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1 STATE OF WISCONSIN CIRCUIT COURT CHIPPEWA COUNTY  
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4 JEFFREY P. ERBS,

5 Petitioner,

CASE NO. 2010 FA 11

6 vs.

7 MARY ANN ERBS,

8 Respondent.

FINAL HEARING/

MOTION HEARING  
9 -----

10 HONORABLE STEVEN R. CRAY

11 CIRCUIT COURT JUDGE, PRESIDING

12 Monday, October 18, 2010

13 Chippewa County Courthouse, Chippewa Falls, Wisconsin  
14 -----

15 APPEARANCES

16 JEFFREY P. ERBS, the Petitioner, appearing in  
17 person without counsel.

18 PAMELA J. VEITH, Attorney at Law, 706 First Avenue,  
19 Eau Claire, Wisconsin 54703, appearing for the  
20 Respondent, who appeared in person.  
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22 Reported by Connie G. Dillon, RMR, CRR  
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1 THE COURT: Ms. Veith, would you call this  
2 matter and give the appearances, please.

3 MS. VEITH: Sure. This is In Re the  
4 Marriage of Jeffrey P. Erbs, Petitioner, and Mary Ann  
5 Erbs, Respondent. Case number is 10 F --

6 THE COURT: FA 11.

7 MS. VEITH: Thank you. This is the time  
8 set for a hearing. The petitioner appears in person  
9 and without counsel. The respondent appears in person  
10 and with counsel Pamela Veith.

11 I believe that at the last hearing, the  
12 court set this time to proceed with a hearing on the  
13 jurisdictional grounds so the court could grant a  
14 judgment of divorce and reserve for further hearing a  
15 decision on their remaining issues.

16 THE COURT: Thank you. We have a motion  
17 for recusal which I'll deal with, then the status  
18 hearing. Third will be the respondent's request for  
19 attorney's fees. Then the motion for relief, then  
20 motion for sanctions.

21 First on the motion for relief, Mr. Erbs,  
22 is there anything you wish to add beyond the pleadings  
23 that you filed with the court?

24 MR. ERBS: Yeah. I would like to ask you,  
25 Judge, you've taken an oath to support and uphold the

1 constitution of the United States of America and not  
2 of this state. Is that correct?

3 THE COURT: I've taken an oath to uphold  
4 the constitution of the State of Wisconsin and the  
5 United States Constitution.

6 MR. ERBS: Okay. And then according to  
7 those -- that oath, you're required to abide by those  
8 oaths in the performance of your official duties,  
9 including those before this honorable court. Is that  
10 correct?

11 THE COURT: Sir, you don't ask me  
12 questions. I take my oath very seriously. Don't  
13 question it. Move on.

14 MR. ERBS: I'm asking for your recusal  
15 right now, Your Honor, because this is the attitude  
16 that you've been giving me the whole time I've been in  
17 your court, and I'm asking you these questions because  
18 in the course of this action, there have been things  
19 done by yourself that are violations of Wisconsin  
20 statutes and that would be in violation of your oath,  
21 Judge, and it would also be violating my due process  
22 rights and my fairness and any amount of equity that I  
23 might be able to get out of this hearing, this trial,  
24 and I feel you violated -- I feel it is a violation of  
25 my due process rights.

1                   And September 8th, in your court, you were  
2 threatening me with two 30-day jail sentences for  
3 something that the Wisconsin Supreme Court has found  
4 to be, a jail sentence for violation of an order for  
5 discovery, would be a violation of due process.

6                   THE COURT: No, Mr. Erbs, you are wrong on  
7 the law. Mr. Erbs, you were in contempt of court.  
8 Judge Cameron ordered you to comply, you failed to do  
9 so. You did so willingly and you did so knowingly.

10                   MR. ERBS: I did not.

11                   THE COURT: Yes, you did, sir, and so I  
12 found you in contempt of court. You must obey the  
13 court orders whether you like them or not. You are  
14 going to have to live by the rules that everybody else  
15 that appears before this court must do.

16                   So that while you may not like the fact  
17 that you have to comply with the orders, you are  
18 required to do so and so that that is not a violation  
19 of your rights. It is a violation of your wife's  
20 rights when you fail to comply with the law so that I  
21 found you in remedial contempt.

