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 REPLY BRIEF

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Introduction

As expected, Ekaterina relies on legalistic sophistry and obfuscation in her response. However, the big picture remains the same:

1. This is the first "omitted assets" case in history where the "aggrieved" party had already received cash value of the "omitted" asset and then was awarded the asset itself by Family Court.
2. This is also 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.

Ekaterina's response does absolutely nothing to disprove the above assertions. She simply continues with her attempts at obfuscation. Notably, she does not provide **any** calculation that could even plausibly support the idea that she may have been underpaid. She simply asks Court of Appeal to make this inference when all the evidence shows the opposite. In other words, she asks this court to affirm that 2+2=5.

Throughout this litigation Ekaterina asserted multiple contradictory reasons for why my GOOG shares should be awarded to her:

1. Her original claim was that I "hid" Schwab-GOOG sub-account and that only Schwab-6350 was divided (AOB 10). On this basis Family Court awarded her ½ of the GOOG shares it found to be community property. Family Court completely ignored the **dollar values** of these accounts.
2. Court of Appeal ruled 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"* (2CT 573). So on remand Ekaterina attempted to show that she was underpaid (AOB 10). This attempt utterly failed (AOB 17-24).
3. In her RB, Ekaterina finally makes a third argument. Stripped of the legalese, this argument can be summarized as follows: "*It doesn't matter if Ekaterina was underpaid or not, she should be awarded GOOG shares anyway*".

Ekaterina now explicitly endorses the idea that she should be awarded both GOOG shares and their cash value (i.e. that it is perfectly reasonable to award to her both the "omitted" asset and the equalization payment she had already received for that same asset). She asserts that this is not a miscarriage of justice. That is one hell of an argument!

Corrections to Ekaterina's statement of the case

Ekaterina's Statement of the Case lacks many of the details (see AOB 5-25). It also contains a number of inaccuracies, some of which will be addressed below.

Ekaterina restates FOAH as follows:
"trial court issued a Findings and Order After Hearing, in which it determined that the interests of justice did not require an unequal division of the Google stock".
(RB 6)

FOAH actually states:
"Based on the-above, the Court finds good cause for an unequal division of assets."

But then orders:
"Eugene is Ordered to transfer one-half of the community shares of Google stock (36 shares as of July 2019, including any subsequent stock Splits) to Ekaterina"

(5CT 1406).
The order is self-contradictory. It is for that reason I was confused about its meaning.

Ekaterina states:
On December 13, 2023, the trial court granted Eugene's request for a continuance of the trial, to which Katia did not object, and trial was continued to February 21, 2024 before Judge Blecher. (4CT 938.) Trial was thereafter continued to February 27, 2024"
(RB 8)

Her recollection is faulty. The 12/13/2023 hearing was for my 09/25/2023 RFO (2CT 343). However, for whatever reason, this RFO was assigned to the wrong department. Judge Blecher, who heard the original trial and the remand, has moved to department 72. I requested continuance of the 12/13/2023 hearing due to illness. It was continued to 02/21/2024 (4CT 938). I then withdrew this RFO entirely after Ekaterina provided her trial brief and revealed her new argument.

The remand trial before judge Blecher was initially set for 11/29/2023 but was continued at Ms Finelli's request. It was finally held on 02/27/2024. There was no 02/21/2024 → 02/27/2024 continuance.

This may seem pedantic but it is hard for me, as a non-attorney, to know what is and is not important. There are certain details that I initially overlooked, but they turned out to be very important (AOB 24-25).

Ekaterina states: *"Eugene acknowledged that he had proposed the parties' division of their vehicles"* (RB 11).

Literally the opposite[1]. I made it clear it was Ekaterina who insisted on receiving 100% of the community property vehicle (which was purchased only 1 month before the divorce) without any equalization payment to me. I testified that she threatened to drag out the divorce and bury me in legal fees (RT 60:7-24). Of course she did that anyway.

Ekaterina states: *"Katia testified that she believed the condo had increased in value approximately $20,000 during that time period"*. (RB 12)

She actually testified that "*[her] sense would be **up to** $20,000"*. She was very careful to say "*up to*" both when Ms Finelli (RT 69:22) and I (RT 75:7) questioned her. She did not elaborate what "*up to*" means. She presented no evidence of her claim and admitted that she *"haven't done any assessment on it"* (RT 75:11).

