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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF WILMA WILLIAMS AND FRED WILLIAMS JR.

Upon the Petition of
WILMA WILLIAMS,

Petitioner/Appellant/Cross-Appellee,

And Concerning
FRED WILLIAMS JR.,

Respondent/Appellee/Cross-Appellant.

Filed June 4, 1986

5-598
85-331

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Appeal from the Iowa District Court for Sac County (No. DM 594) - Louis F. Beisser, Judge.

Wife appeals and husband cross appeals from the property division of their dissolution decree. Husband also requests spousal support. **AFFIRMED AS MODIFIED.**

Ned A. Stockdale, Ft. Dodge, for petitioner/appellant/cross-appellee.

Thomas L. McCullough, Sac City, for respondent/appellee/cross-appellant.

Considered en banc.

SACKETT, J.

Petitioner Wilma Williams appeals from that portion of the trial court order dividing property in her dissolution action. Fred Williams cross appeals from the property division and contends he should have spousal support.

Wilma and Fred were married in 1946. During the marriage they acquired considerable real and personal property located in Iowa and Missouri. They also acquired substantial liabilities.

Wilma filed a petition for dissolution in November, 1982. The decree was not entered until February, 1985. The ensuing period saw a barrage of court involvement including a prior appeal to this court Williams v. Richardson, 368 N.W.2d 734 (Iowa App. 1984)(an unreported case of certiorari against the trial court for finding Wilma in violation of certain court orders; the writ in said cause was annulled).

When the matter finally came for trial the trial court first heard evidence and then appointed a special master. The special master also heard evidence and entered a report setting forth a determination of the parties' assets, liabilities and unresolved financial issues. The trial court again heard evidence and entered an order, judgment and decree dissolving the marriage. In the decree the trial court ordered each party have certain property as their sole property and the balance of the property be sold and certain debts be paid. The trial court ordered the master to reconvene to hear additional evidence regarding the acquisition of certain stock. The trial court also determined it would make a disposition of the funds from the sale of property after the stock issue was determined.[1]

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[1] From the language of the opinion we would assume the trial court probably would have divided the remaining property equally between the parties.

Petitioner appealed and respondent cross appealed from the decree. Both parties have treated the decree as a final order despite the trial court's failure to resolve all issues.

We determine the order is a final order despite the trial court's reservation of issues. A decree which dissolves a marriage but reserves a subsidiary issue for future determination is nevertheless a final decree for purposes of appeal. See Petition of Fenchel, 268 N.W.2d 207, 208-09 (Iowa 1978). Our rules contemplate one final decree. A marriage may be dissolved only once. Dissolution decrees in which issues are reserved are disapproved. See Fenchel, 268 N.W.2d at 208; Shipley v. Shipley, 182 N.W.2d 125 (Iowa 1970).

The trial court lost jurisdiction to divide the property and determine the remaining issue because of the appeal. After an appeal is perfected the trial court has no further jurisdiction over the controversy until some part thereof is remanded back for further action. In re Marriage of Novak, 220 N.W.2d 592, 596 (Iowa 1974).

This is a court of review without original jurisdiction to retry dissolution proceedings. Our review of litigated dissolution proceedings is de novo on issues properly raised of record below. In re Marriage of Huston, 263 N.W.2d 697, 699 (Iowa 1978).

PROPERTY

The master determined property values of various marital assets. In her brief Wilma generally accepts the report of the master and the values found by him. Fred does not challenge the master's values. The master found the parties at time of trial had known assets of $670,995.47 and known liabilities of $144,403.05.[2]

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[2] This figure does not include a $250,000 confession of judgment and a $250,000 mortgage given by Fred to his attorney, Thomas McCullough, and Don Bierstedt.

Wilma is a U.S. postmaster and earns $27,000 annually. She has held the job since 1970. Fred has been involved in numerous businesses and farming interests. He claims to be without current income. The parties' principal assets were in the various business interests Fred controlled.

Wilma filed her dissolution petition in November, 1982. At that time the trial court entered an ex parte order enjoining Fred from encumbering property and destroying, altering or concealing records. After notice and hearing the injunction was affirmed in December, 1982, and made applicable to Wilma. It was affirmed again in June, 1983, and May, 1984.

Wilma contends she should be awarded all the remaining property of the parties because of Fred's disposition of property after she filed a petition for dissolution, his concealment of property and business records and his violations of discovery orders.

DISCOVERY

After the petition was filed both parties invoked discovery procedures. Discovery procedures are designed to implement, not to impede fair and speedy determinations of cases. See State v. Marchellino, 304 N.W.2d 252, 257 (Iowa 1981). The functioning of discovery rules depends upon each party fulfilling his or her obligation thereunder. See Penthouse, International, Ltd. v. Playboy, 663 F.2d 371, 390 (2d Cir. 1983). Discovery works most effectively when parties and their attorneys enter into it in a spirit of cooperation, mindful its purpose is to expedite the delivery of justice.

Discovery procedures have been subject to frequent criticism: (1) The person commencing discovery is criticized for utilizing the shotgun approach. Every conceivable question is asked. The result is the party responding to discovery is forced to spend an unreasonable amount of time supplying information and answering questions which are hardly relevant to the issue at hand. (2)

The person answering is criticized for providing evasive answers and utilizing unreasonable technicalities to avoid responses.

This cause provides examples of both problems. Petitioner filed 51 interrogatories.[3] Many of the interrogatories had numerous subparts. Respondent immediately returned the same 51 interrogatories.

Petitioner used the shotgun approach,[4] and respondent followed suit. Unfortunately, the stage was set for an exchange that impeded, not implemented, a speedy determination of the cause.

A certain amount of inconvenience inheres in discovery and must be tolerated by the parties. Pollock v. Deere and Co., 282 N.W.2d 735, 739 (Iowa 1979).

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[3] Iowa R. Civ. P. 126(a) provides: "A party shall not serve more than thirty interrogatories on any other party. . . ." Neither party initially challenged the number of interrogatories served.

[4] We set forth one of the interrogatories with its eleven sub parts:

2. In regard to your mental and physical health, state;
   - a. What the condition of your mental and physical health at the present time is.
   - b. If you have any infirmities or chronic ailments.
   - c. If you have had any nervous breakdowns, nervous disorders or any type of mental illness.
   - d. If you have had any physical infirmities or chronic ailments in the past ten years.
   - e. The details of any nervous or mental illness you have had.
   - f. The details of any physical infirmities or chronic ailments in the past ten years.
   - g. The name and address of each doctor treating you for any nervous or mental illness which you have had.
   - h. The name and address of each doctor treating you for any physical ailments or conditions in the past ten years.
   - i. The period each doctor listed in g and h above treated you.
   - j. The ailment, illness or condition for which each doctor listed in g and h above treated you.
   - k. The name and address of any hospital or institution to which you were admitted for any ailment, illness or condition listed in c and d above and the ailment, illness or condition for which you were treated in such institution.

