IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re the Marriage of Ekaterina Strulyov and Eugene Strulyov EKATERINA STRULYOV, *Respondent*, v EUGENE STRULYOV, *Appellant*	**Case No.: H052147** Superior Court No. 19FL001660 Santa Clara County

RESPONDENT'S BRIEF

Appeal from an Order of the Santa Clara County Superior Court, The Honorable Brooke A. Blecher, Presiding

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I. INTRODUCTION

This is the second appeal by Eugene Strulyov on the issue of the trial court's division of the parties' Google stock. In the first appeal, this Court reversed and remanded as to a limited issue: it affirmed the trial court's finding that the Google stock was an omitted asset, but reversed and remanded for a determination as to whether there was good cause for an unequal division of it. This Court explicitly refrained from suggesting the trial court exercise its discretion in any particular way in making that determination, or even whether it should take additional evidence.

In keeping with this Court's directive, the trial court held a half-day evidentiary hearing. After submission of closing briefs, the 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, and ordered that one-half of the 36 shares as of July 2019 be transferred to Respondent. It is from this Order that Appellant appeals.

There is no merit to Appellant's arguments. Based on the law and the evidence presented at trial, the court had discretion to divide 36 shares of the omitted Google stock equally. Such division was consistent with this Court's directive on remand and is not subject to reversal. Appellant's unhappiness with this ruling does not create a valid basis for appeal.

The Findings and Order After Hearing should be affirmed and costs and fees awarded to Respondent for having to oppose this meritless appeal.

II. STATEMENT OF FACTS AND CASE

A. The Prior Appeal and This Court's Opinion

Appellant is Eugene Strulyov ("Eugene"); Respondent is Ekaterina Strulyov ("Katia"), his ex-spouse.

On July 27, 2023, this Court issued its Opinion in Euguene's first appeal. It affirmed the trial court's orders refusing to set aside a stipulation

requiring Eugune to pay for one-half of his daughter's tuition and imposing $60,000 in sanctions against him. This Court also affirmed the trial court's finding that the Google stock was an omitted asset, but reversed the court's division of that stock and remanded for a determination as to whether an unequal division was warranted by good cause.

In so determining, the Court explicitly affirmed the trial court's finding that the Google stock was an omitted asset. (2CT 543 ["Thus, we uphold the trial court's determination under section 2556 that the Google stocks were not adjudicated in the judgment and thus are an omitted asset."]) However, this Court reversed to allow the trial court to address Eugene's argument that he had given Katia equivalent value such that an unequal division of this omitted asset was appropriate. (2CT 543 ["The trial court did not address the applicability of the 'good cause' exception in its otherwise detailed order."])

This Court thus "remand[ed] 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 544.) In remanding, this Court left it entirely to the trial court's discretion as to whether to divide the Google stocks equally. (2CT 544 ["We do not intend, by anything we have said in this opinion, to suggest that the court should exercise its discretion in a particular manner with respect to division of the Google stocks."])

The remittitur issued September 26, 2023, transferring jurisdiction back to the trial court. (2CT 552.)

B. Pre-Hearing Proceedings on Remand

On October 23, 2023, the trial court set the hearing on remand for November 29, 2023 in Department 72, before Judge Brooke Blecher, the trial

judge who had rendered the prior decision from which Eugene had appealed. (2CT 580.)

On November 2, 2023, Eugene filed a peremptory challenge to Judge Blecher pursuant to Code of Civil Procedure section 170.6. (2CT 585.) Katia opposed this motion on the grounds that the matter to be decided was not a "new trial" and did not permit Eugene to challenge Judge Blecher pursuant to Code of Civil Procedure section 170.6. (3CT 621.) Eugene filed a reply thereto, claiming the matter was set for a new trial. (3CT 625.)

On November 9, 2023, the court denied Eugene's request for peremptory challenge as untimely. (3CT 631.) Eugene did not appeal or seek a writ from this order.

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, with the parties ordered to exchange briefs, points and authorities witness lists and exhibits by January 24, 2024. (4CT 940.)

On January 24, 2024, Eugene filed a motion in limine, seeking to have his exhibits filed on November 27, 2023 admitted (4CT 942) as well as a trial brief, to which he re-attached all of his exhibits. (4CT 953.)

On February 13, 2024, Katia provided an amended trial brief, requesting the court divide the additional ten shares of Google stock Eugene had received, and requesting attorney fees. (5CT 1257.) Therein, Katia explained that this Court had affirmed the finding that the Google stocks were an omitted asset pursuant to Family Code section 2556, and that under that statute, the trial court was required to divide those stocks equally unless if found good cause to divide them unequally. (5CT 1258-1269.) Katia argued Eugene had the burden of showing a basis for an unequal division, which she argued would be difficult, as he was the one who had omitted the

asset. (5CT 1259.) She pointed out that the stipulation between the parties was to divide the "Schwab 6350" account equally; that the account was in Eugene's name and control; and that he divided it by giving Katia certain stocks in July 2019 based on April 2019 values, and did not provide her with any statements showing the values or even what stocks were in the account. (5CT 1260-1261.) She explained that Eugene had given her the stocks with the lowest costs basis, i.e., the highest unrealized gains, and that he had calculated her share as 50% of the value of the account as of April 2019, despite the fact the holdings had increased in value over that time. (5CT 1262.) She also noted that although the court had only focused on the 36 Google shares Eugene had as of April 1, 2019, Eugene had later received 10 more shares of Google, and thus had a total of 46 shares in the omitted account at the time of the division. (5CT 1263.) Katia argued that Eugene's breaches of fiduciary duty in failing to divide the investment accounts equally as of July 2019, combined with his decision to give Katia the stocks with the highest taxes, negated any good cause for an unequal division of assets. (5CT 1263-1264.)