Ekaterina states:
"As the trial court found, Eugene had opened the door to additional evidence as to other community assets by arguing that he received less community property in the division of the vehicles."
(RB 13)

The issue of the condo value is Res Judicata. Family Court already made a ruling about it (1CT 230:19-25). There was no ruling about community property vehicles. It is for that reason I objected to Ekaterina's attempt to relitigate the condo, but Family Court allowed this relitigation to proceed.

Ekaterina states: *"Eugene paid Ekaterina based on April 8, 2019 values"* (RB 14)

I actually used April 25 values, which is when I filled out my FL-142 (3CT 778). This was already addressed multiple times (5CT 1374-1375; AOB 18). I'm not sure why Ekaterina still insists on repeating this inaccuracy. In any case, the changes in asset values

[1] The court should take note that Ms Finelli outright lied about this point.

were minor during this brief period. And indeed during the entire April-July period between our separation and asset division. Ekaterina received almost all assets by July 2 (Exhibit B4, 3CT 708). The final transfer was T ($10,641.17) on July 10 (same exhibit). VCAIX was transferred to her at the end of June (Exhibit E3, 3CT 746 / Exhibit Ek3, 3CT 857).

Ekaterina states:
"Eugene received additional Google shares after April 8, 2019: he received an additional 5 shares on April 29, 2019 and another 5 shares on May 30, 2019. (2CT 434.) Eugene admitted that he did not tell Ekaterina about these additional shares."
(RB 14)

As Ekaterina was well aware, I was employed at Google at that time, and GOOG shares were part of my compensation. They vested monthly in batches of 4-5 shares per month. (Exhibit D, 3CT 729). I accurately disclosed all my assets in my 04/08/2019 "divorce settlement proposal" email (Exhibit A, 3CT 664) and in my FL-142 form, which was filled out on 04/25/2019 (Exhibit N, 5CT 1284). The email (Exhibit A) explicitly calls out *"Google stock vests here"* (3CT 664).

Furthermore, even if any omission had occurred, it would have been inadvertent. At Ekaterina's insistence we settled the divorce via mediation. I did not have an attorney. For that reason I testified that *"I did not know that there was anything to disclose."* (RT 49:22).

Ekaterina cannot show underpayment

The most important thing is missing from Ekaterina's response: any sort of calculation of community property division. She does not even attempt to answer the most crucial questions, raised in my request for Statement of Decision:

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

(5CT 1410)

Without a clear answer to the above questions it is impossible to conclude that Ekaterina was underpaid. I showed my calculations in AOB 18-23. The one and only time Ekaterina offered any sort of calculation, it was laughably bad (AOB 24). So instead

Ekaterina continues obfuscating this issue. She goes so far as to say that the above questions are completely unimportant: *"the trial court was not required to calculate the dollar value of the community assets awarded to Katia"*. (RB 20)

She fixates on the fact that there was a minor increase in value of the community assets between April and July 2019 (RB 14). But despite this increase she was still overpaid (Table 10.1, AOB 19). This is explained by the fact that I filled out my FL-142 form **before** I transferred $10,000 to Ekaterina's individual Chase bank account, so the total value of Schwab (i.e. Schwab-6350 + Schwab-GOOG) was overstated by approximately $10,000 (5CT 1373). I calculated community property division based on this overstated value.

Ekaterina does, however, make one important admission in her RB. She acknowledges that the tax rate on capital gains that she would have to pay is 21% (RB 11). That consists of 15% federal + 6% California taxes. Thus, my estimate of her tax burden is correct by Ekaterina's own admission (Table 7.1, AOB 21). But she claims that it is not de minimis (RB 21) despite it being approximately 1% of the total value of the assets Ekaterina received (Exhibit T5; 3CT 881).

Court of Appeal should revisit its prior order in light of new evidence

In AOB 24-25 I showed that Family Court made a false finding[2]. In her RB, Ekaterina does not dispute that:

1. This finding is false.
2. Trial court judge **knew** that it is false when she made it.

To the extent that Court of Appeal's H050115 Opinion relied in part on this false finding, it should be revisited. Specifically, Court of Appeal cited this as a reason for affirming that Schwab-GOOG sub-account was "omitted".

I am not an attorney, so I cannot cite the specific law to support this argument. But to me it seems self-evident that the interests of justice require it.

