

1 DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO
2 Case No. 89DR477, Division 10
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4 REPORTER'S TRANSCRIPT
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6 In re the Marriage of:

7 SANDRA WILFRED,

8 Petitioner,

9 and

10 HARMON WILFRED,

11 Respondent.
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13 The above-entitled matter commenced on Tuesday,
14 May 22, 1990, before the HONORABLE JOYCE S. STEINHARDT,
15 District Court Judge.

16 A P P E A R A N C E S

17 FOR THE PETITIONER: Elaine Edinburg

18 FOR THE RESPONDENT: Loyd Percy

19 GUARDIAN AD LITEM: Susan Dycus
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MORNING SESSION, TUESDAY, MAY 22, 1990

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

THE COURT: This is Wilfred, 89DR477. Counsel, make your appearance for the record.

MS. EDINBURG: Elaine Edinburg, attorney of record for the Petitioner, Sandra Wilfred.

MR. PEARCY: I'm Loyd Percy, Judge, for Harmon Wilfred.

MS. DYCUS: Susan Dycus, Guardian ad Litem for the minor child.

THE COURT: All right. This is a Motion to Continue. Go ahead, Mr. Percy.

MR. PEARCY: Yes, Judge, several things. First of all, as I said in my motion, I don't think this case is ready for hearing because there's been no discovery on the part of -- essentially on the part of the Respondent at the time I put in my motion. I didn't know that he had deposed Mrs. Wilfred in bankruptcy court, but, in fact, that deposition dealt almost exclusively with her role as a member of the board of directors of one of his entities, and certainly, I think it's self-evident that the issue there, and the issues in this case are quite different.

There are other people that I think need to be deposed, of course, and one critical one, it seems to me, is

1 Mr. Campbell, who now has observed Mr. Wilfred's interaction
2 with this child, by my count, for more than 500 hours, and
3 he seems to me to be a critical witness, and we would want
4 to depose him, and that's in the interest of time; that we
5 would sort of summarize that there's been essentially no
6 discovery made on Mr. Wilfred's behalf to this point.

7 I would say that I do have in my file a set of
8 interrogatories and request for production of documents that
9 Ms. Mary Davis -- I'm sorry, Mary Kelley certified that she
10 had sent to the Petitioner on May 5, 1989. Mr. Wilfred
11 can't recall that those were ever answered, but apparently
12 there was no follow-up, so there has been no effort at
13 discovery, so that's my first point, Judge, and I think
14 that's a major point.

15 The other thing that troubles me about the case
16 is, and I'll try to summarize this objectively, but as I've
17 heard from my client, the approach has been by the Petitioner
18 with respect to his religious faith and practice, or something
19 like this, that he's so eccentric in his religious faith
20 and practice, that he must be an unfit parent or that it's
21 dangerous for the Court to allow him to visit his child
22 without supervision and so forth.

23 I put that together with what he tells me about
24 what has happened to this point and in the hearings to
25 this point, which is that the Petitioner has almost finished

1 her side of the case in those hearings. Respondent's
2 case in chief has never been started to this point, so at
3 this point, Mr. Wilfred has not had his say, and if he
4 has to go into the permanent orders on this issue that I
5 think has some constitutional implications to it, he still
6 won't have had his say.

7 You know, what I would like to see happen on that
8 issue, is a real good pretrial process where the Court
9 determine whether that's connected between religious
10 eccentricities as seen per say connected to his parental
11 ability or even to emotional stability. I'd like the
12 opportunity to try to maybe secure proof of that, and I
13 don't think that he has been given that opportunity yet.

14 Judge, in the interest of time, let me just
15 respond briefly to the response that Ms. Edinburg was kind
16 enough to fax to me yesterday. We take issue with several
17 things. I'm now going to her document, if you're following
18 this. In paragraph 2, she says, "In desperation, he has
19 again hired another attorney at the eleventh hour to attempt
20 to delay this matter." Judge, I think it's real critical
21 to remember what happened here. He had two attorneys. One
22 of them moved to withdraw for lack of payment of the fees.
23 Almost immediately after the stay of execution was lifted by
24 the bankruptcy court, I'm talking about Bob Hinds, he filed
25 his motion in January, and the Court granted it in February.

