Sixth No. H052147

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

EKATERINA STRULYOV, Petitioner and Respondent, v. **EUGENE STRULYOV**, Respondent and Appellant.	Court of Appeal No. H052147 (Super. Ct. No. 19FL001660)

Appeal From Order of the Superior Court
County of Santa Clara
Honorable Brooke A. Blecher

APPELLANT'S OPENING BRIEF

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Table of Contents

Table of Authorities

California Cases

Statutes

Issues Presented

1. On de novo review, did Family Court err by refusing to issue Statement of Decision which was requested per CRC rule 3.1590 and CCP §632? The questions raised therein pertain directly to the valuation of community property, which Family Court was tasked with dividing.
2. On de novo review, did Family Court misapply Fam.Code §2556 to divide "omitted" asset when evidence shows that the prevailing party had already received cash value of the "omitted" asset?
3. Did Family Court abuse its discretion by refusing to apply offsets to the "omitted" asset that it awarded to Petitioner? In doing so, Petitioner got paid twice: via equalization and in kind.
4. On de novo review, did Family Court violate Fam.Code §2550? Petitioner had already received more than half of community property in the initial division. Family Court then further exacerbated unequal division in her favor.
5. On de novo review, did Family Court's denial of Peremptory Challenge, which was timely filed in accordance with CCP §170.6, deprive me of my right to due process before an impartial and disinterested fact finder?

Statement of the Case and Statement of Facts

Introduction

This is an appeal from Findings and Order After Hearing (FOAH) of 02/27/2024, filed on 03/25/2024 (5CT 1404). Eugene and Ekaterina were married on 10/29/2010 and separated on 04/08/2019, for a total marriage of 8 years and 5 months. They have one minor child of their marriage, Sofia Strulyov, born 04/07/2013 (1CT 17).

The parties retained a private mediator to assist them in negotiating a global settlement. Marital Settlement Agreement (MSA) was signed by the parties on 05/28/2019 – less than 2 months after the separation (1CT 41). However, after finalizing their divorce, Ekaterina initiated post-judgement litigation which continued ever since. The precise nature of this litigation is described in H050115 AOB 7-27.

There are 3 notable things about the instant case:

1. This is the second time this case comes up for appeal. On remand, Family Court refused to make any changes to its prior order (orig. case# H050115).
2. This is the first "omitted assets" case in history where the "aggrieved" party had already received cash value of the asset that was supposedly "omitted", and then was also awarded the asset itself by Family Court.
3. This is also the first "omitted assets" case in history where the "aggrieved" party had already received more than half of community property **before** she filed the "omitted assets" motion, and then Family Court further exacerbated unequal division in her favor.

On 04/08/2022 Family Court issued an order which, inter alia, allowed Ekaterina to double-dip on community property division: it awarded her 18 GOOG shares in kind (1CT 262). However, I argued at trial that Ekaterina had already received cash value of these shares (1CT 243-244). At issue was my Schwab account which actually consisted of 2 sub-accounts: Schwab Brokerage (a.k.a. Schwab-6350) and Schwab Equity Awards (a.k.a. Schwab-GOOG) (1CT 243:6-11). My "divorce settlement proposal" email lists the two sub-accounts as separate line items, with balances of $161,107.95 and $43,457.40, respectively (Exhibit A, 3CT 664). However, my FL-142 lists Schwab as a single line item with a combined balance of $205,622.38 (Exhibit 5, 5CT 1481). This is akin to having a checking & savings account with Chase bank and listing their combined balance as simply "Chase". Nevertheless, on this basis Ekaterina claimed that Schwab-GOOG was "omitted" and Family Court so ruled (1CT 257:1-6). Family Court completely ignored the **dollar values** of these accounts.

I appealed that order. On 07/27/2023 Court of Appeal issued a hair-splitting Opinion. It affirmed that Schwab-GOOG was "omitted" but found that:

"Eugene's exhibits to his declaration opposing Katia's motion for determination and division of the Google stocks support his contention that the full value of both Schwab accounts was included in the numbers from which Katia and Eugene determined the total value of the community property."

" [Trial Court] did not address Eugene's argument that, under sections 2550 and 2556, good cause (based on an unequal division of other assets) supported a finding that the Google stocks should not be divided equally."

"A trial court's failure to exercise discretion is itself an abuse of discretion." (In re Marriage of Gray (2007) 155 Cal.App.4th 504, 515.) We decide that, on the facts here, the trial court abused its discretion in failing to decide this issue."

(H050115 Opinion, p21)

On 08/08/2023 I filed a Petition for Rehearing. Among other things, I asked Court of Appeal to issue a clarification that:

"While I understand the Court of Appeal's desire to leave matters of fact for the trial court, it should, at a minimum, reaffirm that under Family Code § 2550, Family Court is required to divide community estate equally. Where one party had already received more than half of community estate, Family Court should not be permitted to award even more community estate to that party."

(H050115 Petition for Rehearing, p5).

I predicted that unless Court of Appeal makes this explicit, Family Court will once again divide community property unequally. On 08/10/2023 Court of Appeal denied Petition for Rehearing, so of course my prediction is exactly what happened on remand. And thus the instant case comes up for appeal for the second time.

Post-Remittitur Events

Remittitur was issued on 09/26/2023 (2CT 552). On 9/25/2023 I filed a motion asking for a return of my GOOG stocks since Ekaterina was already paid their cash value (2CT 343). I am not an attorney, so I did not know the proper procedure to get this issue heard on remand. This motion was later withdrawn and I instead filed a trial brief that contains the same arguments (4CT 953). The important point, however, is that Ekaterina knew all the details of my arguments since 09/25/2023. I also reached out to Ekaterina and asked her to explain her argument (5CT 1279) – surely she could no longer argue that I "hid" GOOG stocks in light of the Court of Appeal's Opinion. Ekaterina refused. She kept me in the dark about her arguments until the last possible moment.

On 11/02/2023 I filed Peremptory Challenge under rule 170.6 (2CT 586). On 11/06/2023 Ekaterina filed opposition to the Peremptory Challenge (3CT 621). On 11/09/2023 I filed my reply (3CT 625). The same day Family Court denied Peremptory Challenge on the grounds that it was "untimely" (3CT 631) – a very curious ruling since it was well within

the 60 day window. My trial brief contains a request for Statement of Decision. One of the questions raised therein is:

"Why did this court deem peremptory challenge "untimely" when remittitur was issued on 09/26/2023 and said peremptory challenge was filed on 11/02/2023?".

(4CT 955)

Eliciting Ekaterina's Argument

With Ekaterina still refusing to explain her position, I was afraid that I'm headed for an ambush at trial. So on 11/27/2023 I filed a motion asking the court to force Ekaterina to put her cards on the table (4CT 914). It was initially rejected with a comment saying "*Rejected: It is unclear what you are requesting in the RFO.*". (I cannot produce Filing Activity Log because it is technically not part of the record.) I refiled this motion on 12/05/2023. I moved the content of my request to a separate declaration, which got auto-accepted (3CT 882).

My RFO was finally accepted on 12/13/2023. However, I immediately received an email from the court clerk Michelle Johnson saying:

"I accepted your Request for Order, Envelope# 13779738. I did not mean to accept it. It was to be rejected. You must specify what you would like to be heard for. You only stated Trial in the department. Please be more specific and resubmit. I will talk to my supervisor about reversing the acceptance."

Again, this email is not part of the record because it was never filed with the court. I protested, so Ms Johnson CC'd her supervisor in subsequent emails. At my insistence, they finally accepted the RFO for real, but they replaced the first page with another one that says "Filed on Demand" and reassigned it to the wrong department (4CT 911) – judge Blecher, who heard this remand, has moved to department 72. I expressed my incredulity as to how one judge can rule on the matters pertaining to the trial before a different judge, but to no avail.

Nevertheless, it appears that this motion had the desired impact. At the 01/11/2024 status conference I asked the judge to order the trial briefs to be filed at least 30 days before trial, so that I am not ambushed with last-minute arguments. She agreed (4CT 940). I subsequently withdrew this motion (5CT 1254).

Eugene's Trial Brief

On 01/24/2024 I filed my trial brief (4CT 953). I made two arguments for why GOOG stocks should be returned to me (4CT 961):

1. Ekaterina had already received cash value of GOOG stocks in June-July 2019 when the parties initially divided the community assets (4CT 965). Thus, Family Court's 04/08/2022 order awards her these stocks for the second time.
2. Ekaterina had already received more than half (approximately 54%) of community property in June-July 2019 when the parties initially divided the community assets (4CT 966). Family Court's 04/08/2022 order exacerbates unequal division in Ekaterina's favor (4CT 968).

