

A08-0636

STATE OF MINNESOTA

IN COURT OF APPEALS

In re the Marriage of:

MOHAMMED MONIRUL ALAM,
Appellant,

v.

SALINA CHOWDHURY,
Respondent.

RESPONDENT CHOWDHURY'S BRIEF

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STATEMENT OF THE LEGAL ISSUES

- I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY VACATING THE JUDGMENT AND DECREE OBTAINED BY APPELLANT IN 2001 BY MEANS OF FALSE TESTIMONY THAT HE HAD PROVIDED RESPONDENT WITH NOTICE OF THE DEFAULT HEARING AND NOT INFORMING THE TRIAL COURT THAT RESPONDENT REFUSED TO SIGN THE INEQUITABLE AND UNFAIR PROPOSED AGREEMENT HE HAD PRESENTED TO HER.

The trial court vacated the entire Judgment and Decree (except for the provisions dissolving the parties' marriage) and ordered a new trial on all issues *ab initio* on the basis of fraud on the Court.

Minn. Stat. § 518.145, subd. 2 (2004)
Maranda v. Maranda, 449 N.W.2d 158 (Minn. 1989)

- II. WHETHER AFTER THE NEW TRIAL, THE TRIAL COURT ABUSED ITS DISCRETION IN DETERMINING ASSET VALUES, VALUATION DATES AND AWARDED ASSETS IN ORDER TO RENDER THE PROPERTY DISTRIBUTION FAIR AND EQUITABLE.

The trial court's specific findings setting the valuation dates and values resulted in a just and equitable division of the parties' property with an acceptable basis in fact and principle.

Minn. Stat. § 518.58, subd.1 (2006)
Minn. Stat. § 518.003, subd. 3b (2006)
Grigsby v. Grigsby, 648 N.W.2d 716 (Minn. Ct. App. 2002)

STATEMENT OF THE CASE

Appellant, Mohammed Monirul Alam (“Alam”) and Respondent, Salina Chowdhury (“Chowdhury”) were married in Bangladesh on June 29, 1979. Two daughters were born of this marriage relationship,

Alam commenced this marriage dissolution proceeding on July 10, 2001. In re the Marriage of Alam and Chowdhury (Anoka County District Court File No. 02-F4-01-7186). Chowdhury did not serve or file a written Answer, but did refuse to sign Alam’s proposed Stipulation. Transcript, Motion Hearing, 3/13/06 at 14-15 (“T. 3/13/06 at 14-15”). Neither party was represented by legal counsel at the time.

Nevertheless, Alam scheduled a default hearing before the Honorable James A. Morrow, Anoka County District Court Judge, on October 16, 2001. Alam testified that this was a default because he served his wife and she never responded. Transcript, Default Hearing, 10/16/01 at 2 (“T. 10/16/01 at 2”). Alam did not inform the Court that he had never given notice of the date and time of the default hearing to Chowdhury. Nor did Alam inform Judge Morrow that Chowdhury refused to sign the Stipulation. Alam’s testimony formed the basis of the property division contained in Judge Morrow’s Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree filed on October 16, 2001 (“2001 J & D”). Chowdhury filed her Notice of Motion and Motion to vacate the October 16, 2001 Judgment and Decree on January 21, 2006.

The hearing on the motion to vacate the October 16, 2001 Judgment and Decree was heard by Judge Morrow on March 13, 2006. Both parties were represented by legal counsel. At the hearing, Alam testified *inter alia*, that he did not give his wife any notice of the Default Hearing in 2001 because they were not on speaking terms at the time and he assumed that she received Notice of Default Hearing in the mail by the court. T. 3/13/06 at 15-16, 33-34.

Judge Morrow determined that Alam “engaged in an intentional course of misrepresentations and non-disclosure of assets which mislead the Court and made the property settlement grossly unfair to [Chowdhury].” Order Vacating Judgment and Decree, filed 5/5/06 at 2, paragraph 11. Judge Morrow vacated the October 16, 2001 Judgment and Decree “in its entirety” except for the provisions terminating the parties’ marriage. *Id.* at 3, paragraph 1.

The new trial on the merits was held on May 9, 10 and 11, 2007 before Honorable Stephen J. Askew, Anoka County District Court Judge. Besides the testimony of the parties, the Court received additional exhibits and updated valuations. The Court also received into evidence the transcript of the October 16, 2001 Default Hearing (Exhibit 69) and the March 13, 2006 Motion Hearing (Exhibit 70) which were both heard by Judge Morrow. In his Amended Findings of Fact, Judge Askew included the fact that Judge Morrow had vacated all provisions of the initial Judgment and Decree (except the marriage termination) “because of numerous false and fraudulent representations Mr. Alam made to the court.” Amended Findings of Fact, Conclusions of Law, Order for

Judgment and Judgment and Decree filed February 11, 2008 at 2-3, paragraph IV (“2008 Amended J & D at 2-3, paragraph IV”).

In addition to a just and equitable property division, Judge Askew ordered temporary spousal maintenance in the amount of \$700.00 per month for two years and \$500.00 per month for an additional eight years. Id. at 21-23, paragraph 2.

Judge Askew also ordered Alam to pay \$10,000 in conduct-based attorney fees because Alam “presented the Court with fraudulent information on October 16, 2001” resulting in increased costs in the dissolution proceedings. Id. at 33-34, paragraph 23.

Alam served his timely Notice of Appeal on April 10, 2008 which was duly filed in this Court on April 11, 2008.

STATEMENT OF FACTS

Appellant, Mohammed Monirul Alam (“Alam”) and Respondent, Salina Chowdhury (“Chowdhury”) were married in Bangladesh on June 29, 1979. Trial Transcript, May 9, 10 and 11, 2007 at 29 (“T.T. at 29”). They have two daughters, . Id. at 31. At the time Alam commenced these proceedings on July 10, 2001, was the only minor child of the parties. They purchased their homestead in Andover, Minnesota on October 31, 1996. Id. at 30.

Alam is a tenured English professor at Anoka-Ramsey Community College. T. 3/13/06 at 10. Although he described Ms. Chowdhury’s proficiency in the English language as comparable to his own, he admitted that she relied on their daughters to explain things to her in English. Id. at 10-11. In addition, he testified that her knowledge of the law was limited to what she had seen on television. Id. at 11. Chowdhury is an assembly worker at Wendell’s, Inc. making medallions and badges. T. 3/13/06 at 77-78.

