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Moreover, as is noted by the State, Fleming's minimum sentence is just 5 years more than the mandatory minimum for the crimes for which he was convicted. Both F.K. and A.S. have nightmares because of the abuse perpetrated by Fleming, as well as continuing emotional problems. The sentences imposed on Fleming were not excessive; the district court did not abuse its discretion in so sentencing Fleming. Fleming's final assignment of error is without merit.

CONCLUSION

The judgment and sentences of the district court are affirmed.

AFFIRMED.

WRIGHT, J., not participating.

FREEDOM FINANCIAL GROUP, INC., ET AL., APPELLANTS, V. JANICE M. WOOLLEY, INDIVIDUALLY, ET AL., APPELLEES.

794 N.W.2d 142

Filed December 30, 2010. No. S-09-1302.

SUPPLEMENTAL OPINION

Appeal from the District Court for Douglas County: MARLON A. POLK, Judge. Supplemental opinion: Former opinion modified. Motion for rehearing overruled.

Thomas A. Grennan and Francie C. Riedmann, of Gross & Welch, P.C., L.L.O., for appellants.

Michael L. Schleich and Timothy J. Thalken, of Fraser Stryker, P.C., L.L.O., for appellees.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

Case No. S-09-1302 is before this court on the motion for rehearing filed by appellants regarding our opinion reported at *Freedom Fin. Group v. Woolley, ante* p. 825, 792 N.W.2d 134

(2010). We overrule the motion but, for purposes of clarification, modify the opinion as follows:

In the section of the opinion designated "FACTS":

We withdraw the first three paragraphs, *id.* at 827-28, 792 N.W.2d at 137, and substitute the following:

> Presidents Trust was an independent, nondepository limited liability company (LLC) chartered in South Dakota. FFG was the sole member of Presidents Trust. Bethel Enterprises is the parent company to FFG, Freedom Group, Freedom Financial, Freedom Asset Management, Mid-America Employment Services, and U.S. Securities Management. Simply stated, Bethel Enterprises owned FFG, which was in turn the sole owner of Presidents Trust.
>
> On or about July 10, 2003, Presidents Trust, through various marketing agents, began soliciting individuals to invest in its "Fixed Income Trust" concept (FIT Program). David Klasna, president of both FFG and Presidents Trust, stated in his deposition that Presidents Trust was the only entity allowed to market the FIT Program, an investment concept.
>
> On July 18, 2003, Presidents Trust sought legal counsel from Woolley, of Marks Clare, regarding the legalities of the FIT Program. Woolley and Marks Clare provided an opinion letter addressed to Klasna. In that letter, Woolley stated that the FIT Program was exempt from registration under South Dakota statutes. In the opinion letter, Woolley indicated that she and Marks Clare had "confined our review to the South Dakota statutes, administrative rules and Federal statutes." Subsequent to the issuing of the opinion letter, Presidents Trust began marketing the FIT Program in earnest. The Securities Exchange Commission (SEC) began an investigation shortly thereafter.

Further, we withdraw the 10th and 11th paragraphs of that section, *id.* at 829-30, 792 N.W.2d at 138, and substitute the following:

> In Klasna's deposition, he also stated that he had asked Woolley to look at federal securities law as well as South Dakota state banking law. Klasna stated that he was aware

that "things of this nature were regulated as securities" and that they were hoping to find an exemption. He also claimed to have said as much to Woolley. Klasna admitted that he did not remember whether he had specifically asked Woolley to look into securities law, but he said that it was implied, if not stated outright.

Klasna stated that FFG had collected funds for the sale of the FIT Program before Woolley rendered her opinion, but that those funds were put in safekeeping until they were certain the FIT Program could be released. Klasna could not recall a specific conversation with Woolley about whether the FIT Program was a security until after investors raised the issue. Klasna alleged that even after investors questioned whether the FIT Program required registration, Woolley continued to assure him that the FIT Program met the definition of a trust and was exempt. Klasna also stated he did not believe that Woolley understood the FIT Program or the potential securities problems.

The remainder of the opinion shall remain unmodified.

FORMER OPINION MODIFIED.

MOTION FOR REHEARING OVERRULED.

WRIGHT, J., not participating.

BRYAN S. BEHRENS, AN INDIVIDUAL, ET AL., APPELLANTS AND CROSS-APPELLEES, V. CHRISTIAN R. BLUNK, AN INDIVIDUAL, ET AL., APPELLEES AND CROSS-APPELLANTS.

792 N.W.2d 159

Filed December 30, 2010. No. S-10-342.

1. **Pretrial Procedure: Appeal and Error.** An appellate court reviews a trial court's sanction for failure to comply with a proper discovery order for abuse of discretion.
2. **Judges: Words and Phrases.** A judicial abuse of discretion exists when reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition.
3. **Judgments: Appeal and Error.** As to questions of law, an appellate court decides such questions independently of the lower court's conclusions.