

NO. A08-0636

State of Minnesota
In Court of Appeals

Mohammed Monirul Alam,

Appellant,

v.

Salina Chowdhury,

Respondent.

APPELLANT ALAM'S BRIEF AND APPENDIX

LINDQUIST & VENNUM P.L.L.P.
Paul A. Banker (#256596)
Brittany J. Stephens (#0348533)
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 371-3211

Attorneys for Appellant
Mohammed Monirul Alam

Gregory R. Solum (#122270)
3300 Edinborough Way
Suite 550
Edina, MN 55435
(952) 835-1300

Attorneys for Respondent
Salina Chowdhury

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF THE ISSUE 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 3

SUMMARY OF ARGUMENT 9

STANDARD OF REVIEW 10

ARGUMENT 11

 I. THE TRIAL COURT ABUSED ITS DISCRETION BY
 REOPENING THE JUDGMENT AND DECREE OF MARRIAGE
 DISSOLUTION BECAUSE THERE IS NOT SUFFICIENT
 EVIDENCE TO SUPPORT THE REQUISITE FINDING OF
 FRAUD ON THE COURT. 11

 A. There is no evidence that Alam engaged in an intentional
 course of material misrepresentation or non-disclosure. 13

 B. There is no evidence that Alam misled the court or
 Chowdhury..... 18

 C. There is no evidence that the terms of the 2001 Judgment and
 Decree are grossly unfair. 19

 II. THE TRIAL COURT ERRED BY VALUING ALAM’S
 RETIREMENT ACCOUNTS AFTER THE DATE OF THE
 MARRIAGE DISSOLUTION. 21

 A. Because Minnesota Statutes Section 518.003 defines marital
 property as property acquired during the marriage, the trial
 court erred by valuing Alam’s retirement accounts after the
 date of the marriage dissolution. 21

 B. Alam’s new wife has an ownership interest in Alam’s
 retirement assets included in the division of assets and
 liabilities in the marriage dissolution between Alam and
 Chowdhury..... 24

CONCLUSION 25

TABLE OF AUTHORITIES

<u>CASES</u>	Page(s)
<u>Baker v. Baker</u> , 733 N.W.2d 815 (Minn. Ct. App. 2007).....	10
<u>Berenberg v. Berenberg</u> , 474 N.W. 2d 843 (Minn. Ct. App. 1991).....	10
<u>Cummings v. Cummings</u> , 376 N.W.2d 726 (Minn. Ct. App. 1985).....	22
<u>Haefele v. Haefele</u> , 621 N.W.2d 758 (Minn. Ct. App. 2001).....	14, 15
<u>Kornberg v. Kornberg</u> , 542 N.W.2d 379 (Minn. 1996).....	10, 14
<u>Mahoney v. Mahoney</u> , 474 N.W.2d 232 (Minn. Ct. App. 1991).....	10
<u>Maranda v. Maranda</u> , 449 N.W.2d 158 (Minn. 1990)	1, 12, 13, 19
<u>Sanborn v. Sanborn</u> , 503 N.W.2d 499 (Minn. Ct. App. 1993).....	19, 20
<u>Searles v. Searles</u> , 420 N.W.2d 581 (Minn. 1988).....	24
<u>Stageberg v. Stageberg</u> , 695 N.W.2d 609 (Minn. Ct. App. 2005).....	10, 22
<u>Sweere v. Gilbert-Sweere</u> , 534 N.W.2d 294 (Minn. Ct. App. 1995).....	22, 23
<u>Thompson v. Thompson</u> , 739 N.W.2d 424 (Minn. Ct. App. 2007).....	12
<u>Vangsness v. Vangsness</u> , 607 N.W.2d 468 (Minn. Ct. App. 2000).....	10
<u>Wopata v. Wopata</u> , 498 N.W.2d 478 (Minn. Ct. App. 1993).....	10

STATUTES

29 U.S.C. § 1055 (2006)25

Minn. Stat. § 518.003, subd. 3b2, 21, 24

Minn. Stat. § 518.58, subd. 121

Minn. Stat. § 518.145, subd. 2 (2008)1, 11, 12

STATEMENT OF THE ISSUE

1. To vacate a marital-dissolution judgment for fraud on the court requires an intentional course of material misrepresentation or non-disclosure that misleads the court or the other party and makes a property settlement grossly unfair. Here, there is no evidence in that Alam intentionally misled the court; the disparities in the value of the assets awarded to the parties were nominal and Alam's valuation was made in good faith. Should this Court reverse the trial court's abuse of discretion in reopening the 2001 dissolution judgment?

Trial Court's Ruling: The trial court reopened the 2001 dissolution judgment, save the dissolution of the parties' marriage.

List of Most Apposite Cases and Statutory Provisions:

Minn. Stat. § 518.145, subd. 2 (2008); and
Maranda v. Maranda, 449 N.W.2d 158, 166 (Minn. 1990).

2. Property acquired after the dissolution of a marriage is statutorily excluded from marital property. Here, after reopening the property-settlement terms of the 2001 marital-dissolution judgment, though not the marriage dissolution itself, the trial court used a 2006 valuation date for Alam's retirement assets that included post-dissolution contributions and asset appreciation. Should this Court reverse the trial court's 2006 valuation of Alam's retirement assets because that valuation improperly includes his post-marital assets?