On February 20, 2024, Eugene filed with the court a second set of exhibits for trial. (5CT 1267.) He also filed another motion in limine, requesting the court answer a series of questions in a statement of decision. (5CT 1328-1330.)

C. Evidentiary Hearing

Hearing on remand was held on February 27, 2024 before Judge Blecher. (5CT 1346; RT 1.) The court began by clarifying that the issue before the court was "very limited," that it would not be making orders on additional issues, and it would be issuing a written order. (RT 4.) The court later clarified that it would be "issuing an order rather than a statement of decision." (RT 17.) Eugene voiced no objection.

1. Eugene's Testimony

Eugene began with his case, as he had the burden of proving that an unequal division of the omitted Google stocks was warranted by good cause. (RT 8.) He submitted exhibits and made argument, seeking to show that Katia received more than one-half of the value of all of the investment accounts. (RT 9-16.)

When he sought to raise the issue of the division of the vehicles, Katia objected as outside the scope of remand. (RT 17.) The court allowed it for the very limited purpose of permitting Eugene to argue Katia had received more than one-half of the community property. (RT 18.)

Eugene testified and submitted documents showing he transferred assets to Katia totaling $184,296.28, plus another $16,651.51 in the form of a check. (RT 23.)

On cross-examination, Eugene admitted Katia did not have access to the investment accounts, but claimed he gave her the statements on the same day he sent her an email about divorce, which was April 8, 2019. (RT 25-26.) He confirmed he did not attach the statements to his April 8, 2019 email, and had never referenced in later emails that he had given her the statements. (RT 26.)

Eugene asserted that in July 2019, he had given Katia a total of $200,957.79 in the form of stocks and cash. (RT 27-28.) He also confirmed that he had withdrawn $54,481.60 from his Schwab account in April 2019, including $10,000 ***after*** April 8, 2019. (RT 29-30.) He also acknowledged that from April 30, 2019 and June 30, 2019, the value of the assets in the Schwab 6350 account had increased by about $4,500. (RT 31.) He acknowledged he did not discuss with Katia what stocks she would be receiving. (RT 36.) He conceded that he transferred to Katia one-half of the value of the stocks as of the time he filled out his FL-142 form in April 2019, not as of the time of the transfer. (RT 37.)

Eugene acknowledged that the stocks he transferred to Katia would incur capital-gains taxes if she sold them immediately after the transfer, including Facebook, with an unrealized gain of almost $6,000, and gold with a gain of $4,248. (RT 37-38, 40.) The stocks he retained would have had resulted in a tax loss had he sold them. (RT 38-39.) He acknowledged that if Katia had sold the stocks, she would have realized gains, on which she would have paid approximately 21% in state and federal taxes. (RT 40-41.) He did not tell Katia that she would have had such taxes, stating "I did not even know what the unrealized gain was at the time I transferred it," claiming he had not looked at that information when he transferred the stocks. (RT 40-41, 41-42 ["I never even thought about it."])

Eugene stated there was a total of approximately $271,000 in all of the investment accounts (E*Trade, Schwab and Schwab Equity), plus he had transferred $20,000 from Schwab 6350 to his own account, and they had about $67,000 in checking. (RT 45-46.) Eugene disagreed this totaled $357,000 in community assets, asserting they had $33,000 in taxes due and a $20,000 credit card balance. (RT 46.) He confirmed he had not informed Katia that prior to June 30, 2019 he had received an additional 10 shares of Google stock, claiming he did not know that he had. (RT 49.)

When asked if he could have given Katia one-half of the Google stock as part of the division of assets, Eugene refused to simply answer the question, then claimed there was always an odd number of shares, then, when confronted with the fact the account contained 46 shares as of June 30, 2019, stated he would not have known "which" 23 shares he would have given her, as they vested at different times and thus would have had different cost bases. (RT 50-53.) It was stipulated that in 2022, Google stock underwent a 20 to 1 split. (RT 22; 2CT 469.)

Eugene acknowledged that he had proposed the parties' division of their vehicles, such that they each keep their own. (RT 59; 4CT 974.)

2. Katia's testimony

Katia confirmed that it was Eugene who had proposed the division of the parties' vehicles. (RT 61.) She stated that prior to July 1, 2019, Eugene had not shown her copies of any Schwab account statements. (RT 62.) When she received the stocks from Eugene—for which she had to open her own Schwab account—she assumed he had transferred to her one-half of all the stocks they had. (RT 63.) She did not find it odd that she did not get any Google, assuming he had sold it. (RT 63-64; see 4CT 973.) She did not have access to the accounts online, and did not question Eugene's numbers, as she just wanted to move on. (RT 64.) Katia testified that Eugene had not asked or even told her before he sold the stocks, and that he did not keep her apprised of the investments. (RT 67.) She first heard about the sale of stock and the huge tax bill from Eugene's email. (RT 67-68.) She was not aware that Eugene had withdrawn funds from the investment accounts, including an additional $10,000 at the end of April 2019. (RT 70.) She stated that when Eugene gave her his form FL-142, she did not have the account statements and he had not given them to her. (RT 84.)

