S290105

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

After unpublished Opinion by the Court of Appeal Sixth Appellate District,
Appellate Court Case No. H052147

Appeal from Santa Clara Family Court, Hon. Brooke Blecher
Superior Court No. 19FL001660

PETITION FOR REVIEW

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California Cases

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Issues presented

1. How can an asset be "omitted" when the prevailing party had already received the dollar value of that asset?
2. Does the party who "omitted" the asset but made equalization payment for said asset get any credit for that payment?
3. Does Fam.Code §2550 permit awarding even more assets to the party who had already received more than half?
4. How can an order be affirmed when the key finding it was based on is proven to be false?
5. Do procedural irregularities at Family Court amount to denial of due process?

Why review should be granted

The instant case presents two issues of first impression:

1. This is the first "omitted assets" case in history where the "aggrieved" party had already received the dollar value of the asset that was supposedly "omitted" and then was also awarded the asset itself by Family Court. In fact, she was slightly overpaid (AOB 19).
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 (from approximately 53% to 77%, AOB 23).

Court of Appeal did not consider this outcome to be a miscarriage of justice or a misapplication of Fam.Code §2556. I submit that it self-evidently is.

Additionally, the trial court made a finding which was cited in H050115 Opinion but was then **proven to be false** on remand. However, Court of Appeal did not find this to be a sufficient reason for reversal – it did not discuss this issue at all in H052147 Opinion.

Community property assets are often divided in such a way that one party keeps a particular asset but gives the other party equalization payment equal to ½ of the value of said asset. This is what happened in the instant case. However, Family Court ruled that an asset so divided is, in fact, "omitted" and awarded both the asset itself and the equalization payment to the "aggrieved" party. Court of Appeal affirmed this ruling.

This sets a very dangerous precedent. It allows a party to accept equalization payment for a community asset, and then, years later, go back to court and demand the asset itself under the premise that said asset was “omitted”. There is also no limit to this process. Court of Appeal did not consider it a problem that said party already had more than half of community assets **before** making the “omitted assets” allegation. Said party enriched herself by exacerbating unequal division in her favor. If this is not miscarriage of justice, I don’t know what is.

Statement of the case

This is a very short summary. For more details, with references to the record, please see H050115 AOB and H052147 AOB.

Eugene (hereafter “Husband”) and Ekaterina (hereafter “Wife”) were married on October 29 2010 and separated on April 8 2019, for a total marriage of 8 years and 5 months. They have one minor child of their marriage, born in 2013. The parties retained a private mediator to assist them with dissolution. Marital Settlement Agreement (MSA) was signed by the parties on May 28 2019, less than two months after the separation. Community property division was completed by July 2019.

However, shortly after the parties had a major disagreement. Wife wanted to enroll their daughter in private school, as they had planned before the separation. Husband countered that the parties agreed to enroll her in public school, Country Lane Elementary. Husband assisted Wife in co-signing the lease for an apartment of her choice in the school district she chose for their daughter. Divorce changed financial situation of both parties and private school was no longer affordable.

However, Wife never moved into that apartment. Instead, immediately after MSA was signed, she moved in with her then-boyfriend (now new husband) whom she had been seeing unbeknownst to Husband. Wife did not inform Husband of her intent to cohabitate during MSA negotiation and this was not taken into account when calculating spousal support. Furthermore, while her then-boyfriend was very wealthy, he lived in a completely different part of town with significantly worse public schools.

Wife proceeded with private school enrollment and began sending Husband invoices for private school tuition. In January 2020 she retained an attorney and threatened to sue

Husband over this issue. In February-March 2020 the parties negotiated a settlement, which was filed on April 21 2020. It obligated Husband to pay for private school tuition in exchange for bidirectional termination of spousal support.

However, by this time Wife had obtained a new job and her income nearly tripled. She did not inform Husband of this during the negotiation of April 21 2020 Stipulation. Based on Wife's new income, no spousal support was due at all – and that's before even considering her cohabitation with a very wealthy individual. Attached with the Stipulation was a dissomaster calculation which listed Wife's old income.