In support of these arguments, I provided a detailed explanation of our financial situation (4CT 962-964). Tables 1-3 show my calculation for the investment accounts division (4CT 965-966). Based on this calculation, not only did Ekaterina receive full cash value of GOOG shares, but she was actually overpaid (4CT 966). These tables were presented at trial as Exhibits T1-T3 (3CT 872-877).

Table 4 shows the total value of community assets, including vehicles and bank accounts (4CT 967). It does not include retirement accounts which were equally divided and were never subject to any litigation. Table 5 shows the value of the assets Ekaterina received in the initial division – approximately 54% of the total (4CT 967-968). These tables were presented at trial as Exhibits T4 and T5 (3CT 878-881).

Family Court's 04/08/2022 order awards Ekaterina 18 GOOG shares in kind (1CT 262:16-20), in addition to their cash value that she had already received. I calculated that this order increased Ekaterina's share of community property to approximately 64% (4CT 968).

Family Court also awarded Ekaterina another $60,000, ostensibly as attorney fees and sanctions (1CT 263:7-8). My ARB explains why such a characterization is untenable (H050115 ARB 25-30). With these $60,000 included in the calculation, Ekaterina's share of community property increases to approximately 77% (4CT 969).

Finally, I noted that I cannot respond to Ekaterina's argument in the trial brief because I still don't know what her argument is (4CT 969-970). As explained above, I reached out to Ekaterina but she refused to articulate her position (5CT 1279).

My trial brief contains a request for Statement of Decision (4CT 955). This request was amended in my MSC statement with additional questions (5CT 1214) and amended again in my Motion in Limine (5CT 1329). This motion contains the final list of questions (5CT 1330).

Ekaterina's Trial Brief

On 01/24/2024 Ekaterina's attorney provided her trial brief to me via email. Interestingly, she did not file it – she filed a slightly different version on 02/13/2024 (5CT 1257). In this trial brief, Ekaterina for the first time revealed her argument. She engaged in dishonest arguing technique called **moving the goalposts**. She no longer claimed that I "hid" GOOG stocks – as she did in her March 8 RFO (1CT 55). She fully accepted Court of Appeal's ruling that:

"Eugene's exhibits to his declaration opposing Katia's motion for determination and division of the Google stocks support his contention that the full value of both Schwab accounts was included in the numbers from which Katia and Eugene determined the total value of the community property."

(H050115 Opinion, p21*)*

Instead, she attempted to show that she was underpaid. To that end, she argued:

1. That I did not properly disclose my accounts (5CT 1260) and attempted to morph her claim from "omitted assets" to "breach of fiduciary duty" (5CT 1263).
2. That the 10 GOOG shares that vested after our date of separation (April 8 2019) were community property (5CT 1261).
3. That stocks increased in value between the time when I calculated community property division and when it was actually divided, and that she was underpaid because of this increase (5CT 1262).
4. That the assets she received had unrealized capital gains which were subject to income taxes when sold (5CT 1262).

In other words, she threw everything but the kitchen sink. And of course she did not provide any calculations to corroborate her claims. Nevertheless, all of these arguments amount to complaining that there may have been a minor mistake in the calculation. This is a far cry from Ekaterina's original claim that *"Respondent purposefully did not include*

this account as part of the division of the community accounts." (1CT 57:1-2), i.e. that Schwab-GOOG was omitted entirely. But despite the enormous shift in Ekaterina's argument, she still demanded that Family Court *"affirm its division of the Google stock at 50-50, with Ekaterina receiving one-half of the 36 shares"* (5CT 1266).

Settlement Conference

Settlement Conference was held on 02/13/2024 (yes, after the trial briefs were due). I filed my MSC statement on 2/8/2024 (4CT 1198). Rather than repeating my arguments, I used this as an opportunity to respond to Ekaterina's arguments which she revealed for the first time in her trial brief (4CT 1200). I pointed out that she would never have been able to win a finding of "omitted assets" with these arguments (5CT 1203). Ekaterina's attorney provided to me her MSC statement via email but did not file it with the court. In it she largely repeated the arguments from her trial brief.

I argued that my accounts were properly disclosed (5CT 1203) and that Ekaterina was kept informed throughout the whole process (5CT 1204). She never objected to the asset division that was performed in 2019 or asked for any clarification – a fact that she admitted at trial (RT 89-90).

With regards to the alleged increase in asset values, I pointed out the timeline (5CT 1205). Our date of separation is April 8 2019 (1CT 17). I filled out my FL-142 on April 25 2019 (3CT 778). We signed the MSA on May 28 2019 (1CT 41). Ekaterina received the assets at the end of June/beginning of July 2019 (5CT 1205). Thus, there was approximately 2.5 months gap between the time I filled out my FL-142 and the time the assets were divided. I calculated community property division based on the numbers I entered in my FL-142 (Exhibits T1-T3, 3CT 872-877). I pointed out that asset values changed little during that brief period (5CT 1206). Moreover, Ekaterina was overpaid because I made a mistake in her favor when I originally calculated asset division (5CT 1207).

With regards to the 10 GOOG shares that vested after our date of separation, I argued that Ekaterina's claim is without merit (5CT 1208). However, I learned at the settlement conference that Ekaterina can still claim a fraction of the 5 shares that vested on 04/29/2019. I noted this in my Motion in Limine (5CT 1328). I also noted that if Family Court were to make a modification to its prior finding that only 36 GOOG shares were community property, such a modification would be minor and would change community property division calculation by less than $1000 (5CT 1329).

I explained how taxes on financial assets are calculated (5CT 1209) and provided the calculation for the assets Ekaterina received (5CT 1210). This table was presented at trial as Exhibit T7 (5CT 1272). I also explained how I selected the assets that I transferred to Ekaterina (5CT 1211). And I pointed out that the asset division Ekaterina now insists on is logistically impossible (5CT 1212).

Finally, I pointed out that even if **all** of Ekaterina's claims were true, she still received more than 50% of community property in the initial division – because she received 100% of her car which was purchased only 1 month before the divorce (5CT 1213). This table was presented at trial as Exhibit T8 (5CT 1274).

The Trial

Trial on this issue was held on 02/27/2024. It proceeded in a very strange direction: instead of narrowly focusing on the issue that was remanded, Family Court allowed Ekaterina to relitigate issues that she had already lost. Specifically, Ekaterina testified about:

- My sale of community property stocks (RT 66). In 2018 I sold stocks and bought other investments (1CT 95-97). Ekaterina once again attempted to argue that she was unaware of these sales (RT 66). Family Court already ruled on this issue (1CT 257:18-25).
- My condo title (RT 66). As already described in H050115 AOB 19-20, I owned this condo before marriage. For the entire duration of the marriage this condo was a rental property. (1CT 245:1-3). Ekaterina forced me to add her name to the title (1CT 95). As part of divorce settlement she returned the condo title back to me (1CT 31). Family Court already ruled on this issue (1CT 230:1-4).
- My condo valuation (RT 68). Ekaterina attempted to argue that during the brief period her name was on the title of my condo, it increased in value by "up to $20,000". (RT 69:22) She presented no evidence to corroborate this claim. And indeed she admitted that she *"haven't done any assessment on it"* (RT 75). Family Court already ruled on this issue (1CT 230:19-25).
- Mortgage payoff (RT 68). As already described in H050115 AOB 20, some of the proceeds from the stock sales ($130,000) were used to pay down the condo mortgage. Judgment awards Ekaterina $65,000 to compensate her for this paydown (1CT 31).

All of these issues were previously litigated at the March 8-9 2021 trial and Ekaterina lost. None of these issues were appealed. None of them were part of the remand. I objected to this relitigation multiple times (RT 43, 66-70). Family Court overruled all objections. It argued that:

"...you opened the door today with the issue of the car values and you said we're here to look at the equal division. You brought that up. You raised it. There was an objection, and you wanted the Court to hear that. So that opened the door to this issue, all right."

(RT 70)

Trial was scheduled for only ½ day with the expectation that only the issue of GOOG stocks would be considered. However, Family Court essentially allowed Ekaterina to relitigate everything. Consequently, I did not have enough time to question Ekaterina. I noted this in my closing statement (5CT 1381).

As to the issue at hand, Ekaterina's strategy can be described in one word: obfuscation.