Katia testified that she understood she would be receiving an additional $65,000 as an "equalization payment" for her interest in the condo. (RT 65-66; 1CT 31.) This was intended to equalize the $130,000 of community property Eugene had put into the condo, which he asserted was his separate property. (See 4CT 973.) At the prior trial, the court stated the only evidence it had received regarding the value of the condo was from Eugene, who asserted that from October 2017 (when it was placed in both names) to May 28, 2019 (when the parties signed the agreement and Judgment) it did not increase in value. (1CT 230.) The court thus found no undue influence or duress in causing her to sign over the title to him. (1CT 230; RT 69.) At this trial, Katia testified that she believed the condo had increased in value approximately $20,000 during that time period. (RT 69.)

The purpose of this testimony was related to the equal division of the community property. (RT 70.) 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. (RT 70.)

Katia also testified that when she received the stock from Eugene in the division of assets, she assumed he had transferred half of everything in the accounts. (RT 90.) When questioned further, she stated she understood she was also getting an additional $65,000 as equalization for the condominium, which was originally supposed to be a cash payment, and Eugene later decided to transfer that partly in cash and partly through the stocks. (RT 90.) She stated, "Where this money was coming from -- because you also had Fidelity investment account, which was your own before the marriage -- I would not know. I would not know if you were moving money somewhat across your accounts or which fund it was coming from. I would not know." (RT 90.) She did not know the stock positions the parties had during the marriage. (RT 91.)

3. Documentary Evidence

The parties provided extensive documentary evidence showing their stock holdings, including as of April 8, 2019, when Eugene calculated Ekaterina's share of the stocks, and June 30-July 10, 2019 when he transferred stock to her using the prior figures. This included the following:

- After April 8, 2019—the date on which Eugene stated the Schwab 6350 account was worth $161,107.95 (2CT 369, ¶5.2)—Eugene transferred $10,000 from this account to his Chase account. (2CT 380.)
- In the month of April 2019, the investments in the Schwab account grew in value by $6,574.45 and had accrued income of $313.09, such that the ending balance of the account was $154,171.76. (2CT 374.) This

was after Eugene had withdrawn the $10,000, meaning the account increased by $3,063.81 since April 8, 2019.

- Although the value of the Schwab 6350 account decreased by $8,850.29 in May 2019 (2CT 374), it increased by $13,222.91 in June 2019 (2CT 398) for a total increase as of June 30, 2019 of $7,436.43. ($3,063.81 + $13,222.91 - $8,850.29 = $7,436.43).

- According to Eugene, on April 8, 2019, the E*Trade account was worth $66,273.20. (2CT 369, ¶5.1.) When he transferred it to Ekaterina in June 2019, the account was worth $67,425.71. (2CT 451.) It thus increased from April 8, 2019 to the time of division by $1,152.51.

- Eugene paid Ekaterina based on April 8, 2019 values. (2CT 486.) Thus, he alone retained the $7,436.43 increase in the value of the Schwab 6350 account and the $1,152.51 in the E*Trade account as of the date of the divisions, for a total of $8,588.94 in community property he retained for himself based on the increased values of the accounts as of April 8, 2019. He did not share any of this increased value with Ekaterina, as he used April 8, 2019 values in the division.

- 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. (RT 49.)

D. Court Ruling

At the conclusion of the hearing, the court requested written briefs from each party. (RT 94.) Eugene did not indicate that he needed additional time or that he had not presented all of his evidence. (RT 94.) He had concluded his own direct testimony with, "I think this is all for now." (RT 24.) And his cross-examination of Katia spanned 23 pages of transcript,

twice what her direct had encompassed. (See RT 3.) His own testimony on direct and cross-examination consumed the majority of the trial. (RT 3.)

The parties each submitted closing briefs on the issues. (5CT 1351, 1362.) On March 25, 2024, the trial court issued a written Findings and Order After Hearing ("FOAH"). (5CT 1404.)

The court initially stated that issues other than the narrow issue of whether the omitted Google stock should be divided unequally would not be addressed as those issues were not before the court. (5CT 1405.)

The court noted Eugene's assertion that Katia had received at least one-half of the community assets, regardless of whether the division was based on an April 2019 valuation (which it was) or on a July 2019 valuation. (5CT 1405.) It also noted Katia's assertion that, for an equal division, she should have received one-half of each of the shares of stock in the accounts at the time of the transfer, and that instead Eugene selected which stocks to give her, resulting in capital gains to her of approximately $13,000, and a tax loss to Eugene. (5CT 1405-1406.) The court stated, "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 1406, emphasis added.)

Citing Eugene's April 2019 email regarding the tax bill the parties had incurred from the sale of stock, the court did not find Eugene's testimony that he did not consider the tax basis when determining which shares of stock to transfer to Ekaterina credible. (5CT 1406.) The court did not find credible his testimony as to "his lack of awareness of the impact of the tax basis or how that affects the actual value of these assets." (5CT 1406.)

The court also stated that "Eugene received post separation Google shares in between the 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." (Ibid.) The court found, "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.)

Finally, the court stated that, in dividing the Google stock as an omitted asset as directed by this Court, "Based on the above, the Court finds good cause for an unequal division of assets." (5CT 1406.) It thus ordered Eugene to transfer one-half of the 36 shares of Google stock as of July 2019, including any subsequent stock splits, to Katia. (5CT 1406.)