For the discovery process to serve its purpose, however, it is necessary that the party utilizing discovery weigh its requests and make reasonable use of the process. The need to make a reasonable use of the process becomes even more important where, as here, the party ultimately is required to seek the assistance of busy trial judges to obtain discovery.

Wilma entered the discovery process at a substantial disadvantage. Fred had been in control of the business interests, including interests in the State of Missouri.[5] Furthermore, shortly after the dissolution was filed Fred moved a large number of business records from the parties' home. Wilma had to start from the beginning to locate and value marital assets and liabilities. The parties' relationship during the proceeding has hardly been cordial.[6]

We have carefully examined the voluminous files, the records, and exhibits in this cause. We find Wilma filed a total of eleven motions to compel discovery. We clearly find Fred made no attempt whatsoever to offer his cooperation to implement the discovery process. We determine Fred made numerous efforts to impede the process. There are many and numerous examples. We look at responses Fred made to several interrogatories:

> 27. If any person, firm or business entity holds or owns any property for your benefit, for each parcel or item of property, state:
> a. The name and address of each such person, firm or business entity.

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[5] In an early motion Wilma sought to have Tom McCullough removed as attorney for Fred, claiming McCullough had represented both of them in their various business interests. The motion was successfully resisted by Fred who claimed he controlled the business interests and Wilma had had little contact with McCullough.

[6] An interrogatory given to Fred was answered as follows:

3. If anyone in your household has any infirmities or ailments, state:
a. Who has the infirmity or ailment.
ANSWER: Wilma Williams
b. The extent of the infirmity or ailment.
ANSWER: Just plain meanness.

ANSWER: Not that I know of but there are various corporations in which I have a stock interest but you already have this information from the CPA.

b. A description of the property held for your benefit.

ANSWER:

c. The conditions under which the property is held for your benefit.

ANSWER:

d. The approximate value of the property.

ANSWER:

29. If, during your marriage to your spouse, you transferred any property in which you claimed an interest without receiving fair market value as consideration for the transfer, for each item of property transferred, state:

a. A complete description of the property.

ANSWER: No. There were mortgages given to secure indebtedness including my attorney fees but this has been previously described to you.

b. The name and address of each transferee.

ANSWER:

c. The reason for the transfer.

ANSWER:

d. The amount of consideration received for the transfer.

ANSWER:

e. Whether the written consent of spouse was obtained for such transfer.

ANSWER:

40. If, during your marriage to your spouse, you ever prepared or had prepared any financial statement or list of your assets and liabilities, for each such document, state:

a. The date of preparation.

ANSWER: All financial statements were prepared by CPA, Goracke and petitioner has all this information by reason of documents requested from the CPA and the deposition of the CPA.

b. The name and address of the person or firm who prepared the document.

ANSWER:

c. The purpose of the document.

ANSWER:

d. The name and address of the person in present custody of the document.

ANSWER:

e. Whether you will attach a copy of each such document to your answers to these interrogatories, without a request to produce.

ANSWER:

After the petition was filed and the injunction ordered, eight file drawers of business records were removed by Fred from the family home and taken to Tom McCullough's office, Fred's attorney. When the records were requested by Wilma, Fred no longer had them. When asked about the records Fred said:

> Q. Mr. Stockdale (counsel for Wilma)
>
> A. Fred Williams
>
> Q. Now, at the time the action for dissolution was filed, Mr. Williams, did you remove any records from the — from your house in Lytton, Iowa? A. Yes, I removed some.
>
> Q. What — from what container did you remove the records? A. There was some in boxes in my office.
>
> Q. Boxes? Cardboard boxes? A. Things that Goracke brought back from prior years.
>
> Q. What types of documents would have been in those cardboard boxes? A. Probably cancelled checks, and maybe a copy of a general ledger. I don't know. I'm not familiar with accounting.
>
> Q. How many boxes did you remove? A. I don't recall.
>
> Q. Where was the — where were the boxes kept? A. In Mr. Goracke's office.[7]
>
> Q. No, I mean at your house. A. In my office.
>
> Q. And so you took these cardboard boxes from your office, and took them down to Mr. McCullough's office? A. They were at his office.
>
> * * *
>
> Q. Did you remove any documents from any files? A. Could have.
>
> Q. And what did you do with those documents? A. They were sent right along with the others.
>
> Q. What type of documents would you have removed from the files? A. I don't recall what would have been in those files. It would be the way we received them back probably from Goracke.
>
> Q. These would have been bank statements, financial ledgers, financial statements, of your various corporations which you have told us about today? A. Probably.
>
> * * *
>
> Q. Okay. and all of the records that were removed were taken to Mr. McCullough's office? A. Yes, sir.
>
> Q. And when were these records removed? A. Probably December of '82.
>
> * * *

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[7] Goracke is a certified public accountant in Omaha, Nebraska, who has handled the family's accounting for some period. He was deposed by Wilma's attorney.

Q. After you first took those records to Mr. McCullough's office did you ever have occasion to see those records again? A. I never looked for them.

Q. So you have never seen them since then? A. Not to my knowledge.

Q. You didn't refer to any of those records in answering any of the interrogatories or request for production of documents in this case? A. In most cases we called Mr. Goracke.

Q. But you did not review any of the records that you transported to Mr. McCullough's office for the purpose of responding to request for production of documents or interrogatories? A. I'll repeat again, I'm not a certified public accountant. I wouldn't know what I was reading if I read it.

* * *

Q. My question was, you did not look at the records that you took to Mr. McCullough's office for the purpose of responding to any of the discovery requests? A. The answer to that is no.

Fred failed to produce certain of these documents, particularly bank records. Ultimately the trial court (Judge Smith) ordered Fred to deliver all bank records in his possession, custody, or control or to personally file an affidavit that he did not have possession, custody or control of any bank records. Fred responded "I have no such bank records or bank statements." He verified the answer. At the time of trial Wilma's counsel asked him about his response.

Q. Mr. Stockdale (Wilma's counsel).
A. Fred Williams

Q. And I'm going to show you Petitioner's Exhibit 88, and in your response to Judge Smith's order you state that you don't have the records. A. No, I don't have the records.