Trial Court's Ruling: In dividing the marital assets, the trial court valued Alam's retirement assets as of December 31, 2006, including more than five years of Alam's post-marital contributions and asset appreciation.

List of Most Apposite Cases and Statutory Provisions:

Minn. Stat. 518.003, subd. 3b.

STATEMENT OF THE CASE

Respondent Mohammed Monirul Alam (hereinafter "Alam") commenced marriage-dissolution proceedings on July 10, 2001. (App. 41.) On October 16, 2001, the matter came on for a default hearing before the trial court, the Honorable James Morrow presiding. (App. 1-7; Tr. 1:10-13, Oct. 16, 2001.) Alam appeared pro se at the default hearing, and Petitioner Salina Chowdhury (hereinafter "Chowdhury") did not appear. (App. 1.) Following the default hearing, the trial court issued its Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree entered October 16, 2001 (hereinafter "2001 Judgment and Decree").

More than four years later, by motion filed January 20, 2006, Chowdhury moved the trial court to reopen the 2001 Judgment and Decree on the basis of fraud. The trial court took testimony of the parties at a hearing held March 13, 2006 and issued its Order Vacating Judgment and Decree dated May 5, 2006, reopening all issues save the dissolution of marriage. (App. 41-43.)

The court held trial on May 9, 10, and 11, 2007 on all issues in the marriage-dissolution proceeding, save the dissolution of the parties' marriage. (App. 44.) On August 31, 2007, the trial court entered its Findings of Fact, Conclusions of Law, Order

for Judgment and Judgment and Decree (hereinafter “2007 Judgment and Decree”). The 2007 Judgment and Decree valued Alam’s retirement accounts using a 2006 value, rather than the date of the parties’ marriage dissolution – October 16, 2001. (App. 59, 67-69.) The 2006 value included more than five years of non-marital contributions to and growth in Alam’s retirement accounts. Alam moved the trial court to amend its Findings of Fact and Conclusions of Law concerning his retirement assets to include only the marital portions of the accounts accrued through the date of the marriage dissolution – October 16, 2001. The trial court denied Alam’s motion following a hearing on November 14, 2007. It entered its Amended Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree on February 11, 2008 (hereinafter “2008 Amended Judgment and Decree”). This appeal followed.

STATEMENT OF THE FACTS

The parties were married on July 29, 1979. (App. 2.) They have two children of their marriage, both of whom are now emancipated. The parties’ youngest daughter was a minor when Alam commenced marriage-dissolution proceedings on July 10, 2001. (App. 2.) Chowdhury did not respond or participate in the marriage-dissolution proceedings in 2001. In August 2001, the parties and their two children met to discuss the terms of Alam’s proposed stipulation. (Tr. 11-14, Mar. 13, 2006.) Chowdhury rejected Alam’s proposal, but still chose not to appear in the proceedings. The trial court scheduled a default hearing on October 15, 2001, and sent notice to Chowdhury. (App. 10.) Alam appeared pro se at the default hearing. (App. 1.) Chowdhury did not appear. Id. Following the hearing, the trial court issued the 2001 Judgment and Decree, awarding

Chowdhury physical custody of the minor child of the parties and requiring Alam to pay child support of \$750 per month; denying spousal maintenance to both parties; and dividing the assets and liabilities of the parties. (App. 4-7.) The 2001 Judgment and Decree divided the parties' assets and debts as follows:

Assets/Liabilities	Value	Alam	Chowdhury
<i>Real Estate</i>			
14136 Orchid Street	\$180,000	\$90,000	\$90,000
Home Equity Loan	(\$18,000)	(\$18,000)	
<i>Cash & Investment Accounts</i>			
Mutual Funds	\$82,000	\$41,000	\$41,000
2 Bangladesh savings bonds	\$15,516	\$7,758	\$7,758
Joint Savings Account - \$80,000			
Less Alam inheritance \$35,000			
Less Alam premarital - \$20,000			
Net	\$25,000	\$25,000	
Chowdhury Savings Account	\$15,000		\$15,000
Chowdhury Inheritance - Pending (not included - \$17,200)			X
<i>Retirement Assets</i>			
Alam - State of MN	\$52,806	\$52,806	
<i>Personal Property</i>			
1994 Toyota Corolla Vehicle			X
1999 Nissan Altima Vehicle		X	
Jewelry	\$30,000		\$30,000
Household goods and furnishings	\$10,000		\$10,000
<i>Debts</i>			
Discover Credit Card		X	
American Express Credit Card		X	
Total	\$392,322	\$198,564	\$193,758
		50.6%	49.4%

The 2001 Judgment and Decree awarded the parties the marital homestead as tenants in common. (App. 5.) Alam was required to pay the home equity line encumbering the property, together with all property taxes, insurance, maintenance, and repairs on the home. Id. The parties were required to equally divide the cost of the monthly utilities so long as Alam continued to reside in the home. Id.