After being served the Summons and Petition, Alam presented a proposed Stipulation to Chowdhury at a family meeting. T. 3/13/06 at 12-14. The Stipulation was prepared by a paralegal based upon information provided exclusively by Alam. Id. Alam admitted that Chowdhury and their daughters told him that the terms were unfair and that Chowdhury refused to sign it. Id. at 13, 15. Nevertheless, he proceeded to go forward with the divorce under the terms of the proposed Stipulation drafted by the paralegal. Id. at 15.

Alam scheduled a default hearing before the Honorable James A. Morrow, Judge of Anoka County District Court, on October 16, 2001. Alam testified that the proceeding was a true default because he served his wife and she had not responded. T. 10/16/01 at 2. However, Alam did not disclose to the Court that Chowdhury had been presented with the proposed Stipulation and had refused to sign it. Nor did he disclose to the Court that he had not provided Chowdhury with notice of the time and date of the default hearing. At the time of the hearing, neither party was represented by legal counsel.

Judge Morrow's Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree filed October 16, 2001 were based upon the information supplied by Alam. Judge Morrow questioned the proposed property division because it provided that Alam received \$85,000.00 and Chowdhury received only \$26,000.00. T. 10/16/01 at 2. He assured Judge Morrow that this was fair and that she received \$1,455.00 per month as a painter. Id. at 10. He testified that she is capable of taking care of herself. Id. The only adjustment made in the property division was Alam's agreement to pay the home equity loan in the amount of \$18,000 as well as repairs and property taxes. Id. He also agreed to pay child support for their minor daughter in the amount of \$750.00 per month. Id.

Alam did not provide Chowdhury with a Notice of Filing or a copy of the Judgment and Decree and she did not read it until December 25, 2001. T. 3/13/06 at 44; T.T. at 402. She found out about the divorce in December of 2001 when she discovered \$750.00 had been deposited into her bank account. Affidavit of Salina Chowdhury, January 19, 2006 at 2 ("Chowdhury Aff. 1/19/06, p. 2"); reproduced in Appellant's

Appendix at 16 (“A.App. 16”). Alam told the Court that she must have received Notice of the October 16, 2001 Judgment and Decree from the Court. T. 3/13/06 at 44. He testified that she must have gotten the Notice in the mail “because everything comes in the mail.” Id.

On January 20, 2006, Chowdhury’s new attorney filed a Motion to Vacate the Judgment and Decree. In her Affidavit In Support of Motion To Vacate Judgment and Decree [October 16, 2001], Ms. Chowdhury explained her reluctance to come forward and request relief from the initial Judgment and Decree. She stated that they were Muslims from Bangladesh where “wives are subservient to their husbands...If a husband divorces a wife, it brings great shame on the wife and her family.” Chowdhury Aff. 1/19/06 at 1-2, A.App. At 15-16. Nevertheless, she refused to sign the proposed Stipulation. Id. In her affidavit, Ms. Chowdhury stated:

I was also given an agreement to sign, but I did not sign it. Mohammed promised me that I would receive an equal share of all our assets, as well as financial support if I did not contest the divorce. I relied on his promises and did not get legal advice. I did not hear anything further or receive any written notice about the divorce and did not receive a copy of the divorce decree. Mohammed continued to live with me in our family home after the divorce just as if nothing had happened.

Id.

Alam had testified at the default hearing that he planned to continue living at the homestead “[f]or the time being, you know. But after the dissolution, maybe I’ll move out.” T. 10/16/01 at 7.

However, Alam did not in fact move from the home until August, 2004. Chowdhury Aff., 1/19/06 at 2. Appellant states that the move occurred during the same

month that their youngest daughter left for college. App.Brief, 7/1/08 at 5. In fact, did not begin college until one year later during the Fall of 2005. See, Exhibit 39 (Alam's first check for tuition, dated 8/8/05). He moved from the home because he planned to remarry and he demanded that the house be sold in order to split the sale proceeds. T.T. at 34, 405-407. It was at this point that Chowdhury (who determined that financially she had to continue to live in the home) obtained legal counsel and moved the Court to Vacate the initial Judgment and Decree. T.T. at 407

At the motion hearing before Judge Morrow on March 13, 2006, Alam admitted that he never provided his wife with notice of the date and time for the Default Hearing scheduled for October 16, 2001. T. 3/13/06 at 15-16. He testified that he did not provide her with Notice of the Default Hearing because they were not on speaking terms at the time. Id. at 33-34. However, he insisted that she must have gotten it by mail, because he received a copy of the Notice by mail. Id. He did not give a copy to his wife because "I thought she got her copy too." Id. Judge Morrow asked him "by whom?" Alam responded "by mail as I got by mail [sic]." Id. There is a Notice of Default Hearing in Appellant's Appendix, but there is no evidence she ever received it from the clerk's office, Alam or any other source. A.App. at 10.

In her testimony, Chowdhury reiterated the fact that she had refused to sign the proposed agreement prior to October 16, 2001. T. 3/13/06 at 84. She testified that their daughter confronted Alam and told him it wasn't right that "mommy is getting nothing" and that he had to "do something fair" and he said he would. Id. at 87. Alam admitted that there was a family meeting where he presented the proposed agreement and his wife

and daughters discussed the issue that the terms were unfair. Id. at 12-13. He claimed he could not remember what was said at the meeting, but he denied he told Chowdhury that she would get an equal share of the property. Id. at 14. In fact, he testified that he never told Chowdhury that he was not going forward with the divorce on the basis outlined in the proposed agreement, or that he was going to give her something other than what was in the document. Id. at 49. His position at the motion hearing was that he did nothing to actually hide the fact that there was going to be a default hearing. Id.

Following the testimony, Judge Morrow ruled from the bench. He found Alam “not credible” and stated “I’m totally convinced there has been fraud on the court. He has misled the court. There should be a new trial...” T. 3/13/06 at 94-95. Specifically, the court stated “I’m convinced [Ms. Chowdhury] didn’t get notice. I’m convinced she didn’t know about this, in terms of findings, until two months after the divorce. I’m convinced that he misrepresented the jewelry, misrepresented her household goods. Misrepresented how much assets she had versus what he had.” Id. at 95-96.