Q. So just so we're clear, did I understand your testimony, Mr. Williams, that you claim that you do not have control over your own bank statements because they're in the possession of Mr. Goracke? A. The bank statements goes from the bank to Mr. Goracke, so how would I get them?

Q. But it's your testimony that because Mr. Goracke has them in Omaha they're not under your control, is that your testimony? A. They're under his control.

Q. Okay. And is it true that Mr. Goracke is your certified public accountant? A. He has been in the past.

> Q. And that's why you answered in response to Judge Smith's order that you did not have the records? A. I don't have the records.
>
> Q. But that's why you answered that way? A. All the records I ever got I turned over to my counsel.
>
> Q. Let's take that — that will be my next question. It's your testimony that you did not produce those bank records because Mr. Goracke had them? A. I couldn't.
>
> Q. Okay. And you are the person that instructed each of your banks to send those bank statements to Mr. Goracke, is that right? A. That's the way we've always done it.
>
> Q. It's true that you made that direction, is that correct? A. I or somebody in my organization.

Fred was not excused as he thought, from answering the questions or providing the requested information simply because the materials were in the possession of his attorney and/or accountant. In Hercules, Inc. v. Exxon Corp., 434 F. Supp. 136, 158 (D. Del. 1977), plaintiff objected to interrogatory calling for identification of documents in control of a third party not involved in the suit. There the court determined plaintiff and the third party had had a close cooperative working relationship and the objectionable interrogatory could be construed as requesting plaintiff to make a good faith effort, in keeping with previous experience, to obtain identification of documents held by third party. Id.

In Team Central, Inc. v. Teamco, Inc., 271 N.W.2d 914, 922 (Iowa 1978) the Iowa Supreme Court determined the trial court did not abuse its discretion in ordering inspection of tapes by defendant. There the court upheld discovery of tapes which had been delivered to plaintiff for use at trial, despite plaintiff's objection the tapes were property of a nonparty witness who had not been subpoenaed, who had not testified and who had not had any demand made upon him for the documents. Id.

A party's failure to comply with discovery defeats the purpose of discovery by reducing access of the moving party to relevant evidence and leaving the

actual grounds of the controversy ill-defined prior to trial. See Haumersen v. Ford Motor Co., 257 N.W.2d 7, 14 (Iowa 1977). Parties should promptly and fully comply with discovery rules. Blink v. McNabb, 287 N.W.2d 596, 601 (Iowa 1980). The fact discovery may be burdensome to a party is not a sufficient reason to justify the party's refusal to answer an interrogatory. Hercules, Inc., 434 F.Supp. at 158.

Wilma also made a request under Iowa R. of Civ. P. 129 (1985) for entry into a residential property of the parties in Branson, Missouri. Fred was living there and Wilma felt certain unaccounted for personal property was in the house.

When Wilma's attorney went to Branson to take depositions and to inspect the residence, he was denied entrance. He expanded his request at the time of deposition. The following dialogue transpired:

> MR. STOCKDALE: I'd like to expand on the record that I made earlier this morning with respect to the outstanding request for entry while we are still physically located in Branson, Missouri. And that is, pursuant to the request for entry, I asked for permission to enter the Williams' home for the purpose of inspecting and photographing its interior so that I could, in turn, show those photographs to Mr. Riebold, whose deposition is going to be taken tomorrow in Springfield, Missouri, to assist him in formulating opinions as to the property's fair market value.
>
> This morning when I appeared at the premises to inspect and photograph it, I was advised that the request for entry would not be honored; and I was not given the opportunity to photograph the interior of the house. And, therefore, I do not and will not have the photographs available for Mr. Riebold tomorrow morning.
>
> And while we're still in Branson, while I still have the opportunity—or while I still have the physical opportunity to look at the property and photograph it, I just want to make certain that Mr. Williams continues to maintain the same position, that he will not grant me personal opportunity to enter and photograph the house.
>
> MR. McCULLOUGH: I told Mr. Williams, when you served notice on me of a request for entry, I told him that I had talked with you and that you had advised me that your appraiser wanted to look at the house. And I told him that that was the purpose of it. And Mr. Williams had no objection to doing that. I said to him,

you know, the Court would probably let him do it anyway. And I understood that was what you said to me. And I told Mr. Williams, accordingly, that the appraiser would be there this morning to look at the house. Mr. Williams was perfectly willing to let the appraiser look at the house. And he told me that for reasons that are personal, but known to you, Ned, that he doesn't want you in his home. And that is still his position.

MR. STOCKDALE: Well, just so the record is clear, I did not limit my request for entry to the appraiser. The formal written request for entry specifies entry for purposes of inspection and photographing.

MR. McCULLOUGH: Your request doesn't say who at all. That's why I asked you.

MR. STOCKDALE: Is it — Are you stating for the record that you will not permit me the opportunity to enter the premises and photograph it?

MR. McCULLOUGH: I think you heard what I said one minute ago.

MR. STOCKDALE: But I understood that to mean you would not permit me to do; is that right?

MR. McCULLOUGH: Whatever I said on the record.

MR. STOCKDALE: As long as we're in Branson, I just want to make it clear, I don't know any reasons I should not be permitted access to his house other than the fact that-

MR. McCULLOUGH: Show we left.

(Counsel McCullough and Mr. Williams exited the deposition room.)

MR. STOCKDALE: — there may be business records contained in the house that are subject to outstanding orders to produce but which have not been produced, and their existence have been denied under oath.

(Thereupon, at 4:20 p.m. the deposition was concluded.) (emphasis added).

Wilma complains about this refusal in her brief. We set forth the dialogue above and the brief response below because it is illustrative of the extremely uncooperative attitude toward discovery exhibited by Fred and his attorney throughout this entire proceeding.

> We invite the Court's attention to the fact that the request by Wilma was purely that, a request for entry, and there was no Court order directing that somebody be allowed in Fred's house. Nor did the request spell out that it was Wilma's attorney who wished to go into the house.
>
> As a courtesy to Wilma's attorney, Fred's attorney agreed that Wilma's appraiser could inspect the house

and that it wasn't necessary to get a court order to do so.

Remember that the depositions in Missouri were already scheduled and Wilma wanted to examine the house then.

In other words, Wilma's counsel was going to be in Missouri on depositions anyway. He infers to this Court that he drove to Branson, Missouri, a distance of more than 500 miles (page 11 of Wilma's brief) to examine the house. This simply isn't true. He drove to Missouri because he had scheduled depositions down there.

He wanted to have the house examined while he was down there and he told Fred's attorney that he wanted his appraiser to examine the house.