1 We then come up to April, and Mr. Epstein moves
2 to withdraw, and the only argument they give for withdrawing
3 was Mr. Epstein had died and the professional corporation
4 was dissolving. So, at the time that Your Honor granted
5 Mr. Hinds' motion to withdraw, there was another very
6 competent attorney still in the case on Mr. Wilfred's behalf.
7 He dies, and the reason we're talking about this today is
8 because Mr. Epstein otherwise --

9 THE COURT: Mr. Epstein's various cases are being
10 continued to other lawyers without any problem, so I
11 understand Mr. Epstein died. You know, that's a sad kind of
12 thing, and nobody could help what happened to Mr. Epstein.

13 MS. EDINBURG: Your Honor, Mr. Epstein did not --

14 THE COURT: Just a moment. Just a moment. I'm
15 talking. So, go ahead without belaboring that, Mr. Pearcy.

16 MR. PEARCY: Let me move to another issue here
17 in response. It says he has made every attempt to
18 complicate this matter and delay a resolution and just
19 prior to what I read was referenced to the bankruptcy,
20 Judge, what happened in the Chapter 11 bankruptcy is
21 Mr. Wilfred, and this is a matter of record, he negotiated
22 the release of more than \$20 million of debt that he had
23 personally guaranteed. That was substantive procedure.
24 There was nothing about it that was done to delay the
25 divorce case.

1 One other thing, in the response, it says, "After
2 Respondent's request for continuance was not granted at the
3 pretrial conference, Respondent advised Petitioner that he
4 would no longer be making maintenance and child support
5 payments." There's two things wrong with that statement.
6 First of all, there was no connection between the two, and
7 you know, all we know is what Mr. Wilfred told Mr. Campbell
8 to tell the Petitioner which was, he did not have the
9 money to make the May 15th payment. He would make the
10 May 30th payment in full, and as he could, make up the
11 payment that he had missed.

12 This is the first time that he's missed in more
13 than approximately a year and a half, but apart from that,
14 the response that he had made about losing his motion to
15 continue and not making the payment is just not true, and
16 I wouldn't want that to prejudice the Court in your
17 consideration of my motion.

18 THE COURT: Ms. Edinburg.

19 MS. EDINBURG: Your Honor, I assume the Court has
20 received the response we filed yesterday afternoon?

21 THE COURT: Yes, Ma'am.

22 MS. EDINBURG: I'm going to deal with Mr. Pearcy's
23 comments. First of all, Mr. Wilfred hired Mr. Seagall who
24 appeared in your court on a three-hour motion to set aside
25 the T.R.O., and Mr. Wilfred had full opportunity to present

1 his side of the case. After Mr. Wilfred and his witnesses
2 testified, Your Honor denied his motion to set aside the
3 restraining order. We then set a temporary orders hearing.
4 Mr. Seagall requested -- Mr. Wilfred fired Mr. Seagall and
5 hired Ms. Kelley, who never formally entered her appearance.
6 Ms. Dycus and I set up a meeting with Ms. Kelley to solve
7 some of the issues, and Mr. Wilfred fired Ms. Kelley and
8 hired Mr. Hinds and Mr. Epstein. There were two temporary
9 orders hearings in June. Mr. Wilfred then filed a
10 bankruptcy which stayed the proceedings in state court, and
11 it was Mr. Wilfred saying to Referee Ware, "I can't go
12 forward because you don't have any jurisdiction now because
13 I filed bankruptcy."

14 So, Mr. Percy's statement that this Court did
15 not get to hear Mr. Wilfred's case is because of his own
16 actions. He deliberately filed the bankruptcy before the
17 July 7th continued temporary orders hearing, and that stayed
18 us from proceedings to conclusion with the temporary orders
19 hearing, and Ms. Dycus can verify that.

20 That he's eccentric in his religious practice is
21 his own business, Your Honor, but what it comes to is what it
22 does to his two-year old child, and my client and I have
23 been concerned about Mr. Wilfred's behavior that came out in
24 testimony, which has, in fact, put this child in danger both
25 emotionally and physically.

1 When Mr. Wilfred appeared in front of the Court on
2 May 8th, you asked him very clearly, did he intend to
3 represent himself. He said, yes, he did. You made certain
4 pretrial orders. Mr. Wilfred still has not complied with
5 those orders. You ordered him to get me all of the
6 documents from the bankruptcy court, and of all of his bank
7 statements within five days. That was almost two weeks
8 ago. I've got not one document from Mr. Wilfred. Mr.
9 Wilfred does exactly what he wants to do and does not obey
10 Court orders. My client needs to get this permanent orders
11 resolved. We're arguing again on this, I'm repeating myself
12 in terms of what I already said on May 8th.