[2] This is not the only finding that is false, but it is one that I proved to be false beyond a shadow of doubt.

The 02/27/2024 trial was a trial

Ms Finelli attempts to frame the remand trial as "evidentiary hearing" (RB 9). Among other things, she uses this framing to claim that Statement of Decision was not required (RB 19). This is ridiculous in every possible way. At the 02/27/2024 trial there was extensive testimony by both sides. New evidence was admitted. Both parties submitted written trial briefs and closing statements. Trial court made factual findings and orders. The 02/27/2024 trial was clearly "*a trial of a question of fact*" within the meaning of CRC Rule 3.1590(a). It is astonishing that this even needs to be argued.

Statement of Decision was mandatory

This was already covered in Miramar Hotel Corp v. Frank B Hall & Co.(1985) 163 Cap.App.3d 1126 which was cited in AOB 27. In it the court held: *"Section 632 clearly specifies that the issuance of a statement of decision upon timely request therefor is mandatory."*

Alternatively, Ekaterina asserts that *"trial court's FOAH sufficed as a statement of decision"* (RB 19). It does not, as has already been explained in the very same case:

"By labeling the minute order a statement of decision and ignoring appellants' request for the issuance of such a statement, the trial court deprived appellants of an opportunity to make proposals and objections concerning the court's statement of decision. [citations omitted]. *Such an opportunity is a key aspect of the process described in section 632 and rule 232"*

The opportunity to object to a proposed Statement of Decision is, in fact, the entire point. I anticipated that Family Court may try to fudge numbers so I asked for very specific calculations which are necessary in order to divide community property that Family Court was tasked with dividing. I did not expect that Family Court would ignore the law entirely.

Ekaterina would have a point if Family Court had chosen to respond to my Objection (5CT 1408) and addressed the concerns raised therein. I said this explicitly in my motion for new trial: *"If the court addresses the concerns raised in the Objection filed on 04/04/2024 l will withdraw this motion."* (5CT 1493). But Family Court did not respond and instead decided to remain willfully blind.

Ekaterina also asserts that I waived any right to Statement of Decision because at some point during the trial the judge said that she will not be issuing it and I did not object (RB 18). It does appear that the judge said that she *"would be issuing an order rather than a statement of decision"*and then interrupted me when I tried to respond (RT 17:18-28). I did not voice my objection during the trial but I did file a written objection (5CT 1408). I am not an attorney and I am not familiar with all the intricacies of court procedure. But even if I did say something during the trial, what good would it do? The judge was already determined to violate the law.

Finally, Ekaterina cites F.P. v. Monier, 222 Cal.App.4th 1087 (2014) which puts limits on reversal per se. I already cited this same case myself and explained why the instant case fits well within those limits (AOB 28).

Trial court's findings do not justify its order

I already went through Family Court's reasoning and showed that it is woefully inadequate (AOB 30-32). Ekaterina's argument to the contrary essentially amounts to "nuh-uh".

First Ekaterina promises to *"disabuse this Court of the notion that she received more of the community assets than did Eugene"* (RB 20). But all she does is quote from Family Court's order. The very same order that is the subject of this appeal. The very same order in which Family Court refused to make any calculations and simply declared that 2+2=5.

She proceeds to state that *"trial court was not required to calculate the dollar value of community assets awarded to Ekaterina"* (RB 20). On what basis then can she or Family Court come to the conclusion that I somehow received more community assets than Ekaterina? Exactly how does she plan to "disabuse" this court? I showed my calculations in AOB 18-23. Where are Ekaterina's calculations?

It is unclear what point Ekaterina is trying to make. She appears to be suggesting that Family Court can simply declare that "Eugene received more community assets than Ekaterina" without actually looking at the numbers and calculating the value of community assets awarded to each party. If so, then this argument is patently absurd. That would be akin to declaring that $1 > 2$.

One of the questions explicitly raised in my request for Statement of Decision is:

12. Which party received more than half of community property in 2019 when the assets were initially divided?
(5CT 1330)

Family Court refused to respond – because the answer to this question undermines Ekaterina's entire case.

She then states that *"pursuant to that settlement agreement, the parties were required to divide the Schwab 6350 account equally. (1CT 27, 29.) As the trial court found, Eugene did not divide the stocks in that account equally"* (RB 20).