A few months later, Husband found out about Wife's new employment. When he realized the subterfuge, he filed a motion to set aside Stipulation based on fraud. Wife retaliated in a number of ways. She violated the custody agreement and ultimately deprived Husband of custody of their daughter. She launched baseless child support litigation which she overwhelmingly lost. And – as pertains to the instant case – on March 8 2021 she filed an RFO against Husband challenging various aspects of community property division.

The March 8 RFO accused Husband of hiding assets (specifically GOOG stocks), breach of fiduciary duty, fraud, duress, etc. It demanded well over $250,000 in compensation (about 4x as much as Husband had in liquid assets) plus attorney fees and sanctions. Wife did not even attempt to meet & confer with Husband prior to filing this motion. Rather, she filed it in secret, obtained a hearing date of July 21 2021 and did not serve Husband until the last possible day (only 15 court-days before the hearing).

In the meantime, she filed a motion to disqualify Husband's attorney (Joseph Camenzind) under the pretext of conflict of interest – the same attorney who had been representing Husband for the previous 8 months. Wife claimed to have consulted with another attorney (Travis Witfield) who shares office space with Mr Camenzind and, from time to time, employs Mr Camenzind as "of counsel" on cases that they specifically agree for him to work on. Mr Camenzind never met or consulted Wife. Mr Witfield filed a declaration stating that he has no memory of ever meeting Wife, has no records pertaining to her case, and never discussed her case with Mr Camenzind. Nevertheless, on April 12 2021 Husband's attorney, Mr Camenzind, was removed.

At the same April 12 2021 hearing, Wife's attorney inadvertently mentioned her RFO. This alerted Husband and allowed him to prepare a response, which took well over a month to write and gather all the evidence (emails, financial statements, etc.) – Wife's

RFO made multiple complex allegations. As pertains to the issue at hand – namely the "omitted" GOOG stocks – Husband argued as follows:

- He acknowledged that his Schwab account actually consisted of two sub-account: Schwab Brokerage (a.k.a. Schwab-6350) and Schwab Equity Awards (a.k.a. Schwab-GOOG) where his GOOG stocks were vesting. Husband was employed at Google at that time and GOOG stocks were part of his compensation.
- He pointed out that his April 8 2019 "divorce settlement proposal" email listed the two Schwab sub-accounts as separate line items, with balances of $161,107.95 and $43,457.40, respectively (Exhibit A, 3CT 664). His April 25 2019 Schedule of Assets & Debts declaration (FL-142) listed "Schwab" as a single line item with a combined balance of $205,622.38 (Exhibit N, 5CT 1284). This is akin to having a checking & savings account with Chase bank and listing their combined balance as simply "Chase".
- He calculated community property division based on the numbers he entered in his FL-142 declaration (i.e. the combined value of both accounts). He acknowledged that Wife did not receive any GOOG stocks, but she did receive other stocks of equal value. This was corroborated by financial statements which were attached to his declaration and admitted as exhibits at the trial.

The above documents are attached as exhibits hereto.

Trial on Husband's set-aside RFO and Wife's March 8 RFO took place on March 8-9 2022. Order was issued on April 8 2022. Family Court ruled as follows:

- It upheld the Stipulation, except for one issue: *"With respect to child support only, Katia's failure to disclose her increased and actual income is a grounds for relief which materially affected the April 21, 2020 Stipulation and Eugene would materially benefit from the granting of the relief."* (1CT 253).
- It ruled that Schwab-GOOG sub-account which held GOOG stocks is an omitted asset due to the fact that MSA refers specifically to Schwab-6350 and does not mention Schwab-GOOG: *"The November 18, 2019 Judgment awards each party one-half of the Schwab 6350 account (brokerage account) and is* ***silent*** *as to the Schwab GOOG account"* (1CT 255, emphasis in the original)
- Based on the above finding, it awarded Wife 18 GOOG stocks out of the 36 which were community property. (1CT 262)

- It denied all other claims in Wife's March 8 2021 RFO. Wife committed perjury as to her claims but that was not mentioned in the order.
- It awarded Wife $60,000 as attorney fees / sanctions. (1CT 263).

