

DISTRICT COURT, COUNTY OF MESA, STATE OF COLORADO

CASE NO. 96 DR 372

DEPOSITION OF PAUL WILLIAM SOWERBY
WEDNESDAY, MAY 15, 1996

COPY

JOHANNAH C. WILKENSON,

Petitioner,

and

DAVID E. WILKENSON,

Respondent.

PURSUANT TO NOTICE, the deposition of PAUL WILLIAM SOWERBY, a witness herein, called for examination by Clayton D. Tipping, counsel for the Respondent, was taken at the law offices of Clayton D. Tipping, 326 Main Street, Suite 201, Grand Junction, Colorado, beginning at the hour of 11:40 a.m., May 15, 1996, before Mary L. Doring, Notary Public in and for the State of Colorado, Certified Shorthand Reporter and Registered Professional Reporter.



Grand Valley Reporting

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EXHIBIT JJ

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3

1 MR. TIPPING: Let the record reflect
2 that it's 11:40 a.m., May 15, 1996. Present, Mr. Paul
3 Sowerby, who is the deponent; Dave Wilkenson, who is the
4 respondent in this action; and no other parties or their
5 attorneys are present. And both parties have been
6 noticed. I have advised Catherine Burkey that we would
7 make every attempt, within the short time constraints
8 that we had, to afford her an opportunity to be present
9 and to ask questions. She has filed no objection to the
10 deposition to this time. As recently as a few moments
11 ago, when we just left court, when we were on Action
12 Number 96-JV-180, I again offered her the opportunity
13 that we would try to accommodate her if we could, if she
14 would speak with me. She indicated she was too busy to
15 do so.

16 At this time I am going to dictate to my
17 secretary a memo to be faxed to Catherine Burkey, which
18 we will allow to happen as soon as it can happen before
19 noon.

20 Darlene, please prepare a fax transfer to
21 Catherine Burkey. If there's any problem with the fax,
22 make sure a copy gets hand delivered, which means you'll
23 have to check with Catherine's office to be sure she got
24 the fax after you've sent it. The fax is regarding
25 Wilkenson v. Wilkenson, 96-DR-372. The deposition of

2

1 APPEARANCES

2 FOR THE PETITIONER:

3 (No Appearance)

4 FOR THE RESPONDENT:

5 Clayton D. Tipping
6 CLAYTON D. TIPPING, P.C.
7 P.O. Box 1149
8 326 Main Street, Suite 201
9 Grand Junction, Colorado 81502

10 ALSO PRESENT:

11 David E. Wilkenson

12 INDEX

*PAGE

13 DEPOSITION OF PAUL WILLIAM SOWERBY

14 Examination by Mr. Tipping

5

4

1 Mr. Paul Sowerby was interrupted by the hearing in
2 96-JV-180, as you had been previously advised. We are
3 resuming that deposition and the initial questioning of
4 Mr. Sowerby at approximately 11:45 a.m. As I told you
5 when we left court, we will do everything we can to make
6 Mr. Sowerby available to you within the time constraints
7 that we face; however, you not having filed an objection
8 and having been given notice, we are proceeding. You
9 may call at any time; however, we will not be able to
10 guarantee you any cooperation after this evening. If we
11 do not hear from you or your office before 5:00, we will
12 assume that you do not wish any special arrangements
13 made for you to examine Mr. Sowerby. The phone number
14 is above. And for your convenience, my home phone
15 number is 243-8883.

16 Okay. That having been done -- bring that in
17 when it's done, please, Darlene, and we'll send it out.

18 I think the best thing we can do is to note
19 the parties present. You're Paul W. --

20 THE WITNESS: Paul William Sowerby.

21 MR. TIPPING: Paul William Sowerby.

22 And David --

23 MR. WILKENSON: David Earl Wilkenson.

24 MR. TIPPING: -- Earl Wilkenson. And

25 the only attorney present is Clayton D. Tipping.

5

1 I spoke with Mr. Hand just briefly before we
2 commenced. He said that he did not regard it essential
3 that he be here for this deposition and he had no
4 objection.

5 So at this point, if you'll swear Mr. Sowerby
6 in, we'll proceed and be done as quickly as we can.

7 PAUL WILLIAM SOWERBY,

8 a witness herein, having been duly sworn, was examined
9 and testified as follows:

10 EXAMINATION

11 BY MR. TIPPING:

12 Q Have you ever had your -- well, first, state
13 your name, please, for the record.

14 A Paul William Sowerby.

15 Q And very slowly, as you did in court, please,
16 your address, right down to the last digit.

17 A Northern Cottage, Station Road, Goldsborough,
18 all one word, North Yorkshire, England, HG58NS.

19 Q And your telephone numbers, if you don't
20 mind.

21 A Dialing from here it is 011-44-1423-865-371,
22 at home. And 530-655 being the last six digits at work.

23 Q And your work address, please, and the name
24 of the company, so if we chose to mail something to you
25 there, we could.

7

1 Q And they sometimes can also be of a civil
2 nature. You might find yourself in a position, having
3 stated something, not being able to present evidence you
4 might want to present later because you denied such
5 existence, and, therefore, you have hindered, perhaps,
6 other parties learning of it too late, and thereby may
7 prevent yourself from being able to testify to it.