Judge Morrow granted the new trial and found Alam’s testimony lacked credibility as follows:

...specifically regarding the jewelry, the household goods, some of his assets. That he either misrepresented or failed to disclose. Also that I’m convinced, I’m finding a fact that she did not get notice. She got the Petition. They discussed it. Her daughter explained some things. Some things she understood, but she did not get notice of the default hearing. She did not know she was divorced until at least two months after the divorce. And then I’m convinced that based on intentional misrepresentation of material facts or nondisclosure of material facts that there has been fraud on the Court. Like your client [Ms. Chowdhury], who I found credible, when she said he was going to do 50/50, he told me it was 50/50, and I certainly don’t believe that that is what happened.

Id. at 98-99.

The new trial on the merits was held on May 9, 10, and 11, 2007 before the Honorable Stephen J. Askew, Judge of Anoka County District Court. The testimony and exhibits focused primarily on budgets, assets (marital and non-marital), valuations and valuation dates.

Regarding income and budgets, Chowdhury received a net income of \$433.76 per week or \$1,879.63 per month. T.T. at 286, 342; 2008 Amended J & D, FOF XIII at 7; A.App. at 94. Alam had a “net” figure for her annual salary of \$30,130.00 from her 2006 tax return. T.T. at 434-435. He testified that “my understanding is that her gross income is the income you get in hand.” T.T. at 109. Chowdhury claimed expenses of \$2,456.00 per month, (Exhibit 53 as adjusted), which the court reduced to \$2,100.00. 2008 Amended J & D, FOF at paragraph XIV at 8; A.App. at 95. Thus, her needs exceeded her income by \$220.00 per month. Id.

Alam’s average annual gross income from 2001-2006 was \$67,367.00. 2008 Amended J & D, FOF XI at 4-5; A.App at 91-92. His net income was \$3,930.00. 2008 Amended J & D, FOF XI at 5-6; A.App at 92. Alam claimed monthly expenses of \$4,148.00. Exhibit 23. However, the court reduced the latter figure to \$2,674.00 based upon the finding that Alam took out a shorter mortgage on his new home and is refunding a loan from his retirement account to make a larger than necessary down payment on this home. 2008 Amended J & D, Findings of Fact XII at 6; A.App at 93. Alam also counted his monthly medical and dental expenses of \$200.00 by including it in his monthly

expenses (Exhibit 23) despite the fact that the expense was deducted from his monthly gross income. Id. In his findings of fact supporting his spousal maintenance award,

Judge Askew found:

Mr. Alam is accumulating retirement benefits rapidly. In addition to his IRAP plan, he is contributing an additional \$300 bi-weekly to his 403(B) and deferred compensation plans. When Mr. Alam purchased his new house, he chose a 15 year mortgage instead of a 30 year mortgage. Consequently, he has a higher mortgage payment making an appearance that he has less financial ability to support Ms. Chowdhury. Petitioner also borrowed \$50,000 from his retirement fund. Included in Petitioner's expenses he listed \$549 as necessary payment to refund his account. This too gives an appearance that he has less financial ability to support Ms. Chowdhury. Mr. Alam agreed that he was in good health and capable of full-time employment. In his current position, if he taught a full class load he could earn \$68,000 without teaching in the summer. Petitioner's net income is \$3,930. Less reasonable monthly expenses of \$2,674, Petitioner is left with \$1,256 in discretionary monthly income.

2008 Amended J & D, FOF XV at 10-11; A.App at 97-98.

Alam admitted that he did not need to borrow \$50,000 from his retirement account to buy the new house as a lower down payment would qualify for the mortgage he was seeking from U.S. Bank. T.T. at 284.

Regarding the assets, the value of Alam's retirement plan in October 2001 was \$52,806.00. T.T. at 145. At the time of the trial in May, 2007, the value increased by \$154,324.00 of which he testified he contributed \$94,468.00. T.T. at 268. The trial court determined that, according to Exhibit 29, Alam's retirement totaled \$281,594.00 as of December 31, 2006. 2008 Amended J & D, FOF XXIV at 17; A.App at 104. This amount was reduced by the \$50,000 loan Alam took out for the purpose of the down

payment on his new home. Id. In addition, he had an I.R.A. in the amount of \$7,000.00.

Id.

Chowdhury's retirement benefits were obtained from an April 26, 2007 letter from her union pension provider. T.T. at 439. At that time, after 6.1 years at Wendell's Inc., she would receive \$156.77 per month at the age of 65. Id. The cash value of the pension was \$9,764.61. Id.

Alam claimed that all increases to his retirement account since October 16, 2001 are his non-marital assets (except for \$18,983.73 which should be split between the parties as passive increases to marital property). See, Alam's Notice of Motion and Motion for Amended Finding's and Conclusions, dated September 28, 2007 at 2, paragraph 1. On the other hand, he argued that the increase in value to the homestead since October 16, 2001 should be credited to both parties as tenants in common. T.T. at 39. He testified that he wanted the house sold and the proceeds split in order to provide each party with \$157,500.00. T.T. at 287-288. He admitted, however, that such a scenario would be essentially what he received in the vacated October 16, 2001 Judgment and Decree. Id.

Alam testified that he continued to live in the homestead with Chowdhury and their children for about three years after the October 16, 2001 divorce decree. T. 3/13/06 at 36-37. They did not tell even their immediate family and closest friends about the divorce. Id. The parties continued to live in the home as husband and wife until August 31, 2004 when Alam moved out and remarried four months later. T.T. at 215. Despite the fact that he claimed they were not talking to each other, Alam testified that the

decision to continue to live together was “[S]o far as I know, it was a mutual decision.”

Id.

Chowdhury testified that it was Alam who decided to continue to live at the homestead and the decision was not “mutual” at all. T.T. at 364-365. He continued to make all decisions. Id.

The homestead was valued at \$230,000.00 in October of 2001 and \$315,000.00 in November of 2006. T.T. at 39. Following the initial Judgment and Decree, Alam paid off the home equity balance of \$18,000. T.T. at 452. He also contributed to expenses such as taxes, insurance, repairs, etc. although he admitted he received a benefit himself from paying these expenses while living in the home. T.T. at 216-217. For example, he was not paying rent to live in another location and was thus able to save money. T.T. at 222; Chowdhury Aff. 1/19/06 at 2-3, paragraph 7; A.App. at 16-17. The trial court characterized these payments as voluntary and, since Alam was living there, he should be making financial contributions. T.T. at 60, 67. Even after the initial Judgment and Decree, in addition to working at Wendell’s Inc., Chowdhury continued with the homemaker duties including housecleaning, laundry, grocery shopping, cooking, etc. T.T. at 467.