Indeed. Ekaterina received 74% of Schwab-6350 and 100% of E-Trade (H050115 ARB 18-19). Exhibit B4 shows that out of the $158,231.09 worth of assets that were in Schwab-6350 as of 06/30/2019 Ekaterina received $116,668.17 (3CT 704). Exhibits E3 and Ek3 (3CT 746, 857) show E-Trade being transferred to Ekaterina in its entirety. The *"substantial evidence"* that Ekaterina received *"less than one-half of Schwab 6350"* (RB 22) **does not exist**.

It is indeed true that *"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*[3]*."* (RB 21) But it was Ekaterina who received the larger share (Table 10.1, AOB 19). I was expecting Ekaterina to provide any kind of calculation in her response that could even plausibly cast doubt on the above conclusion. She did not. She relies solely on obfuscation.

Ekaterina again attempts to rehash the issue of 10 GOOG shares that were my separate property (RB 22). This was already covered in AOB 31. Contrary to her assertion, trial court did not have discretion to divide my separate property. If it did so anyway, that in itself would be a reversible error.

[3] I find it quite telling that Family Court leaves this part vague and does not explicitly state **which party** received the larger share. Because the conclusion it wants to reach is mathematically impossible.

Ekaterina received full cash value for ½ of community property GOOG shares

Court of Appeal ruled that Schwab-GOOG was "omitted" but 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."* (2CT 573)

To me, as a non-attorney, this appears to be a hair-splitting distinction without an actual difference. I suspect that the reason for this decision may have been that Court of Appeal entertained the possibility that Ekaterina may have been underpaid (i.e. that the equalization payment for the GOOG shares was not quite sufficient). That seems to be indicated by the wording Court of Appeal chose to use:

"We will therefore remand the matter to the court to determine whether and ***to what extent*** *sections 2556 and 2550 support a finding that the interests of justice require an unequal division of the Google stock."*

(2CT 573, emphasis added).

And underpayment is indeed what Ekaterina tried to show on remand. She failed. All the evidence presented actually shows overpayment (Table 10.1, AOB 19). Ekaterina did not provide any alternative calculation in her RB.

If, under these circumstances, Court of Appeal still believes that Schwab-GOOG was "omitted" and that Fam.Code §2556 still applies, then I respectfully ask it to provide answers to the following questions that I raised in my request for Statement of Decision:

- *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)

I am aware of no other case in which Fam.Code §2556 was applied in this manner. Neither does Ms Finelli since she cited none.

It should also be noted that my FL-142 refers simply to “Schwab” and does not itemize the balance between the two sub-accounts (5CT 1284). Thus, the entire basis for finding Schwab-GOOG to be “omitted” is a typo in the judgment. For that very reason, I included the following question in my request for Statement of Decision:

10. Does not itemizing accounts constitute not disclosing? Example: a party has a checking and savings account with Chase bank; on FL-142 that party enters the combined value of both accounts as simply "Chase".
(5CT 1330)

Family Court abused its discretion by refusing to apply offsets

Ekaterina argues that I *“never made this argument below[sic]”* and therefore *“waived and/or forfeited this argument and is prohibited from raising it on appeal”* (RB 24).

First, this is factually false. The issue of offsets was explicitly raised in H050115 motion for new trial (H050115 AOB 29-30; H050115 3CT 716-721) – the very motion that Family Court refused to hear in violation of relevant statutes and case law.

Second, offsets are inherent to the very nature of my argument. I have always admitted that Ekaterina did not receive GOOG stocks in kind, but maintained that she received other stocks of equal value. I was, nevertheless, prepared to entertain the possibility that I may have made a mistake in the calculation. I said that explicitly to Ekaterina:

*“I will offer one concession: I will listen to an argument based on the *merit*. If your client can show, mathematically, why she should be entitled to retain 260 of my GOOG stocks, I will gladly accept. But she needs to demonstrate that I made a mistake in the calculation. I did acknowledge my mistake with regards to my PartnersFCU / her Chase division and paid her $5000. In the absence of such showing, your client is simply attempting to keep stolen property. Moreover your client *knows* that it is stolen property and refuses to return it. This is absolutely despicable.*

Math is not subject to opinion. 2+2 will never be 5. I think this is the part that you / your client / family court are missing.“
(5CT 1279)

Ekaterina, in fact, tried to make this showing on remand. But her one and only attempt at an alternative calculation was embarrassingly bad (AOB 24). She did not even make another attempt in her RB.