Immediately upon entry of the 2001 Judgment and Decree, Alam began paying child support to Chowdhury by directly depositing \$750 per month into Chowdhury's bank account. (Tr. 293-94, May 10, 2007.) Chowdhury knew of the marriage dissolution and the terms of the 2001 Judgment and Decree by at least December 2001. (Tr. 42, 80, Mar. 13, 2006.)

The parties continued to reside together in the homestead until August, 2004 -- the month in which the parties' youngest daughter left home to attend college. (App. 16, 90; Tr. 31-32, May 9, 2007; Tr. 35-36, Mar. 13, 2006.) During the period the parties lived together following the marriage dissolution, Alam paid off the home equity line encumbering the property (Tr. 46-48, May 9, 2007) and paid all taxes, insurance, maintenance, and repairs for the property, as required by the 2001 Judgment and Decree (Tr. 53-69, May 9, 2007). Although Alam was paying child support of \$750 per month, he also paid for all of the minor child's expenses, and most of the family's groceries and other living expenses. (App. 91; Tr. 72, May 9, 2007.)

In December 2004, Alam remarried. (Tr. 215, May 9, 2007.) He subsequently asked to sell the homestead owned by the parties as tenants in common, or to have Chowdhury buy him out of his one-half interest in the home. (App. 27; Tr. 406-07, May

11, 2007.) Chowdhury refused and hired an attorney. In September 2005, Chowdhury's attorney mailed to Alam a demand letter that Alam perform certain repairs to the homestead. (App. 23-24; Tr. 403, May 11, 2007.) Neither Chowdhury nor her attorney indicated that Chowdhury wished to reopen the 2001 Judgment and Decree.

Several months later, Chowdhury retained a new attorney and brought a motion to reopen the 2001 Judgment and Decree. (App. 11-14.) In her sparse affidavit requesting that the trial court reopen the 2001 Judgment and Decree, Chowdhury challenged the valuation of certain limited assets: jewelry, household goods, and furnishings, her savings account, and a joint bank account. (App. 15-24.) Chowdhury argued that Alam committed fraud by representing that the value of the jewelry awarded to her was \$30,000, though Chowdhury concluded it was worth \$6,000. Chowdhury also argued that Alam committed fraud by representing that the value of all of the parties' household goods and furnishings was \$10,000, though she concluded it was only worth \$2,000. Chowdhury presented no evidence for her personal beliefs as to the value of the jewelry and household goods and furnishings. Chowdhury did not present appraisals of the value of the jewelry and household goods and furnishings. Alam made his best, good-faith estimate as to the value of both the jewelry and the household goods and furnishings. (App. 30-31.)

Chowdhury further alleged that Alam committed fraud by valuing her savings account at \$15,000 when the actual balance was \$13,000. (App. 18.) Despite the fact that this asset was Chowdhury's, she did not present any documentary evidence to support a value of \$13,000.

With respect to the joint savings account, Chowdhury did not dispute the value but accused Alam of committing fraud by making a non-marital claim to the account deriving from a \$35,000 inheritance and \$20,000 of his pre-marital savings. Nonetheless, Chowdhury subsequently agreed that Alam inherited \$35,000 and that she knew he had some pre-marital savings. (Tr. 86:25, Mar. 13, 2006.) At the motion to reopen the 2001 Judgment and Decree, Chowdhury's complaint was merely that Alam had not proven his non-marital claims. (App. 11-24.)

Chowdhury chose not to participate in the marriage-dissolution proceedings, during which she could have requested a detailed tracing from Alam. Chowdhury also mistakenly complained that the 2001 Judgment and Decree awarded her a potential inheritance as a marital asset. Although the Judgment and Decree awarded her all interest in an anticipated inheritance, the 2001 Judgment and Decree does not characterize the asset as "marital." (App. 3.) The Judgment and Decree achieved an almost completely equal division of the assets suggesting that the potential inheritance was not considered by the trial court as a marital asset in the 2001 Judgment and Decree.

Chowdhury also requested that the trial court reopen the 2001 Judgment and Decree because she claimed said document failed to address two possible assets – proceeds from a sale of property in Bangladesh and funds received from the Kuwaiti government. In bringing her motion, Chowdhury failed to acknowledge the likelihood that these funds were included in one of the marital bank accounts, as explained by Alam. (Tr. 40-41, Mar. 13, 2006.)

Finally, in her motion to reopen the 2001 Judgment and Decree, Chowdhury argued that the trial court should reopen the Judgment and Decree because she was denied spousal maintenance. The 2001 Judgment and Decree found that she had gross income of \$1,765 per month and net income of \$1,455. Alam testified that this calculation was based on a pay stub Chowdhury provided to Alam. (Tr. 62-63, Mar. 13, 2006.) In her motion to reopen the Judgment and Decree, Chowdhury argues she had gross monthly income of \$1,161 per month and net monthly income of \$904 based on her 2001 W-2 Earnings Statement. However, Chowdhury testified that she earned \$9.14 per hour and worked 40 hours per week (Tr. 87, Mar. 13, 2006), resulting in gross monthly income of \$1,590. This is only \$175 less in gross monthly income than the Judgment and Decree found. Chowdhury also complains that Alam understated his income by \$7,000 to \$8,000 per year, representing the income he earned in teaching summer school. Chowdhury failed to advise the trial court that Alam did not teach summer school in 2001. (Tr. 62, Mar. 13, 2006.) Alam's income in the 2001 Judgment and Decree was based on his actual year-to-date earnings in 2001. Id.