- She disavowed the method of division that she/her attorney had previously argued for (RT 76-77). As noted in my closing statement, I recalculated asset division the way she wanted and this recalculation still shows overpayment (5CT 1376).
- She denied having looked at the numbers and said that she is *"not a forensic accountant"* (RT 77), despite the fact that she was in possession of all exhibits for more than 2 weeks (more than 3 months in the case of Set 1 exhibits).
- She refused to admit that $205,622.38 in my FL-142 represents the total value of Schwab (i.e. Schwab-6350 + Schwab-GOOG). (RT 81-82). That was despite the fact that Ekaterina read the balances of Schwab-6350 and Schwab-GOOG from the financial statements (RT 83-84).
- She denied receiving notifications about the $70,000 and $60,000 withdrawals from our joint checking account (RT 87), and denied having any knowledge of the mortgage payoff, despite having access to our joint checking account (5CT 1369).
- She refused to acknowledge the basic mathematical consequence of her receiving $65,000 in addition to ½ of all investment accounts: that she would necessarily be receiving more than "½ of every stock" (RT 90-91).

Eugene's closing statement

On 03/15/2024 I filed my closing statement (5CT 1362).

- I was forced to spend the first half of it responding to the issues Ekaterina had already lost but Family Court allowed her to relitigate (5CT 1363-1372).
- With regards to the investment accounts division, I showed that Ekaterina was overpaid (5CT 1373-1374; 1377). I included new tables 1.1 and 3.1 which are similar to Exhibits T1 and T3 but exclude the 10 GOOG shares that were my separate property (5CT 1373-1374)
- I responded to Ekaterina's argument (5CT 1374-1375) since I finally knew what it was.
- I provided the recalculation that Ekaterina/her attorney had argued for but then abandoned (5CT 1376). This recalculation still showed overpayment, albeit a smaller one (Exhibit T6, 5CT 1270).
- I noted that because of Ekaterina's obfuscation I am no longer sure what is the "right" way to make this calculation and added table 10 to assist the court in making this decision (5CT 1377).
- I argued that Ekaterina's method of division is logistically impossible (5CT 1377-1378), not to mention that it would still result in her receiving more than "½ of every stock".
- I responded to Ekaterina's tax arguments and calculated the tax burden of the assets she received (5CT 1379-1380).
- I also noted that Ekaterina received approximately $28,000 more than me in vehicle value, which is the primary reason why she got more than half of community property in the initial division (5CT 1381).

Ekaterina's closing statement

On 03/15/2024 Ekaterina also filed her closing statement (5CT 1351).

- This is the first time that Ekaterina offered any sort of calculation regarding community assets division (5CT 1352). On the same day I filed a supplemental declaration pointing out that this calculation amounts to mathematical gobbledygook (5CT 1403).
- Ekaterina attempted to cast doubt on the division of our joint Chase bank account (5CT 1352). This was the first time she raised this argument. This allegation was not part of her March 8 RFO which started this multi-year litigation (1CT 55) and had nothing to do with the issue that was remanded. I explained in both my trial brief (4CT 963) and closing statement (5CT 1373-1374) that this account was

divided equally. My Objection includes additional exhibits that further corroborate it (Exhibits C5, C6; 5CT 1419, 1424).

- She complained about *"state and federal taxes on capital gains of over $13,000"* (5CT 1354:8-9) and relied on my Exhibit T7 (5CT 1352:18-19) to corroborate her claim. Table 7.1 below shows the tax calculation. My MSC statement explains how capital gains taxes are calculated (5CT 1209).
- She added another tax argument – regarding the stocks that were sold in 2018 (the year before divorce) and the community paid capital gains taxes (5CT 1355:9-13). My closing statement already explains why this argument is without merit (5CT 1380).
- She attempted to disprove my claim about community property vehicles by arguing that Ekaterina came into the marriage with a car (5CT 1354:16-21). My closing statement already explains why this argument is without merit (5CT 1381).

Order

On 03/25/2024 Family Court issued its order (5CT 1404). As explained above, I requested Statement of Decision. Family Court **refused to issue Statement of Decision**. The court found:

"Based on the above, the Court finds good cause for an unequal division of assets".

(5CT 1406:20). But then ordered:

"Eugene is Ordered to transfer one-half of community shares of Google stock (36 shares as of July 2019, including any subsequent stock splits) to Ekaterina."

(5CT 1406:24-25), i.e. exactly the same division as what the court previously ordered on 04/08/2022 (1CT 262:16-20). This order also seemingly contradicts the finding of good cause for an unequal division.

The 4-page order is very thin on details. None of the findings made therein support the award of 18 GOOG shares in-kind to Ekaterina, when she had already received cash values of these shares (see p30 below).

Objection

On 04/04/2024 I filed an objection pointing out deficiencies in Family Court's order (5CT 1408). I specifically mentioned the court's refusal to issue Statement of Decision as a problem (5CT 1409). I wrote that at a minimum the following questions must be answered:

"What was the dollar value of community assets owed to Ekaterina?
What was the dollar value of community assets Ekaterina actually received?"

(5CT 1410)

I argued that without answering the above questions, it is impossible to conclude that Ekaterina was underpaid, and indeed that evidence shows the opposite:

"If, contrary to all evidence, Family Court believes that Ekaterina was underpaid, then it is incumbent upon it to provide a calculation that explains its reasoning. Instead, the court decided to ignore all the numbers and once again ruled that 2+2=5."

(5CT 1411)

I once again pointed out that Ekaterina had received more than half of community property in the initial division and then Family Court exacerbated the unequal division in her favor (5CT 1412).

New Trial

In the H050115 appeal I described how I filed a motion for new trial but Family Court refused to hear it in violation of the relevant law (H050115 AOB 29-30; ARB 8). Court of Appeal chose to take a myopic view of this issue. First, it denied my motion to augment the record as to the documents that were filed after the 04/08/2022 order was issued. Then it ruled that it cannot review this issue because the documents related to this motion are not part of the record (2CT 563-564). This creates an interesting loophole: motion for new trial is not independently appealable, but is reviewable when the underlying matter is appealed. But without the supporting record, motion for new trial becomes effectively unreviewable. I am not an attorney but I find it extremely perplexing if this is indeed how the law works.

The relevant documents are part of the record now. Specifically, Declaration of Patrick T. Bell corroborates my claim that Family Court rejected the RFO that was electronically filed on 04/29/2022 (2CT 307). It inexplicably demanded that it be filed on paper (2CT 308), despite the fact that Santa Clara county **mandates** electronic filing for parties represented by an attorney (2CT 328). It then ruled that the RFO was "*untimely submitted to Court*" (2CT 334). This violated the relevant statutes and case law (2CT 327-330). The clerk who rejected this motion, M.Johnson (2CT 311), appears to be the same Michelle Johnson who also rejected my motion to show cause (p7, above).

While this issue is not part of the appeal now, I am including it here for one important reason: from that point forward, Family Court stopped even pretending to follow the law.

This time around, I also filed a motion for new trial (5CT 1490). Family Court performed a slight variation of the above procedure, but with the same result.

My RFO was filed timely on 04/07/2024. On 04/16/2024 Family Court rejected it with the comment *"There is a $60 filing fee for FL-300. Please resubmit with the fee added. SP"*. However, filing fees are calculated automatically by Greenfiling. There was no $60 fee for the document type "Motion: New Trial".

I refiled the RFO on the same day and added "Optional Services: Family Law Motion or Order to Show Cause". On 04/25/2024 it was accepted without a stamp. The clerk's comment said *"Your document will be routed to Department 72 for the Judge to review. You will be e-served a copy once the Judge has decided. Thank you, L. Martinez"*. Again, I cannot provide references for the above quotes because Filing Activity Log is not part of the court record. This creates another interesting loophole wherein Family Court effectively gets to operate via a side-channel.

On 05/01/2024 I was served a copy of the RFO signed by the judge (5CT 1490). It was denied on the grounds that *"Respondent's RFO does not meet the requirements set forth in Code Civ. Proc. § 659 and Cal. Rules of Court, rule 3.1600"*. The court did not specify which requirement was not met.

The Math

This is the most important aspect of the case: did Ekaterina receive what was owed to her? There is no dispute that Ekaterina and I received different assets, but the crucial question is: what is the **dollar value** of these assets? As explained above, Ekaterina

strategy on remand involved obfuscating this issue, and Family Court refused to engage in this analysis. I raised, inter alia, the following questions:

What was the dollar value of community assets owed to Ekaterina?
What was the dollar value of community assets Ekaterina actually received?

(5CT 1410)

Family Court refused to respond. Thus, all I can do is present the arguments made by both sides and leave it up to the Court of Appeal to make this determination.