Ekaterina herself understood that a partial return of GOOG stocks is a distinct possibility – provided that she can show cause as to why she should keep any portion of them. She wrote this in her trial brief:

"In the alternative, if this Court determines that an unequal division of the Google stock is appropriate in some form, Ekaterina requests that any such offset account for, and divide, the additional 10 shares of Google stock in the account as of May 30, 2019."
(5CT 1266)

Ekaterina next argues that *"His argument that Katia may be entitled to something less than half of the omitted Google stocks conflicts with his argument that she was entitled to none of them."* (RB 24). It does not. My argument is not that there was an underpayment, but rather that **even if** there was, Family Court abused its discretion by not quantifying the alleged underpayment and awarding Ekaterina only that amount.

She states *"He asserted that Katia was overpaid."* (RB 24). Of course I did. Because that's what the numbers show (Table 10.1, AOB 19). But I was always prepared to accept partial return of GOOG stocks if Ekaterina was able to show underpayment. She was not. So as things stand, the method of division I proposed in AOB 35 would still result in her receiving zero stocks – but I would encourage Ekaterina to make another attempt at this calculation on remand.

In short, my argument to Ekaterina has always been: "*Per my calculations, you got paid what you were owed. If I'm wrong, show me where I made a mistake."*. Ekaterina was unable to show it. And she refused to even articulate her argument when I reached out to her on multiple occasions (AOB 8). Her game plan has always been to drop her argument on me at the last possible moment so that I would not have time to prepare a response. This has been her consistent tactic throughout this litigation.

Next Ekaterina once again rehashes the issue of 10 GOOG shares that I earned after our separation. This has already been covered in AOB 31. Family Court ruled – correctly – that only the 36 GOOG shares that vested before our separation are community property. To the extent that Ekaterina has any claim to any of the shares that I earned after that, it

would be limited to ½ of the pro-rated fraction that vested between April 1 and April 8 2019 (5CT 1328-1329, 1375-1376). In any case, Family Court did not make this modification. But even if such a modification was made, it would have increased Ekaterina's share of community property by approximately $700. The expression *grasping at straws* does not even begin to describe this argument.

Nevertheless, Ekaterina goes on to argue that *"Eugene did obtain an offset of sorts"* … because Family Court allowed me to retain the 10 GOOG shares that were my separate property! (RB 26) I'm not surprised that Ekaterina is still beating this dead horse, but Ms Finelli is an experienced attorney. She ought to be ashamed of herself for even making this argument.

Finally, even if everything Ekaterina says is true, her argument still fails. She effectively asserts that any underpayment whatsoever, no matter how minor, should still result in her receiving 50% of the "omitted" asset. So hypothetically, an underpayment of $1 would be sufficient to justify awarding her $54,000[4] worth of assets. If this is not an abuse of discretion, I don't know what is.

Family Court violated Fam.Code §2550

Ekaterina begins with this statement:
"The fallacy of Eugene's argument is that it rests solely on the notion that, on remand, the trial court was tasked with dividing the omitted Schwab account to ensure that each party had received an equal division of the community assets."
(RB 26)

That is not my argument. I am well aware that only Schwab-GOOG was to be divided. However, my argument is that awarding **even more** assets to the party who had already received more than half is a miscarriage of justice. In other words, Family Court did not have to equalize community property division, but it certainly should **not** have exacerbated unequal division in Ekaterina's favor – which is exactly what it did. If, as I argued, Family Court had ordered the return of GOOG shares to me, that would **still** leave Ekaterina with more than half of community property.

[4] That is the approximate value of GOOG shares awarded to Ekaterina at the time 03/25/2024 order was issued.

The argument that "*the parties divided their assets pursuant to agreement*" (RB 26) is likewise unavailing. There was certainly no agreement for Ekaterina to receive both GOOG shares and their cash value. She ended up receiving 100% of community property GOOG shares: 50% via equalization + 50% in kind.

Similarly, her argument that only *"Charles Schwab Investment account no. -6350"* is mentioned in the judgment and that *"It did not mention the Schwab equity account which held the Google stock, or the Google stock itself."* (RB 28) is yet another attempt to obfuscate the issue by ignoring **numbers**. Ekaterina received 74% Schwab-6350 and 100% of E-Trade – more than enough funds to pay for ½ of community property GOOG shares (Table 10.1, AOB 19).