8 A I understand that clearly.

9 Q Okay. And there is also the possibility of
10 civil penalties for failure to cooperate if it is
11 determined that your cooperation was inappropriate.

12 A I understand.

13 Q Sometimes you can be penalized with
14 attorneys' fees and costs and that sort of thing if it's
15 found that you have improperly obstructed the deposition
16 in some way.

17 A I understand the gravity of that penalty.

18 Q You will be asked questions. And in this
19 particular case, this deposition was upon notice that
20 your testimony might be preserved for future use
21 possibly in trial.

22 A That's understood.

23 Q And that sometime in the future you may face
24 your own testimony again being thrown back at you if you
25 should contradict that or in any way make a statement

6

1 A Paul Sowerby, Public Relations, Franklin
2 House, Victoria Avenue, Harrogate, North Yorkshire,
3 HG15LT.

4 Q Is Harrogate one or two words?

5 A One.

6 Q And North Yorkshire?

7 A Two.

8 Q Okay. Have you ever had your deposition
9 taken before?

10 A No.

11 Q Have you ever had a deposition explained to
12 you?

13 A Yes.

14 Q Just briefly, may I have your understanding
15 of what's happening.

16 A I am on oath to answer questions in relation
17 to a certain issue, and I'm obliged to answer those
18 questions honestly.

19 Q And are you also aware that there are
20 penalties for failure to do so?

21 A Yes.

22 Q Or there may be penalties imposed?

23 A Yes.

24 Q Of a criminal nature?

25 A Absolutely.

8

1 that is not clear.

2 A I understand the obligations of being under
3 oath.

4 Q And you also understand the possible
5 penalties as I've explained them to you and the fact
6 that you might be --

7 A In contempt?

8 Q -- presented with your own prior testimony?

9 A I understand.

10 Q Okay. Veracity is an extremely important
11 thing in law cases, and very often depositions are used
12 to establish veracity. Inconsistent statements are one
13 way to do that.

14 A I understand.

15 Q If anything happens during the deposition
16 that you think is improper, it's quite proper for you to
17 ask a question about it. And you understand that I do
18 not represent you?

19 A Clearly.

20 Q I represent Mr. David Wilkenson, who is also
21 present. And, on occasion, his interests may be diverse
22 from your own.

23 A I understand.

24 Q Okay. If you do not understand a question,
25 please interrupt me and tell me what you do not

9

1 understand. If you feel, for any reason, a question is
2 unfair or needs more elaboration than you think the
3 immediate answer to the simple question might give,
4 please tell us or tell me what you think might be
5 appropriate, and we'll try to give you every
6 consideration in that regard.

7 A I'll do that.

8 Q And, also, keep in mind that a certain format
9 must be preserved in order to make your testimony
10 admissible at a later time.

11 A Understood.

12 Q And so some of the questions will be asked in
13 a way that might be a little more inconvenient than
14 otherwise, or you might be asked to say something in a
15 way that would take from the answer anything that might
16 be objectionable.

17 A Understood.

18 Q Okay. Having done all that, or said all
19 that, is there anything you would like to ask me about
20 the deposition before we get started?

21 A No. It's been very clearly explained.

22 Q Would you tell us, please, your relationship
23 to Johannah, now known as Johannah Wilkenson.

24 A Johannah and I were married in or around the
25 middle of 1985, and were divorced in June 1989. Before

11

1 A December 30, 1995.

2 Q And does she reside at the same address that
3 you've given for yourself above?

4 A Yes, she does. We've lived there for five
5 years together.

6 Q So you lived with her prior to the time you
7 married her?

8 A Yes. We were engaged for almost five years.

9 Q Does she work?

10 A Yes, she does.

11 Q Where does she work?

12 A She's a marketing consultant -- deputy
13 marketing manager at a conference and banqueting center
14 in Harrogate.

15 Q And what are her normal work hours?

16 A Nine 'til five.

17 Q Monday through Friday?

18 A Yeah.

19 Q How far is her work from your home?

20 A It's a ten-minute drive.

21 Q How far is your work from your home?

22 A A fifteen-minute drive.

23 Q What are your normal work hours?

24 A As a director of a large corporation, it is
25 my obligation to fulfill -- to complete the work that

10

1 we were divorced, our relationship had broken down
2 irretrievably for six months.

3 Q Were there any children born as a result of
4 that marriage?

5 A Tom, our son, was born on the 25th of July
6 1986.

7 Q And where was Tom born?

8 A He was born in the London borough of Sutton.

9 Q And Sutton, is that a county?

10 A Sutton is a town within the county of Surrey,
11 which is a London borough. And it's where we were
12 living at the time.

13 Q And what was Tom's birth date?

14 A The 25th of July 1986.

15 Q And his full name?

16 A Thomas William Soverby.

17 Q Okay. Do you have any other children?

18 A No.

19 Q Are you married at present?

20 A Yes.

21 Q May I have your wife's name, please.

22 A Joanne Soverby.

23 Q How do you spell Joanne?

24 A J-o-a-n-n-e.

25 Q And when were you married to Joanne?

12

1 needs to be done. Working hours are stipulated in my
2 employment contract as 9:00 to 5:30, although, clearly,
3 from time to time, commitments take me outside those
4 hours.