Community property division is described in sections 5, 6, and 7 of the MSA (1CT 26-31). It closely mirrors my "divorce settlement proposal" email, which contains a plain-English explanation (3CT 664). Retirement accounts were divided equally and were never part of any litigation. They are thus excluded from the calculation below.

Investment Accounts Division

All investment accounts were to be divided equally (1CT 27-30). In addition to that, Ekaterina was to receive $65,000 equalization payment to compensate her for the mortgage payoff (item 7 of MSA, 1CT 31).

I calculated Ekaterina's share on Exhibit T3 (3CT 877). I based this calculation on the numbers I entered in my FL-142, which was filled out on 04/25/2019 (3CT 778). However, Ekaterina actually received the assets at the end of June / beginning of July 2019, about 2.5 months later (5CT 1375). Ekaterina argued that during this brief period assets increased in value and she was underpaid for that reason (5CT 1353:11-15). I recalculated everything the way she wanted and presented that calculation as exhibit T6 (5CT 1270). At the trial, Ekaterina disavowed this argument (RT 77). Therefore, I included another table in my closing statement to assist the court in making this calculation (Table 10, 5CT 1377). It shows account values as of April / May / June 2019 and Ekaterina's share calculated as 50% of Total + $65,000. Table 10.1 below is the same as Table 10 but also adds a calculation of overpayment, based on the fact that Ekaterina received $200,947.79 (Exhibit T2, 3CT 875). It also illustrates that asset values changed little during this brief period.

Account	**04/30/2019**	**05/31/2019**	**06/30/2019**
Schwab-6350	153,858.47	145,163.13	158,231.09
Schwab-GOOG, 36 shares	42,785.28	39,730.68	38,912.76
Total Schwab	**196,643.75**	**184,893.81**	**197,143.85**
E-Trade	66,552.14	67,425.69	67,801.03
Total	**263,195.89**	**252,319.50**	**264,944.88**
Ekaterina's share	**196,597.95**	**191,159.75**	**197,472.44**
Overpayment	**4,349.84**	**9,788.04**	**3,475.35**

Table 10.1: Investment account values and Ekaterina's share in April/May/June
(Exhibits B1, B2, B3, D, E1, E2, Ek3;
3CT 669, 682, 693, 727, 732, 739, 857)

Assets Ekaterina actually received are shown on Exhibit T2.

Asset	**Value**
VCAIX (Vanguard tax-free bond fund)	67628.11
FB (Facebook)	38802.00
IAU (Gold ETF)	67225.00
T (AT&T)	10641.17
Cash	16651.51
Total	**200947.79**

Table 2: Assets Ekaterina received

Ekaterina admitted to receiving these assets (RT 79-81). Numbers come from her own account statements (Exhibits Ek2, Ek3, Ek4; 3CT 852, 857, 864).

Individual Bank Accounts division

Judgment awards to each party their respective individual bank accounts (items 5F, 6F; 1CT 27, 29). However, this was done under the assumption that each party received the same initial deposit. This turned out to not be the case: I initially received $20,000 and Ekaterina received $10,000 (1CT 219:4-12). I acknowledged this mistake and paid Ekaterina another $5000 to equalize these deposits (4CT 963).

	Eugene's PartnersFCU	**Ekaterina's Chase**
Initial deposit	$20,000	$10,000
Deposit Equalization	$-5,000	$5,000
Total	**$15,000**	**$15,000**

Table 11: Bank Accounts Division

The $10,000 deposit is corroborated by Exhibit Ek1 (3CT 847). The $5,000 deposit is the result of 04/08/2022 order (1CT 263:2-4). This part of the order was not appealed.

Joint Bank Account division

The parties continued to share the joint Chase bank account after the separation, and finally divided it in June 2019, after the MSA was signed (5CT 1403). It was to be divided equally (items 5J, 6G of MSA; 1CT 27, 29). I asserted that this did, in fact, occur (4CT 963). Ekaterina never disputed this fact throughout this litigation, but then effectively decided to cast doubt on it in her closing statement by including it in her calculation (5CT 1352). She made no such claim in her March 8 RFO which started this multi-year litigation (1CT 55).

Statements ending 05/13/2019 were presented at trial (Exhibits C1, C2; 3CT 713, 720). The ending balance as of 05/13/2019 was $20,342.87 (3CT 720). I looked up additional statements and attached them to my Objection (Exhibits C5, C6; 5CT 1419, 1424). It turned out that even here Ekaterina received a larger share. On 06/26/2019 the remaining balance of the joint checking account was $4,217.22 (5CT 1425). Ekaterina then transferred $2600 to her individual bank account.

Taxes

Ekaterina asserted that the assets that were transferred to her had unrealized capital gains on which she would have to pay taxes after selling these assets (5CT 1262:11-17). She argued that the after-tax value of her assets is smaller than the numbers shown in the financial statements (Table 2, above). I calculated the taxes thus accrued and presented them in Exhibit T7 (5CT 1272). My MSC statement contains a detailed explanation of how taxes are calculated (5CT 1209). Ms Finelli correctly pointed out that Table T7 shows only federal taxes (RT 41). California taxes would also need to be paid. That tax rate was 6% for Ekaterina in 2019 (5CT 1379), based on the fact that she was earning $25/hour at the time of divorce (1CT 59:16). Her income since then more than tripled (1CT 252:1-2) and she married a very wealthy individual, so her tax rate is now higher (5CT 1209). But that is not something I could have anticipated in 2019. Table 7.1 below shows both federal and California taxes.

Asset	**Cost Basis**	**Value**	**Gain/Loss**	**Federal Tax**	**California Tax**	**Total Tax**
VCAIX	63,354.71	68,275.63	2680.82	402.12	160.85	562.97
IAU	63,251.62	67,600.00	4,348.38	652.26	260.90	913.16
T	10,323.57	10,732.58	409.01	61.35	24.54	85.89
FB	32,654.95	38,846.00	6,191.05	928.66	371.46	1300.12
Total			**13,629.26**	**2044.39**	**817.75**	**2862.14**

Table 7.1: Tax burden of Ekaterina's assets
(Exhibits Ek3, Ek4, E5)

There are a few things to notice here:

- This tax burden is de minimis, amounting to approximately 1% of the total value of the assets Ekaterina received (Exhibit T5; 3CT 881).
- If Ekaterina had received different assets her tax burden would have been different but it would not be zero. Thus not all of the approximately $2800 can be attributed solely to the way I divided the assets.
- Taxes accrue only after an asset is sold (5CT 1209), so the tax burden shown above is an estimate. Asset prices change every day, so the price at which

Ekaterina would actually end up selling these assets would certainly be different from the closing price shown in the statements.

- Ekaterina was overpaid by a larger amount (Table 10.1, above). Thus, even if the entire tax burden is subtracted from that overpayment, Ekaterina still received the cash value of 18 GOOG shares – in fact slightly more than that.

Ekaterina made another tax argument – regarding the stocks that were sold in 2018 and on which community paid taxes (5CT 1355:9-13). I explained in my closing statement why this argument is without merit (5CT 1380). Family Court did not rely on this argument in its order (5CT 1405-1406).

Vehicles

Exhibit T8 shows community property vehicles division (5CT 1274). Ekaterina received approximately $28,000 more than me in vehicle value. This is the main reason why community property was initially divided unequally in Ekaterina's favor.

Vehicle	**Value**	**Awarded To**
Mercedes GLE 350	36,000	Ekaterina
Suzuki GSX-R 750	7,000	Eugene
Utility trailer	1,000	Eugene

Table 8: Community property vehicles

In her closing statement, Ekaterina attempted to disprove this fact by arguing that she came into the marriage with a car (5CT 1354:15-23). However, at the trial Ekaterina admitted that:

- The car she had before marriage was leased (RT 73)
- We continued to make lease payments during the marriage and then bought it out of the lease (RT 73)
- Thereafter, we leased a new car for Ekaterina. We bought it out of the lease after 3 years (RT 74)
- Finally we bought Mercedes GLE 350 only 1 month before our separation (RT 72). This car was not leased or financed (RT 74, 58).
- My car was bought before marriage and was not leased or financed (RT 74).
- At no point during the marriage was a new car purchased for me (RT 74).

- She also agreed that my recollection about the value of the community property car that was purchased only 1 month before the divorce is correct (RT 72:17). She did not know the values of my motorcycle and trailer (RT 72-73). But interestingly, her own FL-142 lists the same numbers (Exhibit O, 5CT 1288).