22                   You purged your contempt so you did not  
23 have to serve the time, but you are going to be  
24 required to disclose your assets, your financial  
25 condition, and you cannot control the situation beyond

1 what is allowed by the law.

2 So the fact that you may not like it does  
3 not mean that I'm being biased. It just simply means  
4 that I am requiring you to live by the same rules that  
5 everybody else has to.

6 MR. ERBS: I object to that, Your Honor.

7 THE COURT: Well, you may object to that.

8 MR. ERBS: Because --

9 THE COURT: But that is the way it's going  
10 to be. You are going to have to live by the rules  
11 that are set by the laws of the State of Wisconsin.

12 MR. ERBS: And only I have to go by the  
13 rules, apparently, because the respondent also has  
14 not --

15 THE COURT: Sir.

16 MR. ERBS: -- done their discovery.

17 THE COURT: We're going to get to that, as  
18 I indicated to you earlier, and so that we are going  
19 to be discussing later the fact that you believe that  
20 there's not been compliance with the discovery by the  
21 respondent here.

22 And I am going to hold her to the same  
23 requirements as you, but two wrongs don't make a  
24 right, sir, and so that the fact that you may not like  
25 my decisions does not mean I'm biased. It simply

1 means I am enforcing the law.

2 Now, you have -- the first point you raised  
3 in your pleadings was that I improperly dismissed your  
4 writ of mandamus and that that was showing bias.  
5 However, the Supreme Court has overruled your  
6 arguments on that and supported my decision so that  
7 that does not form a basis for recusal here.

8 You allege that the letter I wrote to Ms.  
9 Veith, with a copy to you, of August 30th was somehow  
10 biased in that I required her to provide proof of  
11 doing certain acts. What that was was an unbiased  
12 request because I needed the information to know if  
13 they were trying as hard as I felt they should to  
14 adjourn -- to have Mayo Clinic delay their decision.

15 They provided that proof. That is not an  
16 indication of how I was going to rule. In fact, I  
17 never had to rule because of the fact that the Mayo  
18 Clinic agreed to delay their decision so that that  
19 does not form a basis for recusal.

20 My denial of the request that you made to  
21 record documents was appropriate. The accommodation  
22 you requested can be addressed because you say you  
23 have difficulty handling papers, and if you had  
24 requested an electronic copy of the transcripts, you  
25 would not have to handle the papers because it would

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be on a computer so that that does not form a basis.

MR. ERBS: I disagree.

THE COURT: You may disagree, sir, but my decisions stand --

MR. ERBS: I disagree because I'm the one --

THE COURT: Excuse me, sir, I'm not asking for debate. I am telling you, and I'm going through this, and you are not to interrupt me.

MR. ERBS: So I'm not allowed due process, Your Honor?

THE COURT: You are allowed due process, but you have to be polite, and interrupting me is not being polite. As I was indicating, that the case law is that the court can control the recording devices here. I am not going to allow a debate between a recording device that is inferior to a court reporter and have endless debate over what was said or what was done.

The transcripts are received. I note that they are done promptly once you pay the fees and so that I am not seeing where that is a problem because your stated problem can be accommodated by what already exists.

Then you next complained that you were

1 searched entering the courtroom prior to the prior  
2 hearing but the respondent was not. However, the  
3 respondent was searched in the courtroom and so that I  
4 don't find that there was any bias there and so that  
5 the facts that you allege were incorrect.

6 At the hearing, I found that you were in  
7 contempt for your undisputed failure to comply with  
8 Wisconsin law regarding discovery. The court order  
9 for purging the contempt was stern. I agree with you  
10 there, but it was fair and lawful.

11 You must comply with Wisconsin law  
12 including the discovery statutes as I've indicated.  
13 Both individually and collectively, there has been no  
14 bias on my part.

15 You certainly can try the patience of this  
16 court, but I am going to continue on with this case.  
17 I am not going to allow you to use this as -- by  
18 accusing each judge as they come into your case,  
19 trying to kick everybody off so that you can  
20 indefinitely postpone this matter. There will be an  
21 ending to this case.

