

IN THE FAMILY DIVISION
 IN THE SECOND JUDICIAL DISTRICT COURT
 OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE
 BEFORE THE HONORABLE CHARLES WELLER

ooc

IN THE MATTER OF THE DIVORCE
 OF
 ANDREW EARL FURER,
 and
 ELOISA BESADA FURER.

Case No. DV04-01626
 Dept. No. 5

TRANSCRIPT OF PROCEEDINGS

VOLUME III

Wednesday, April 12, 2006

RENO, NEVADA

REPORTED BY: MICHELLE BLAZER
 CCR #469 (NV) - CSR #3361 (CA)

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1 MR. MARKS: On the photos, your Honor, can it be
 2 that the photos are transmitted and --
 3 THE COURT: I am not going to do anything about
 4 the photos. If you have got time at the end of the five
 5 days, you can do it.
 6 If you have got time. If not, we will do it at
 7 the final hearing.
 8 We have got ten minutes left and I want to deal
 9 with this money; okay? If there is time, I will talk
 10 about the photos, but I would assume the money is more
 11 important to you than the pictures.
 12 MR. MARKS: Sure, sure.
 13 THE COURT: I will tell you what my inclination
 14 is. I have heard a lot about whether Mrs. Furer has
 15 business sense here. It sounds like counsel's very
 16 content that she has business sense to get about 12
 17 million dollars tomorrow.
 18 MR. MARKS: Do you want me to respond to that?
 19 THE COURT: Yeah, it is a question, I guess.
 20 MR. MARKS: I mean under the law, if you are
 21 under the law of community property which I think applies
 22 here, presumptively the standard for receiving one-half
 23 of the community property is different than the standard
 24 on the case law that I have argued as to the validity of
 25 an agreement.

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1 THE COURT: I understand. My question to you
 2 is, do you think that if your client receives that size
 3 of amount of money, it is my understanding that the
 4 husband in this case has managed the money over the
 5 course of the marriage.
 6 MR. MARKS: Right.
 7 THE COURT: Is your client prepared to deal with
 8 a sum of that size?
 9 MR. MARKS: She is going to have to be prepared
 10 at some point or other in the case, because she's
 11 entitled to her share.
 12 The issue is when? Do we wait? It should have
 13 been rendered, I think, you know, two years ago.
 14 THE COURT: My question is, is she prepared
 15 today? Is she prepared now?
 16 MR. MARKS: Well, let me just, from my prior
 17 conversations, I believe she is.
 18 THE COURT: Okay.
 19 MR. MARKS: I guess Mr. Fortney is an advisor,
 20 they have always had advisors, Mr. Simonian, Fortney is
 21 an advisor, they have always had an advisor, Mr. Simonian
 22 in San Francisco, they have used financial advisors, they
 23 could continue to do that. I mean, they could continue
 24 to use the same advisor or another advisor.
 25 THE COURT: You indicate that your fees in

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1 recent months have been averaging fifty, \$60,000 a month?
 2 MR. MARKS: Yes.
 3 THE COURT: Mr. Robison, have Mr. Furer's fees
 4 been in those approximate amounts?
 5 MR. ROBISON: I don't know, you know, I haven't
 6 even looked at my bills. I don't even know if they are
 7 paid. It's just not my --
 8 THE COURT: Mr. Furer, have your bills been
 9 around that much?
 10 MR. FURER: My bills from Mr. Meador have been
 11 more in the 20 to \$25,000 range. I have gotten a couple
 12 of bills from Mr. Robison that have been in the 15 to
 13 \$25,000 range.
 14 THE COURT: So you are spending \$40,000 a month?
 15 MR. FURER: It depends very much on how much
 16 activity there is, I don't know what my bills are for
 17 this trial.
 18 THE COURT: Okay. There is a case called
 19 Sergeant versus Sergeant. What it says is that it is my
 20 obligation to allow the parties to meet each other on an
 21 equal playing field in litigation.
 22 MR. FURER: May I inquire, because I am not
 23 familiar with Nevada divorce law, I really don't
 24 understand this, your Honor. I signed an agreement with
 25 my wife, she was advised by counsel, it's our contention