Ekaterina's share of community property

My trial brief (4CT 966-969) and objection (5CT 1411-1412) contain a calculation of Ekaterina's share of community property. As I noted in my closing statement, the numbers for E-Trade and Schwab-6350 come from April statements (5CT 1381). They may change if the court decides to use different months for this calculation, but not significantly (Table 10.1, above). As noted previously, I requested Statement of Decision and asked, inter alia, the following questions:

1. *What was the total **dollar value** of the community estate assets at the time the parties divided these assets?*
2. *What was the **dollar value** of the assets that were transferred to Ekaterina in 2019 when the parties initially divided the community assets?*
3. *What **percentage** of community assets by dollar value did Ekaterina receive in the initial property division?*
4. *Do the numbers in items 1 and 2 above include the **dollar value** of Google stocks?*
5. *Which party received more than half of community property in 2019 when the assets were initially divided?*

(5CT 1329).

Family Court refused to issue Statement of Decision and refused to address these issues (5CT 1404). However, evidence shows unequivocally that Ekaterina's initial share was approximately 54% (4CT 968). Family Court then exacerbated unequal division by also awarding Ekaterina 18 GOOG stocks in kind, which increased Ekaterina's share to 64% (4CT 968). And exacerbated it yet again by awarding her another $60,000 (4CT 969). This was framed as an award of attorney fees and sanctions, but my reply brief explains why such a framing is untenable (H050115 ARB 23-30). With these $60,000 included in the calculation, Ekaterina's share increases to 77% (4CT 969). I noted in multiple documents that Family Court's decision put me nearly $100,000 in debt and drove me to the brink of bankruptcy (5CT 1382, 1412).

Ekaterina's Calculation

The only calculation Ekaterina even attempted is found in her closing statement (5CT 1352). As already explained in my supplemental declaration (5CT 1403) this calculation is deficient in the following ways:

- It attempts to merge investment accounts & bank accounts into the same calculation (i.e. it merges Table 10.1 and Table 11) but without accounting for the deposits Ekaterina received in her individual bank account ($10,000 + $5,000).
- It misstates the value of our joint bank account and does not account for the joint expenses that were paid out of this account. The correct numbers are found in the statements (Exhibits C2, C5; 3CT 720; 5CT 1419).
- It does not account for the funds Ekaterina received from our joint bank account (Exhibit C6; 5CT 1425).

Finally, as already noted above, the division of our joint bank account was not part of Ekaterina's March 8 RFO (1CT 55) and had nothing to do with the issue that was remanded.

False Findings

Family Court made, inter alia, the following finding:

"Both parties exchanged their unsigned Preliminary Declarations of Disclosure on May 28, 2019, the same day they signed their Judgment. There were no attachments, statements or required backup documentation attached to their Schedule of Assets and Debts."

(1CT 226:8-10)

Court of Appeal cited this "fact" in H050115 Opinion, p2:

"In May 2019, Katia and Eugene executed a stipulated judgment of dissolution of marriage. That same day, Katia and Eugene exchanged unsigned preliminary declarations of disclosure about their finances (see Fam. Code, § 2104)."

I explained in my Petition for Rehearing, p6-7 that this "finding" is false:

"We actually exchanged our FL-142 declarations via email (which is why they are both unsigned)."
"At the trial, the judge actually asked me when I provided my FL-142 declaration to Ekaterina. I tried to look up this email in order to give her the exact date. She yelled at me and told me to stop looking."

As noted previously, there was no court reporter at that trial, so I cannot corroborate the interaction between me and the judge. However, the email in question is now part of the record (Exhibit H, 3CT 778). It was not included in the record previously because neither party ever made that argument. Ekaterina admitted to receiving this email (RT 88:16-22).

I sent my FL-142 to Ekaterina and the mediator on April 25 2019, more than a month before signing Judgment (3CT 778). Neither party's FL-142 declarations list account numbers (5CT 1281-1290) but Judgement does (1CT 27,29). At the trial, Ekaterina did not provide a clear explanation for how that happened (RT 85-86). I summarized my recollection in my closing statement (5CT 1372).

Summary

Evidence shows unequivocally that:

- Ekaterina was not only paid full cash value of 18 GOOG shares, but was actually overpaid. The amount of (pre-tax) overpayment ranges from $3,475 to $9,788 depending on the date the court chooses to use for the valuation of community investment accounts (Table 10.1).
- Family Court refused to issue Statement of Decision, so the precise amount owed to Ekaterina was not established. The questions raised in my request for Statement of Decision pertain specifically to the valuation of community property. Family Court's entire strategy involved obfuscating the value of community property and remaining willfully blind.
- The tax burden on the assets Ekaterina received was de minimis (Table 7.1), approximately 1% of the total value of the assets she received (Exhibit 5, 3CT 881). If she had received different assets, her tax burden would be different but it would not be zero. Family Court refused to apportion this tax burden between the parties.
- The amount of pre-tax overpayment exceeds the entire tax burden (Tables 10.1, 7.1). Thus, even if this tax burden is 100% my responsibility, Ekaterina still received full cash value of 18 GOOG shares – indeed slightly more than that.

- There were no immediate tax consequences upon transferring the assets to Ekaterina. Taxes would be due only after Ekaterina sold the assets. Asset prices change every day, so taxable gain changes accordingly.
- Ekaterina received approximately $28,000 more than me in vehicle value (Table 8). This amount would absolutely dwarf any conceivable underpayment in investment accounts division, even if there was such an underpayment. This is the main reason why Ekaterina received more than half of community assets by value in the initial division.
- Some of the findings Family Court made in its 04/08/2022 order are false. Court of Appeal relied on this false information in its Opinion.

Under these circumstances, awarding Ekaterina 18 GOOG shares in kind is wholly unjustified.

Statement of Appealability

This appeal is taken from an order after judgment entered in the Santa Clara County Superior Court and is pursuant to California Code of Civil Procedure §§904.1(a)(2) and 904.1(a)(12).

Code of Civil Procedure §904.1(a)(2) provides that an appeal may be taken from an order made after a judgment made appealable by §904.1(a)(1). The judgment contemplated by this statute is "one final judgment" in an action, which in effect ends the suit in the court in which it was entered and finally determines the rights of the parties in relation to the matter in controversy. (In re Marriage of Garcia (2017) 13 Cal.App.5th 1334, 1342). A judgment or order is final when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined. (In re Marriage of Corona (2009) 172 Cal.App.4th 1205, 1216, citing Sullivan v. Delta Air Lines, Inc. (1997) 15 Cal.4th 288, 304).

Code of Civil Procedure §904.1(a)(12) provides that an appeal may also be taken from an order directing payment of monetary sanctions by a party if the amount exceeds $5,000.

Here, the Findings and Order After Hearing of 02/27/2024 (filed 03/25/2024), is a post-judgment order that is final and leaves nothing to be done but to enforce by execution what has been determined. It directs Eugene to transfer to Ekaterina 18 shares of Google stock, including any subsequent splits (valued at approximately $54,000 at the time the order was issued).

Standards of Review

Family Court's refusal to issue Statement of Decision, which was timely requested in accordance with CRC rule 3.1590 and CCP §632, is reviewed de novo. The questions raised therein pertain specifically to the valuation of community property which Family Court was tasked with dividing.

The applicability of Fam.Code §2556 is reviewed de novo. Evidence shows that Ekaterina had already received cash value of the "omitted" asset – indeed more than its cash value – before she filed her March 8 RFO. I submit that this is not the situation that Fam.Code §2556 was meant to cover, and there is no existing precedent of this statute being used that way.

Family Court's refusal to apply offsets when dividing the "omitted" asset is reviewed for abuse of discretion. Even if there was an underpayment (i.e. if Ekaterina had received slightly less than the cash value of the "omitted" asset), Family Court had the duty to quantify that underpayment and award her only that amount.

The violation of Fam.Code §2550 is reviewed de novo. Here we have the situation where Ekaterina had already received more than half of community property **before** she filed her "omitted assets" RFO. Thus, the application of Fam.Code §2556 to divide the "omitted" asset comes into conflict with Fam.Code §2550.

The violation of my right to due process is reviewed de novo. I submit that the pattern of behavior by Family Court shows unmistakeable bias.

Argument

Family Court erred by refusing to issue Statement of Decision

Family Court's refusal to issue Statement of Decision is reversible per se. The relevant precedent here is Miramar Hotel Corp v. Frank Hall co. of California (1985). In it the court held:

"This case presents the question whether a trial court's failure to issue a statement of decision when there has been a timely request therefor is per se reversible error. We will conclude that it is."