Fred's attorney, as an accommodation to Wilma's attorney, agreed that the appraiser could examine the house. Fred's attorney could have refused the request and then Wilma's attorney would have had to set the matter down for hearing and have a hearing in Court. This would have occurred long after the parties had been in Missouri for the depositions. But as a courtesy to Wilma's attorney, Fred's attorney said you don't have to go to Court and get an Order, we will allow your appraiser, whose deposition we are going to be taking anyway, to take a look at the house.

When Mr. Stockdale announced that he wanted to examine the house rather than the appraiser, Mr. McCullough told him that Mr. Williams, for reasons well known to Mr. Stockdale, didn't want Mr. Stockdale in the house and he absolutely had no objection to the appraiser examining the house. (emphasis added).

BAD FAITH

In Smiley v. Twin City Beef Co., 236 N.W.2d 356, 358 (Iowa 1975) the facts were as follows:

Plaintiff, Donald V. Smiley, brought this action to recover delinquent rents under the terms of a written lease after defendant, Twin City Beef Company, had abandoned the leased premises. Defendant counterclaimed alleging breach of the lease terms.

On May 10, 1973, plaintiff-lessor filed eight interrogatories. Under rule 123, R.C.P., defendant had 14 days to either file answers or object to the propriety of plaintiff's interrogatories. Defendant on May 23 filed application for 30-day extension to answer the interrogatories. June 1 defendant was granted until June 11 to

answer. Defendant failed to meet this deadline and did not request further extension. June 15 plaintiff filed application for orders striking defendant's pleadings, and for entry of default judgment in favor of plaintiff and against defendant on grounds of defendant's failure and refusal to file answers pursuant to the June 1, 1973 court order. Plaintiff's application was filed under the then existing terms of rules 134(b)(2) and 134(d), R.C.P.

On June 28 defendant did file answers to some of plaintiff's interrogatories. July 2 plaintiff filed an amendment to its application for orders compelling answers to interrogatories asserting that answers to 1, 2, 3 and 6 did not constitute answers "in that the defendant did not file the requested information." In addition, "the defendant has failed and refused to answer Interrogatory No. 7."

Hearing on plaintiff's application and motion was held July 3. The trial court on July 11 entered an order overruling plaintiff's application for entry on default judgment under rule 134 on condition that defendant file answers to each interrogatory, including number 7, The court directed each interrogatory be fully and separately answered not later than July 27, 1973.

Defendant did not file further answers as ordered on July 11. On July 30, on application of plaintiff, trial court stuck defendant's counterclaim and entered judgment for the amount of plaintiff's claims based on plaintiff's June 15 application and the court's order of July 11.

On August 24 defendant moved to have plaintiff's judgment set aside. It alleged amended answers had been prepared but the wife of its president had mistakenly mailed them to defendant's Kansas City attorney.

After hearing, the trial court on November 20, 1973 filed a well-prepared detailed review of the record and denied defendant's motion to set aside the default judgment in favor of plaintiff. it included the following:

"The Court observes that the docket and the Court file in this case reflect that the only answers to interrogatories filed by the defendant were those filed on June 28, 1973, and the answers implicitly referred to in the various affidavits are not yet on file.

"The Court finds that the facts set forth in the affidavits do not support any mistake, inadvertence, surprise, excusable neglect or unavoidable casualty as required in Rule 236 of the Rules of Civil Procedure or the cases cited thereunder."

In Smiley, the court made the following finding: "[T]he record before us clearly indicates defendant from the beginning was determined not to answer plaintiff's

interrogatories, acted in bad faith and must be charged with flagrant disregard of the rules of discovery and the trial court's specific order." Smiley, 236 N.W.2d at 360. Analogous to Smiley, Fred's actions clearly indicate he was determined not to comply with discovery requests. We determine he acted in bad faith.

DISCOVERY ISSUE ON APPEAL

Fred contends we cannot address the discovery issue on appeal because sanctions were not sought in the trial court. The eleven motions Wilma filed for sanctions are before us. We also find the issue was raised again at trial. However, the trial court did not see fit to impose sanctions. Wilma is asking that we, in essence, impose sanctions in the form of awarding all the property to her.

Ordinarily the trial court has wide discretion in ruling upon the discoverable nature of requested information and will not be reversed in the absence of an abuse of discretion. State v. Iowa District Court, 356 N.W.2d 523, 526 (Iowa 1984). The trial courts have inherent power to enforce our discovery rules. White v. Citizens National Bank of Boone, 262 N.W.2d 812, 816 (Iowa 1978). See Bos Line, Inc. v. Phillips & Phillips, 226 N.W.2d 819, 821 (Iowa 1975)(found no abuse of trial court's discretion in involuntary dismissal for refusal to obey an order to produce documents); Wernimont v. International Harvester Corp., 309 N.W.2d 137, 143 (Iowa App. 1981)(found no abuse of trial court's discretion in order prohibiting plaintiff from introducing expert testimony where more than two years elapsed between defendant's initial service of interrogatories and plaintiffs' answer to question relating to the experts they intended to call as witnesses); Suckow v. Boone State Bank & Trust, 314 N.W.2d 421, 426 (Iowa 1982)(found trial court abused discretion in dismissing plaintiff's petition where no trial court's order was not disobeyed).

In Penthouse International Ltd., the court held the failure of defendant to obtain an order to produce did not prevent the trial or appellate court from taking into consideration plaintiff's long history of obstruction of discovery in considering the propriety of imposing sanctions. Penthouse International Ltd., 663 F.2d at 390. The court said:

> [I]f parties are allowed to flout their obligations, choosing to wait to make a response until a trial court has lost patience with them, the effect will be to embroil trial judges in day-to-day supervision of discovery, a result directly contrary to the overall scheme of the federal discovery rules.

Id., at 388.

There is little Iowa precedent on this issue. This is a credit to Iowa attorneys who seek to work within the system. However, what happened here should not be tolerated lest parties to other litigation think our discovery rules can be flouted. See Nat. Hockey League v. Meho Hockey League, 427 U.S. 639, 96 S.Ct. 2778, 49 L.Ed.2d 747, (1976).

In In re Marriage of Moffatt, 279 N.W.2d 15, 17 (Iowa 1979), the trial court determined the husband's lack of cooperation with discovery process reflected adversely on the credibility of his testimony. The court held "the court was entitled to consider [the husband's] conduct and demeanor in assessing his credibility."