22 I'm therefore denying the motion for  
23 recusal.

24 MR. ERBS: I'd like to take leave for  
25 appeal now, Your Honor.

1 THE COURT: You may appeal, but we are  
2 proceeding on so that next we will do the status  
3 portion. Mr. Erbs, would you take the oath at this  
4 time? Come up and take the witness stand.

5 MR. ERBS: Me?

6 THE COURT: Yes. You are the petitioner in  
7 this matter.

8 JEFFREY P. ERBS,  
9 being duly sworn upon his oath, testified as follows:

10 THE COURT: Please come around, sit in the  
11 witness chair.

12 EXAMINATION

13 BY THE COURT:

14 Q Would you state your name for the record, please.

15 A My name is Jeffrey P. Erbs.

16 Q What is your home address?

17 A 19080 - 71st Avenue, Chippewa Falls, Wisconsin.

18 Q And you and the respondent were married on October 6,  
19 2003?

20 A I think so, yeah.

21 Q That's what you state in your petition, is it not?

22 A Yeah. I think it's the 4th. Is it the 4th, Mary Ann?  
23 That's what I thought.

24 Q So your petition is two days off in that you were  
25 actually married on October 4th, 2003. Is that

1 correct?

2 A Yes.

3 Q Now, prior to filing the petition, did you live in the  
4 State of Wisconsin for six months?

5 A Yes.

6 Q And prior to filing the petition, had you lived in  
7 Chippewa County for 30 days?

8 A Yes.

9 Q When were the -- when did the two of you start living  
10 separately?

11 A Mary Ann moved out on January 11th of this year.

12 Q And no children have been born or adopted as a result  
13 of this relationship?

14 A No.

15 Q You filed the petition on January 12th of 2010. Is  
16 that correct?

17 A That is correct.

18 Q And you had the respondent served on January 12th as  
19 well. Is that correct?

20 A That is true.

21 Q Are you aware of any other legal actions affecting  
22 this marriage?

23 A None that I'm party to.

24 Q Are you active in the military service of the United  
25 States or the State of Wisconsin?

1 A No.

2 Q Are you requesting a change of surname at this time?

3 A No.

4 Q In your opinion, is the marriage irretrievably broken?

5 A No.

6 Q So that you wish to change the petition to indicate  
7 that?

8 A Yes.

9 THE COURT: Then those are the questions I  
10 have of you at this time. Ms. Veith, you may ask your  
11 questions.

12 CROSS-EXAMINATION

13 BY MS. VEITH:

14 Q Mr. Erbs, you indicate that you believe your marriage  
15 is not irretrievably broken. Is that true?

16 A Yes.

17 Q You understand that your spouse, Ms. Erbs, believes it  
18 is irretrievably broken?

19 A That's her decision.

20 Q And you and Mary Ann are not currently counseling?

21 A No, we never agreed to do that. I wanted to.

22 Q You understand that she does not wish to participate  
23 in counseling?

24 A Yeah, that's her mind-set, yeah.

25 MS. VEITH: That's all I have, Your Honor.

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THE COURT: Thank you, sir. You may step down. Ms. Veith, would you call your client, please.

MS. VEITH: Yes, Your Honor, we would call Mary Ann Erbs.

MARY ANN ERBS,

being duly sworn upon her oath, testified as follows:

THE COURT: If you'd please come around and sit in the witness chair.

DIRECT EXAMINATION

BY MS. VEITH:

Q Would you state your name, please.

A Mary Ann Erbs.

Q Miss Erbs, where are you currently residing?

A 301 University in Elk Mound.

Q You are married to Jeffrey P. Erbs?

A Yes.

Q Do you believe that your marriage to Mr. Erbs is irretrievably broken?

A Yes.

Q Do you believe there's any chance or hope for reconciliation even with counseling?

A No.

Q Are you in the military today?

A No.

Q Were you in the military at the time this action was

1 commenced?