The court further noted that *"Section 632 clearly specifies that the issuance of a statement of decision upon timely request therefor is mandatory."* and that by failing to issue statement of decision, trial court *"deprived appellants of an opportunity to make proposals and objections concerning the court's statement of decision."*

This is exactly what I said in my Objection:

"My understanding of the correct procedure is that:

- *Family Court issues Statement of Decision*
- *Both parties can review and possibly object to it*
- *Family Court then issues FOAH*

This has not happened."

(5CT 1409)

Another relevant precedent is F.P. v. Monier, 222 Cal.App.4th (2014). In it the court restricted reversibility per se to only those cases where "*after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.*" and ruled that "*the burden is on the appealing party to demonstrate that a miscarriage of justice has occurred*". This is a tough standard to meet, but the instant case easily meets this standard.

Family Court was tasked with determining whether good cause exists for an unequal division of GOOG shares. My arguments in favor of this were:

1. Ekaterina was already paid cash value of GOOG shares when the parties initially divided community assets in June-July 2019. By awarding her these same shares in kind, Ekaterina got paid twice.
2. Ekaterina had already received more than half of community property in June-July 2019 when the parties initially divided community assets. By awarding her 18 GOOG shares in kind, Family Court exacerbated unequal division in her favor.

How can Family Court evaluate these arguments without first determining the dollar value of community assets? Indeed, how can **any** informed decision about the division of community property be made without first determining the value of said property? My request for Statement of Decision asked specifically about the **dollar value** of community

property (4CT 955). Furthermore, Court of Appeal's instructions on remand clearly require Family Court to make this determination.

Even if Family Court did not want to address other inconvenient questions – such as why it ruled Peremptory Challenge "untimely" when it was, in fact, timely – it should have, at a minimum, answered the questions about the value of community property. I said as much in my Objection:

At a minimum the following questions must be answered:

- *What was the dollar value of community assets owed to Ekaterina?*
- *What was the dollar value of community assets Ekaterina actually received?*

This is particularly important before awarding any more assets to Ekaterina.

(5CT 1410).

Without a clear answer to these questions, any response Ekaterina might give amounts to nothing more than empty rhetoric, and attempt to "win" the argument not on the merits but via legalistic sophistry.

There is a legal concept of **willful blindness**. I do not know if this is the right term when the court engages in this behavior, but it describes what Family Court did perfectly. By refusing to answer pesky questions about the dollar value of community property, Family Court chose to remain willfully blind. And it once again divided community property unequally.

Family Court's refusal to issue Statement of Decision is also a violation of equal protection under the law (USA Constitution, Amendment 14). Ekaterina previously requested Statement of Decision (1CT 211) and Family Court issued it (1CT 221). Family Court does not even pretend to hide its misandry.

I believe that it would be appropriate for the Court of Appeal to answer these questions, since Family Court refused to do so. Math is not subject to witness testimony or questions of credibility. No amount of oral arguments can make 2+2=5. Therefore, all mathematical calculations qualify for de novo review. All the numbers come from the evidence that was already admitted at trial.

None of the Family Court's findings justify its order

The precise amount Ekaterina was owed was an issue for the Family Court to resolve. It refused to do so. It did make some findings, but none of them justify the award of 18 GOOG shares in kind to Ekaterina. I will go through these findings point by point.

"Euguene[sic] transferred Facebook, Gold, and AT&T to Ekaterina, resulting in capital gains of approximately $13,000. Eugene retained Ford, Honda and Micron which resulted in a tax loss, as he had no capital gains. Ekaterina argues that this resulted in Ekaterina receiving less than one-half of the community assets. The Court finds this argument persuasive and relevant with respect to the valuation and division of the parties' stock, and in particular, the omitted Google stock."

(5CT 1405:24-1406:4)

This is the only finding that has any merit. However, even this finding has a number problems:

1. Tax burden on the "approximately $13,000" worth of capital gains was de minimis (Table 7.1, above), amounting to approximately $2800. Again, Ekaterina does not dispute this number – she referenced my Exhibit T7 in her closing statement (5CT 1352:18-19). That is approximately 1% of the total value of the assets she received (Exhibit T5, 3CT 881).
2. If Ekaterina had received different assets, her tax burden would have been different but it would not be zero. Thus, not all of the $2800 can be attributed solely to the way I divided the assets. Family Court did not apportion this tax burden between the parties.
3. Any talk of potential tax burden is necessarily speculative. Stock prices change every day (indeed every second), and taxable gain changes accordingly. For this very reason courts generally do not consider tax implications unless they are "immediate and specific" and will not speculate about the future tax liability that a spouse might incur at some later date when a taxable event actually occurs (Marriage of Fonstein (1976) 17 Cal.3d 739.). The situation in the instant case is exactly analogous: there were no immediate tax consequences upon transferring the assets to Ekaterina. Taxes would be due only **after** Ekaterina sold the assets. And the value of these assets would certainly change in the interim.
4. Family Court's finding ignores the fact that Ekaterina was overpaid (Table 10.1). The amount of overpayment exceeds the entire tax burden. Thus, even if the entire

tax burden is my responsibility, Ekaterina still received slightly more than the cash value of 18 GOOG shares.

5. Ekaterina received approximately $28,000 more than me in vehicle value (Table 8). This amount would absolutely dwarf any conceivable underpayment in the investment accounts division, even if there was such an underpayment. The argument that "*this resulted in Ekaterina receiving less than one-half of the community assets"* is **mathematically impossible**.

"At the February 2024 Trial, Eugene testified that he did not consider the tax basis when determining which shares of stock to transfer to Ekaterina. The Court did not find Eugene's testimony credible regarding his lack of awareness of the impact of the tax basis or now[sic] that affects the actual value of these assets."

(5CT 1406:8-11)

My MSC statement (5CT 1211) and closing statement (5CT 1378) contain an explanation of how I selected the assets that I transferred to Ekaterina. I also attempted to explain this during the trial but Ms Finelli cut me off. Twice. (RT 53-54). Family Court does not have to believe this explanation, but it cannot argue with numbers. The assets Ekaterina received had the tax burden of approximately $2800 (Table 7.1), which is about 1% of the total value of the assets Ekaterina received (Exhibit T5, 3CT 881). This tax burden was unquestionably de minimis. Mathematical calculations are not subject to questions of credibility.

"Eugene received post separation Google shares in between April and June 2019. By Eugene's own testimony these additional shares were not factored into his calculations to divide the stock. Eugene kept those shares."

(5CT 1406:12-14)

This finding is irrelevant and serves only to obfuscate the issue. Family Court found in its 04/08/2022 order that only 36 out of 46 GOOG shares are community property, and awarded 18 GOOG shares to Ekaterina on that basis (1CT 262, footnote). The 10 GOOG shares that vested post-separation are my separate property. Family Court's 03/25/2024 order does not change this finding in any way (5CT 1406). I did note in my closing statement that a minor modification to this finding is possible (5CT 1375-1376, 1328-1329) but Family Court did not make this modification.

Family Court's statement also misrepresents my argument. I showed that the total value of Schwab (i.e. Schwab-6350 + Schwab-GOOG) was overstated by approximately $10,000 (5CT 1373). Ekaterina was overpaid because of this overstatement (Table 10.1).

"Indeed factoring the post-tax value of an asset allows for a more accurate calculation of its value. The parties received different values of stock in what was to be an equal division of an asset. Thus, there was not an equal division of their stock."

(5CT 1406:15-17)

Indeed. And Family Court had the duty to determine what that value is. It refused to do so but somehow decided to award Ekaterina my GOOG stocks anyway. While it is certainly true that "*there was not an equal division of their stock*", it was Ekaterina who received the larger share (Table 10.1). This continues to be the case even after taking into account the tax burden of the assets (Table 7.1).

Fam.Code §2556 is not applicable to the present case

Fam.Code §2556 states:

"... the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability."

In the instant case, the "omitted" asset is the Schwab-GOOG sub-account which contained GOOG shares. As shown above, Ekaterina had already received cash value of 18 GOOG shares, out of the 36 that were ruled to be community property. Then Family Court awarded her another 18 shares in kind. Thus, Ekaterina ended up receiving 100% of this asset: 50% via equalization + 50% in kind.

There have been cases where the aggrieved party received more than half of the omitted asset. For example, In Re Marriage of Rossi (2001), 90 Cal.App.4th the wife concealed the lottery winnings. Family Court awarded 100% of the winnings to the aggrieved husband – not just the 50% he was entitled to per community property laws. This was done to deter and punish such an underhanded behavior.