While we do not invoke discovery sanctions, we consider Fred's conduct particularly as it relates adversely as to his credibility with reference to the disposition of assets under his control during the pendency of the action. On our de novo review, therefore, we consider Fred's failure to cooperate with the discovery process.

INJUNCTION

We further find Fred to have been in flagrant violation of the court's order enjoining transfer of assets following the dissolution. After the injunction was entered, Fred cashed a state income tax refund check made to both Fred and Wilma. When Fred was asked about the check, he said:

> Q. In late November or December of 1982 did you direct Virgil Goracke of the accounting firm of Goracke & Wilcox to send all records to yourself, all financial records I should say, of yourself personally or any corporation over which he was doing the accounting work, did you direct him to send all of those records to you in care of Phillips' Auto? A. I think he has all the records to the best of my knowledge.
>
> Q. My question is, however, during that time period did you tell Mr. Goracke to send all of the records that he would normally send to you, to you in care of Phillips' Auto? A. I'd have to have a mailing address someplace.
>
> Q. But you did tell him to send all of those records -- — A. I'm not saying I did or didn't. I just told him to direct my mail to that location.
>
> Q. So you're saying that you did tell him to send your mail to that address? A. You bet.
>
> Q. And did you also tell him to send the financial records for Lytton Farm Equipment to you in care of Phillips Auto? A. I don't think so.
>
> Q. Did you direct Mr. Goracke to send all income tax refunds to you at Phillips' Auto? A. Mr. Goracke collected the income tax refunds at his office.
>
> Q. Did you direct Mr. Goracke to transmit those income tax refunds to you at Phillips' Auto? A. No, not to — not to my knowledge.
>
> Q. Did you receive a 1981 Iowa State Income Tax Refund? A. I couldn't be sure of that. He'd have the records on that.
>
> Q. After the dissolution petition was filed did you and Mr. McCullough meet with Mr. Goracke? A. There's a possibility we did.
>
> Q. Okay. And did you and Mr. McCullough on occasion make a joint telephone call to Mr. Goracke? A. I can't remember.
>
> Q. Well, on December 1, 1982 did you and Mr. McCullough call Mr. Goracke's office? A. I am not going to answer it because I don't remember. I can't remember that far back.
>
> Q. Well, if Mr. Goracke's notes show he talked to you and Mr. McCullough on that date you wouldn't dispute them, would you? A. Probably not if he signed them, and it's his writing.

Q. Okay. A. And on his letterhead.

Q. Did you tell — did you tell Mr. Goracke to send all the income tax refund checks to Mr. McCullough? A. Not to my knowledge.

Q. Did Mr. McCullough tell Mr. Goracke to send all the income tax refund checks to Mr. McCullough: A. I doubt it. You'd have to ask Mr. McCullough.

Q. Did you — did you tell Mr. Goracke's office — let me stop for a minute. Mr. Goracke is the head partner of a CPA firm, is that correct? A. I don't know who is the senior partner.

Q. It's Goracke & Wilcox, isn't it? A. Yes.

Q. And does he have other employees that work for that accounting firm? A. Lots of them.

Q. Okay. And who were — what were the names of the people that were assigned to your account? A. I have no way of knowing.

Q. You didn't meet them and talk with them? A. No.

Q. You don't know who you were talking to? A. Every time I would go there I'd talk to a different man.

Q. How about Gene DeBoer? Have you ever heard of Gene DeBoer? A. Yes, I've heard of Gene DeBoer.

Q. Who is Mr. DeBoer? A. He's an employee of Goracke, or was at one time.

Q. Did you meet with Mr. DeBoer in connection with your — the accounting work that they did for you? A. I don't know what he did for me.

Q. I'll show you what's been marked as Petitioners' Exhibit Number 38. Have you seen that before? A. If he ever wished me a Merry Christmas that's the first time he ever did.

Q. Have you seen that exhibit before? A. I can't say that I have, no.

Q. It's a letter to you from Mr. Goracke that's dated December 16, 1982. A. That's what it appears to be.

Q. And he's transmitting to you Iowa Tax Refund checks which — copies of which were attached? A. That's what he says it says.

Q. It says "Mr. Fred Williams, In Care of Phillips' Auto Repair, 101 Mauer Avenue, Sac City, Iowa 50583" Is that right? A. Is that an address or is that something written on it?

Q. That's what it says on the envelope, doesn't it? A. I don't know.

Q. It's marked "personal". A. Where is the stamp on it?

Q. It's a copy of a envelope, isn't it? A. Where's the stamp?

Q. You got me. A. Then I wouldn't say it's an envelope.

MR. STOCKDALE: We'd offer Exhibit Number 38, Your Honor.

MR. McCULLOUGH: No objections to the offer.

THE COURT: Exhibit 38 will be received.

Q. (by Mr. Stockdale) Look at the income tax refund check dated December 10, 1982. The check appears to be in the amount of $13,322.78. A. Yes, sir.

Q. It appears to be made out to Fred R. and Wilma Williams, is that correct? A. Yes.

Q. Okay. Did you and Wilma file joint income tax returns during that period of time? A. Yes.

Q. And during that period of time, as I understand it, Wilma was earning a salary from the Post Office? A. That's correct.

Q. And you were earning a salary from Lytton Farm Equipment? A. That's correct.

Q. So this income tax refund would represent, at least in part, monies that Wilma had overpaid? A. Wouldn't that income tax refund reflect income from prior years, not the year you're talking about?

Q. Well, it's a refund for the year 1981, is it not? A. No, no, it isn't.

Q. What — tell the court what you did with that income tax refund check? A. Mr. Goracke would have a detail on every nickel of it. Every nickel of it was deposited and loaned to Verona Valley Farms. Goracke would have a record of it.

Q. Now, before you turned this check over to Mr. Goracke did you endorse Wilma's name on the back of it? A. Probably did.

Q. And before you turned this check over to Mr. Goracke did you notify the court that you were going to turn it over to Mr. Goracke? A. I didn't say I turned that check over to Mr. Goracke. I said the funds were probably deposited and loaned to Verona Valley Farms of which he had a record.

Q. Okay. Are you saying that you probably endorsed Wilma's name on it, and deposited the check in your account, and in turn loaned the money to Verone Valley Farms? A. I'm quite sure that's the way you'll find it.

Q. Okay. Go back to the pending question, Mr. Williams. Before the money was deposited in your account did you notify the court that you were going to deposit that sum of money in your account? A. No, sir.