Nevertheless, Alam claimed that his financial contributions during the period that he was living in the homestead after October 16, 2001 entitled him to a “credit for overpaid child support.” See, Petitioner’s Letter Brief, dated May 31, 2007 at 3, paragraph 2. Judge Askew denied this claim on the grounds that these were voluntary payments. 2008 Amended J & D, COL at 23, paragraph 4; A.App. at 110. In his

Findings of Fact XVI, Judge Askew reasoned that both parties' were committed to their daughters' educations. Id. at 11-12; A.App. at 98-99. The "child support" funds were not spent by Chowdhury until it became necessary to fund college education at Columbia University. Id.

The record contains numerous examples of Alam's false representations regarding asset values and claims of non-marital property. For example, at the motion hearing he testified that Chowdhury's "inheritance" of \$17,200.00 from her father was "pending" because he did not know if she really received it. T. 3/13/06 at 21-23. Ms. Chowdhury never received any such inheritance. Chowdhury Aff. 1/19/06 at 4, paragraph 9(e); A.App. at 18.

Regarding "non-marital" claims, Alam testified that he had not told anyone he had sold Bangladesh property for \$20,000.00 rather than \$35,000.00. T.T. at 297-298. At the motion hearing, he testified that the proceeds were non-marital and he deposited the money into four different banks on March 26, 2001. T. 3/13/06 at 54-55. He explained that "I didn't want to deposit all the money one day [sic] in the bank, because I think banks have to report to F.B.I. or someone if it is more than \$10,000...I don't want the bank to work hard and make another report." Id. At the trial, he admitted that he had no records showing he received any money from the sale of this land. T.T. at 230.

Alam also claimed premarital savings of \$20,000 from working in Libya. T. 3/13/06 at 55. However, he was unable to track this because Lloyds of London did not keep banking records beyond 10 years. Id. at 57; T.T. at 175-176. Likewise, he made a "non-marital" claim of \$80,000 in U.S. Bank and credit for U.N. payments in the amount

of \$13,265.39 for damages to property following the Kuwait invasion. T.T. at 173, 179. However, he admitted that he could not trace these assets. T.T. at 231-233. In fact, he admitted that the funds were commingled with family accounts. T.T. at 298-299, 318.

Several examples of factual misrepresentations of marital property values were specifically found by Judge Morrow and Judge Askew and included in their Findings of Fact. For instance, Alam testified the household goods he left for Chowdhury were valued at \$13,765.00. T.T. at 111-112. Chowdhury testified that they were only worth \$2,082.00. T.T. at 373-374.

Similarly, Alam testified at the motion hearing that his ex-wife's jewelry was worth approximately \$30,000.00. T. 3/13/06 at 20. Even at the trial, he claimed there value was \$10,000.00 (i.e., \$6,000.00 for the jewelry and \$4,000.00 worth of gold bars). T.T. at 97-98. Appellant states that Chowdhury "did not present appraisals of the value of the jewelry..." App. Brief at 6. To the contrary, Trial Exhibit 14 is the written appraisal dated December 5, 2006. The exhibit shows and Alam admitted that the actual appraised value was \$2,526.00. Exhibit 14; T.T. at 93-94. Not included in the appraisal or property division were the "gold bars" which actually consisted of two gold pendants, one for each daughter. T.T. at 374.

Following trial, Judge Askew determined that the parties' property division and spousal maintenance provision should be restructured. Regarding Alam's credibility, the court found as follows:

The parties were married on July 29, 1979, in Dahka, Bangladesh and remained married to each other for more than 22 years until their marriage was dissolved, by Judge Morrow, on October 16, 2001, by a Judgment and

Decree of this court. Respondent became aware of the Judgment and Decree in December of 2001. In or around August, 2005, Respondent consulted with several attorneys, who reviewed the contents of the Judgment and Decree with her. On May 5, 2006, all provisions of the Judgment and Decree were vacated by Judge Morrow except the provision dissolving the bonds of matrimony. Judge Morrow vacated the judgment and decree because of numerous false and fraudulent representations Mr. Alam made to the court. Mr. Alam was found to have intentionally overstated the value of the parties' household goods and jewelry awarded to the Respondent, and represented that Respondent received an inheritance which she had not and mischaracterized the inheritance as a marital asset. Additionally, Mr. Alam did not disclose the value of the marital land the parties owned in Uttra, Bangladesh, and he claimed a non-marital interest in the parties' joint savings account which he was unable to prove.

2008 Amended J & D, FOF IV at 3; A.App at 90.

This appeal followed.

ARGUMENT

I. LEGAL STANDARD AND SCOPE OF REVIEW

With the exception of the provisions which dissolve the parties' marriage, a Judgment and Decree can be vacated by a party based upon the other parties' dishonesty. Minn. Stat. § 518.145, subs. 1 and 2. While the time limit for a motion to reopen a final decree is generally one year, the trial court is authorized to set aside a judgment after this one year period when it finds proof that the non-moving party committed fraud on the court. Id. Maranda v Maranda, 449 N.W.2d 158, 165 (Minn. 1989). Fraud on the court is defined as:

...an intentional course of material misrepresentation or non-disclosure, having the result of misleading the court and opposing counsel and making the property settlement grossly unfair.

Id.

The trial court is given broad discretion in deciding to vacate a divorce decree involving a property settlement, child support or spousal maintenance because of fraud on the court. Maranda v Maranda, 449 N.W.2d at 164. An abuse of discretion is a high standard to overcome on appeal and the court's decision will not be disturbed unless Appellant can show that the disposition of the issue "is against logic and the facts on record." Haefele v. Haefele, 621 N.W.2d 758, 762-763 (Minn. Ct. App. 2001) (citations omitted). On the other hand, if there is evidence in the record which supports the trial court's decision, the Court of Appeals will not find an abuse of discretion. Thompson v. Thompson, 739 N.W.2d 424, 428 (Minn. Ct. App. 2007) (citing Prahl v. Prahl, 627 N.W.2d 698, 702 (Minn. Ct. App. 2001)). Furthermore, the trial court's findings of fact

regarding fraud on the court must be upheld on appeal unless clearly erroneous. Sanborn v. Sanborn, 503 N.W.2d 499, 502 (Minn. Ct. App. 1993) (citing Mahoney v. Mahoney, 474 N.W.2d 232, 234 (Minn. Ct. App. 1991), pet. for rev. denied (Minn. Nov. 13, 1991)). In other words, merely because “the record might support findings other than those made by the trial court does not show that the court’s findings are defective.” Haefele, 621 N.W.2d at 763 (quoting Vangsness v. Vangsness, 607 N.W.2d 468,474 (Minn. Ct. App. 2000)).