However, there is one important ingredient in all such cases: the omitted asset was truly **omitted**. The party who concealed the asset retained 100% of it while the aggrieved party received nothing at all. This is not the case here. As shown above, Ekaterina had already received cash value of 50% of the "omitted" asset, and then Family Court awarded her another 50% in kind. There is not one precedent where Fam.Code §2556 was used in this manner.

Family Code does not require each party to receive ½ of every single asset. On the contrary, divorcing spouses can, and often do, receive different assets, provided that they each receive the same amount by value. For example, one cannot saw a car down the middle, so when dividing this asset one spouse receives the car, the other receives a cash equalization payment. If Family Court's decision stands, then Family Court can simply declare any asset so divided as "omitted" and award both the asset itself and the equalization payment to the "aggrieved" party.

Furthermore, the "omitted" asset in question is not merely some other asset for which Ekaterina was paid. It is Schwab-GOOG sub-account. As already explained, I saw Schwab-6350 and Schwab-GOOG as one and the same asset, and entered the total value of Schwab in my FL-142. Community property division was calculated based on this value, as even the Court of Appeal found.

For this very reason my request for Statement of Decision raises the following questions:

- *How can an asset be "omitted" when the prevailing party had already received the dollar value of that asset?*
- *If item 6I of Judgement said "Schwab" instead of "Schwab-6350", would assets still be "omitted"?*

(4CT 955)

Family Court refused to answer these questions. Perhaps the Court of Appeal will do so instead.

Family Court abused its discretion by refusing to apply offsets

It is important to recap what Ekaterina does and does not argue on remand. Her original claim was that I "hid" Schwab-GOOG sub-account. However, Court of Appeal found that *"the full value of both Schwab accounts was included in the numbers from which Katia*

and Eugene determined the total value of the community property" (H050115 Opinion, p21).

Faced with this adverse ruling, Ekaterina instead attempted to show that she was underpaid. She also attempted to morph her claim from "omitted assets" to "breach of fiduciary duty" (5CT 1263). By even making this argument, she acknowledges that she did receive an equalization payment for GOOG shares – even if, in her opinion, that equalization payment was insufficient. But despite this acknowledgment, she still wants those same shares to be awarded to her in kind (5CT 1266). In other words, she wants the court to pretend that no equalization payment was made at all.

As shown above, the equalization payment Ekaterina received actually exceeded the value of 18 GOOG shares. But even if that was not the case (i.e. if there was a slight underpayment), Family Court had the duty to quantify that underpayment and award only that amount to Ekaterina. It is a miscarriage of justice for Ekaterina to receive both GOOG shares and the equalization payment.

There is a massive difference between receiving 0% of what was owed and receiving 99% of what was owed. Fam.Code §2556 is meant to cover the former case. If it even applies to the latter case, surely the "good cause" exception must also apply in favor of the party who made the equalization payment, even if this equalization payment resulted in a slight underpayment. The correct outcome would be to quantify the alleged underpayment and award only that much. For example, if the value of the "omitted" asset is $10,000 and the "aggrieved" party already received $4,900 via equalization, surely the fair outcome would be to award only the $100 underpayment to that party. If instead Family Court awards 50% of the "omitted" asset to the "aggrieved" party, it will result in that party being paid twice: via equalization and in kind. And that's exactly what Family Court did here.

Court of Appeal clearly recognized this as a problem, which is why it remanded this case in the first place. But Family Court ignored the clear intent behind this remand and arrived at exactly the same result as before – by once again ignoring the numbers.

The asset in question is GOOG shares, which change in value every day. Therefore, I want to propose the following method of division for the court's consideration:

1. Determine the dollar value of the assets Ekaterina was owed and the dollar value of the assets she actually received in 2019. If there was an underpayment, proceed to step 2, otherwise stop.
2. Convert the underpayment to fractions of GOOG shares based on their valuation as of the date of division. For example, an underpayment of $1000 would equate to 0.92 GOOG shares.
3. Award only that many GOOG shares to Ekaterina. The rest of them should be returned to me. Google made this easier by executing a 1:20 stock split in July 2022.

Of course the reason Family Court refused to engage in this analysis is simply because all the evidence presented shows an overpayment to Ekaterina. As I stated in my Objection, *"Instead, the court decided to ignore all the numbers and once again ruled that 2+2=5."* (5CT 1411).

Family Court violated Fam.Code §2550

There have been cases where the application of Fam.Code §2556 **resulted** in unequal division in favor of the aggrieved party. Again, In Re Marriage of Rossi (2001), 90 Cal.App.4th comes to mind. The aggrieved husband was awarded 100% of the lottery winnings that the wife concealed, increasing his share far beyond 50% of community estate as a whole.

However, there is one important ingredient in all such cases: the aggrieved party initially received less than half of community property and then sought assistance from the court to redress this injustice. The party who omitted the assets retained more than half of community property as a whole, and was punished for it.

The opposite happened here. As shown above, Ekaterina already had more than half of community property – about 54% – **before** she filed her "omitted assets" RFO. This is largely because she received approximately $28,000 more than me in vehicle value (Table 8). This amount would absolutely dwarf any conceivable underpayment in investment accounts division, even if there was such an underpayment.

Instead of equalizing community property division, Family Court further exacerbated unequal division in Ekaterina's favor. For this very reason, my request for statement of decision asks the court these questions:

- *What was the total* **dollar value** *of the community estate assets at the time the parties divided these assets?*
- *What was the* ***dollar value*** *of the assets that were transferred to Ekaterina in 2019 when the parties initially divided the community assets?*
- *What* ***percentage*** *of community assets by dollar value did Ekaterina receive in the initial property division?*
- *Do the numbers in items 1 and 2 above include the dollar value of Google stocks?*
- *Which party received more than half of community property in 2019 when the assets were initially divided?*
- *How can* ***any asset*** *be omitted when the "aggrieved" party had already received more than half of community property?*

(5CT 1329)

I provided ample calculations for Family Court to answer these questions. It refused to respond, choosing instead to remain willfully blind. I hope Court of Appeal answers these questions instead.

In its FOAH, Family Court wrote *"None of these additional issues will be addressed or ruled upon as they are not before the Court."* (5CT 1405:13). However, Ekaterina's entire testimony at trial focused specifically on disproving my assertion that she had already received more than half of community property in the initial division. To that end, she decided to relitigate issues she had already lost. Family Court allowed this relitigation to proceed saying that I "*opened the door today with the issue of the car values*" (RT 70).

In other words, both Ekaterina and Family Court understood that this issue undermines the court's order awarding Ekaterina 18 GOOG shares in kind. Family Court allowed Ekaterina to relitigate issues that were res judicata in an attempt to disprove these facts. But because this attempt utterly failed, Family Court decided "*oh well… I don't need to consider it anyway*".

And thus we have the first "omitted assets" case **in history** where the "aggrieved" party had already received more than half of community property in the initial division and then had her share further increased by Family Court. If this is not a miscarriage of justice, I don't know what is.

As applied to the present case, the Fam.Code §2556 requirement to divide the "omitted"

asset equally runs counter to Fam.Code §2550 requirement to divide community property as a whole equally. Fortunately, the "good cause" exception Fam.Code §2556 exists to handle just such an eventuality.

Family Court violated my right to due process

At the 10/23/2023 status conference I was informed that the same judge who presided over the original trial will also hear the remand. I understood from my prior dealings with this judge that she is prejudiced against me, so on 11/02/2023 I filed Peremptory Challenge under CCP §170.6 (2CT 586). Family Court denied it as "untimely" (3CT 631). I asked the court to explain its reasoning in my request for Statement of Decision:

"Why did this court deem peremptory challenge "untimely" when remittitur was issued on 09/26/2023 and said peremptory challenge was filed on 11/02/2023?".
(4CT 955)

Family Court refused to answer this question, or any other questions raised therein. In People v. Mayfield, 14 Cal.4th 668 (Cal. 1997) the court held that "*Under our statutory scheme, a petition for writ of mandate is the exclusive method of obtaining review of a denial of a judicial disqualification motion.* [citations omitted] *Nevertheless, a defendant may assert on appeal a claim of denial of the due process right to an impartial judge.*". In Marshall v. Jerrico, Inc., 446 U.S. 238 (1980) the court held that *"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases."*

I challenge anyone to look at the totality of events and conclude that I received a fair trial before "an impartial and disinterested tribunal". This includes:

- Inexplicable denial of Peremptory Challenge (p7)
- Allowing Ekaterina to relitigate old issues that she had already lost (p12)
- Refusal to issue Statement of Decision (p15)
- Refusal to make any determination as to the amount owed to Ekaterina and the amount she actually received (p18)
- Denial of motion for new trial as "untimely", in violation of relevant statutes and case law (p16)
- False findings regarding an issue that neither party raised (p24)
- Refusal to rule on my claim of duress (5CT 1366)
- Removal of my attorney under very dubious circumstances (H050115 AOB 11-12)

etc.