2 A No.

3 Q Are you pregnant today?

4 A No.

5 Q Do you have any major health issues that you're aware  
6 of?

7 A No.

8 Q What is your former surname?

9 A Well, my prior married name was Haas, H-A-A-S, and my  
10 maiden name, F-U-H-R.

11 Q Do you wish to resume the use of either of those  
12 names?

13 A My maiden name.

14 Q And how do you pronounce it?

15 A Fuhr.

16 MS. VEITH: Those are all the questions I  
17 have, Your Honor.

18 THE COURT: Ms. Erbs, you filed a  
19 counterclaim on January 20, 2010. Does that sound  
20 correct to you?

21 THE WITNESS: Yes.

22 THE COURT: And what is the zip code for  
23 Elk Mound?

24 THE WITNESS: I think it's 54739, but I'm  
25 not positive.

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THE COURT: Is that your mailing address?

THE WITNESS: No. My mailing address is  
Post Office Box 2196, Eau Claire.

THE COURT: 2109 --

THE WITNESS: No, 2196.

THE COURT: 2196, Eau Claire?

THE WITNESS: Eau Claire, 54702.

THE COURT: Thank you. Those are the  
questions I have. Mr. Erbs, you may ask questions of  
the witness.

CROSS-EXAMINATION

BY MR. ERBS:

Q Well, this is it, Mary Ann. The marriage is  
irretrievably broken up to you, huh?

A Yes.

MR. ERBS: Okay, fine. That's it.

THE COURT: Okay. Ms. Veith, do you have  
any other questions?

MS. VEITH: No, Your Honor.

THE COURT: Thank you. You may step down.  
As I indicated, this portion of the hearing is dealing  
with the status of the marriage alone. It is not  
dealing with the issues of maintenance, property  
division or division of debts.

As to this aspect of the hearing, I'm going

1 to find that the petitioner and respondent were  
2 married on October 6, 2003 (sic). The petitioner  
3 lived in the State of Wisconsin for six months  
4 immediately prior to the commencement of this action  
5 and Chippewa County for 30 days immediately prior to  
6 the commencement of this action.

7 The court therefore has jurisdiction on  
8 this matter. The petitioner and respondent separated  
9 on January 11, 2010. No children were born or adopted  
10 as a result of this relationship. The wife is not  
11 pregnant at this time.

12 A summons and petition were filed on  
13 January 12, 2010. The summons and petition were  
14 served on the respondent on that same day, January 12,  
15 2010.

16 The response and counterclaim were filed on  
17 January 20, 2010. Therefore, the counterclaim was  
18 timely filed. There are no other legal actions  
19 affecting this marriage that are known. Neither party  
20 is in the active military service of the United States  
21 or the State of Wisconsin.

22 The statutory waiting period has expired.  
23 There is a request by the respondent for a change of  
24 surname to the name of, is it Fuhr?

25 MS. ERBS: Fuhr.

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THE COURT: F-U-H-R. That is granted. The marriage -- the parties do not agree as to whether the marriage is irretrievably broken. Mr. Erbs originally petitioned stating it was but has changed his mind. The respondent, however, has firmly stated, and I believe her when she states that in her opinion, the marriage is irretrievably broken.

Since it takes two parties to have a marriage, the fact that one of them has convinced me that it is her opinion the marriage is irretrievably broken meets the standards required for a divorce.

I'm reserving the issues of maintenance, property division and debt division at this time.

I'm therefore granting the parties a judgment of absolute divorce at this time. I need to inform both of you that neither of you may remarry within six months from today's date and have it recognized by the State of Wisconsin.

The next matter I have is a motion for relief. Mr. Erbs, I have in your pleadings that you believe that you should receive some relief because of the fact that an order requiring the respondent's previous counsel to step away from the case is the basis for relief, and you believe that you are entitled to damages of one hundred percent of the

1 assets of the marriage times three. Is that correct?

2 MR. ERBS: Times three, yeah, times three,  
3 times three, treble damages for fraud.

4 THE COURT: I'm not finding any new facts  
5 or arguments beyond what was found by Judge Cameron.  
6 I'm denying the relief requested for fraud. I find  
7 that the judge determined that there was an appearance  
8 of impropriety, but I find no factual basis for fraud.  
9 Therefore, that request is denied.