5 Q What type of flexibility, if any, do you have
6 in your work schedule?

7 A Total flexibility. The business that I work
8 for is -- was my own business. I was self-employed for
9 eight years before selling the company to the large
10 organization which is under the name of BRAHM, capital
11 letters B-R-A-H-M, in November 1994. And we retain
12 total autonomy for the business unit that we now run as
13 part of the larger corporation. And my commitments are
14 identical to those as before, with the exception that I
15 have responsibilities as a main board director of a
16 bigger group.

17 Q And when you say total flexibility, does that
18 mean -- or what does that mean to you?

19 A Well, it means that, within reason, I'm able
20 to provide -- providing I meet my commitments at work,
21 the time I'm at work is up to me. I am governed by five
22 weeks annual holiday, although, clearly, that
23 entitlement is also flexible.

24 Q Have you had occasion to exercise that
25 flexibility in relationship to your son Tom in the past?

13

1 A No. I have only seen Tom for one year's
2 visits while I have been governed by the new
3 regulations, as far as holiday is concerned. But before
4 that, my holiday entitlement was unlimited, so I was
5 able and took advantage of the opportunity to spend as
6 much time with him as I possibly could.

7 Q You did that on a holiday basis then?

8 A Yeah, in this country.

9 Q You're not here on holiday now, are you?

10 A No.

11 Q How are you able to be here at this time, in
12 absence from your work?

13 A It was an emergency which required my
14 immediate departure from work. And because of the
15 flexibility I have as the managing director of the
16 business, I simply jumped on the first plane out of
17 Britain I could when I got a phone call telling me what
18 had happened here.

19 Q And tell us, if you should meet other
20 emergencies or other requirements in the future, what
21 would be your state of flexibility in comparison?

22 A The same.

23 Q How old was Tom when you and your former wife
24 Johannah were divorced?

25 A I think he was two.

14

1 Q And at that time, where did you live?

2 A When we were divorced, we lived in a house in
3 Harrogate.

4 Q And what's your nationality, your
5 citizenship?

6 A British.

7 Q And what is Tom's nationality or citizenship?

8 A British. And he's on my passport.

9 Q Pardon?

10 A And he's on my passport as a British citizen.

11 Q And Johannah, do you know what her
12 nationality and citizenship is?

13 A British.

14 Q When the divorce was entered, what court was
15 it entered in?

16 A Leeds County Court. Leeds is the nearest
17 major city to the town in which we live.

18 Q That's in England?

19 A Yes, in the county of Yorkshire.

20 Q Okay. And what were the provisions of that
21 divorce decree, as you recall them, pertaining to
22 Thomas?

23 A That his mother, because of his age, would be
24 the custodian parent, but that I would have access as
25 and when necessary or required.

15

1 Q At the time of the divorce, what was your
2 understanding of what was necessary to complete the
3 action, to obtain the divorce?

4 A At the time, in England, one party within the
5 divorce had to take the blame, there had to be fault
6 proved. And in order to expedite the divorce process, I
7 felt it was appropriate to take the blame for the
8 irretrievable breakdown of our relationship.

9 Q I asked you your impression, and you answered
10 as though you knew particularly exactly what the English
11 law was in that case. Was your impression the same as
12 what you just now said?

13 A Yeah. I mean, you have to prove that a
14 relationship is broken down irretrievably. And we did.
15 It clearly had.

16 Q In doing that, how did you establish fault in
17 this particular case?

18 A There was an incident on the very last night
19 that we spent together which involved a repeat of
20 Johannah's enduring problem with excessive drinking and
21 the violence which always followed. Having experienced
22 the impact and the pain of her violence on a number of
23 previous occasions, I must admit, though disgusted to
24 this date to admit it, that I got to the end of my
25 tether and retaliated and slapped her. And it was

16

1 because I was so sickened by the fact that I had not
2 been able to keep my patience that I felt it appropriate
3 to take the blame for the incident, and, also, to use
4 that incident as the evidence needed that the
5 relationship had broken down irretrievably.

6 Q Well, why did you choose to take such blame?

7 A It speeded up the process. My only
8 alternative would have been to produce counterclaims as
9 to her version of what happened that night, which was
10 outrageous. The incident took place, but it was grossly
11 exaggerated by her. Now, I had two choices, I could
12 either accept it, or I could put my own version in and
13 start the claim and counterclaim process, which is
14 invariably characteristic of acrimonious divorces. I
15 was advised that if I went down the route of trying to
16 make counterclaims that it would serve only to delay the
17 process, and might even prompt the Judge to take the
18 view that there weren't sufficient grounds for divorce,
19 and it could have taken a lot longer. At that point, I
20 just wanted to get out as quickly as I could. I would
21 have signed anything.

22 Q Why did you agree then to allow her to have
23 custody of Thomas?

24 A Because while I felt that she was a violent
25 person when under the influence of excessive alcohol,