13 Mr. Percy does not have a proper understanding of
14 this case, unfortunately, and neither does anybody else that
15 Mr. Wilfred seems to manipulate. Mr. Moore and Mr. Epstein's
16 office handled the telephone conference on February 22d with
17 Your Honor when I made a motion for this Court to take
18 jurisdiction over the \$75,000 that remained in the bankruptcy
19 court, and Mr. Moore more than competently handled that
20 telephone conference, and he was more than willing to
21 represent Mr. Wilfred, but for some reason, that did not
22 work out.

23 Mr. Wilfred has filed lots bankruptcy and civil
24 suits. He's had lots of opportunities to harass my client.
25 My client has no information. My client left this house

1 in desperation one morning, and she took her son and herself
2 and sought shelter. She has no documents. She has no
3 information. There's no discovery that he can get from
4 her that's going to be helpful other than this harassment.
5 She does not know anything. He's the one that has had all
6 of the ability to manipulate and to do whatever he seems
7 to do with some ten different corporations, and I have now
8 last week, had to go through and subpoena all the bank
9 statements, all the bank accounts the Court ordered Mr.
10 Wilfred to produce to me that he still has not produced
11 to me.

12 We're ready for hearing on June 5th and 6th,
13 Your Honor. Please don't grant this motion for continuance.
14 This case has been pending for over a year and a half now.

15 THE COURT: Ms. Dycus.

16 MS. DYCUS: Your Honor, Susan Dycus. I really
17 want to reiterate what we talked about at the May 8th
18 pretrial. This has been pending for a long time. I think
19 the child really needs a resolution. I also agree that
20 the religious practice is not the issue. The issue is
21 Mr. Wilfred's emotional stability. What's more, that is not
22 a new issue. Much of the testimony taken at the temporary
23 orders went directly to this issue.

24 I'm also concerned, Your Honor, that Mr. Wilfred
25 advised the Court in his motion to continue filed May 8th

1 that he had no funds available at this time for retainer.
2 Then, apparently in the interim, something has improved
3 financially because Mr. Pearcy advised the Court in his
4 motion that Mr. Wilfred is current on his financial statement.
5 I'm not certain that that's the case, but it appears that
6 one day he would be broke, and the next day, he had enough
7 money to hire an attorney, and I certainly don't want that
8 to happen at the expense of the child being able to eat.

9 I think we need to get this resolved. Your Honor,
10 I don't think the delay is going to assist Mr. Wilfred in
11 preparing his case. He, unlike both I and the petitioner,
12 have had an opportunity to offer four or \$500 to talk
13 with Mr. Campbell, so any question about what Mr. Campbell
14 might say, I think, he's also aware of, and certainly is
15 able to be aware. I would strongly urge the Court to deny
16 the continuance again.

17 THE COURT: Okay.

18 MS. EDINBURG: Your Honor, I spoke with Mrs.
19 Wilfred this morning just before the Court initiated the
20 telephone conference. She still has not received the second
21 half of the May child support payment which was due May 15th,
22 and it's now May 22d.

23 THE COURT: Okay. The motion to continue is
24 denied. There's plenty of time to depose either Mrs. Wilfred
25 or other witnesses you need, Mr. Pearcy.

1 MR. PEARCY: Judge, could I just ask, are we
2 making a record of this?

3 THE COURT: Absolutely.

4 MR. PEARCY: Can I respond to several things that
5 were brought up since I spoke last?

6 THE COURT: Yes.

7 MR. PEARCY: As far as the financial issue is
8 concerned, Mr. Wilfred has paid me a retainer of \$100. He's
9 told me that he may have to cut that monthly payment down
10 to \$50 per month, so there is certainly no money being
11 diverted into financing -- spending for an attorney. The
12 other thing that I would just say for the record, is I
13 failed to see, honestly in my own mind and heart, where the
14 prejudice is in taking another two or three months, if that's
15 what it takes to do this in an ordinary manner.

16 THE COURT: Mr. Percy?

17 MR. PEARCY: Yes.

18 THE COURT: You're just rearguing this.

19 MR. PEARCY: Okay.

20 THE COURT: The motion to continue or to vacate
21 the June 5th and 6th hearing is denied. The matter will
22 be heard on June 5th and 6th.

23 MS. EDINBURG: Thank you, Your Honor.

24 MS. DYCUS: Thank you, Your Honor.

25 MR. PEARCY: Thank you, Judge.

(Whereupon, the Court adjourned this matter at
10:12 a.m.)

REPORTER'S CERTIFICATE

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 2d day of January, 1991.

Sandie Noblitt
Court Reporter
Division 10