The order made no mention of the fact that Wife had, in fact, received equalization payment for GOOG stocks. It ignored all the calculations which showed that Wife had been made whole, i.e. that she received other stocks equal in value to the "omitted" GOOG stocks.

On 04/29/2022 Husband's attorney electronically filed a Motion for New Trial, narrowly focusing on this one aspect of the order (back then Husband could still afford an attorney). Inexplicably, the clerk's office rejected this filing and demanded that it be filed on paper instead. This demand directly contradicted Santa Clara county local rules which **mandate** electronic filings for parties represented by an attorney. Nevertheless, Husband's attorney complied with the demand and on 05/04/2022 refiled Motion for New Trial on paper, together with a cover sheet explaining that it was electronically filed on 04/29/2022 and thus should be stamped 04/29/2022. Clerk's office finally accepted this motion on 05/20/2022 and stamped it with the same date.

Family Court then issued a tentative ruling stating that it is going to deny this motion based on the premise that it was "untimely". Husband's attorney filed a memorandum proving that this motion was, in fact, timely as a matter of law (2CT 307-330). He cited ample legal precedent which essentially stated that any mistake or delay by the clerk's office cannot be held against the litigant who filed the papers timely (2CT 327). Family Court ignored all of this precedent. At the 06/21/2022 hearing it summarily dismissed Motion for New Trial as "untimely".

This left Husband no recourse but to file an appeal. His appeal challenged three aspects of the Order:

1. The denial of his motion to set aside Stipulation. As Family Court itself noted, Wife failed to disclose her new and actual income during negotiations of Stipulation.
2. The award of 18 GOOG stocks to Wife without any credit given to Husband for the equalization payment that he made.
3. Unfair imposition of $60,000 worth of sanctions against Husband while ignoring Wife's misconduct.

Upon receiving clerk's transcript, Husband realized that it was missing some of the most important documents, including:

- Husband's responsive declaration which debunked Wife's claims
- All exhibits presented at trial
- Documents pertaining to the Motion for New Trail

Etc.

He filed a Motion to Augment the Record as to these documents. It was ultimately granted as to the documents filed before 04/08/2022 order was issued but denied as to the documents filed after that. This specifically excluded all documents pertaining to the Motion for New Trial.

At this stage Husband also ran out of money and was forced to continue the fight without an attorney. He noted in multiple filings that Family Court nearly bankrupted him.

On 07/27/2023 Court of Appeal issued its Opinion (H050115 Opinion):

- It affirmed Family Court's refusal to set aside Stipulation.
- It affirmed the imposition of sanctions against Husband.
- It affirmed that GOOG stocks were "omitted" but ruled that "*Eugene's exhibits to his declaration opposing Katia's motion for determination and division of the Google stocks support his contention that the full value of both Schwab accounts was included in the numbers from which Katia and Eugene determined the total value of the community property*" (H050115 Opinion p21).
- It remanded the case back to Family Court with instructions to consider "*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*" (H050115 Opinion p21).
- It refused to review Motion for New Trial because documents pertaining to this motion were not part of the record. And, as noted previously, Court of Appeal denied augmentation of the record as to these very documents.

On 08/08/2023 Husband filed Petition for Rehearing. He pointed out that per the MSA community property was divided unequally in Wife's favor and then Family Court exacerbated unequal division. The remand order gave no guidance to Family Court, so it could implement the same division again. Husband also noted that a key finding that

Court of Appeal cited was actually false (more on this later). Finally he wondered why any discussion about the removal of his attorney was absent from Opinion. This was relevant because Family Court cited Husband's opposition to the removal of his attorney as one of the reasons to impose sanctions on him. On 08/10/2023 Court of Appeal summarily denied Petition for Rehearing.

Remittitur was issued on 09/26/2023. At the 10/23/2023 status conference, Husband was informed that the same judge who heard the original case will also hear the remand. On 11/02/2023 Husband filed peremptory challenge. On 11/09/2023 Family Court denied peremptory challenge as "untimely" – a very curious ruling since peremptory challenge was well within the 60 day window.