In so holding, the court declined to divide any portion of the additional 10 shares of Google stock Eugene had acquired after separation but before the division of assets. Nor did the court award Respondent any attorney fees.

On April 4, 2024, Eugene filed objections to the FOAH, claiming he did not have sufficient time to question Katia; asserting the court ignored his request for statement of decision; and making other arguments as to why he believed the decision was wrong. (5CT 1408.) He also claimed the order was "unclear" as to whether Katia was to receive one-half of the 36 shares, or the entire 36 shares. (5CT 1412.) And he argued "The current outcome is clearly not what the Court of Appeal envisioned when it remanded this case. The intent behind the remand was clearly to equalize community property division, or at least move it in that direction. Instead, Family Court apparently decided to exacerbate unequal division even more." (5CT 1412.)

On May 17, 2024, Eugene filed a notice of appeal. (6CT 1598.)

III. STANDARD OF REVIEW

An appealed judgment is presumed to be correct, and will not be reversed unless error is shown. (*In re Marriage of Arceneaux* (1990) 51

Cal.3d 1130, 1133.) Even if based on an incorrect ground, the judgment must be affirmed if correct on any legal theory.

> On appeal, a judgment of the trial court is presumed to be correct. [Citation.] Accordingly, if a judgment is correct on any theory, the appellate court will affirm it regardless of the trial court's reasoning. [Citations.] All intendments and presumptions are made to support the judgment on matters as to which the record is silent. [Citation.] We presume the trial court followed applicable law. [Citation.] When no statement of decision is requested and issued, we imply all findings necessary to support the judgment. [Citation.].

(*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.)

The division of community property is an issue on which the trial court has broad discretion. (See *In re Marriage of Schleich* (2017) 8 Cal.App.5th 267, 276.) The reviewing court reviews the trial court's division of community property for abuse of discretion, upholding the court's factual findings. (*In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1572.) Whether good cause exists for the unequal division of omitted assets under Family Code section 2556 is not de novo, but is discretionary, as evidenced by the language of the statute itself, which provides that the court ***shall*** order an equal division ***unless*** it finds good cause not to do so. (Fam.Code §2556 ["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."]) This necessarily vests the trial court with the discretion to determine whether good cause exists for the unequal division of such assets.

The trial court's factual findings are reviewed for substantial evidence. Particularly where the issue is the credibility of the parties; the reviewing court must "defer to the trial judge." (*Jennifer K. v. Shane K.* (2020) 47 Cal.App.5th 558, 578-579.) This is true even if the testimony is

uncontradicted. (*Id*. at p. 579.) The reviewing court thus "'"reviews the entire record in the light most favorable to the judgment to determine whether there are sufficient facts, contradicted or uncontradicted, to support the judgment."'" (*Ibid*, citations omitted.) And where the judgment is against the party with the burden of proof, it is almost impossible for that party to prevail on appeal by arguing the evidence compels a judgment in their favor. (*Ibid*.)

Furthermore, no judgment may be set aside unless the error resulted in a miscarriage of justice. (Cal. Const. art. VI, § 13.) It must appear from the record that the error was prejudicial, that it caused appellant substantial injury, and that a different result would have been reasonably probable if the error had not occurred. (Code Civ.Proc. §475; *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800.) It is appellant's burden to affirmatively demonstrate prejudicial error on the face of the record. (*Poole v. City of Oakland* (1986) 42 Cal.3d 1051, 1069.) "Absent indication to the contrary, we must presume that the trial court followed the applicable law…." (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 500, citing, inter alia, Evid.Code §664.)

IV. LEGAL ARGUMENT

A. A Statement of Decision Was not Required

Eugene claims the trial court was required to issue a statement of decision, citing Code of Civil Procedure section 632 and California Rules of Court Rule 3.1590. But given the limited issue before the trial court, a statement of decision was not required. The trial court so stated during the hearing, clarifying it would be "issuing an order rather than a statement of decision." (RT 17.) Although he requested a statement of decision in his trial brief, Eugene did not object to this statement that the court would not be issuing a statement of decision. Nor did he at any time during hearing request a statement of decision. By failing to object to the court's statement that it

would not be issuing a statement of decision, and not requesting one during the hearing, Eugene waived any right to a statement of decision.

But even if properly requested, a statement of decision was not required. A statement of decision is only required on "the trial of a question of fact by the court." (Cal.Rules Ct. Rule 3.1590(a); Code Civ.Proc. §632.) The hearing before the trial court was not a "trial of a question of fact," but was limited to a determination as to whether good cause existed for an unequal division of the omitted Google stock. The hearing was thus more akin to a hearing on a motion, which does not require a statement of decision, even upon request. (See *Metis Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 688; see also *People v. Landlords Professional Services, Inc.* (1986) 178 Cal.App.3d 68, 72.) The trial court recognized that no statement of decision was required and properly declined to issue one.

Moreover, there can be no prejudice because the trial court's FOAH sufficed as a statement of decision in that it adequately addressed the bases for the court's ruling. The trial court did not merely order that Eugene was required to divide 36 shares of Google stock equally; the FOAH explained its findings and the reasons for its decision. (5CT 1404.) This satisfies the requirements and purposes of a statement of decision. "To comply with a request for a statement of decision, a court need only fairly disclose its determinations as to the ultimate facts and material issues in the case." (*Metis, supra* 200 Cal.App.4th at p. 689.) "A trial court is not required to make findings with regard to detailed evidentiary facts or to make minute findings as to individual items of evidence. Only where a trial court fails to make findings as to a material issue which would fairly disclose the determination by the trial court would reversible error result." (*Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150, 163.)