10 Your second point in your motion for relief  
11 is, in essence, as I read it -- let me get it in front  
12 of me -- an order requiring Judge Cameron to report  
13 Attorneys Liptak and Mullen to the Office of Lawyer  
14 Regulation.

15 As that is, in essence, a motion for  
16 mandamus, for the same reason that I could not grant  
17 your previous motion for mandamus, I cannot grant this  
18 one either. I cannot tell another circuit judge to do  
19 or not do various things.

20 Having served on the -- with the Office of  
21 Lawyer Regulation on a local committee, I do have some  
22 understanding as to the reporting requirements. I  
23 believe that Judge Cameron must, in his own mind,  
24 determine whether he feels there was a violation of  
25 the Supreme Court Rules. If he determines that there

1 is, he should. If he determines there is not, he  
2 should not, and so that that is up to him.

3 I'm not going to order him to report things  
4 unless he feels that that is appropriate.

5 Item number three is a request for costs to  
6 compel discovery. I'm going to hold off on that  
7 'cause that's, in essence, the next thing that I have  
8 which is your motion for sanctions. And there, your  
9 first request is for sanctions against Attorney Veith.  
10 That's for failure to provide discovery. Is that  
11 correct?

12 MR. ERBS: No, it's for bringing up the  
13 frivolous motion on September 8th.

14 THE COURT: Which was her request to  
15 compel?

16 MR. ERBS: No, it was for that pension  
17 debacle which we discussed, you asked me my comment on  
18 it. I said I viewed it as frivolous because 767.225  
19 said the only orders that can be granted during the  
20 pendency of the action are -- can only be temporary in  
21 nature, and 767.61 says that no property division can  
22 happen until after the dissolution of marriage.

23 I hold that Attorney Veith certainly should  
24 have been aware of this seeings as she specializes in  
25 family law and families and that her motion to bring

1 this in front of the court was fairly ingenuous, and I  
2 deem that it's a -- it lacks candor to the tribunal  
3 and it's not a meritorious claim.

4 I deem it frivolous and asking for  
5 sanctions.

6 THE COURT: Thank you. I am finding that  
7 the motion was not frivolous. The respondent was in a  
8 situation where her employer was requiring her to do  
9 certain things within a certain time; that because I  
10 did not want to try and rule on a matter, 'cause I do  
11 agree with you that's a matter best set for a final  
12 hearing on property division, and I did not want the  
13 employer to set the rules for any of the parties nor  
14 the court. And that's the reason I set that, Mr.  
15 Erbs, because I wanted the employer to grant us more  
16 time, which they ended up doing.

17 So that I disagree with you that it was  
18 frivolous because I think under the circumstances that  
19 the respondent was in, it was necessary to get some  
20 sort of judicial intervention, which did occur, by  
21 enforcing a request or extra time to deal with that  
22 issue.

23 Because of the fact that both parties  
24 apparently feel that they have not gotten the  
25 discovery that they need to complete this action, I

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wanted the employer to give additional time, which the employer did, so I'm denying that motion.

Number two ties into number one 'cause you're asking for ten times the fee charged, but I'm again finding that it was not frivolous.

You're asking me to report Attorney Veith to the Office of Lawyer Regulation. I'm denying that because I do not find that she has violated a Supreme Court rule.

Then I think we get to your motion for contempt, Mr. Erbs, and you're indicating that you have not received the discovery from July 8th. Both of you were ordered by Judge Cameron to provide each other with discovery. What discovery have you not received?

MR. ERBS: I had asked for discovery that would meet the requirements of 7 --

THE COURT: It's too vague. Saying that there's not compliance is a conclusion.

MR. ERBS: So the law is vague?

THE COURT: What discovery have you not received? What bits of information do you need?

MR. ERBS: I filed interrogatories and discovery with the respondent's attorney, and hopefully I'll get that.

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THE COURT: Some additional discovery?

MR. ERBS: Yes.

THE COURT: Is that correct, Ms. Veith?

MS. VEITH: Yes. It was served September 29th, and we're working on the response.

THE COURT: Okay. Are you going to be able to comply by October 28th?