Husband also reached out to Wife to see if she would return his GOOG stocks now that Court of Appeal ruled that "*the full value of both Schwab accounts was included in the number from which Katia and Eugene determined the total value of the community property*". She refused. She also refused to articulate her argument as to why she should be entitled to keep the stocks. This prompted Husband to file a Motion to Show Cause asking the court to force Wife to present her argument. But the clerk's office refused to actually file it on the grounds that "*It is unclear what you are requesting*" (AOB 8). The clerk who rejected this motion appears to be the same clerk who previously rejected Husband's Motion for New Trial.

Wife waited until the last moment to reveal her new argument and finally did so in her Trial Brief. She engaged in dishonest arguing technique called **moving the goalposts**. She no longer argued that Husband "hid" GOOG stocks. Instead, her arguments came down to complaining that there may have been a minor mistake in the calculation which would have resulted in her being slightly underpaid (AOB 10). However, after evaluating this argument, Husband recalculated community property division and it turned out that Wife was actually overpaid (AOB 19).

The remand trial was held on 02/27/2024. Instead of narrowly focusing on the issue that was remanded, Family Court allowed Wife to relitigate issues she had already lost in March 8-9 2022 trial (AOB 12-13). Order was issued on 03/25/2024. Despite the massive change in Wife's argument, Family Court still awarded the same 18 "omitted" GOOG stocks to her.

Husband's Trial Brief contains a request for Statement of Decision. It asked Family Court the following questions:

1. *What was the total **dollar value** of the community estate assets at the time the parties divided these assets?*
2. *What was the **dollar value** of the assets that were transferred to Ekaterina in 2019 when the parties initially divided the community assets?*
3. *What **percentage** of community assets by dollar value did Ekaterina receive in the initial property division?*
4. *Do the numbers in items 1 and 2 above include the **dollar value** of Google stocks?*
5. *How can an asset be "omitted" when the prevailing party had already received the dollar value of that asset?*
6. *If item 6I of Judgement said "Schwab" instead of "Schwab-6350", would assets still be "omitted"?*
7. *Why did Family Court refuse to address items 1-6 until explicitly ordered to do so by the Court of Appeal?*
8. *Why did this court refuse to hear the Motion for New Trial, in violation of the relevant statutes and case law? (see the following documents filed on 06/15/2022):*
    a. *Declaration of Patrick T. Bell*
    b. *Declaration of Sandra Hosler*
    c. *Respondent's Supplemental Memorandum*
9. *Why did this court deem peremptory challenge "untimely" when remittitur was issued on 09/26/2023 and said peremptory challenge was filed on 11/02/2023?*
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".*
11. *How can **any asset** be omitted when the "aggrieved" party had already received more than half of community property?*
12. *Which party received more than half of community property in 2019 when the assets were initially divided?*

(5CT 1329)

Family Court **refused to issue Statement of Decision**. On 04/04/2024 Husband filed an Objection pointing out deficiencies in Family Court's order. He argued that, at a minimum, the following questions must be answered:

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

(5CT 1410)

It is self-evident that without answering these questions it is impossible to conclude that Wife was underpaid. Family Court ignored the Objection and also denied Husband's Motion for New Trial.

So Husband appealed again. His appeal raised the following issues:

1. Family Court erred by refusing to issue Statement of Decision. The questions raised therein pertain specifically to the valuation of community property which Family Court was tasked with dividing.
2. GOOG stocks cannot possibly be an omitted asset because Wife had already received their cash value. In fact, evidence showed that she was slightly overpaid.
3. Even if there was a minor underpayment, Family Court had the duty to quantify the alleged underpayment and award Wife only that much. Otherwise Wife gets paid twice: via equalization + in kind.
4. Regardless of any under- or over-payment, Wife received more than half of community property in the initial division. By awarding Wife GOOG stocks in kind, Family Court exacerbated unequal division in her favor in violation of Fam.Code §2550.
5. The procedural irregularities at Family Court amount to denial of due process.

Court of Appeal dismissed all of the above concerns and affirmed Family Court's order as-is. Husband filed a request for publication pointing out that the instant case presents two issues of first impression:

1. This is the first "omitted assets" case in history where the "aggrieved" party had already received the cash value of the asset that was supposedly omitted 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.