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1 that there was full disclosure.
 2 THE COURT: Yes.
 3 MR. FURER: In that agreement there was a waiver
 4 of temporary alimony and general alimony, and a waiver of
 5 attorneys' fees to proceed with this legislation -- this
 6 litigation, I am sorry.
 7 I have heard the Sergeant case, I have never
 8 read it but I was told that is a case of what a judge can
 9 do in a case where there is no marital agreement between
 10 the parties, and you know, people in this state are
 11 allowed to waive the right to assistance of counsel in a
 12 death penalty case, they are allowed to waive their right
 13 of self-incrimination, they are allowed to waive
 14 constitutional rights.
 15 It is our contention your Honor, that that
 16 waiver is perfectly valid.
 17 THE COURT: I understand that.
 18 MR. FURER: And also, sir, it is our contention
 19 that there is a severability clause in this agreement
 20 which I understand to mean that if some part of the
 21 agreement is found to be invalid, that does not mean the
 22 remainder of the agreement is invalid.
 23 We have respectfully requested your Honor to
 24 determine whether those waivers are valid.
 25 THE COURT: I understand, and that's a very good

1 summary of your case, and you know, their case has words
 2 like fraud, undue influence, unconscionability in it, and
 3 that's what you guys have asked me to decide, and I
 4 promise I will do the best I can for you but between now
 5 and then what do we do? Do we assume that your side
 6 prevails or do we assume that their side prevails? We
 7 can do neither.

8 MR. ROBISON: Your Honor, let me respond.
 9 That's a good question, your Honor, but there is a
 10 substantial due process issue here.

11 We are in the middle of a trial, Phase I, to
 12 determine the validity of two contracts and whether they
 13 have been breached and now we are arguing whether or not
 14 there is going to be a distribution of the estate without
 15 a motion pending.

16 THE COURT: Let me -- let me save you a little
 17 bit of time. Let me tell you what I am inclined to do,
 18 okay?

19 What I am inclined to do, sir, is take you up on
 20 half of your offer where you offered \$200,000, order you
 21 to pay a hundred thousand dollars, which is the amount of
 22 attorneys' fees that they are telling me that are
 23 outstanding, and to split your monthly income.
 24 Right now she is receiving \$60,000 a month. I
 25 am informed by their motion that your monthly income,

1 passive, all of it is \$225,000. I am inclined to cut
 2 that in half on an ongoing basis until this case is
 3 resolved.

4 MR. ROBISON: What's the figure again?

5 THE COURT: 100 and what would it be, 117, five?
 6 Half of it. Is that the -- is that the number from your
 7 motion? I believe that it is.

8 MR. FURER: Your Honor, my monthly income
 9 fluctuates. Most of this depends on Washington,
 10 depending on -- most of it is invested in bonds and our
 11 Washington Mutual stock.

12 THE COURT: I think that number is based on an
 13 annual --

14 MR. FURER: That number fluctuates, so is it
 15 possible to go based on what the income actually is as
 16 opposed to some -- which I could provide statements.

17 THE COURT: The reason I would prefer to pick a
 18 number based on an average is two reasons: One is all of
 19 our statutes that talk about child support and spousal
 20 support do that, we use an average, and so that's one
 21 reason, and the other reason is there is less possibility
 22 of contention.

23 If we pick an average and then you can budget
 24 for it to work out, some months you will keep more money,
 25 some months you will pay more money, but it will average

1 out over time. It is certainly my hope that we are going
 2 to have this case finished completely before it snows
 3 again.

4 MR. FURER: Your Honor, are you telling me that
 5 I cannot get an adjudication of my claim in this court
 6 about whether that waiver of alimony is valid?

7 THE COURT: You will get that, but you won't get
 8 it today. I need to hear five days in May before I am
 9 going to rule on that.

10 MR. ROBISON: And if he prevails and if he is
 11 entitled to damages and if we prevail on that issue and
 12 the money is gone?

13 THE COURT: Well, I imagine then both of you are
 14 going to argue about the significance of that, but I will
 15 say that nothing is precluded.

16 MR. ROBISON: If under this, the court's order,
 17 we are entitled certainly to argue that this should be
 18 reimbursed, if not damages if prepayment of alimony which
 19 the contract forbids.

20 THE COURT: I see no reason to preclude any
 21 argument from either side. So could there be a
 22 rebalancing? Yes. Is somebody going to say there
 23 shouldn't be one? Obviously, and I am not going the
 24 prejudice how I'd rule.