Q. Did you notify Wilma's counsel that you were going to do that? A. No, sir. It was in the normal course of business.

Q. You claim that that's what you have always done? A. In a normal course of business.

Besides cashing the income tax return check without Wilma's endorsement, Fred also disposed and encumbered other properties after the injunction against transfer of assets issued. He also attempted to forge Wilma's name and collect $9,000 from her insurance policy. Fred owned an undivided 56 percent interest in a 320 acre farm in Calhoun County, which was valued at $252,000, with a $25,000 mortgage balance.[8] However, on April 19, 1983, after the injunction had issued, Fred gave a mortgage of $250,000 on the premises to Thomas L. McCullough and Don E. Bierstedt to secure a confession of judgment for $250,000 made in Sac County in their favor on the same date. There is no evidence Fred had current obligations to McCullough[9] or personal obligations to Bierstedt[10] on that date. On November 30, 1983, Fred also executed a $50,000 promissory note to Thomas L. McCullough for legal fees.

In addition, on September 26, 1983, while the injunction was still in effect, the operating assets of Verona Valley Farms were auctioned. No notice was given to the trial court and no accounting of the proceeds was made. After the dissolution was filed Fred also loaned $236,156.93 to Mountain Grove Farms. While fogging up the issue, Fred did not deny the loan, contended he left a paper record and managed to be as evasive as he could when questioned about the transaction. The corporation is allegedly now valueless.

Fred argues he did not violate the injunction because the transfers he made were in the ordinary course of business and he kept accurate records. Fred claims the court order allowed him to transfer assets in the ordinary course of a business which maintains complete and accurate records of its transaction.

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[8] On Fred's share the mortgage balance was $14,280.

[9] When asked about debts for which the mortgage was given Fred admitted McCullough had been paid a $10,200 retainer and evidence indicated the retainer had covered all legal fees to date.

[10] Fred did not personally owe Bierstedt any money, but said he owed some money to Lytton Farm Equipment of which Bierstedt owned stock.

Wilma correctly points out the court order actually provided: "except in the ordinary course of a business which maintains complete and accurate records of its transactions." (emphasis supplied).

Fred supplies no authority for the argument he was not in violation of the court order. He argues he did not conceal any records and the undisputed record is all of Fred's financial affairs were accurately recorded. He fails, however, to make reference to wherein the appendix or transcript the evidence supporting his statement appears. Iowa R. App. P. 14(a)(4) and 14(g)[11] require such references.

The record clearly reflects no records or incomplete records were kept of the transfers. We further determine that forging Wilma's name on the state tax refund, executing a $250,000 confession of judgment and mortgage, selling the assets of Verona Valley Farms, and loaning $236,153.93 to Mountain Groves Farms among other things are not transactions in the ordinary course of a business or of business. We reject Fred's argument. The record is clear Fred disregarded court orders on transfer of assets.

DIVISION OF ASSETS

Wilma contends these actions on Fred's part entitle her to a larger share of the remaining marital assets. On his cross-appeal Fred contends he should have a larger share of the marital assets.

After a long and careful study we have attempted to gain some semblance of order out of the confusion generated over the parties' financial interests. We find three separate financial statements to be particularly revealing.

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[11] This is but one of the many factual assertions made in appellee's brief without reference to appendix and/or transcript.

On November 30, 1981, less than one year prior to the date of the filing of the dissolution petition Goracke and Wilcox P.C., certified public accountants in Omaha, prepared an unaudited statement showing the parties to have:

Total assets of	$2,165,027
Total liabilities of	257,358
For a net worth of	$1,907,669

On December 31, 1982, about one month following the filing of the dissolution petition, a similar unaudited financial statement was prepared by the same firm showing:

Total assets of	$1,467,236
Total liabilities of	764,931
For a net worth of	$ 702,305

The master determined the parties had a net worth of:

Total assets of	$ 670,995.47
Total liabilities of	144,403.05[12]
	$ 526,592.42

The difference between the November, 1981, net worth and the master's determination of the parties' net worth is about $1,331,000. Fred contends the 1981 financial statement showed inflated figures and was prepared on the advice of some banker he could never identify. Fred also contends the value of the parties' assets has decreased because of current market conditions.

We recognize there is validity in both arguments and we give them credence. We note $450,000 of the $700,000 decrease in total assets between the November, 1981, and December, 1982, financial statements is clearly attributable to a $450,000 decrease in the estimated market value of fixed assets. Part of the

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12 This figure did not include the $250,000 confession of judgment and mortgages to McCullough and Bierstedt. In his brief Fred claims this does not have to be paid. However, at time of trial neither the mortgage nor judgment had been released.

decrease is related to a decrease in the value of capital stock in related corporations offset in part by an increase in loans receivable for related corporations. A determination as to whether this loss in value of capital stock of related corporations was the result of decrease in market value of corporate assets could only be made from a careful examination of corporate records. Fred made no effort to explain the decrease in net worth. Furthermore, a comparison of current personal liabilities on the two statements shows the current liabilities to have gone from $93,830 in November, 1981, to $568,136 in December, 1982. This increase occurred almost entirely because of new notes payable.

This analysis points to the fact there is a large and unexplained decrease in the net worth of the parties occurring near and during the time of the dissolution. The assets in question were primarily under Fred's control. Wilma charges a substantial portion of the decrease is due to Fred's unilateral transfers and concealment of property in violation of order of the trial court.

The trial court determined:

> There has been a mist of wrongdoings that permeates this case. However it has never risen to the level of fraud from the evidence.

The record does not reflect a reason or explanation for the tremendous decrease in net worth following filing. Fred made no effort to explain the decrease. In addition, Fred thwarted Wilma's efforts to trace the assets. He made it difficult, if not impossible, for Wilma to examine the eight boxes of business records he took from their home and he made it equally difficult for her to obtain other records and information.

Fred was more than uncooperative. A long and tedious trip through the transcripts, files and exhibits convinces us Fred embarked on a course of conduct clearly designed to impede Wilma's discovery. There is no accounting for assets

under his control. He flagrantly disobeyed the court injunction on transfer of assets and he was extremely evasive during discovery procedures and at trial.

Fred's final argument is that because Wilma was found in contempt and sentenced to seven days in jail she should not be heard to complain about Fred's actions. Once again Fred cites no authority for his position, Iowa R. App. P. 14., but we examine the circumstances surrounding the contempt proceeding in our de novo review.

Wilma was found in contempt for refusing to give Fred possession of the Williams' family residence on three separate weekends in 1983. Although this court affirmed Wilma's contempt citation, we find there were extenuating circumstances which suggest the battle over possession of the family residence was not one-sided.