Court of Appeal denied the request for publication. There was no Petition for Rehearing this time. And thus we come to the final step in the process: appeal to California Supreme Court.

Argument

Refusal to issue Statement of Decision is not "harmless error"

In affirming Family Court's Order, Court of Appeal relies heavily on Family Court's supposed evaluation of the credibility of both parties. For example:

"The trial court found that Eugene's unilateral selection of those stocks he transferred to Katia (rather than transferring one-half of all stock holdings valued at the time of transfer), through which he allocated capital gains to her but not to himself, resulted in Katia receiving less than one-half of the community stock assets. The court further found Eugene's testimony not credible regarding his lack of awareness about the impact of the tax basis when deciding which stocks to transfer to Katia."
(Op.11).

Whether Party A or Party B received more of the community assets is not a question of credibility, it is a question of math. To answer this question, the court would have to calculate the dollar value of the assets each party received. We are not talking about assets whose value is subjectively determined. We are talking about publicly traded stocks. Their value is unambiguous and was corroborated by financial statements.

Family Court refused to do any calculations and found only that *"there was not an equal division of their stock"* (5CT 1406). While that is true, the unstated insinuation that Court of Appeal relied on is that I received the larger share. But such a conclusion is **mathematically impossible**. (Table 10.1, AOB 19). Numbers are numbers. 2+2 will never be 5. No amount of persuasion will change that.

The only way to determine how much community assets each party received – and whether there was, in fact, an underpayment – is to **calculate** those assets. That is precisely what I asked for in my request for Statement of Decision. Family Court refused to do any calculations and Court of Appeal did not see any problem with that. The absurdity of this outcome cannot be overstated. This essentially means that Family Court can simply declare that 2+2=5, and then Court of Appeal will affirm this decision

because "*Well, the trial court evaluated the credibility of both parties. That settles the argument.*"

The same reasoning applies to the tax burden. This is not a he-said, she-said issue. This is a number that can be calculated from the evidence presented. And, in fact, I did calculate it (Table 8, AOB 21). The fixation on taxes, furthermore, amounts to grasping at straws:

- Ekaterina received $215,947.79 in liquid assets (AOB 19-20), a similar amount in retirement assets, plus a $36,000 fully-paid vehicle (AOB 22). The total tax burden on the assets she received was approximately $2800 at the time of division (AOB 21, ARB 8). That is less than 1% of her total.
- Ekaterina was overpaid by a larger amount (Table 10.1, AOB 19).
- The above tax number is an estimate. Taxes accrue not when an asset is acquired but rather when it is **sold**. Stock prices change every day and taxable gain changes accordingly. For that very reason, courts generally do not consider tax implications unless they are "*immediate and specific*", and will not speculate about future tax liability that a party might incur at some later date when a taxable event actually occurs (Marriage of Fonstein (1976) 17 Cal.3d 739.).
- If Ekaterina had received different assets, her tax burden would have been different but it would not be zero (AOB 30). In particular, GOOG stocks themselves had unrealized capital gains which would also be subject to taxes when sold. Moreover, at the time of division, most GOOG stocks had not yet passed the 1 year threshold and thus would not be subject to the favorable long term capital gains tax rate but would instead be taxed as regular income.

(AOB 30-31)

Again, the above is not a question of credibility. It is a question of math. I asked Family Court to do the math but it refused. It appears that Court of Appeal took to heart Ms Finelli's argument that "*we don't need math*". Indeed. We only need gut feeling, apparently.

What happened can be summarized as follows:

Husband: Please calculate the dollar value of the community assets owed to Wife and the dollar value she actually received. Without this calculation, it is impossible to conclude that Wife was underpaid.

Family Court: No. All I can do is state that *"there was not an equal division of their stock"*. I will not even say which party received the larger share.

Court of Appeal: Well, that settles it. Looks like Wife was underpaid. Oh, and no calculation was required. Gut feeling is enough.

What kind of Kafkaesque justice is that?

The court's reasoning amounts to obfuscation

The court's obfuscation of the dollar value of community property is bad enough. But it gets even worse with the mention of the 10 GOOG shares that I earned after the separation. Court of Appeal cited this in its opinion affirming Family Court's order:

"*The court found it was undisputed that Eugene did not factor into his calculations the additional 10 shares of Google stock that he received between the parties' separation in April 2019 and the division of community assets in July 2019, but simply kept those shares."* (Op.11).