Despite Ekaterina's adamant belief that equal division was not required, and that Family Court did not violate Fam.Code §2550 by exacerbating unequal division, she nevertheless attempts to "disabuse" this court of the fact that she had already received more than half of community property before she made her "omitted assets" claim. To that end she argues that:

- In 2018 (1 year before the divorce) community sold stocks and bought other investments. Community paid capital gains taxes on these sales. $130,000 of the proceeds were used to pay down the condo mortgage. Ekaterina received $65,000 equalization payment for this and agreed to return the condo title back to me. She claims that this amount was insufficient because of taxes.
- My condo allegedly increased in value during the brief period when Ekaterina's name was on the title (October 2017 - May 2019).

(RB 27). Both of these arguments fail.

The tax argument regarding the stocks that were sold in 2018 is without merit, as has already been explained in my closing statement (5CT 1380). Family Court did not rely on this argument in its order. The only tax argument it found *"persuasive and relevant"* was in connection with *"capital gains of approximately $13,000"* on the assets Ekaterina received (5CT 1405:24-1406:4). This was already covered in AOB 21-22.

The issue of the alleged increase in the condo value is Res Judicata[5] (5CT 1367) and it is untenable that Family Court allowed Ekaterina to relitigate this issue. Even if it wasn't, Ekaterina's claim is baseless. As mentioned above (p6) she provided no evidence for her claim and admitted that she *"haven't done any assessment on it"* (RT 75:11). But even if we trust her claim, and even if we assume that the condo increased in value by exactly $20,000 (the maximum of her "up to $20,000" range) that still doesn't help her. She received $28,000 more than me in vehicle value (Table 8, AOB 22).

Despite her protestations, Ekaterina clearly understands that the fact that she had already received more than half of community property before making her "omitted assets" allegation undermines her case. This is why she tries to throw any argument, no matter how flimsy, in an attempt to disprove it. Family Court understood this too, which is why it decided to remain willfully blind.

In summary, Family Court need not equalize but it must not exacerbate unequal division. Doing so is a grave injustice and a direct violation of Fam.Code §2550. Ekaterina already had more than half of community property **before** she filed her March 8 RFO which contained "omitted assets" allegation. Family Court should have preserved the status quo instead of awarding even more assets to Ekaterina.

Family Court violated my right to due process

Ekaterina asserts that *"The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate"* (RB 29). She ignores People v. Mayfield, 14 Cal.4th 668 (Cal. 1997) which was already cited in AOB 37: *"Nevertheless, a defendant may assert on appeal a claim of denial of the due process right to an impartial judge."*

In seeking to distinguish the instant case from the above precedent she asserts that People v. Mayfield *"was a death-penalty case in which due process rights are of utmost importance"* (RB 30). Again, she ignores Supreme Court precedent Marshall v. Jerrico, Inc., 446 U.S. 238 (1980) which held that *"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases."*. Indeed any other holding would be simply unfathomable. Is Ekaterina suggesting that a biased judge is permissible in civil cases?

[5] What is not Res Judicata, however, is my claim of duress (5CT 1366) – because Family Court outright refused to rule on it.

Ekaterina also claims that I *"largely waived this argument by failure to seek a timely writ petition"* (RB 29). There is a simple reason for that. Ekaterina / Family Court have already nearly bankrupted me. I am over $100,000 in debt. I was also advised that writ petitions are almost always denied. Thus, filing this petition would be a very bad use of my very limited resources.

Ekaterina's claim that *"Eugene has not even shown a basis for disqualification"* (RB 30) is simply ludicrous. Contrary to her assertion, I showed a lot more than *"unfavorable rulings"*. Family Court blatantly violated the law on multiple occasions (AOB 37). I note, for example, that Ekaterina says nothing about the motion for new trial in her RB. Nor is there any attempt to debunk any other instances of bias that I cited (AOB 37). She simply asserts that all of this is perfectly normal.

Finally, the framing of Ekaterina's argument – that *"Denial of Eugene's Peremptory Challenge Is not Subject to Reversal"* (RB 29) is also misleading. I am not asking Court of Appeal to go back in time and reverse the denial of Peremptory Challenge. I am only asking for this case to be reassigned to a different judge on remand.