Alam hired a paralegal service to help him prepare the requisite documents, including the proposed judgment and decree. (App. 28; Tr. 13, Mar. 13, 2006.) Alam provided information concerning assets and income and asked the paralegal service to prepare the proposed judgment and decree. (Tr. 13, Mar. 13, 2006.) He calculated values using his best estimates and trusted that the paralegal service was appropriately incorporating the information he provided into the proposed judgment and decree.

Following the Order Vacating Judgment and Decree dated May 5, 2006, the trial court held a trial on the issues of disposition of assets and liabilities and spousal maintenance. One of the issues at trial was disposition and value of Alam's retirement assets. For purposes of dividing the assets and liabilities between the parties, the trial court valued Alam's retirement assets using a December 31, 2006 valuation date, rather than the date of the marriage dissolution. (App. 110-14, 116-17.) The result is that Chowdhury shared in more than five years of post-marital contributions and growth on Alam's retirement assets.

SUMMARY OF ARGUMENT

To reopen a judgment and decree of marriage dissolution almost five years after entry of the judgment and decree, the moving party must demonstrate that the other party committed fraud on the court. In the present case, Chowdhury failed to demonstrate that Alam engaged in an intentional course of material misrepresentation or non-disclosure having the result of misleading the court and opposing counsel and making the terms of the judgment grossly unfair. Chowdhury fell drastically short of this burden, and the trial court's conclusory finding of fraud on the court is clearly erroneous. There is no basis in the record for a finding of fraud on the court. The trial court abused its discretion by reopening the 2001 Judgment and Decree by Order Vacating Judgment and Decree dated May 5, 2006.

Regardless, property acquired after the dissolution of marriage is not marital property. Despite this, for purposes of the division of marital property, the trial court valued Alam's retirement assets five years after the marriage dissolution for purposes of

equitably dividing the marital property. Whether property is marital in nature is a question of law over which this Court exercises de novo review. The trial court erred in concluding that Alam's post-marital retirement contributions and growth was marital property.

STANDARD OF REVIEW

A trial court's decision to reopen a judgment and decree based on fraud on the court will be overturned if the appellate court determines that the trial court has abused its discretion. Kornberg v. Kornberg, 542 N.W.2d 379, 386 (Minn. 1996). A trial court's findings concerning allegations of fraud on the court will be overturned if clearly erroneous. Mahoney v. Mahoney, 474 N.W.2d 232, 234 (Minn. Ct. App. 1991). A finding is clearly erroneous if the court of appeals is left with the definite and firm conviction that a mistake has been made. Vangsness v. Vangsness, 607 N.W.2d 468, 472 (Minn. Ct. App. 2000).

Whether property is marital in nature is a question of law over which the court of appeals exercises de novo review and exercises its independent judgment. Baker v. Baker, 733 N.W.2d 815, 819 (Minn. Ct. App. 2007); Stageberg v. Stageberg, 695 N.W.2d 609, 619 (Minn. Ct. App. 2005); Wopata v. Wopata, 498 N.W.2d 478, 484 (Minn. Ct. App. 1993); Berenberg v. Berenberg, 474 N.W. 2d 843, 846 (Minn. Ct. App. 1991). As a result, the trial court's ruling on the marital nature of property neither binds this Court nor must this Court defer to said ruling. This standard applies to the trial court's determination of the marital value of Alam's retirement accounts.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION BY REOPENING THE JUDGMENT AND DECREE OF MARRIAGE DISSOLUTION BECAUSE THERE IS NOT SUFFICIENT EVIDENCE TO SUPPORT THE REQUISITE FINDING OF FRAUD ON THE COURT.

The trial court abused its discretion by reopening the 2001 Judgment and Decree on the basis of fraud on the court. There is no evidence in the record to support the trial court's finding of fraud on the court. This Court should reverse the trial court's decision to reopen the 2001 Judgment and Decree and should reinstate the original judgment and decree.

Minnesota Statutes Section 518.145, subdivision 2 specifically addresses reopening a judgment and decree in the marriage dissolution context and provides that:

[o]n motion and upon terms as are just, the court may relieve a party from a judgment and decree, order, or proceeding under this chapter, except for provisions dissolving the bonds of marriage, . . . and may order a new trial or grant other relief as may be just for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial . . .
- (3) fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment and decree or order is void; or
- (5) the judgment has been satisfied

A motion to reopen the judgment and decree must be made within a reasonable time, and not more than one year after the judgment and decree was entered if the reopening should occur on the basis of mistake, newly discovered evidence or fraud. Minn. Stat.

§ 518.145, subd. 2. A trial court may also set aside a judgment for fraud on the court. Id.