MS. VEITH: I believe so. My client has provided me with the -- her preliminary information. It's just a matter of putting it into the proper form before we provide it to Mr. Erbs.

THE COURT: And so that the discovery that you wish answered or is there something else from July 8th that specifically hasn't been provided?

MR. ERBS: It's kind of a sticky wicket, Your Honor, because the respondent has a share of a lease on 1320 acres of land in Campbell County, Wyoming.

THE COURT: Is that the oil and gas rights?

MR. ERBS: Yes, it is. And there is -- there have been two different oil shale formations found there, and they're to be very, very productive. One is called the Niobrara, and the other is called the Mowry, and it's in the Powder River Basin where that property lease is, and that'll have to be --

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that's an asset.

That's going to have to be -- come up with some kind of a price for that, and that's kind of a sticky wicket because what they may offer for discovery may not be what needs to be done for that, and I've already sent notice to Attorney Veith that I would have to -- maybe have to hire a forensic accountant to figure that out if the data they provide me with isn't enough to get an accurate number on what that asset is actually worth.

THE COURT: I agree with you, Mr. Erbs, that evaluating those oil rights is very difficult; that I wish I could refer you to somebody who knows how to do evaluations like that. It would be my suggestion, perhaps -- was it in Oklahoma?

MR. ERBS: Wyoming, Campbell County, Wyoming.

THE COURT: Okay.

MS. VEITH: Your Honor, just so the court is aware, this -- my client has rights to receive a portion of the income that the lease -- I believe it's the company that's doing the drilling. She doesn't actually own the property, first of all; and second of all, it was leases that she inherited from her father's estate so it's inherited property.

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THE COURT: So that there's two layers. Number one is whether it's a marital asset; and number two, to evaluate it. Mr. Erbs, about the only thing I can suggest is perhaps calling some attorneys over in Wyoming, in that area, 'cause I got to believe that other divorces are affected by people that own or have legal interest in that property and see who they use for an expert.

Generally attorneys will share that kind of information with you, as to who is a good evaluator of that, and I would suggest that you follow up on that because I don't know who to guide you to.

MR. ERBS: I don't have permission to evaluate her assets.

THE COURT: Well, you've asked for it, you're going to get it.

MR. ERBS: Okay. Thank you.

THE COURT: 'Cause that's, like I said, what's good for the gander is going to be good for the goose.

MR. ERBS: That's where I'm at, too, but I would like the court to understand that July, I was in Rochester for a month, okay, for my disability issues, and also after that for several weeks I had a respiratory problem, and I'm not kidding you when I

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said I didn't have time, I did not have time. I was not being rude. I did not have time.

I was in Rochester. I was at home on the weekends, but I was mostly recouping. I was down there for a pain management program from July 13th until August the 6th or 7th, and I had some issues and I still do, okay?

THE COURT: That's fine.

MR. ERBS: And I'm willing to work and get this all straightened out, get it behind us just as much as anybody, but it has to come from both sides.

THE COURT: And that's what I'm trying to tell you is I'm going to require that both sides cooperate, and whether or not it's determined to be a marital asset, it will be evaluated. You're going to have to follow through on that, but again, I want to give you some sort of idea as to how I would do it so you can take that into account.

I've had to evaluate oil rights before, and I always found it to be a pain, quite frankly, but I want you to be diligent on that. If you need disclosures, I'm going to require that that information be disclosed. That's only fair.

MR. ERBS: Thank you.

MS. VEITH: Your Honor, I would note, as

1 part of the discovery, we have provided to Mr. Erbs  
2 back in July, this is the discovery that we provided  
3 to him, we included all of the information my client  
4 has on the leases. So she doesn't have any additional  
5 information.

6 I think from my reading of the discovery,  
7 Mr. Erbs wanted us to have the leases appraised, and  
8 we're obviously not required to do that as part of  
9 discovery.

10 THE COURT: I agree with that. If you want  
11 it appraised, that's going to be on your dime.

12 MR. ERBS: It's an asset.

13 THE COURT: Sir, yes, but as far as  
14 determining its value, that is something that each  
15 side -- you're not entitled to have her evaluate it.  
16 That is your responsibility, if you wish to have it  
17 considered as an asset, to have an appraisal, but the  
18 respondent is also going to have to have some sort of  
19 valuation on it.