Fred repeatedly called Wilma at work to notify her that he wanted possession of the house for the weekend even though the district court had issued an order restraining Fred from bothering her at work. When the district court first ordered Fred to have possession of the house on weekends, Fred sought to take possession at midnight on Fridays and not relinquish possession until midnight on Sundays. In addition, Fred sought to reside in the family home on weekends although he had not paid any utility or maintenance bills since moving out of the house.

Two of the three incidences Fred cited in his application and affidavit of contempt involved holiday weekends, Thanksgiving and Christmas of 1983. By the time Fred notified Wilma he wanted the house for the weekend Wilma had already made plans to have her children and grandchildren to her house for the holiday weekend. Fred did not notify Wilma until December 21, 1983, that he wanted the house for Christmas weekend. By that time Wilma had invited the family for Christmas, which was on a Sunday, had put up a Christmas tree,

made initial preparations for Christmas dinner and had presents for all her grandchildren at the house.

Although Wilma told Fred he could not have the house during Christmas weekend, she did vacate the home by 6 p.m., Friday, December 23, 1983. Wilma testified she took everything for the Christmas weekend when she left and did not return until Sunday night. A neighbor testified Fred drove by the house about 6 p.m. that day but did not stay. Fred testified that he did not drive past the house and did not use the house Christmas weekend because he was ill and confined to bed throughout the weekend. The fact Fred did not use the house after notifying Wilma and forcing her to vacate over the holiday weekend suggests Fred's real purpose was to cause further irritation to an already volatile situation. As such, Wilma's contempt citation does not cancel out Fred's intentional disposition of substantial assets against a direct court order. Wilma should not be denied an equitable share of the couple's assets simply because the court imposed an injunction on Fred to refrain from disposing of property instead of citing Fred for contempt.

We totally reject Fred's arguments on cross-appeal that he should have additional assets. We must consider whether Fred's actions justify our awarding Wilma a larger portion of the parties' assets. We are mandated to consider all the enumerated factors in Iowa Code § 598.21(1) (1985) in making an equitable property division but the list of enumerated factors does not purport to be exclusive In addition, we are required to consider "other factors which the court may determine to be relevant in an individual case." Thus the court is to consider in an individual case such additional factors as the court in its discretion deems relevant. In re Marriage of Johnson, 350 N.W.2d 199, 201-02 (Iowa 1984).

We consider Fred's conduct during the pendency of this action in our determination of an equitable property award. Fred's conduct clearly affects his credibility. Furthermore, his transfers of assets, especially in violation of court injunction, and his inability and refusal to account for assets which were dissipated while under control are relevant to a division in this case. Fred disposed of assets which should have been preserved for equitable division. See Johnson 350 N.W.2d at 202. We specifically determine Fred has offered no reasonable explanation for the following transactions which occurred while assets were under his control:

1. Endorsement of Wilma's name and cashing the Iowa income tax refund of $13,322.78;

2. The failure to account for the sale of the assets of Verona Valley Farms;

3. The unexplained loan, after the dissolution was filed in violation of the injunction, of $236,153.93 to Mountain Groves Farm, a corporation that is now valueless according to Fred; and

4. The increase in personal liabilities from $93,830 in November, 1981, to $568,136 in December, 1982.

Furthermore, Fred argues the $236,153.93 loaned to Mountain Groves Farm was made in an attempt to save the farm. However, the loan was made in violation of the injunction and without consulting Wilma. We now know the loan was an extremely bad investment and the corporation is valueless. These assets would have been available for division with Wilma had Fred not made the loan. Having been provided no reasonable explanation for the whereabouts of these assets by Fred, we find merit in Wilma's contention he has secreted them. Wilma has sought to locate these assets. Fred has thwarted her attempt at every juncture. We must make a division which will assure her protection as to the assets which still remain. Therefore, it is only reasonable under these

circumstances that the $236,153.93 be chargeable against Fred. In addition, our failure to charge Fred with these loans made in violation of court order would only encourage other litigants to ignore, as Fred did, the court order herein.

Conduct such as Fred's cannot be tolerated in the Iowa courts. Parties who play games or engage in evasive conduct with the disclosure required pursuant to Iowa's dissolution statute and discovery procedures must realize they do so at their own peril. The evidence indicates Fred has failed to account for assets under his control in excess of those assets the master now finds are available for distribution. We determine, therefore, that Wilma should receive the majority of the remaining assets.

We are troubled, however, in making our division because of the $250,000 confession of judgment in favor of Tom L. McCullough and Don E. Bierstedt given by Fred and on file in Sac County and the $250,000 mortgage on the Calhoun County farm given by Fred on the same date to the same two people.[13] Fred argues in his brief:

> . . . The confession of judgment was for the benefit for (sic) both Wilma and Fred so that they didn't lose the property that they had left in Sac and Calhoun Counties. Wilma received the benefit of it just as much as Fred did.
>
> There is no claim by anyone Fred owes the $250,000.

Apparently Fred's argument is the confession of judgment and mortgage placed the property beyond the reach of Fred's and Wilma's creditors. However, Fred's actions resulted in a judgment creditor of the parties levying on a $22,378.30 bank account of Wilma's and selling the parties' stock in three closely held implement dealerships at what Wilma claims to be a substantial loss. Wilma

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[13] The result of these instruments is Fred created a $250,000 lien on his Calhoun County property and a $250,000 lien on his Sac County property. There is pending litigation to set aside these liens.

filed an action against Fred and McCullough to recover these losses. This cause is not before us and we do not have jurisdiction over Bierstedt and McCullough to set aside the confession of judgment and mortgage.

The end result of Fred's action in granting the mortgage and confession of judgment is that in addition to the debts found by the master the property of the parties is encumbered by liens of $500,000. If the liens are not set aside there will be little value here to divide. In addition, Wilma will incur expenses in having them set aside.

There is a temptation for this court to refuse to address these issues and remand for further proceedings. However, this matter has remained in our system long enough. We have before us a voluminous record. Both parties had ample opportunity to make a record and introduce evidence. The parties made their trial record. We also have the facts to make a decision and a decision should be made. We modify the trial court's order dividing property by providing the property of the parties should instead be divided as follows:

1. We give to respondent his National Service Life Insurance policy, the bank account in his sole name and his Piper Cherokee Airplane, the boat and the 1979 Lincoln.

2. All other assets of either party, be they held in the name of Fred or Wilma or the names of Fred and/or Wilma including but not limited to those inventoried by the Master wherever situated, shall be the sole and exclusive property of Wilma.