In cases involving the reopening of a dissolution judgment, the trial court’s assessment of credibility is entitled to great deference. As stated by this court:

Where evidence relevant to a factual issue consists of conflicting testimony, the district court’s decision is necessarily based on the credibility of the witnesses. Hamilton v. Hamilton, 396 N.W.2d 91, 94 (Minn. Ct. App. 1986). We give district courts broad discretion precisely because they are in the best position to determine which witnesses are credible and to weigh the evidence. See In re D.L., 486 N.W.2d 375,380 (Minn. 1992) (stating that “the trial court retains broad discretion because of its opportunity to observe the parties and hear witnesses”).

Haefele, 621 N.W.2d at 763-764.

Trial courts are also given broad discretion in structuring just and equitable property distributions pursuant to Minn. Stat. § 518.58, subd. 1. Appellant’s claim that retirement benefits accruing after the date of divorce are non-marital as a matter of law. See Minn. Stat. § 518.003, subd. 3b. However, non-marital property is determined by the valuation date. Id., subd. 3b(d). The valuation date is “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.” Minn. Stat. § 518.58, subd.1. In addition, the court may make a valuation adjustment where the value of an asset changes substantially between the valuation date and final distribution in order to effect an equitable distribution. Id.

As with the decision to vacate the initial Judgment and Decree, the scope of appellate review of a determination of a valuation date is abuse of discretion. Desrosier v. Desrosier, 551 N.W.2d 507, 510 (Minn. Ct. App. 1996).

Since the trial court vacated the initial Judgment and Decree *ab initio*, determination of a fair and equitable valuation date was given extensive thought and discussion in Judge Askew’s Amended Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree filed on February 11, 2008. His findings are not clearly erroneous and, in fact, are amply supported by the record. Thus, there was no abuse of discretion in Judge Askew’s determination of the valuation dates for both the home and retirement benefits.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY VACATING THE JUDGMENT AND DECREE OBTAINED BY APPELLANT IN 2001 BY FALSELY TESTIFYING THAT HE HAD PROVIDED NOTICE OF THE DEFAULT HEARING AND BY NOT INFORMING THE TRIAL COURT THAT RESPONDENT REFUSED TO SIGN THE INEQUITABLE AND UNFAIR PROPOSED AGREEMENT HE PRESENTED TO HER.

The first issue in the instant case is whether the trial court abused its discretion by vacating the October 16, 2001 Judgment and Decree for fraud on the court. As noted above, fraud on the court is defined as:

...an intentional course of material misrepresentation or non-disclosure, having the result of misleading the court and opposing counsel and making the property settlement grossly unfair.

Maranda, 449 N.W.2d at 165.

Following the motion hearing on March 13, 2006, the trial court made specific findings both in the order and on the record. Following testimony, Judge Morrow ruled from the bench and ordered a new trial based upon Alam's false testimony:

...specifically regarding the jewelry, the household goods, some of his assets. That he either misrepresented or failed to disclose. Also that I'm convinced, I'm finding a fact that she did not get notice. She got the Petition. They discussed it. Her daughter explained some things. Some things she understood, but she did not get notice of the default hearing. She did not know she was divorced until at least two months after the divorce. And then I'm convinced that based on intentional misrepresentation of material facts or nondisclosure of material facts that there has been fraud on the Court. Like your client [Ms. Chowdhury], who I found credible, when she said he was going to do 50/50, he told me it was 50/50, and I certainly don't believe that that is what happened.

T. 3/13/06 at 98-99 (emphasis added). An additional ground for vacating a divorce decree is if the moving party is "not actually personally notified as provided in the Rules of Civil Procedure." Minn. Stat §518.145, subd. 2.

Moreover, in his order, Judge Morrow determined that Alam "engaged in an intentional course of misrepresentations and non-disclosure of assets which mislead the Court and made the property settlement grossly unfair to [Chowdhury]." Order Vacating Judgment and Decree, filed 5/5/06 at 2, paragraph 11; A.App at 42. Judge Morrow vacated the October 16, 2001 Judgment and Decree "in its entirety" except for the provisions terminating the parties' marriage. Id. at 3, paragraph 1; A.App at 43. He specifically found that [Ms. Chowdhury's] testimony is credible while "[c]ertain parts of [Mr. Alam's] testimony are not credible." Id. at 2, paragraphs 9 and 10; A.App. at 42. The appellate courts give deference to both explicit and implicit determinations of

credibility made by the trial court. See, Sefkow v. Sefkow, 427 N.W.2d 203, 210 (Minn. 1988).

In analyzing the above rulings, Alam's dishonesty must be placed in the context of the integrity of the administration of justice. The Court of Appeals has stated that the "[p]arties to a marital dissolution have a duty to make a full and accurate disclosure of all assets and liabilities to facilitate the trial court's property distribution." Sanborn v. Sanborn, 503 N.W.2d 499, 503 (Minn. Ct. App. 1993). (Citations omitted). Equally important is the parties' duty of honest disclosure to the court which "sits as a third party, representing all of the citizens of the State of Minnesota to see that a fair property distribution is made." Maranda v. Maranda, 449 N.W.2d 158,165 (Minn. 1989), citing Karon v. Karon, 435 N.W.2d 501, 503 (Minn. 1989).

In both Maranda and Sanborn, the reviewing courts affirmed the lower courts' decisions to vacate the Judgment and Decrees. These decrees were founded upon falsehoods contained in stipulations initially signed by both parties. In the case at bar, Appellant's dishonesty is even more egregious. First, he did not disclose to the court at the default hearing that his wife refused to sign the proposed agreement presented to her. Secondly, he never informed the court that he had not given Ms. Chowdhury any notice of the date and time for the default hearing.