Eugene claims the trial court's failure to issue a statement of decision is reversible per se, citing *Miramar Hotel Corp. v. Frank B. Hall & Co.*

(1985) 163 Cal.App.3d 1126. But later case confirm that reversal is only required if the appellant can show prejudice. (*F.P. v. Monier* (2017) 3 Cal.5th 1099, 1108 ["a trial court's error in failing to issue a requested statement of decision is not reversible per se, but is subject to harmless error review."]) Eugene has not, and cannot, show any prejudice from the trial court's failure to issue a statement of decision. The trial court adequately set forth the bases for its ruling in its Findings and Order After Hearing, and Eugene cannot show the decision would have been any more favorable to him had a "statement of decision" rather than a Findings and Order been issued. This is not a basis for reversal.

B. The Trial Court's Findings Justify Its Order

The trial court acted well within its discretion and the law itself in deciding not to order an unequal division of the omitted asset. This order is not subject to reversal on appeal.

Katia must first disabuse this Court of the notion that she received more of the community assets than did Eugene, as this notion is not supported by the evidence, the trial court's findings, or this Court's Opinion in the prior appeal. In asserting that Katia had already received an equal division, if not more than an equal division, of the community assets, Eugene skews the facts and the evidence, as disregards the trial court's findings.

Contrary to Eugene's argument, the trial court was not required to calculate the dollar value of the community assets awarded to Katia. As noted above, because the parties' community assets and liabilities were awarded pursuant to a settlement agreement, an equal division of the community property was not required. (Fam.Code §2550(a).) However, 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; he gave Katia those

with a lower cost basis. (5CT 1406.) And the evidence showed he gave Katia her share based on April 2019 values, rather than when he divided the account in June 30, 2019, after the values had increased. (RT 30-31, 33.)

The trial court explicitly found good cause for an unequal division of community assets—and an equal division of the omitted Google stock—based on its findings, including that Eugene "unilaterally selected which stock he transferred to Ekaterina" and transferred to her those with the highest capital gains, resulting in Katia receiving less than one-half of the community assets. (5CT 1405-1406.) The trial court found "this argument persuasive and relevant with respect to the valuation and division of the parties' stock, and in particular, the omitted Google stock." (5CT 1406.) In so ruling, the court noted Eugene's lack of credibility as to his assertion that he did not consider the tax basis when determining which stocks to transfer to Katia. (5CT 1406.) Also meaningful was the trial court's finding that Eugene had not informed Katia that he had received additional Google stock between April and June 2019, and did not factor them into the division of stock. (Ibid.) At base, the trial court found, "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.) Eugene's arguments that the tax burden was "de minimis" (it wasn't); that she would have paid taxes regardless of the division (she wouldn't; Eugene did not); or that the tax burden was speculative (it wasn't; the cost basis was calculated as of the date of the division) are thus irrelevant. His claim that Katia was overpaid disregards the evidence and the trial court's own findings. None of these arguments are persuasive.

Eugene's assertion that the trial court divided the community property unequally rings hollow, as the trial court found Eugene himself had unequally divided the community stock. (5CT 1406.) The trial court was not required to determine the precise amount of stock Katia had already

received, it found, based on substantial evidence, that she had received less than one-half of Schwab 6350, and none of the Google stock as a result of Eugene's unilateral division. (5CT 1406.)

Notably, the trial court only ordered that Katia was to receive half of the 36 Google shares, and not half of the 46 shares Eugene had as of July 2019. And yet, the court could have ordered all 46 of these shares divided equally. The court found that Eugene failed to disclose these additional shares, stating "Eugene received post separation Google shares in between the 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.) Thus, contrary to Eugene's repeated assertion, the trial court did not divide all of the Google stock equally. Instead, it ordered Katia to receive 18 of the 46 shares, and permitted Eugene to retain the remaining 28 shares—far short of an equal division.

As Katia had argued in her post-trial brief,

> It is doubtful that Eugene's receipt of vested Google stock on April 29, 2019 was based solely on work he performed over the prior 3 weeks. By not disclosing these shares and the later May 2019 receipt of shares, he failed to account for his receipt of these community funds, and thus breached his fiduciary duty. This should be taken into account when evaluating "good cause" for an unequal division of the omitted asset in Eugene's favor.

(5CT 1357.)

The trial court was entitled to—and likely did—take this into account in awarding Katia one-half of the 36 Google shares as of June 2019, rather than one-half of the 46 shares Eugene actually had. This further undermines Eugene's argument on this appeal. The trial court had the discretion to divide the Google shares in this manner, based on its findings.

C. Family Code Section 2556 Applies to This Matter

Eugene's assertion that Family Code section 2556 is inapplicable to this matter disregards this Court's order in its Opinion, which is to "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 544.) Family Code section 2556 was the basis for the remand and governed the trial court's determination.

In seeking to distinguish this case from those in which a spouse had been awarded 100% of an omitted asset, Eugne disregards the fact that this Court has already upheld the determination that the Google stock was an omitted asset. (2CT 549 ["The trial court's determination that the Google stock is an omitted asset is affirmed."]) This determination is unassailable on remand; the only issue was how to divide the omitted asset, not whether it had been omitted. Eugene's attempt to distinguish cases in which the omitted asset was "truly omitted" is unpersuasive. And his requests that the trial court answer his questions as to how the Google stock could have been considered omitted, or whether it would have been had the judgment said "Schwab" instead of "Schwab-6350" are irrelevant and must be disregarded.