3. Wilma shall assume and hold Fred harmless from the note at the Sac City Bank and the SBA note and $4,357 owed to Goracke & Wilcox. Wilma shall pay the master's fee and all court costs except one-half of the appellate which are taxed to Fred. Each party shall remain responsible for their separate unpaid debts not provided for in this decree.

4. If Wilma is successful in her litigation to have the confession of judgment and mortgage in Bierstedt and McCullough's favor released

> and/or they are in fact released, then she shall pay to Fred the sum of $125,000 payable $20,000, 90 days from the date of the release, with $20,000 one year thereafter and $20,000 on the same date of each succeeding year thereafter until paid in full. Interest shall accrue on the unpaid balances at 9 percent per annum commencing on the date of the release of the confession of judgment and mortgage. Accrued interest shall be paid on or before December 31 of the year in which it accrued.

If the liens are discharged Wilma will receive approximately $375,000 in property. Fred will receive $125,000 in property which, when added to the $236,153.93 he loaned to the now defunct Mountain Groves Farm, totals $361,153.93.

We further order Wilma to pay to Fred as spousal support and/or alimony the sum of $300 per month.[14] Said payment shall continue until Fred reaches age 62.[15]

AFFIRMED AS MODIFIED.

All judges concur except Oxberger, C.J., who dissents, and Snell, J., who dissents."

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[14] Fred may complain he is not receiving his property in a lump sum. We determine installment payments are appropriate because Wilma is receiving few liquid assets in the property division.

[15] Alimony would accrue from the date of the trial court's decree until Fred's 62nd birthday, now past. Fred will receive nearly $600 a month Social Security on retirement.

SNELL, J. (dissenting)

I respectfully dissent. The majority has rendered a wrong result in the wrong forum at the wrong time. The opinion, purportedly to review the correctness of the trial court's division of the parties' property, is more a primer on discovery abuses. Those were duly noted by the trial court which nevertheless specifically found they had never risen to the level of fraud. The trial court, in recognizing the accusations of each party, concluded "This is the proverbial 'pot calling the kettle black.'" The appellate court majority, however, ignores the trial court and, via the mantle of de novo review, decides that Fred and his lawyer have perverted the discovery process. Their remedy for this abuse is to award virtually all of the parties' property to Wilma without even a finding of fraud by Fred. The result bespeaks of punity, not equity.

The majority assumes that Fred squandered or has secreted hundreds of thousands of dollars. Proof of this was not made, which the majority attributes to Fred's obstructionist tactics in discovery proceedings. Little weight is given to Fred's testimony that the value of land has taken a drastic fall, that the two farms in Missouri were subjected to the worst drought since the 30's, and that the cattle market went from an all-time high in 1979 to nearly an all-time low in the next three years. Considerable amounts of money were used in a desperate effort to save the farms. Ultimately, Fred lost the farms and his equity of $180,000 and $40,000. He also suffered a $51,000 judgment to the Sac City State Bank for money borrowed and used for the farms.

Fred also testified he lost a tremendous amount of money when Wilma violated the trial court's order against transferring property without notice except in the ordinary course of business. That violation occurred when Wilma, without notice, seized cattle off Fred's Missouri farm, transported them to Sac County, Iowa, and sold them. For this act Wilma was found guilty of con-

tempt of court and sentenced to twenty days in jail, suspended on condition she would not violate any other orders. Despite the warning, Wilma again violated the trial court's orders by denying Fred access to the house. Wilma was again found guilty of contempt and sentenced to seven days in jail. The trial court stated that the sentence was determined because Wilma was defiant and hostile at the hearing and failed to understand that she has the responsibility to abide by court orders. On appeal, the decision was affirmed by the appellate court. Williams v. Richardson, 368 N.W.2d 734 (Iowa Ct. App. 1984) (unpublished opinion filed December 26, 1984 by Sackett, J., Oxberger, C.J. and Donielson, J. concurring). By contrast, Fred was never found in contempt by the trial court although numerous applications were made. On appeal, Wilma abandons her effort to have Fred found in contempt. Now she seeks a newer and better punishment—just take all of his property.

To Fred the majority awards personal property amounting to $17,761 plus a boat he says doesn't exist. Fred is also assessed one-half of appellate court costs. To Wilma is awarded everything else, which amounts to $508,831.42 according to the Master's valuations. If she is successful in her litigation against Bierstadt and McCullough, she will also have to pay Fred $125,000, but will dole it out over a six-year period. The majority also determined that Fred must be cut down from the statutory interest on judgments of ten percent to nine percent. Meanwhile Fred can exist on social security payments and the paltry property settlement awarded by the majority. To help him out though, Wilma is ordered to pay $300 a month alimony until Fred is 62. This turns out to be a short-shrift benefit, however, lasting only eleven months. Fred became 62 on January 24, 1986.

The majority chalks up to Fred the $236,153.93 loaned to Mountain Grove Farm as though that is an asset awarded to him. Simultaneously, it admits

that the corporation receiving the money is now valueless. Apparently, the majority has no explanation of how Fred can live on this. Obviously the majority concludes that that is good enough for him anyway.

Just to make sure that Fred has nothing more to live on, the majority awards to Wilma all other assets of the parties whether inventoried or not. This would include all assets the majority suspects Fred of having sequestered. A coup de grace.

As part of its decision, the majority is troubled by the confession of judgment to McCullough and Bierstedt by Fred for legal services and to protect the property from creditors. That matter is currently in litigation, Wilma having sued for $325,000 actual damages and $1,000,000 punitive damages. Tom McCullough, Fred's lawyer for 31 years, is also litigating for Fred four other lawsuits aggregating over a million dollars. This is not the forum for deciding any of these matters.

The majority admits there is little precedent for imposing sanctions for discovery abuses in the form of awarding substantially all the property to Wilma. In fact, there is none. Undeterred, they embark on a new, unsound, and dangerous course. From now on, a trial court's finding that fraud has not occurred may be shunned. On appeal, the appellate court may find that court injunctions have been violated and punish the offender by awarding virtually all of the property to the other party. The result will be harsher and infinitely more unpredictable than a citation for contempt.

The trial court, faced with the problem of not knowing the extent or true value of the parties' assets, ordered all but a few specifically awarded to be sold and the proceeds divided equally. I would affirm this result. Additionally, the trial court retained jurisdiction for further disposition of property after the various lawsuits are resolved and further information on the motel property

value is obtained. I would affirm this. I would also remand the case for the purpose of the trial court's retaining jurisdiction to allow discovery of any assets that may have been fraudulently secreted, converted, or dispersed by either party. On proof of such activity, the trial court should award judgment as is appropriate.