In the first place, Mr. Alam failed at the default hearing to disclose to the court that his wife specifically rejected the terms he was presenting to the court. At the Motion Hearing, Chowdhury testified that she had refused to sign the proposed agreement prior to October 16, 2001. T. 3/13/06 at 84. She testified that their daughter confronted Alam

and told him “these are not right. You are taking everything. What will mommy get? Mommy is getting nothing. And do something fair” and he said he would. Id. at 87. Alam admitted that there was a family meeting where he presented the proposed agreement and his wife and daughters discussed the fact that the terms were unfair. Id. at 12-13. He claimed that he could not remember what was said at the meeting, but denied he told Chowdhury that she would ever get an equal share of the property. Id. at 13-14. In fact, he testified that he never told Chowdhury that he was not going forward with the divorce on the basis outlined in the proposed agreement, or that he was going to give her something other than what was in the document. Id. at 49.

Secondly, regarding lack of notice, Alam ultimately admitted that he never personally provided his wife with notice of the date and time for the Default Hearing scheduled for October 16, 2001. T. 3/13/06 at 15-16. See, Minn. Stat §518.145, subd. 2 which authorizes relief from the divorce decree for non-receipt of actual personal notice. He testified that he did not provide her with Notice of the Default Hearing because they were not on speaking terms at the time. Id. at 33-34. However, he insisted that she must have gotten it by mail, because he received a copy of the Notice by mail. Id. He did not give a copy to his wife because “I thought she got her copy too.” Id. Judge Morrow asked him “by whom?” Alam responded “by mail as I got by mail” [sic].” Id. There is a Notice of Default Hearing in Appellant’s Appendix, but there is no evidence she ever received it from the clerk’s office, Alam or any other source. A.App. at 10. His position at the motion hearing was that he never actually hid the fact that there was going to be a default hearing. Id. at 49.

In Maranda, the record before the Minnesota Supreme Court supported a conclusion that the trial court did not abuse its discretion in vacating the divorce decree. Maranda, 449 N.W.2d at 166. There, the Appellant's husband, *inter alia*, excluded his wife from access to the parties' financial information. Id. He willfully misrepresented and failed to disclose the existence and value of marital property. Id. He induced his wife to sign a stipulation "by promising to be fair for the sake of the children..." Id. The Supreme Court characterized the resulting property settlement as "grossly unfair." Id.

Similarly, in the case at bar, Mr. Alam utilized his superior language skills and sophistication to exclude his wife from information regarding the parties' finances. He is a professor of English at Anoka-Ramsey Community College. T. 3/13/06 at 10. Although he described Ms. Chowdhury's proficiency in the English language as comparable to his own, he admitted that she relied on their daughters to explain things to her in English. Id. at 10-11. In addition, he admitted that her knowledge of the law was limited to what she had seen on television. Id. at 11.

Ms. Chowdhury was 20 years old when she married Alam. T.T. at 322-323. She had the equivalent of a twelfth grade education in Bangladesh. Id. at 332-333. Her education was discontinued when she moved with Alam who had a job in Libya. Id. She got her first full-time job in April of 2001 as an assembly worker at Wendell's, Inc. making medallions and badges earning \$8.55 per hour. T. 3/13/06 at 78; T.T. at 336-339. At the time of trial, she was earning \$13.88 per hour. T.T. at 339.

Even as they continued to live together as husband and wife after the initial divorce, Alam continued to make all the decisions regarding finances. T.T. at 364-365.

Ms. Chowdhury performed the duties of homemaker and mother. Id. at 334. These duties included cooking, cleaning and household chores. Id. at 336, 467.

As was the case in Maranda, Alam “willfully misrepresented and failed to disclose the existence and value of marital property.” Maranda, 449 N.W.2d at 166.

The record contains numerous examples of Alam’s false representations regarding asset values and claims of non-marital property. For example, at the motion hearing he testified that Chowdhury’s “inheritance” of \$17,200.00 from her father was included at the default hearing as a “marital asset.” T. 3/13/06 at 21-23. He included it in the property division on October 16, 2001 as “pending” because he did not know if she really received it. Id. Ms. Chowdhury, in fact, never received any such inheritance.

Chowdhury Aff. 1/19/06 at 4, paragraph 9(e); A.App. at 18.

Regarding “non-marital” claims, Alam testified that he had not represented that he had sold Bangladesh property presumably inherited from his father for \$20,000.00 rather than \$35,000.00. T.T. at 297-298. At the motion hearing, he testified that the proceeds were non-marital and he deposited the money into four different banks on March 26, 2001. T. 3/13/06 at 54-55. He explained that “I didn’t want to deposit all the money one day [sic] in the bank, because I think banks have to report to F.B.I. or someone if it is more than \$10,000...I don’t want the bank to work hard and make another report.” Id. At the trial, he admitted that he had no records showing he received any money from the sale of this land. T.T. at 230.

Alam had also claimed he had sold marital property consisting of land in Ultra, Bangladesh for \$20,000.00. T.T. at 458. However, Ms. Chowdhury testified that if Alam

deposited it in a marital account in his name at Firststar U.S. Bank, it was no longer there. T.T. at 454, 458.

Alam also claimed premarital savings of \$20,000 from working in Libya. T. 3/13/06 at 55. However, he was unable to track this because Lloyds of London did not keep banking records beyond 10 years. *Id.* at 57; T.T. at 175-176. Likewise, he made a “non-marital” claim of \$80,000 in U.S. Bank and credit for U.N. payments in the amount of \$13,265.39 for damages to property following the Kuwait invasion. T.T. at 173, 179. However, he admitted that he could not trace these assets. T.T. at 231-233. In fact, he admitted that the funds were commingled with family accounts. T.T. at 298-299, 318.

Several other examples of factual misrepresentations of marital property values were specifically found by Judge Morrow and Judge Askew and included in their Findings of Fact. For instance, Alam testified the household goods he left for Chowdhury were valued at \$13,765.00. T.T. at 111-112. Chowdhury testified that they were only worth \$2,082.00. T.T. at 373-374.