Ordinarily, a motion to set aside a judgment and decree based on fraud must be made within a reasonable time, but not more than one year after entry. Id. Under limited circumstances, a party may move to set aside a judgment and decree after this one-year period of limitation if there is proof that the non-moving party committed fraud on the court. Thompson v. Thompson, 739 N.W.2d 424, 428 (Minn. Ct. App. 2007).

The significance of a finding of fraud on the court is that it permits a court to reopen a judgment and decree in limited circumstances after the 1-year limit for a similar motion brought on the basis of fraud. In determining whether fraud on the court has occurred, the court will focus on whether the offending party engaged in an “unconscionable scheme or plan to influence the court improperly.” Maranda v. Maranda, 449 N.W.2d 158, 165 (Minn. 1990). The difference between fraud on the court is primarily a difference of degree rather than kind. Id. For a judgment and decree to be reopened after the 1-year limitation period prescribed in section 518.145, a finding of fraud on the court is dramatically more severe than a finding of ordinary fraud. The Minnesota Supreme Court held that fraud on the court in a marriage dissolution context has three requisite components: (1) an intentional course of material misrepresentation or non-disclosure; (2) having the result of misleading the court and opposing counsel; and (3) making the result grossly unfair. Id. at 166.

The Maranda Court was troubled by the six-year delay between entry of the original judgment and decree and the motion to vacate the judgment and decree. Id. There are strong policy preferences for finality in marriage dissolution proceedings. Id. The Maranda Court noted that in “most cases, a year or two should suffice to discover

fraud.” Id. The six-year delay in Maranda was an “extreme example” that “probably reaches the outer limits of reasonableness,” though the record reflects that the husband’s conduct prevented the wife from having sufficient facts to move to reopen the judgment and decree earlier. Id. In particular, the wife was systematically excluded from access to information concerning finances, the husband willfully misrepresented facts about marital property, the wife’s counsel’s independent judgment was questioned, and the husband concealed significant amounts of money. Id. at 160-61.

Given the statutory structure of a heightened burden to demonstrate fraud on the court with the passage of time, and the Maranda discussion regarding the preference for finality in marriage dissolution proceedings, the moving party’s burden to demonstrate fraud on the court justifying reopening a judgment and decree escalates as time passes.

Chowdhury failed to produce sufficient evidence of the Maranda fraud-on-the-court components in support of her motion to reopen the 2001 Judgment and Decree. There is no evidence that Alam engaged in an intentional course of material misrepresentation or non-disclosure; that Alam misled the court or Chowdhury; nor that the terms of the 2001 Judgment and Decree are grossly unfair.

A. There is no evidence that Alam engaged in an intentional course of material misrepresentation or non-disclosure.

In order to find that Alam committed fraud on the court justifying reopening the 2001 Judgment and Decree, the court is required to find that Alam engaged in an intentional course of material misrepresentation or non-disclosure. At the motion to

reopen the 2001 Judgment and Decree, there was no evidence to support a finding that Alam intentionally misrepresented or failed to disclose material information.

In Kornberg v. Kornberg, 542 N.W.2d 379 (Minn. 1996), the Minnesota Supreme Court held that the spouse seeking to reopen a judgment and decree of marriage dissolution had not shown fraud under either the ordinary fraud standard or the fraud-on-the-court standard because the record contained no evidence that the husband intentionally made representations or that the court was misled in any way. The wife made no allegations of misrepresentation of material facts. Id. at 388. She alleged only covert and unexpressed intention, but the Supreme Court determined that such allegations alone are not sufficient for a finding that husband intentionally misrepresented any material facts. Id.

In Haefele v. Haefele, 621 N.W.2d 758 (Minn. Ct. App. 2001), this Court reversed the trial court's decision to reopen the judgment and decree on the basis of fraud within one year of entry of the judgment and decree. Though the difference between values in the parties' stipulated judgment and decree and asset values on contemporaneous financial statements was approximately \$800,000, this Court determined that there was no discernable pattern suggesting that husband intentionally altered values for dissolution purposes. Instead, the Court of Appeals determined that the record showed that a combination of carelessness, haste, improper valuation methods, and lack of experience in valuation may have contributed to the mistaken property valuations. Id. at 764. But this did not constitute fraud, even under the less strenuous standard of ordinary fraud

required since the motion to reopen the judgment and decree was brought within one year of entry. Id.

At the motion to reopen the 2001 Judgment and Decree in the present case, there was no evidence before the court that Alam intentionally engaged in misrepresentation or non-disclosure. Before the default hearing, Alam presented Chowdhury with a stipulation containing the same provisions included in the proposed judgment and decree. (Tr. 11-14, Mar. 13, 2006.) Alam fully disclosed to Chowdhury the proposed division and valuation of assets, as well as the denial of spousal maintenance, ultimately approved by the trial court following the hearing. Chowdhury still did not participate in the marriage dissolution proceedings. By at least December 2001, Chowdhury knew of the final terms of the marriage dissolution approved by the trial court in the 2001 Judgment and Decree. She did not take any action to dispute the terms of the 2001 Judgment and Decree for more than four years. At that time, Chowdhury moved the trial court to reopen the Judgment and Decree after Alam requested that the parties' joint home be sold.