Pursuant to Family Code section 2556, it was Eugene's burden to prove the interests of justice required an unequal division of the omitted Google stocks, as the statute requires "good cause" for an ***unequal*** division of an omitted asset. It was established that the Google stock was an omitted asset. Family Code section 2556 provides that "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…" (Fam.Code §2556, emphasis added.) This necessarily put the burden on Eugene, as the party seeking to avoid the equal division of the omitted asset, to show good cause for requiring a different division. The trial court did not find good cause. (5CT 1406.)

Family Code section 2556 was applicable. And as applied by the trial court, Eugene was required to divide the 36 shares of Google stock that he had in a separate account as of April 8, 2019 equally. There is no error.

D. The Trial Court Did not Abuse Its Discretion by Refusing to Apply "Offsets"

For the first time, Eugene argues that even if he divided the parties' stocks unequally (which the trial court found he did), it was unfair to award Katia one-half of the omitted Google stocks because she should only have been awarded so much as would make the division of both stock accounts "equal." This argument fails on several counts.

First, Eugene never made this argument below. His argument in the trial court was that he had properly divided the Schwab 6350 account so as to include the value of the Google stock. (5CT 1364 ["Ekaterina was already paid full cash value of Google stocks in 2019 when we initially divided community assets."]) He asserted that Katia was overpaid. (5CT 1364, fn. 1.) None of his arguments contemplated ***any*** portion of the Google stock being awarded to Katia.

Even after receiving the Findings and Order After Hearing, Eugene did not raise this argument; in his objections thereto, Eugene did not request the court apply "offsets" to equalize his unilateral division of the stocks. (5CT 1408-1413.) Nowhere in his arguments to the trial court did he assert that, if he did not equally divide the value of both stock accounts (as he claimed), Katia was entitled to some of the Google stocks, so as to equalize the division of the stock accounts. He has thus waived and/or forfeited this argument and is prohibited from raising it on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2.) 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. This Court should decline

to hear this new argument, as it is not an important constitutional issue that this Court may entertain for the first time on appeal. (Cf *In re T.G.* (2013) 215 Cal.App.4th 1, 14.)

Second, this Court did not find that Katia had already been paid the full value of the Google stock. Nor did it find that "the full value of both Schwab accounts was included in the numbers from which Katia and Eugne determined the total value of the community property." Rather, this Court stated that "Eugene's exhibits to his declaration opposing Katia's motion for determination and division of the Google stocks ***support his contention***" to this effect. (2CT 544, emphasis added.) On the prior appeal, this Court did not review the division of all community assets, nor was it tasked with doing so. Its review as to the Google stock was limited to whether the trial court correctly found it was an omitted asset and whether an equal division was proper. (2CT 541-542.) This Court "uph[e]ld the trial court's determination under section 2556 that the Google stocks were not adjudicated in the judgment and thus are an omitted asset." (2CT 543.) And as to the trial court's equal division of that omitted asset, this Court reversed, but only because the trial court had not addressed whether good cause existed to divide those stocks unequally. (2CT 543-544.)

This court did not find it would be improper to divide the Google stocks equally, and expressed no opinion as to how the trial court should divide them on remand. (2CT 544 ["We do not intend, by anything we have said in this opinion, to suggest that the court should exercise its discretion in a particular manner with respect to division of the Google stocks."]) On remand, the trial court took further evidence, and issued its decision, this time explicitly exercising its discretion under Family Code section 2556, as directed by this Court. There is no basis for reversal on appeal.

Third, the trial court did not divide ***all*** of the Google stocks in Eugene's account as of June 30, 2019 equally; it only ordered 36 of the 46

shares so divided. (5CT 1406.) Eugene did obtain an offset of sorts, retaining 28 shares, while only parting with 18 of them.

Finally, this is not the forum in which to propose alternate valuations and divisions of the Google stock. As noted above, Eugene went to trial, asserting he was entitled to keep 100% of the Google stocks; nowhere in his briefing, either before or after trial, did he request an "offset" to account for an unequal division of the parties' stock accounts. In fact, he requested not only that all of the Google stocks be returned to him, but that the $60,000 attorney fee award—which this Court had affirmed in the prior appeal—be reconsidered, and that he be awarded $250,000 in fees for the prior trial. (4CT 971.) The only issue before this Court is whether the trial court had the discretion to order the omitted Google stocks divided equally. This Court has already stated the trial court had such discretion in its order on remand. (2CT 543-544.) Eugene's appeal seeks to relitigate this discretion and is thus improper. There is no basis for reversal.

E. The Trial Court Did not Violate Family Code Section 2550

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. This was not the trial court's task. The only issue before the trial court was whether one asset—the Schwab account containing Google stock, which was omitted from the settlement agreement and not divided in the Judgment—should be equally divided between the parties, as Family Code section 2556 normally dictates, or whether there was good cause to order this asset divided unequally.

The parties divided their assets pursuant to agreement. (1CT 16, 26-31.) As such, they were not required, nor was the court required, to divide

their community property equally. (Fam.Code §2550 ["Except upon the written agreement of the parties…"])

In that agreement, the parties agreed that each of them would receive certain community and separate property, including certain vehicles, bank accounts, the condominium, and certain debt. (1CT 26-31.) Pursuant to that agreement, they also agreed that each party would receive "A one-half (1/2) interest in Charles Schwab Investment account no. —6350." (1CT 27, 29.) Nowhere did this agreement mention the Schwab account that contained the Google stock; hence, the trial court found it was an omitted asset, which this Court confirmed.