Similarly, Alam testified at the motion hearing that his ex-wife’s jewelry was worth approximately \$30,000.00. T. 3/13/06 at 20. Even at the trial, he claimed the value was \$10,000.00 (i.e., \$6,000.00 for the jewelry and \$4,000.00 worth of gold bars). T.T. at 97-98. Trial Exhibit 14 shows (and Alam admitted at trial) that the actual appraised value was \$2,526.00. Exhibit 14; T.T. at 93-94. Not included in the appraisal or property division were the “gold bars” which actually consisted of two gold pendants, one for each daughter. T.T. at 374.

Also, as was the case in Maranda, Alam made false promises to Ms. Chowdhury that she would receive an equal share of the assets as well as financial support. Maranda, 449 N.W.2d at 166. The end result was a prolonged period following the initial decree during which time Ms. Chowdhury was reticent to upset the status quo.

Ms. Chowdhury's reluctance to oppose her husband and request relief from the October 16, 2001 Judgment and Decree is explained in her Affidavit in Support of Motion to Vacate Judgment and Decree. She and her husband were Muslims from Bangladesh where "...wives are subservient to their husbands...If a husband divorces a wife, it brings great shame on the wife and her family." Chowdhury Aff. 1/19/06 at 2-3; A.App at 15-16. In her affidavit, Ms. Chowdhury stated:

I was also given an agreement to sign, but I did not sign it. Mohammed promised me that I would receive an equal share of all our assets, as well as financial support if I did not contest the divorce. I relied on his promises and did not get legal advice. I did not hear anything further or receive any written notice about the divorce and did not receive a copy of the divorce decree. Mohammed continued to live with me in our family home after the divorce just as if nothing had happened.

Id. (emphasis added).

The shame associated with divorce is corroborated by Alam who also testified that they continued to live as husband and wife in the family home for almost three years after the initial divorce. T.T. at 36-37. They did not even tell their immediate family (except their daughters) or their closest friends about the divorce. Id.

There can be no doubt that the unusual circumstances described in the record justified the trial courts' decisions to vacate the initial decree and review the parties' financial structure.

The trial court concluded that the initial Judgment and Decree was the result of the disparity in knowledge and information, false representations of marital and non-marital assets, non-disclosure (under oath) regarding the Notice of Default Hearing and Chowdhury's objections to the proposed agreement and false promises made by Alam.

The gross unfairness of the original property division is demonstrated by comparing Alam's false representations in 2001 with the actual valuations for the same assets. Under the Judgment and Decree filed October 16, 2001, Ms. Chowdhury received the following:

One-half Equity in Homestead	90,000
Household Goods	10,000
Jewelry	30,000
One-half of Mutual Funds	41,000
Bangladesh Savings Bond	7,758
Joint Savings Account	0
Wife's Savings Account	15,000
Wife's "pending" Inheritance	17,200
Retirement Benefits	<u>0</u>
Total per Alam's Testimony	\$210,958

See, 2001 J & D, COL at 5-6 paragraphs 7-10; A.App. 5-6.

However, had Alam been truthful, Ms. Chowdhury's share of the marital assets on October 16, 2001 would have been valued as follows:

One-half Equity in Homestead	90,000
Household Goods	2,084
Jewelry	2,526
One-half of Mutual Funds	41,000

Bangladesh Savings Bond	7,758
Joint Savings Account	0
Wife's Savings Account	13,000
Wife's "pending" Inheritance	0
Retirement Benefits	<u>0</u>
Total Value	\$156,368

See, 2008 Amended J & D, COL 6 at 28; A.App. 115. Thus, the trial courts did not abuse their discretion in vacating the October 16, 2001 Judgment and Decree.

Specifically, Judge Askew found:

The parties were married on July 29, 1979, in Dahka, Bangladesh and remained married to each other for more than 22 years until their marriage was dissolved, by Judge Morrow, on October 16, 2001, by a Judgment and Decree of this court. Respondent became aware of the Judgment and Decree in December of 2001. In or around August, 2005, Respondent consulted with several attorneys, who reviewed the contents of the Judgment and Decree with her. On May 5, 2006, all provisions of the Judgment and Decree were vacated by Judge Morrow except the provision dissolving the bonds of matrimony. Judge Morrow vacated the judgment and decree because of numerous false and fraudulent representations Mr. Alam made to the court. Mr. Alam was found to have intentionally overstated the value of the parties' household goods and jewelry awarded to the Respondent, and represented that Respondent received an inheritance which she had not and mischaracterized the inheritance as a marital asset. Additionally, Mr. Alam did not disclose the value of the marital land the parties owned in Utra, Bangladesh, and he claimed a non-marital interest in the parties' joint savings account which he was unable to prove.

Id. FOF IV at 2-3; A.App at 89-90.

The Findings of Fact below are not clearly erroneous and, in fact, are overwhelmingly supported by the record. There is no basis in logic or the facts on record to support a claim of abuse of discretion.

III. AFTER A NEW TRIAL, THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING ASSET VALUES, VALUATION DATES AND AWARDING ASSETS IN ORDER TO RENDER THE PROPERTY DISTRIBUTION FAIR AND EQUITABLE

As with the decision to vacate the Judgment and Decree, the trial court is given broad discretion in structuring a “just and equitable” division of the marital property. Minn. Stat. § 518.58, subd. 1. Appellant claims that the retirement benefits accrued since October 16, 2001 are entirely non-marital. However, the definition of non-marital property is limited to property acquired “before, during or after the existence of their marriage” and which “is acquired after the valuation date.” Minn. Stat. § 518.003, subd. 3b(d) (emphasis added).

In the case at bar, the trial court vacated the initial property division *ab initio* based upon Appellant’s fraud on the court. The court determined that in fairness, the non-marital portion of Appellant’s retirement benefits should not commence until after the valuation date of December 31, 2006. 2008 Amended J & D, COL at 23-27, paragraph 5; A.App. at 110-114.

This Court has described the scope of appellate review in setting a valuation date as follows:

The valuation date is determined as follows:

The 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.*

Minn. Stat. § 518.58, subd. 1 (emphasis added). The district court has broad discretion in setting the marital property valuation date. Desrosier v. Desrosier, 551 N.W.2d 507, 510 (Minn.Ct.App. 1996).

Grigsby v. Grigsby, 648 N.W.2d 716, 720 (Minn. Ct. App. 2002).

Because the trial court made extensive and specific findings explaining its determination of the valuation dates herein, the court did not abuse its discretion.