Changes to Rules of Court

There are certain practices of Family Court that I find baffling and rife for abuse – they were certainly used against me. I am not an attorney, so take this with a grain of salt, but I offer the perspective of an outside observer looking in on the inner workings of Family Court. I would like to propose changes to the Rules of Court. I realize that this will not help my case, but I do hope that this court will take the information presented below into consideration, to at least curtail the abuses that are bound to happen in future cases. The question I ask the court to consider is this: if you were on the receiving end of this process, would you consider it fair?

Serve before filing

Family Court requires a motion to be served to the opposing party only 16 court-days before the hearing. This is **far** too short of a timeframe to prepare a response, particularly when the RFO in question contains multiple complex allegations, as Ekaterina's March 8 RFO did. As described in H050115 AOB 11, I found out about Ekaterina's allegations purely by accident (see also 4CT 957). And immediately after filing this motion, Ekaterina proceeded to remove my attorney under the pretext of "conflict of interest". What would have happened if I didn't find out in time? Would Ekaterina simply win by default? It took me well over a month to write my response (1CT 90) and gather the required evidence. And at the same time I had to look for a new attorney – back then I could still afford an attorney.

Court of Appeal has a much more sensible rule: documents must be served to the opposing party **before** being filed in the Court of Appeal. Why can't the same rule be used in Family Court? At a minimum, the deadline to serve the opposing party should be extended to 45 days.

Court documents are now filed electronically. Electronic filing systems, such as Greenfiling, provide an option to automatically serve the opposing party. But why is that optional? This invites the abuse of the system. A document should be served at the same time that it is filed, at least when the opposing party accepts email service.

Opportunity to correct defects

When a document is filed electronically, it goes into the clerk's review queue. Typically a document gets reviewed and accepted within 1-2 days. But if it's a document that Family

Court does not like, it will sit in the review queue for several weeks. Family Court may then reject the document over a defect – real or imagined. But by that time the deadline to file this document has long passed. So even if the document is refiled, Family Court will issue its favorite ruling – "not timely". This has been used against me multiple times (see H050115 AOB).

Rules of Court should be changed to allow the party to correct any alleged defect and refile, without running afoul of deadlines. Again, Court of Appeal already operates this way. Why can't Family Court do the same?

Filing Exhibits

All documents are filed in the trial court – except, for whatever reason, exhibits. There is a separate, arcane procedure for exchanging exhibits. I never got a clear explanation for why that is the case.

This creates a practical problem. In the H050115 appeal, exhibits were designated as part of the record but not delivered to the Court of Appeal. I had to file a motion to augment the record, which ballooned the cost of appeal.

Anticipating that the same thing will happen again, I filed all exhibits in Family Court – both Petitioner and Respondent exhibits. I also filed the reporter's transcript just to make sure it doesn't get lost (5CT 1495). But why is this not standard procedure? Why not simply file exhibits before trial, just like any other document?

Video Recording

As already described in H050115 AOB, I was absolutely shocked that there was no court reporter at that trial. The absence of a court reporter severely limits appeal options. It also allows the judge to "misremember" what was said at trial. I am still baffled that this is actually legal.

I never made the same mistake again and retained a court reporter for all subsequent trials. But I had to pay for it myself. I then also had to pay for preparing the transcript.

Every courtroom already has video cameras that record everything. But that footage is not available to the parties. Many hearings are now done remotely. Video conferencing

software such as Zoom, MS Teams, etc. has built-in recording capability. But recording is prohibited. Family Court likes to operate in secret.

I submit that all court proceedings must be video recorded, and that footage made available to all parties for the purpose of preparing the transcript. The party who chooses to appeal can pay for the transcript, but the video footage must exist.

The current system, where the vast majority of proceedings are done in secret, practically invites abuse and severely undermines trust in the justice system. People – including judges – behave differently when they know that their behavior can be scrutinized by a higher authority.

Again, I note that Court of Appeal's proceedings are not only video recorded, but available online for anyone to see. Why can't Family Court operate the same way?

File briefs on remand

I described above how, after Court of Appeal issued its Opinion, I reached out to Ekaterina and tried to elicit her argument. She refused. The only reason I was able to prepare is because the judge eventually agreed to make trial briefs due 30 days before trial – without that I was headed for an ambush. I believe it should be standard procedure for both parties to file briefs upon issuance of remittitur, which explain to the trial court and to the opposing party how Court of Appeal's Opinion affects their argument, and whether they still have any. I hope Court of Appeal orders it this time. A party should not be able to game the system in order to ambush the opposing party with last-minute arguments.

Conclusion

Evidence unequivocally shows that:

1. Ekaterina already received cash value of 18 GOOG shares in June-July 2019 when the parties initially divided community assets. In fact she received more than that.
2. Ekaterina already had more than half of community property before she filed her March 8 RFO which included the "omitted assets" claim.

Family Court understood that these facts are fatal to its order awarding Ekaterina 18 GOOG shares in kind. So it decided to simply ignore the facts. It refused to make any

determination as to the dollar value of community property and refused to issue Statement of Decision which asked these very questions. In doing so, it failed to do the one thing that the Court of Appeal ordered it to do on remand. Instead, it allowed Ekaterina to relitigate issues she had already lost in a failed attempt to disprove the above facts. I anticipated that I cannot get a fair trial before this judge, so I filed Peremptory Challenge under rule 170.6. It was inexplicably denied.

Publication

I respectfully request publication of the Opinion. The present case unquestionably breaks new ground:

1. This is the first "omitted assets" case in history where the "aggrieved" party had already received cash value of the asset that was supposedly "omitted" – indeed more than its cash value – before she filed the "omitted assets" motion. Family Court allowed her to retain the cash equalization payment while also awarding her the "omitted" asset in kind.
2. This is the first "omitted assets" case in history where the "aggrieved" party already had more than half of community property **before** she filed the "omitted assets" motion. Family Court then exacerbated unequal division in her favor.

Such publication is especially important if Court of Appeal chooses to affirm Family Court's order. If Court of Appeal is comfortable with this outcome, it is **imperative** to announce it far and wide. From my discussion with attorneys, nobody currently understands the law to operate this way.

Requested Orders

1. Reverse the order awarding Ekaterina 18 GOOG shares in kind.
2. To the extent permitted by law, answer the questions raised in my request for Statement of Decision (5CT 1329-1330).
3. Remand the case to Family Court with explicit orders that it **may not** ignore numbers. Specifically, Family Court must determine:
    a. The dollar value of community property owed to Ekaterina.
    b. The dollar value of community property she actually received.
    c. In the event there was an underpayment, award to her the number of GOOG shares proportional to that underpayment.

4. Notwithstanding 3c, reaffirm that under Fam.Code §2550 Family Court may not award even more community property to the party who had already received more than half.
5. Reassign this case to a different judge.

Respectfully submitted,

Dated: 8/28, 2024

E. Strulyov

Eugene Strulyov
Appellant in Pro Per

Brief Format Certification

Pursuant to California Rules of Court, Rule 8.204, I hereby certify the text of the Appellant's Opening Brief is proportionally spaced, has a typeface of 13 points or more, and contains no more than 13441 words, including footnotes, as counted by the Microsoft Word processing system used to generate the brief.

Dated: 8/28/2024

Respectfully submitted,

E. Strulyov

Eugene Strulyov

Proof of Service

CASE NAME: Strulyov v. Strulyov
CASE NUMBER: **H052147** Santa Clara County 19FL001660

I declare that:

I am over the age of 18 and not a party to the within action. I am employed in the County of Santa Clara, State of California. My business address is 31 E Julian St, San Jose CA 95112.

On 8/28/24 at 12:18pm, pursuant to CCP §1013A(2), I served **Appellant's Opening Brief**

By **ELECTRONIC SERVICE:** by emailing a copy of said document to the following:

Stephanie J. Finelli
Steph@finellilaw.com

By **MAIL**: by depositing a copy of said document in the United States mail in San Jose, California, in a sealed envelope, with postage fully prepaid, addressed as follows:

Santa Clara County Court
Family Justice Center Courthouse
191 N. First Street,
San Jose, CA 95113

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Date: 8/28/24 Signature: _____

Print Name: Michael Mezzetti