In her sparse affidavit requesting that the court reopen the 2001 Judgment and Decree, Chowdhury only disagreed with the 2001 Judgment and Decree on certain limited assets. She also alleged that the trial court failed to address two possible assets. Chowdhury mistakenly complained that the judgment and decree included an inheritance she did not receive as a marital asset. Chowdhury provided no evidence to suggest that the values proposed by Alam were erroneous, nor that he *intentionally* misrepresented or failed to disclose any assets, as required under Maranda. Chowdhury simply concluded

that because she disputed the values, Alam made misrepresentations. Likewise, Chowdhury presented no evidence that Alam's representations concerning the parties' incomes were intentionally inaccurate.

Chowdhury had an opportunity to participate in the dissolution proceedings in 2001. She chose to abstain. But she thereby lost her chance to express differences of opinion about valuation, property, and income.

In her motion to reopen the 2001 Judgment and Decree, Chowdhury argued that the trial court should reopen the judgment and decree on the issue of spousal maintenance on the basis of fraud. The 2001 Judgment and Decree found that Chowdhury had gross monthly income of \$1,765 and net monthly income of \$1,455. Chowdhury testified that she earned \$9.14 per hour and worked 40 hours per week (Tr. 87, Mar. 13, 2006), resulting in gross monthly income of approximately \$1,590. This is only \$175 less in gross monthly income than the Judgment and Decree found. The difference in net income was even smaller.

This small difference, coupled with Alam's testimony that he calculated Chowdhury's monthly income using a current pay stub she provided to him in the summer of 2001, indicates that Alam did not intentionally misrepresent Chowdhury's income. There is no basis for a finding otherwise.

Chowdhury also complains that Alam understated his income by \$7,000 to \$8,000 per year, representing the income he earned in teaching summer school. Alam did not actually teach summer school in 2001. The finding regarding Alam's income in the 2001 Judgment and Decree was based on his actual year-to-date earnings in 2001. There is no

evidence that Alam intentionally understated his income in asking that the trial court deny spousal maintenance to both parties.

Alam provided information concerning assets and income to a paralegal service to help him prepare the proposed judgment and decree. It is possible that Alam's valuation was not perfectly accurate, as in most marriage dissolution proceedings. He calculated values and income using his best estimates and using reasonable approaches. He trusted and believed that the paralegal service was appropriately incorporating the information he provided into the proposed judgment and decree. Like in the Haefele case, any imperfections in Alam's valuation of assets or determination of income derive from improper valuation methods and lack of experience, though not intentional material misrepresentations.

Like the Kornberg case, there is no evidence that Alam intentionally misrepresented or failed to disclose any facts to the trial court or to Chowdhury. At the motion to reopen the 2001 Judgment and Decree, Chowdhury makes no factual allegations that any of her disagreements with the terms of the Judgment and Decree are the result of intentional misrepresentations or non-disclosures by Alam. Chowdhury drastically failed to meet her burden to demonstrate fraud on the court in accordance with Maranda.

Therefore, the trial court abused its discretion by reopening the 2001 Judgment and Decree. There is no basis in the record for a finding that Alam committed fraud on the court by intentionally misrepresenting any information or by failing to disclose certain information.

B. There is no evidence that Alam misled the court or Chowdhury.

In order to find that Alam committed fraud on the court justifying the trial court reopening the 2001 Judgment and Decree, the trial court is not only required to find that Alam intentionally made material misrepresentations or non-disclosures, but also that said intentional misrepresentations or non-disclosures resulted in misleading the court and the opposing party.

Given that Chowdhury knew all of the precise terms of the judgment and decree Alam proposed to the trial court *before* the default hearing, there is no logical way to conclude that she was misled. She could have participated in the proceedings if she disagreed with the values of property, division of property or denial of spousal maintenance. She chose not to do so. She knew of the terms of the 2001 Judgment and Decree for more than four years before moving the court to reopen said decree. Further, she benefited financially by the terms of the 2001 Judgment and Decree. The parties agree that Alam paid virtually all of the household expenses from 2001 to 2004, while the parties continued to live together. During that time, he also paid Chowdhury \$750 per month in child support, all of which she saved. It was not until Alam requested that the parties sell the marital homestead held as tenants in common many years after the marriage dissolution that Chowdhury became upset and no longer agreed to live under the 2001 Judgment and Decree.

At that point, she grasped to find limited areas of disagreement with the 2001 Judgment and Decree, conclusively alleging without any factual proof that Alam had been dishonest in his representations to the court. Chowdhury failed to provide any

factual evidence or allegations of her conclusion that Alam misled her. There is no evidence in the record to indicate that Alam misled the court or Chowdhury. As such, the trial court abused its discretion when it reopened the 2001 Judgment and Decree.

C. There is no evidence that the terms of the 2001 Judgment and Decree are grossly unfair.

In order to find that Alam committed fraud on the court justifying reopening the judgment and decree, Maranda also requires the trial court to find that the terms of the original 2001 Judgment and Decree are grossly unfair.