20 Are there any other discovery issues, Mr.  
21 Erbs, that we should talk about?

22 MR. ERBS: I had hired Jim Severson to do  
23 personal property appraisals, and he has not been  
24 allowed to access the respondent's residence to look  
25 at personal possessions and appraise them.

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THE COURT: Where are we at with that, Ms. Veith?

MS. VEITH: Your Honor, my client currently resides with her daughter, and she doesn't have that many items of personal property in her possession. When she left the residence, she took her clothing. I think she has two sets of silverware and some --

MS. ERBS: The diamond ring I had from Jeff.

MS. VEITH: So it was her wedding ring and her vehicle. She's taken everything she has in terms of personal property in her possession to Mr. Severson. He's viewed it, and it's our understanding has included in his report.

I haven't received Mr. Severson's report, so to require Mr. Severson to travel to Dunn County to appraise the very few items that she has, including the two silver sets, one was a gift, inherited by her from her mother -- her grandmother.

So Mr. Severson has seen the items that she has in her possession with the exception of a silver set that was received from her grandmother that she intends to give -- pass down to her daughters. Again, it was --

THE COURT: It should be shown to Mr.

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Severson.

MS. VEITH: She'll have to make arrangements for Mr. Severson to see it. That's the only thing he hasn't seen that's in her possession.

THE COURT: I want that to occur in the next three weeks.

MS. VEITH: Sure.

THE COURT: Anything else for your discovery, Mr. Erbs?

MR. ERBS: Well, Your Honor, I'll just -- I don't want -- I just say I'll wait until I get her list of her personal items and then we'll have to go through it and sort this -- sort this whole thing out, okay, so there's really no reason for me to bring up anything else right now about that.

THE COURT: I want to make sure I'm addressing all the issues you have today.

MR. ERBS: I understand that. All I'm saying is I have to get a list from her. She has to get a list from me. Mr. Severson was at the home for a number of hours and went around and did his appraisal unfettered, basically, and we'll just have to see what prices he comes up and what he lists and everything else. That's what it comes down to then, isn't it?

1 THE COURT: It wouldn't shock me if we have  
2 to come back again, but I just want to make sure that  
3 I'm doing what I can today. We may well have to have  
4 more hearings, I don't know, but --

5 MR. ERBS: Well, I'd prefer not to, but I'm  
6 sure we probably will have to, also.

7 THE COURT: But I've addressed the  
8 discovery issues you have for today. Is that right?

9 MR. ERBS: Yes, sir.

10 THE COURT: Okay. Ms. Veith, are there any  
11 discovery issues that you wish to raise at this time?

12 MS. VEITH: No, Your Honor.

13 THE COURT: I'm just reading something by  
14 Mr. Erbs, bears today's stamp, so I'm going to glance  
15 through this to make sure I am dealing with this as  
16 well.

17 The first two pages appear to be dealing  
18 with Mr. Erbs's finding of contempt by this court in  
19 relation to his failure to disclose his disability  
20 payments.

21 Mr. Erbs cites the fact that that cannot be  
22 assigned, and Mr. Erbs, you are missing the point.  
23 The point is not whether or not it can be assigned but  
24 the fact that it needs to be disclosed, and that is an  
25 asset of the marital estate and so that I am requiring

1 you to disclose it.

2 I'm not necessarily requiring you to assign  
3 it, but those are two different things. Yes, Mr.  
4 Erbs?

5 MR. ERBS: Pardon me, Your Honor. Leighton  
6 versus Leighton, Wisconsin, be considered as earned  
7 income is not an asset to be divided between the  
8 parties.

9 THE COURT: But you're missing the point.  
10 It has to be revealed, and that is an asset that you  
11 have, and so that whether or not it can be divided,  
12 just like the respondent is saying well, I inherited  
13 this stuff, and if she inherited it, then it's not  
14 marital property and can't be divided either, but that  
15 doesn't mean that she doesn't have to disclose to you  
16 what it is and information sufficient so you can  
17 evaluate it so then arguments can be made whether it  
18 is going to be a marital asset or not.