25 MR. ROBISON: I haven't got the numbers yet,

1 your Honor, I am a little slow on the draw on these
 2 numbers.

3 MS. PETRONI: She wants her pictures.

4 MRS. FURER: Your Honor, this is the only
 5 picture, your Honor, of my son.

6 THE COURT: Ma'am, you will just have to control
 7 yourself for a moment; okay? We need to finish what we
 8 are talking about.

9 MRS. FURER: Okay. Go ahead.

10 THE COURT: Go ahead.

11 MR. ROBISON: Your Honor slid right by me the
 12 numbers.

13 THE COURT: My understanding is they have about
 14 a hundred thousand dollars of attorneys' fees unpaid, so
 15 my -- as I say, my inclination is to order you to pay,
 16 and then my understanding is the average monthly income
 17 that these parties have is \$225,000, and to split that
 18 50-50.

19 MR. ROBISON: \$225,000 a month.

20 THE COURT: \$225,000 a month is what I believe I
 21 understand from the defendant's motion, that they are
 22 asking for half of that on an ongoing basis.

23 MR. ROBISON: So you are suggesting that he pays
 24 a hundred thousand dollars in fees and from this point
 25 forward until we resolve these issues, \$125,000 per

ORDER

ORDER

ORDER

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1 THE COURT: All right. I understand about the
 2 money. Now the question is on the originals and the
 3 copies, and I have a solution if you don't want to offer
 4 the originals, and my solution would be that you make two
 5 identical piles of the pictures, with some originals, and
 6 some copies.
 7 MR. FURER: I think we offered the originals.
 8 THE COURT: Well, if you want to give the
 9 originals that settles it, but if not, you make two piles
 10 of the identical pictures and they get their choice of
 11 the two piles.
 12 MR. FURER: That sounds reasonable to me.
 13 MR. MARKS: Thank you, your Honor.
 14 THE COURT: Okay. There is still -- thank you,
 15 sir, for your offer, and thank you, ma'am, for your
 16 acceptance. I hope it's the beginning of some
 17 rapprochement.
 18 How about they want another \$50,000, you want to
 19 make any suggestion on that, sir? They want another
 20 \$50,000 for the month of April.
 21 MR. FURER: I just gave her the 10,000 for the
 22 Paris apartment.
 23 THE COURT: Okay.
 24 MR. FURER: So --
 25 MR. MARKS: Your Honor, we don't view that as

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1 this? We will try to --
 2 MRS. FURER: Why don't you let this judge do it?
 3 MR. ROBISON: You have got staff, you know, you
 4 got staff, can't we discuss this and we will get going
 5 and we will try to select somebody. If we can't, we will
 6 use you.
 7 THE COURT: Fine, okay. If you can't find
 8 somebody else, you can use me. Okay. I will see you in
 9 May, if not sooner.
 10 Thank you.
 11 THE BAILIFF: All rise.
 12 (Court adjourned at 5:22 p.m.)
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1 giving, 'cause that's out of the community funds to
 2 maintain everything.
 3 THE COURT: I understand your position. I
 4 ordered that it started on May 1st, that will remain the
 5 order, it will start on May 1st, and I will see you all
 6 on May the 1st.
 7 MR. MARKS: Do you want to order settlement
 8 conference, your Honor?
 9 THE COURT: I will be glad to order a settlement
 10 conference if that's what you'd like. I need to think
 11 about who you want as settlement judge, whether you want
 12 it to be me or someone else, and if you are ready to say
 13 it right now, you can, and if you need to think about it
 14 for a day or two, you are welcome to do that.
 15 MR. ROBISON: Just need calendars, your Honor.
 16 MR. MARKS: With who?
 17 THE COURT: Who do you want to do the
 18 settlement --
 19 MR. ROBISON: Well, listen, we proposed two
 20 names, they nixed them both.
 21 THE COURT: I understand.
 22 MR. MARKS: And we proposed some names.
 23 THE COURT: Do you want to pick somebody else
 24 outside or do you want to get this judge?
 25 MR. ROBISON: You got staff, can we discuss

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1 STATE OF NEVADA)
 2) ss.
 3 COUNTY OF WASHOE)
 4
 5 I, MICHELLE BLAZER, a Certified Court Reporter
 6 in and for the State of Nevada, do hereby certify:
 7 That said transcript which appears hereinbefore
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