get an

1 award. What ended up happening was that Mr. Hinds and Mr.
2 Wilfred offered to pay \$1750 of child support and maintenance,
3 but I believe the Court would have ordered well in excess of
4 that, and that Mr. Wilfred has been paying that for the last
5 six months with the \$10,500.

6 So, easily almost \$40,000 of additional funds, he's
7 had to do with what he wants, not to mention, Your Honor, all
8 the other sources of money that Mr. Wilfred had. He had
9 rental income from another substantial office building.
10 He has other real estate dwellings.

11 This is not the only money that Mr. Wilfred has.
12 This is one piece of the pie. I really urge the Court not
13 to accept what poor Mr. Wilfred wants and that is have any
14 other money. Mr. Wilfred has had thousands and thousands
15 of dollars.

16 MR. MOORE: I'm sure the opportunity will arise
17 before Your Honor to substantiate any allegations, evidentiary
18 allegations that have been made here, and if the Petitioner
19 believes that Mr. Wilfred has all sorts of income, of any
20 thousands of dollars coming in, I would fully expect her to
21 provide some evidence to that effect.

22 Mr. Wilfred indicated to me that at this time, this
23 total liability comes to between two hundred and sixty to
24 to \$270,000, and Mr. Rosania is probably in a better position
25 to clarify that figure. And, Your Honor, I don't mean for this

1 to sound facetious, but I guess my feeling is, if the
2 Petitioner wants \$37,500 to do with what she wants, is she also
3 willing to accept a proportionate share of the current
4 liability of somewhere around \$130,000 plus.

5 THE COURT: Well, I'm going to stop you right there.
6 This matter comes on an emergency hearing regarding the
7 \$75,000. What I will do is order that when the bankruptcy is
8 dismissed, the \$75,000 shall be placed in the registry of the
9 court. At that time, Mr. Wilfred can file a petition with this
10 Court, telling me what he needs to spend the money on, for his
11 commitments that he has made, and the Court will rule as to how
12 much he will get to spend.

13 MR. MOORE: Your Honor, could I ask the Court's
14 indulgence, could we -- would it be possible to go ahead and
15 send what we've got to Counsel on the phone right now? Is the
16 Court intending to do this by some type of telephone hearing?

17 THE COURT: That's fine, we can have a telephone
18 hearing.

19 MR. MOORE: Could we go ahead and clear a time
20 right now?

21 THE COURT: That's fine.

22 MS. EDINBURG: Your Honor, given the bankruptcy
23 court has indicated the bankruptcy action is being dismissed, I
24 had earlier filed a motion to compel discovery. That's now a
25 year overdue. The Court did not have the power to order that.

1 Would the Court consider renewing the order for discovery so we
2 can see what these liabilities are, what the marital estate is?
3 We're really operating at a loss here.

4 MR. MOORE: Your Honor, I noticed in the file that
5 there was some discovery that was sent to the Petitioner, so
6 perhaps we could just agree that everything will be provide
7 with everything that they have asked for by a date certain.

8 THE COURT: That's fine.

9 THE CLERK: March 5th at 8:30.

10 MS. EDINBURG: I won't be here.

11 THE CLERK: March 8th at 8:30.

12 MS. EDINBURG: That's fine.

13 MR. MOORE: I'm sorry, Your Honor, I'm going to be
14 out in Jefferson County.

15 THE CLERK: March 9th at 8:30.

16 MR. MOORE: That would work. This is Richard Moore.
17 Your Honor, that would work for me.

18 MS. EDINBURG: That's fine with me, Your Honor.

19 MS. DYCUS: Your Honor, it's clear with me because
20 I'll be there.

21 THE COURT: A telephone conference is set for
22 March 9th at 8:30. Counsel, I expect a petition of some
23 sort indicating what it is you want.

24 MR. MOORE: Of course, Your Honor.

25 MS. EDINBURG: Can I have a copy of the written

1 order?

2 MR. MOORE: Your Honor, I'll take care of that.

3 THE COURT: All right.

4 MS. EDINBURG: I do have a written order. I did
5 prepare a written order that we filed.

6 THE COURT: Let me see.

7 MS. EDINBURG: I presume that the Court will sign
8 it?

9 THE COURT: Yes, that's fine.

10 MS. EDINBURG: Thank you.

11 MR. MOORE: I'm sorry, I was shuffling papers, I
12 missed that.

13 THE COURT: I signed the order prepared by Ms.
14 Edinburg.

15 MR. MOORE: Okay.

16 (Whereupon, the Court adjourned this matter.)
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REPORTER'S CERTIFICATE

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The above and foregoing is a true and accurate transcription to the best of my ability of my stenotype notes taken in my capacity as the Official Shorthand Reporter, Division 10, Arapahoe County District Court, Englewood, Colorado.

Dated this 21st day of December, 1990.

Sandie Noblitt

Sandie Noblitt
Court Reporter
Division 10