There were no breaches of fiduciary duty

In a last-ditch effort, Ekaterina asserts that *"At the February 27, 2024 hearing, Katia argued that an equal division of the omitted Google stock was appropriate, given Eugene's breaches of fiduciary duty."*
(RB 31)

There are two problems with the above statement:

1. An equal division of Google stock would involve Ekaterina returning 18 (pre-split) GOOG stocks to me. She already received another 18 via equalization.
2. Family Court did not find any breaches of fiduciary duty. Ekaterina simply states her argument as a matter of fact and attempts to manifest it into existence.

As noted in my closing statement, Ekaterina's switch from "omitted assets" to "breach of fiduciary duty" is simply an attempt to move the goalposts (5CT 1370). In support of this new theory, she offers the same arguments as before, namely that community assets slightly increased in value between April and July and that the assets she received had

unrealized capital gains which were subject to income taxes when sold. Both of these arguments have been covered already (AOB 11-12, 17-23, 30-32).

I based my calculations on April 25 numbers because that's when I filled out my FL-142 (Exhibit H, 3CT 778). As explained in my closing statement, *"I was operating under the assumption that the numbers entered in FL-142 are the values to be divided."* (5CT 1375). At Ekaterina's insistence we settled the divorce via mediation. I did not have an attorney. I have since learned that this assumption was not correct. But despite this mistake, Ekaterina was still overpaid (Table 10.1, AOB 19). Also, even eliciting this argument from Ekaterina was like pulling teeth (AOB 8).

It is also important to understand what Ekaterina's argument about the tax burden really means. As explained in my MSC statement (5CT 1211) and closing statement (5CT 1379) I gave Ekaterina all the safe assets and kept all the risky stocks that were either **dropping in value** or not performing well. Never in my life could I have imagined that I would be accused of "breach of fiduciary duty" for that.

Finally, the initial division of community assets was indeed unequal – in Ekaterina's favor (AOB 18-23).

This appeal is not frivolous

On the contrary, this appeal presents issues of first impression:

1. This is the first "omitted assets" case in history where the "aggrieved" party had already received cash value of the "omitted" asset and then was awarded the asset itself by Family Court.
2. This is also 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.

Never before has Fam.Code §2556 been applied in this manner and, from my discussions with attorneys, nobody currently understands the law to operate this way. Court of Appeal clearly recognized this as a problem, which is why it remanded this case in the first place. But Family Court arrived at exactly the same result as before – by once again ignoring the numbers and choosing to remain willfully blind.

Nevertheless, Ekaterina asserts that this appeal is "devoid of merit" and, as a final act of cruelty, demands $10,475.74 in sanctions. She is well aware that Family Court has already put me over $100,000 in debt. She is also well aware that I lost my job in June and have absolutely no way of paying her.

Conclusion

It is no secret that Family Court is biased against men. But there is a big difference between hearing about it and experiencing it first hand. Before I was put through this meatgrinder, I always considered the bias to be exaggerated. But it turned out to be far, far worse that I could have imagined. Ekaterina, of course, understood perfectly well that she is on friendly territory and used Family Court as a tool of personal vendetta against me.

The motion that is "devoid of merit" is Ekaterina's March 8 RFO which started this multi-year litigation (1CT 55). Ekaterina lost on all issues except "omitted assets" – the matter that is the subject of this appeal. She also committed multiple counts of fraud and perjury in the process (H050115 ARB 28-30). But instead of being sanctioned for this, she was actually rewarded. She received 18 GOOG shares in kind, in addition to their cash value that she had already received. And she was awarded another $60,000 on top of that. Most disappointingly, Court of Appeal refused to act to redress this injustice.

What will it take for Court of Appeal to act? There is now even more evidence of outright corruption. If, despite everything presented, Court of Appeal believes that what happened to me is "justice", then there is no hope of justice left in this country.

Dated: 10/21/2024

Respectfully submitted,

E. Strulyov

Eugene Strulyov

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 6387 words, including footnotes, as counted by the Microsoft Word processing system used to generate the brief.

Dated: 10/21/2024

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 10/21/24, pursuant to CCP §1013A(2), I served **Appellant's Reply 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: 10/21/24 Signature: _____

Print Name: Michael Mezzetti