This issue was explicitly addressed in Family Court's 04/08/2022 order. The court specifically noted the fact that at the time of division (July 2019) there were 46 GOOG shares in the Schwab-GOOG account but at the time of separation only 36 were vested and thus only 36 were community property. It awarded Ekaterina 18 GOOG shares on that basis:

"Based upon Petitioner's Exhibit 9, it appears as though there were 36 shares on April 1, 2019. Accordingly, Katia should receive 18 shares. In the event either party disputes the number of shares, the Court will entertain RFO." (1CT 262).

No RFO followed – because there is nothing to argue about. This ruling is consistent with Fam.Code §771 which states unequivocally that *"The earnings and accumulations of a spouse… after the date of separation of the spouses, are the separate property of the spouse."* This ruling was not appealed by either party.

Nevertheless, Ekaterina decided to relitigate this issue on remand in an attempt to show that she was underpaid. In response, I did note that Ekaterina may be entitled to a minor modification – because our date of separation is actually April 8 2019 (5CT 1328-1329).

But this modification would be limited to ½ of the pro-rated fraction of shares that vested between April 1 and April 8 2019 – or approximately $700 (ARB 15).

In any case, Family Court declined to make this modification in its 03/25/2024 order, but still felt the need to mention that between our separation and asset division I earned 10 additional GOOG shares. Court of Appeal cited this in its Opinion affirming the order, despite the fact that it does not affect the calculation of community property in any way.

So what is the point of even mentioning this issue? To create plausible deniability while impugning my credibility?

Finally, if Family Court believed that Ekaterina was entitled to any portion of the 10 GOOG shares that I earned after the separation, then their dollar value should have been included in the numbers that I asked the court to calculate in my request for Statement of Decision. But Family Court refused to do any math and simply hand-waved that *"there was not an equal division of their stock"*. Indeed. And who got the larger share?

How can an asset be "omitted" when the prevailing party had already received the dollar value of that asset?

So far both Family Court and Court of Appeal refused to answer this question. But this is the core of the issue. Evidence shows that Ekaterina had already received the dollar value of 18 GOOG shares. Again, this is not my opinion. This can be calculated from the evidence presented – but Family Court refused to do any calculations and chose to be willfully blind.

Consider the following scenario:

Divorcing Husband and Wife have a community property car worth $20,000. Husband keeps the car but gives Wife $10,000. Years later, Wife claims that the car is an omitted asset.

"But wait", says Husband, "did you not receive the $10,000 that I gave you?"

"I did", says Wife, "but the car is still omitted. Now hand it over!"

To Husband's astonishment, the court sides with Wife.

This is, essentially, what happened, except that the assets in question are publicly traded stocks. Their values are independently determined by the stock market and corroborated by financial statements which were admitted as exhibits at trial.

As the Court of Appeal noted, *"The mere mention of an asset in the judgment is not controlling. [Citation.] '[T]he crucial question is whether the benefits were actually litigated and divided in the previous proceeding."* (In re Marriage of Thorne & Raccina (2012) 203 Cal.App.4th 492, 501 (Thorne & Raccina).) If receiving the dollar value of an asset does not constitute receiving the benefits, then what does?

The decision Court of Appeal arrived at contradicts the above principle and sets a very dangerous precedent. When dividing community assets it is quite common for one party to keep an asset and give the other party equalization payment equal to ½ the value of said asset. This is especially common with physical assets (such as a car, as illustrated above) but not limited to that. If this decision stands, then Family Court has carte blanche to simply declare any asset so divided as "omitted" and then award both the asset itself and the equalization payment to the "aggrieved" party.

I argued that this is a miscarriage of justice and a complete misuse of Fam.Code §2556. Court of Appeal disagreed. Supreme Court should weigh in on this issue.

Does the party who "omitted" the asset but made equalization payment for said asset get any credit for that payment?