The Maranda court upheld the trial court's decision to reopen a judgment and decree where the husband concealed hundreds of thousands of dollars, making the initial property division grossly unfair. Maranda, 449 N.W.2d at 166. In Sanborn v. Sanborn, 503 N.W.2d 499 (Minn. Ct. App. 1993), this Court upheld the trial court's finding that the husband committed fraud on the court where the husband represented to his wife that his 52.6% interest in his business was worth approximately \$320,000, while simultaneously and extensively negotiating a sale of the business for \$2,000,000 (making his interest approximately \$1,050,000). Before the marriage dissolution, the wife confronted the husband after hearing the business was selling for \$2,000,000. The husband denied the sale and told the wife that the price she quoted was "ridiculous." After affirmatively learning of the sale transaction after the marriage dissolution, the wife brought a motion to reopen the judgment and decree based on fraud on the court.

The Sanborn Court affirmed the trial court's finding that the initial property division was grossly unfair, as the trial court's findings reveal a huge disparity in the

value of property awarded to each party as a result of the fact that the husband's business interest was worth over \$730,000 more than he represented in the marriage-dissolution proceeding. *Id.* at 504. The husband in Sanborn knew that the fair market value of the business was worth more than *three times* the value he represented in the marriage dissolution proceedings. The Sanborn case illustrates the type of gross inequity warranting a finding of fraud on the Court – where the actual value of an asset was more than *three times* the represented value, resulting in a \$730,000 misrepresentation.

The facts of the present case are dramatically different. Even if there was evidence to support a finding that Alam intentionally made material misrepresentations or non-disclosures to the court having the effect of misleading the trial court or Chowdhury, the magnitude of Chowdhury's claimed errors in the values of assets and the parties' incomes in the Judgment and Decree is minimal.

There is no evidence in the record to support a finding that the terms of the 2001 Judgment and Decree were grossly unfair. In the Order dated May 5, 2006, the trial court failed to make any specific findings concerning this issue. The value of assets disputed by Chowdhury in her motion to reopen the 2001 Judgment and Decree were only a small fraction of the value of the marital estate. Likewise, Chowdhury's alleged variance in the parties' incomes in relation to the issue of spousal maintenance was minimal, and only a small fraction of the parties' incomes.

The trial court abused its discretion in reopening the 2001 Judgment and Decree. There is no evidence in the record to support the trial court's finding of fraud on the court as there is no evidence to support any of the three Maranda requirements for a finding of

fraud on the court. This Court should reverse the trial court's decision to reopen the 2001 Judgment and Decree and should reinstate the original judgment and decree.

II. THE TRIAL COURT ERRED BY VALUING ALAM'S RETIREMENT ACCOUNTS AFTER THE DATE OF THE MARRIAGE DISSOLUTION.

Property acquired after the dissolution of marriage is not marital property. Despite this, for purposes of the division of marital property, after vacating the original decree except as to the dissolution of the marriage, the trial court valued Alam's retirement assets more than five years after the marriage dissolution for purposes of dividing the marital property. Whether property is marital in nature is a question of law that this Court reviews de novo and over which this Court exercises its independent judgment.

- A. Because Minnesota Statutes Section 518.003 defines marital property as property acquired during the marriage, the trial court erred by valuing Alam's retirement accounts after the date of the marriage dissolution.**

Minnesota Statutes section 518.003, subdivision 3b defines marital property as:

[P]roperty, real or personal, including vested public or private pension plan benefits or rights, acquired by the parties, or either of them, to a dissolution, legal separation, or annulment proceeding at any time during the existence of the marriage relation between them, or at any time during which the parties were living together as husband and wife under a purported marriage relationship which is annulled in an annulment proceeding, but prior to the date of valuation under section 518.58, subdivision 1. All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property regardless of whether title is held individually or by the spouses in a form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, or community property

The valuation date in a marriage-dissolution proceeding is addressed in Minnesota Statutes section 518.58, subdivision 1, which provides that a trial court "shall value

marital assets for purposes of division between the parties as of the day of the initially scheduled prehearing settlement conference, unless a different date is agreed upon by the parties, or unless the court makes specific findings that another date of valuation is fair and equitable.”

Minnesota caselaw reiterates the statutory definition of marital property. In order for property to be marital, it must be acquired during the marriage. Stageberg v. Stageberg, 695 N.W.2d 609, 619 (Minn. Ct. App. 2005); Cummings v. Cummings, 376 N.W.2d 726, 730 (Minn. Ct. App. 1985). While a spouse generally has ownership rights in property acquired during a marriage, a party to a marriage dissolution proceeding does not have a right to property acquired by the other spouse after dissolution. Sweere v. Gilbert-Sweere, 534 N.W.2d 294, 297 (Minn. Ct. App. 1995). In the Cummings case, this Court held that a three-year period of cohabitation preceding the marriage cannot be considered marital property based on the clear statutory definition of marital property. Cummings, 376 N.W.2d at 729-30.

In the present case, the parties’ marriage was dissolved on October 16, 2001. On the motion of Chowdhury in 2006, the trial court vacated all of the terms of the 2001 Judgment and Decree save for the marriage dissolution. Following a trial on vacated issues in the present case, the trial court awarded Alam his retirement accounts using a December 31, 2006 value – a value more than five years after the dissolution of the parties’ marriage. The trial court based the value of Alam’s *marital* interest in his retirement assets on the December 31, 2006 valuation date.