As discussed above, the values of various items of marital and non-marital property were resolved by the trial court in order to structure a “just and equitable” property division. The most valuable and difficult distributions involved the parties’ homestead and retirement benefits.

At trial, Alam testified that the parties agreed that the value of the family home was \$230,000.00 at the time of the default hearing in October of 2001. T.T. at 39. He also gave the stipulated value at \$315,000.00 at the time of the first scheduled pretrial hearing in November of 2006. Id. It is undisputed that Alam paid off the sole remaining encumbrance on the property in the amount of \$18,000.00 following the initial decree. He also contributed financially while living in the family home for almost three years thereafter. However, he admitted he also received the benefit of living in the home including lack of a separate rent expense and the benefits of Ms. Chowdhury’s contributions as homemaker and mother. T.T at 60, 67, 217, 222, 467.

As a result of the almost three years of lower living expenses, Alam admitted he was able to put away a substantial amount of retirement funds. T.T. at 222-223. He stated his retirement fund accrued \$150,000.00 in personal and employer contributions. Id.

Regarding the value of Alam’s retirement, in October 2001 it was worth \$52,806.00. T.T. at 145. At the time of the trial in May, 2007, the value increased by

\$154,324.00 of which he testified he contributed \$94,468.00. T.T. at 268. The trial court determined that, according to Exhibit 29, Alam's retirement totaled \$281,594.00 as of December 31, 2006. 2008 Amended J & D, FOF XXIV at 17; A.App at 104. This amount was reduced by the \$50,000 loan Alam took out for the purpose of the down payment on his new home. Id. In addition, he had an I.R.A. in the amount of \$7,000.00. Id.

Chowdhury's retirement benefits were obtained from an April 26, 2007 letter from her union pension provider. T.T. at 439. At that time, after 6.1 years at Wendell's Inc., she would receive \$156.77 per month at the age of 65. Id. The cash value of the pension was \$9,764.61. Id.

In its effort to reach a just and equitable property division, the Court utilized the updated information before it and the 2001 valuations where updated information was not presented. 2008 Amended J & D, COL at 25, paragraph 5; A.App. at 112. Regarding the home and pension values, both the home (where Alam continued to live until mid-2004) and Alam's pension (which he enhanced with increased contributions) gained in value. A valuation date of October 26, 2001 for the home would result in a windfall for Chowdhury since the value of Alam's tenancy in common (although vacated by Judge Morrow in his Order dated May 5, 2006) would not include the appreciated equity. Id.

Furthermore, Judge Askew concluded that:

...a 2001 valuation date would reward the Petitioner for his fraudulent representations because he would be able to retain his retirement contributions and growth. If the parties had not resided together after the dissolution in 2001, Petitioner's living costs would have been higher and he would not have been able to make such large contributions to his retirement

account. Based on his lack of candor to the court, Petitioner's decision to heavily fund his retirement account after the dissolution is suspicious.

Id. at 24; A.App. at 111.

Therefore, Judge Askew determined the issue by setting the valuation date for both assets at December 31, 2006. Id. at 25; A.App. at 112. The valuation of the home was determined by the November 2, 2006 appraisal to be \$315,000.00. T.T. at 39. The valuation for the retirement benefits was \$281,594.00 as of December 31, 2006 pursuant to Exhibit 29. For those two assets, the presumption of marital property classification prior to that date had to be overcome by a preponderance of evidence by the party claiming the non-marital classification. Minn. Stat. §518.003, subd. 3b, Cummings v. Cummings, 376 N.W.2d 726, 731 (Minn. Ct. App. 1985). Furthermore, because the entire October 16, 2001 property division was vacated, both the pension and home were subject to the court's jurisdiction. As an alternative, the trial court could have used the date of the initial dissolution and awarded Ms. Chowdhury the entire homestead. This date was utilized in Maranda in an effort to restore the parties to the same relative positions they would have received but for the false representations. However, the court distinguished the case at bar because here the parties lived together for almost three years after the date of dissolution. 2008 Amended J & D, FOF XVIII at 13; A.App. at 100. In addition, Mr. Alam was simply unable to distinguish which portions of the retirement benefits accrued after October 16, 2001 were the result of active (as opposed to passive) appreciation. See, Gottsacker v. Gottsacker, 664 N.W.2d 848 (Minn. 2003).

Likewise, the trial court discounted Mr. Alam's claim that his new wife has a third party interest in Alam's retirement funds and is not a party to the divorce. Judge Askew distinguished the case of Danielson v. Danielson, 721 N.W.2d 335 (Minn. Ct. App. 2006) and Sammons v. Sammons, 642 N.W.2d 34 (Minn. Ct. App. 2002) which were cited by Alam. The court stated that "[t]he thematic difference in these cases from the one at hand is that they involved real property to which third parties had current title and interest." 2008 Amended J & D, COL at 27 paragraph 5; A.App. at 114. Judge Askew concluded that:

In this case, Petitioner's new wife married a person whose property interests were subject to division in a marital dissolution; albeit a dissolution that was not open at the time but one that was subsequently vacated due to fraud. This Court certainly has jurisdiction to dispose of property that is considered marital without concern of the subsequent wife's interest in what is left over. Petitioner's new wife's interests, whatever they may be, do not vest until the property division for the first marriage is resolved.

Id.

Given public policy and judicial integrity the decisions of both Judge Morrow and Judge Askew were the only realistic options available. *A pro se* party has the same duty to court and opposing parties as an attorney. Minnesota General Rules of Practice for the District Courts 1.03 and 1.04. An attorney could be suspended for the false statements, lack of notice to the other party and non-disclosures perpetrated by Alam. The Minnesota Supreme Court cannot discipline Alam, but under no circumstances should he be allowed to enjoy the benefits of his dishonesty. Otherwise, there would be no disincentive for a *pro se* spouse to

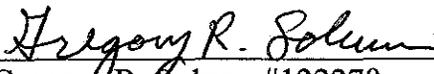
fail to notify the other party or lie under oath and later claim “innocent ignorance”
when exposed.

CONCLUSION

The trial courts' decisions to vacate the initial Judgment and Decree and to determine valuation dates were consistent with logic and the facts on record in the instant case. Because Appellant has not demonstrated that either decision was an abuse of discretion, the trial courts' orders and ultimate Judgment and Decree should be affirmed.

Respectfully submitted,

Dated: 7/31/08


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