In the February 27, 2024 hearing, Eugene argued the division of community property was unequal because Katia's vehicle was worth more than those Eugene had retained. (RT 17.) In turn, Katia argued that Eugene sold community stocks to pay $130,000 on his condominium, for which the community incurred tax liabilities. (RT 42-44.) She also argued the condominium had increased in value during the time it was in both parties' names, such that her $65,000 reimbursement was inadequate compensation for her releasing title to him. (RT 56, 68-69.)

But these issues had been addressed and resolved in the marital settlement agreement. (1CT 26-31.) Therein, Eugene was awarded the Subaru, the Suzuki, and the utility trailer, and Katia was awarded the Mercedes. (1CT 26, 29.) Eugene was awarded the condominium on Hatteras Street, and Katia was awarded $65,000 as an equalization payment. (1CT 26, 31.) This was in accordance with Eugene's April 8, 2019 email proposing that the parties so stipulate. (4CT 973-974.)

In its March 25, 2024 Findings and Order, the trial court held that none of these issues were properly before it and would not be addressed. (5CT 1405.) Thus, Eugene's argument, which he continues to make on this appeal, that Katia had received more of the community property because her

car was worth more than his vehicles, is entirely inappropriate and must be disregarded. Even if Katia's vehicle was worth more than those Eugene retained, and even though Eugene used community assets in the form of stock sales to pay down the debt of his condominium, for which the community incurred tax liabilities, none of those issues are properly before this Court. The premise of Eugene's argument—that Katia received more than 50% of the community property "largely because she received approximately 428,000 more…in vehicle value"—is not before this Court and cannot be a basis for reversal. Likewise, his assertion that she ended up with more community property because she was awarded attorney fees must be disregarded, as the award of such fees was not an award of community property.

Because the parties divided their assets via agreement, this Court need not, and should not, engage in a precise calculation of the parties' division of community property. The only issue before this Court is whether the trial court had the discretion to divide the omitted Google stock equally or in some other manner. The parties' marital settlement agreement provided that each party was entitled to "a one-half (1/2) interest in Charles Schwab Investment Account no. -6350" (1CT 27, 29.) It did not mention the Schwab equity account which held the Google stock, or the Google stock itself. (Ibid.) And Eugene—who had 100% control over the accounts and took it upon himself to divide the stocks unilaterally—did not transfer any Google stock to Katia. This stock was thus an omitted asset and was required to be divided equally unless the court found good cause to divide it otherwise. The trial court did not. (4CT 1405.) There was no violation of Family Code section 2550 or 2556, and no basis for reversal.

In its Findings and Order After Hearing, the trial court ordered the omitted asset, to wit, the Schwab account containing the Google stock, divided equally. (5CT 1406-1407.) This was based on its determination that

an unequal division of community assets—assuming such occurred—to be appropriate. (5CT 1406 ["Based on the above, the Court finds good cause for an unequal division of assets."]) The trial court acted well within its discretion in deciding that good cause did not exist to award an unequal division of the omitted asset.

F. The Denial of Eugene's Peremptory Challenge Is not Subject to Reversal

Couched as a "due process" issue, Eugene argues the trial court violated his rights by failing to recuse itself after Eugene filed a peremptory challenge under Code of Civil Procedure section 170.6. But Eugene's only avenue for contesting the trial court's denial of his peremptory challenge was to file a writ from the denial. (Code Civ.Proc. §170.3(d); *People v. Hull* (1991) 1 Cal.4th 266, 268.)

"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…" (Code Civ. Proc. §170.3(d).) This applies to challenges for cause as well as peremptory challenges under Code of Civil Procedure section 170.6. (*Hull, supra* at p. 268 ["We conclude, as did the Court of Appeal in this case, that section 170.3(d) prescribes the exclusive means of appellate review of an unsuccessful peremptory challenge."])

A party may not seek review of the denial of a challenge on an appeal from the later-entered judgment or order. (*Hull, supra* at p. 276; *Searles v. Archangel* (2021) 60 Cal.App.5th 43, 49, fn. 4 ["Any challenge to Commissioner Martella's failure to grant her motion to disqualify him for cause, however, is not reviewable on appeal."])

Even if styled as a due process argument, Eugene's challenge to the court's order denying his peremptory challenge is untenable. He has largely waived this argument by failure to seek a timely writ petition. (*Tri Counties*

Bank v. Superior Court (2008) 167 Cal.App.4th 1332, 1339.) As that court stated,

> petitioner also forfeited its related claim that the purported ground for disqualification amounted to a violation of its due process right to an unbiased judge. It is true that section 170.3, subdivision (d), does not bar appeal from a final judgment on constitutional grounds of judicial bias. [Citation.] Nevertheless, a litigant should seek to resolve such issues by the required statutory means and "his negligent failure to do so may constitute a forfeiture of his constitutional claim." [Citation.] This is particularly true in civil cases where "a constitutional question must be raised at the earliest opportunity or it will be considered to be waived."

(*Ibid*.)