19 There's a difference between those two  
20 concepts. One is it being divided, and the second  
21 concept is whether it's discoverable, and both of  
22 those things are discoverable so that that is why I  
23 found you in contempt because you willfully failed to  
24 disclose it, not that you failed to assign it.

25 MR. ERBS: It can't be used in any legal

1 process, Your Honor, then why should it have to be ex  
2 -- declared?

3 THE COURT: Because I have to determine --  
4 you're asking for maintenance. I have to understand  
5 what your income is.

6 MR. ERBS: That's --

7 THE COURT: Sir, you're talking about case  
8 law that says it can't be assigned, but it is part of  
9 your income. I have to take a look at the assets that  
10 each party has available to them to determine whether  
11 or not maintenance is appropriate and so your income  
12 is your income, and if you want and need funds, I have  
13 to understand what your -- what your ability to  
14 maintain your own lifestyle is.

15 MR. ERBS: I've already disclosed what I  
16 get per month to Pamela Veith.

17 THE COURT: She had financial disclosure  
18 information she required and you had refused to sign  
19 it, and I'm not going to put up with that and so that  
20 is why I made my finding. I'll continue on with your  
21 pleading here.

22 Paragraph nine deals with the allegations  
23 that there was fraud by the previous attorneys, and  
24 again, I have no information to indicate that a fraud  
25 occurred so I'm not dealing with that.

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Paragraph eleven again deals with the letter I sent out on -- in August. Again, as I've indicated, that was not -- I was requesting information so I could make a decision. It was not assisting the respondent nor was it showing bias. That is my ruling on that.

Paragraph twelve I believe deals with my writ of mandamus. Courts have to find, when they rule on something such as a mandamus, they have to consider it and then determine whether they have jurisdiction.

That is one of the responsibilities of the court. The fact that I considered it and then found that I did not have jurisdiction doesn't mean that I could somehow decide before I even considered the matter whether or not there was jurisdiction so that paragraph twelve is a bit of a circular argument.

Paragraph thirteen deals with reasonable accommodations. Again, Mr. Erbs, you've indicated you have difficulty handling papers. I suggested that you try an electronic format, and that, I believe, is a reasonable accommodation.

MR. ERBS: Your Honor, I'm the one with the disability, and there are days when I can't sit at the computer, and there are days I cannot hold paper material to read. That's why I asked for that.

1 I had no idea that you could put or did put  
2 -- I'm used to looking at those little thirteen key  
3 machines, not the laptop. I had no idea that it was a  
4 transcript on the CD that I'd have to read on the  
5 computer. That's what I'm saying.

6 THE COURT: Okay. Well, if you have -- if  
7 you get a statement from a doctor saying that you are  
8 unable to operate a laptop computer, then I will  
9 reconsider the motion.

10 MR. ERBS: Your Honor, that would be  
11 hearsay, wouldn't it be? I have to tell the doctor  
12 that needs to tell you?

13 THE COURT: Again, if there's sufficient  
14 indicia that it is indeed coming from a doctor, I will  
15 accept it. What I usually require is that it be on  
16 the letterhead and bear the signature.

17 I can generally tell a letter from a doctor  
18 so that that would be an exception to the hearsay rule  
19 under the general exception which is where there's  
20 sufficient indicia of reliability where the court can  
21 rely on it.

22 Then the next document is your brief in  
23 opposition to Pam Veith's brief in opposition to  
24 motion for recusal.

25 MR. ERBS: I think we already covered that.

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THE COURT: Okay. Mr. Erbs, are there any other issues that you wish to bring to the court's attention today?

MR. ERBS: Not that I can think of offhand.

THE COURT: Thank you. Ms. Veith, anything else?

MS. VEITH: No, Your Honor.

THE COURT: I don't know if you want to prepare a partial judgment at this time. If you do, please send it to Mr. Erbs, give him a week's time to review it to see if he agrees with the wording. Doesn't mean that you necessarily agree with the conclusions I've reached but whether or not it accurately reflects the rulings I have made.

Thank you both. We stand adjourned.

MS. VEITH: Thank you, Your Honor.

(The proceedings concluded.)