In doing so, the trial court reasoned that section 518.003, subd. 3b defines marital property as all property acquired during the marriage and “before the valuation date.” Because section 518.58 grants the trial court discretion to value assets as of a date that is “fair and equitable,” the trial court further reasoned that it was within the court’s authority to value Alam’s retirement assets as of December 31, 2006, despite the fact that the parties’ marriage was dissolved more than five years earlier. The trial court’s ruling includes more than five years of post-marital contributions and growth to Alam’s retirement assets in the division of “marital” assets.

The trial court’s reasoning fails. Section 518.003, subdivision 3b limits the property that is marital in nature, rather than expanding it. If section 518.003 did not limit the definition of marital property, the trial court might need to use the most current values of assets at the moment that the parties’ marriage is dissolved. Many assets fluctuate on a regular basis. Given the practical challenges with needing updated valuations of the parties’ property to effectuate a fair and equitable division of all of the marital property, the legislature placed a limit on the definition of marital property. Section 518.003 limits marital property to property acquired during the marriage and before the valuation date, as opposed to property acquired up until the moment the marriage is dissolved. The statute limits, not expands, the definition of marital property. Minnesota law is clear that a party to a marriage dissolution proceeding does not have a right to property acquired by the other spouse after dissolution. Sweere, 534 N.W.2d at 297-98.

In the present case, the parties continued to cohabitate for three years after their marriage was dissolved. This case is analogous to the Cummings case where the parties also cohabitated for three years outside of the marriage relationship. The Cummings Court held that period of cohabitation cannot be considered in determining marital property based on the clear statutory definition of marital property. Likewise, in the present case the parties' post-marital cohabitation cannot be considered in determining marital property.

Minnesota law is clear that marital property is limited to property acquired during the marriage. The trial court erred in valuing Alam's retirement assets on a date more than five years after the parties' marriage dissolution. Whether property is marital in nature is a question of law over which the court of appeals exercises de novo review. This Court should, therefore, reverse the trial court's valuation of Alam's retirement assets and instruct the trial court to value said retirement assets at the time of the marriage dissolution, a value to which the parties have already stipulated.

B. Alam's new wife has an ownership interest in Alam's retirement assets included in the division of assets and liabilities in the marriage dissolution between Alam and Chowdhury.

Given Chowdhury's severe delay in moving to vacate the 2001 Judgment and Decree, more than five years lapsed between the marriage dissolution and the trial's court's subsequent valuation of Alam's "marital" retirement assets. During that five-year period, Alam remarried. Spouses have a common ownership interest in property acquired during their marriage. Minn. Stat. § 518.003, subd. 3b; Searles v. Searles, 420 N.W.2d 581, 583 (Minn. 1988). That interest is determined and defined at the termination of the

marriage – either by death or dissolution. For retirement benefits, the federal Employee Retirement Income Security Act specifically protects the rights of spouses on death and on dissolution of marriage. 29 U.S.C. § 1055 (2006).

Both Minnesota and federal law provide Alam's second wife with a common ownership interest in his retirement assets acquired during their marriage. By characterizing Alam's retirement assets as marital through December 31, 2006, the trial court effectively awarded Chowdhury a portion of Alam's retirement assets that constitute the assets of Alam's second marriage, in which Alam's current wife has an interest. This results in inequity both to Alam and to his wife.

It is clear that Minnesota law defines marital property only as property acquired by one or both spouses during the marriage. Whether property is marital is a question of law that this Court reviews de novo. There is no basis for the trial court's conclusion that marital property involves assets acquired outside of the marriage relationship. The trial court erred in concluding that Alam's retirement assets acquired in the five-year period after the marriage dissolution were marital property based both on the definition of marital property, and on the interest Alam's current wife holds in these assets. This Court must reverse the trial court's conclusion that Alam's post-marital retirement contributions are marital property in the marriage-dissolution proceedings with Chowdhury.

CONCLUSION

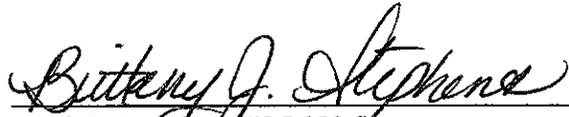
There is no evidence supporting the trial court's decision to reopen the 2001 Judgment and Decree on the basis of fraud on the court. As such, the trial court abused

its discretion by reopening the 2001 Judgment and Decree almost five years after entry. The trial court further erred by valuing Alam's marital retirement assets more than five years after the parties' marriage dissolution. This Court should reverse the trial court's decision to reopen the 2001 Judgment and Decree and reinstate the original Judgment and Decree. Alternatively, this Court must reverse the trial court's valuation of Alam's retirement assets, to exclude all portions of those assets acquired after the date of the marriage dissolution.

Respectfully submitted,

Dated: July 1, 2008

LINDQUIST & VENNUM P.L.L.P.



Paul A. Banker (#256596)

Brittany J. Stephens (#0348533)

4200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

(612) 371-3211

Attorneys for Appellant

Mohammed Monirul Alam