Eugene has not even shown a basis for disqualification, let alone a due-process violation. To show bias necessitating disqualification, a litigant must show that a reasonable person knowing all the facts and looking at the circumstances at the present time would question the impartiality of the court. (See *Flier v. Superior Court* (1994) 23 Cal.App.4th 165, 170.) As the party asserting bias, Eugene bore the burden of establishing the grounds for disqualification based upon facts, not just conclusions. (*Betz v. Pankow* (1993) 16 Cal.App.4th 919, 926; *In re Morelli* (1970) 11 Cal.App.3d 819, 843.) He has not and cannot.

As noted, Eugene's argument that the trial court should have disqualified itself pursuant to his 170.6 challenge was waived. But even as a due-process challenge for bias, Eugene's argument must fail.

Eugene's citation to *People v. Mayfield* (1997) 14 Cal.4th 668 is unavailing. That was a death-penalty case in which due process rights are of utmost importance, given the matters at stake, and is not analogous. More importantly, Eugene did not challenge the trial court for cause or assert any basis for a finding of actual bias. His challenge was based solely on Code of Civil Procedure section 170.6, and therein he did not reference anything the

court had said or done that exhibited actual bias. (2CT 586.) Until this appeal, he has never raised the issue of actual bias.

Nor on this appeal has he demonstrated bias. To assert a claim for judicial bias, it is not enough to show the trial court made unfavorable rulings. (See *Ryan v. Welte* (1948) 87 Cal.App.2d 888, 893.) Yet this is the sum total of Eugene's assertions: that the court failed to make certain findings and ruled against him. Eugene has not shown that his due process rights were violated; he merely expresses unhappiness with the result. This is woefully insufficient to show bias or a basis for reversal.

G. Eugene's Breaches of Fiduciary Duty Provide an Alternative Basis for Affirmance

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. (5CT 1355-1357.) As the trial court thereafter found, Eugene did not divide the community stock equally; he knowingly gave Katia those with the highest capital gains. (5CT 1406.) The court found his testimony to the contrary not credible. (5CT 1406.)

Moreover, as Katia asserted, by using the April 8, 2019 date, Eugene deprived Ekaterina of the growth on the securities between that date and when he finally transferred them to her, and kept all of this growth for himself. This was not only an unequal division of community assets; it was also a breach of Eugene's fiduciary duty, especially as he had the superior knowledge as to the value of the securities and the growth thereon. (See Fam.Code §1100(e).) Eugene's failure to divide the investment accounts 50-50 as of the date of division and equalize the tax burdens was not an oversight on his part. It was consistent with his pattern and practice of gaining an advantage over Ekaterina, no matter how small, and was a breach of his fiduciary duty.

Although the trial court declined to make specific findings as to whether Eugene breached his fiduciary duty, it did make findings that he knowingly retained an advantage for himself at Katia's expense. (5CT 1405-1406.) This was a basis for the court's determination that the 36 shares should be divided equally, with Eugene retaining the additional 10 shares for himself. (5CT 1406.) These findings—which demonstrate that Eugene breached his fiduciary duty—further support the trial court's determination and provide an additional basis for affirmance. Given such breaches, Eugene simply cannot show the trial court's ruling was an abuse of discretion or a miscarriage of justice.

H. Katia Is Entitled to Attorney Fees for a Frivolous Appeal

Pursuant to California Rules of Court Rule 8.276, Katia will be filing a motion for sanctions for this frivolous appeal, which is intended to cause delay and to further harass Katia and increase her attorney fees.

V. CONCLUSION

The court did not err in awarding Katia one-half of 36 shares of the community Google stock that was omitted from the Judgment, and Eugene cannot show otherwise. Although he feels he was treated poorly by the trial court, Eugene fails to recognize he treated Katia unfairly in unilaterally giving her those stocks with the lowest cost basis and highest resulting taxes; keeping all of the community Google stock for himself; and not even informing her that he had received additional Google stock prior to the division. The FOAH should be affirmed and Katia awarded costs on appeal.

Dated: September 30, 2024

Respectfully submitted,

_/s/ Stephanie J. Finelli__
STEPHANIE J. FINELLI
Attorney for Respondent,
Ekaterina Strulyov

BRIEF FORMAT CERTIFICATION
PURSUANT TO CRC RULE 8.204

Pursuant to California Rules of Court, Rule 8.204, I hereby certify the text of the Respondent's Brief is proportionately spaced, has a typeface of 13 points or more, and contains no more than 8,809 words, including footnotes, as counted by the Microsoft Word processing system used to generate the brief.

Dated: September 30, 2024

Respectfully submitted,

_/s/ Stephanie J. Finelli__
STEPHANIE J. FINELLI
Attorney for Respondent,
Ekaterina Strulyov

PROOF OF SERVICE

CASE NAME: Strulyov v..Strulyov

CASE NUMBER: **H052147**
Santa Clara County 19FL001660

I declare that:

I am a citizen of the United States and a resident of the County of Sacramento. I am, and at all times mentioned herein was, an active member of the State Bar of California and not a party to the above-entitled cause. My business address is 3110 S Street, Sacramento, California 95816.

On October 1, 2024, pursuant to CCP §1013A(2), I served the following:

RESPONDENT'S BRIEF

BY ELECTRONIC SERVICE by emailing a copy of said document from my email, which is *steph@finellilaw.com* to the following:

Eugene Strulyov
eugene.strulyov@gmail.com

BY MAIL: by depositing a copy of said document in the United States mail in Sacramento, 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.

DATED: October 1, 2024 _____*Stephanie J. Finelli*_____
Stephanie J. Finelli