Court of Appeal's ruling that "*the full value of both Schwab accounts was included in the number from which Katia and Eugene determined the total value of the community property*" cut the legs from under Ekaterina's argument. So on remand, she switched her argument from "*GOOG stocks were omitted entirely*" to "*there may have been a minor underpayment*" (ARB 10). She was not even able to show underpayment and decided to rely on obfuscation instead (AOB 19, ARB 7). But let's consider the situation in which she succeeded in showing that there was, in fact, a minor underpayment. And let's keep in mind the fact that the total value of the assets Ekaterina received exceeded $400,000 (between liquid assets, retirement assets, and vehicle).

In that case, does the party who in good faith attempted to equalize the division get any credit for the equalization payment he made OR can Family Court simply award 50% of

the "omitted" asset to the "aggrieved" party, without regard for how much she had already received? By way of example:

"There is a massive difference between receiving 0% of what was owed and receiving 99% of what was owed. Fam.Code §2556 is meant to cover the former case. If it even applies to the latter case, surely the "good cause" exception must also apply in favor of the party who made the equalization payment, even if this equalization payment resulted in a slight underpayment. For example, if the value of the "omitted" asset is $10,000 and the "aggrieved" party already received $4,900 via equalization, surely the fair outcome would be to award only the $100 underpayment to that party. If instead Family Court awards 50% of the "omitted" asset to the "aggrieved" party, it will result in that party being paid twice: via equalization and in kind."
(AOB 34)

The latter is what happened in the instant case. Family Court essentially pretended that no equalization payment was made at all and awarded Ekaterina 50% of the "omitted" asset in kind. I argued that the above result is a miscarriage of justice. Court of Appeal disagreed. Supreme Court should weigh in on this issue. Otherwise, the consequences are truly dire:

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 worth of assets. If this is not an abuse of discretion, I don't know what is.
(ARB 15)

Court of Appeal did not consider this outcome to be an abuse of discretion. I submit that it self-evidently is.

Ekaterina's original argument was that Schwab-GOOG account was omitted entirely. She included Schwab-GOOG statement with her RFO but deliberately omitted Schwab-6350 statement. A single look at both of these statements together shows that the "Schwab" number in my FL-142 is simply the combined value of both accounts. She was forced to switch to the underpayment argument in the aftermath of the Court of Appeal's ruling – and she failed even at that.

Does Fam.Code 2550 permit awarding even more assets to the party who had already received more than half?

Court of Appeal misstated my argument as follows:

"Eugene's argument is based on the faulty premise that the trial court's task was to divide the omitted Schwab account to ensure that each party received an equal division of overall community assets."
(Op.12)

This is the argument Ms Finelli made in her RB and it was explicitly addressed in ARB:

*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.*
(ARB 15)

As for why the initial community property division was unequal in Ekaterina's favor, that is explained in AOB 23. MSA contemplates equal division of liquid & retirement assets, but very much unequal division of vehicles (1CT 29-30). In accordance with MSA Ekaterina received $28,000 more than me in vehicle value (Table 8, AOB 22). As a result of that, her initial share of community property as a whole was approximately 53%. Family Court increased her share to 64% by awarding her 18 GOOG stocks in kind. And increased it again to 77% by awarding her another $60,000 as sanctions.

Note further that at the time of division 18 GOOG stocks that Family Court awarded to Ekaterina were worth $19,474.74 (based on 06/30/2019 closing price, Exhibit D4, 3CT 727). Thus, even if these stocks were 100% omitted, that would **still** mean that Ekaterina received more community property than me. It is thus **mathematically impossible** *"to divide the omitted Schwab account to ensure that each party received an equal division of overall community assets"* as Court of Appeal stated. Ekaterina would always have more.

In reality, of course, Ekaterina received equalization payment for GOOG stocks. And this equalization payment actually exceeded the value of said stocks (Table 10.1, AOB 19).

Court of Appeal further justified its order by saying that *"Division of the community estate by agreement negates the requirement that the community estate be divided equally"* (Op.12). However, there was absolutely no agreement for Ekaterina to receive both GOOG stocks and equalization payment for those same stocks. She ended up receiving 100% of this community asset: 50% via equalization + 50% in kind. This too was addressed in ARB.

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.*
(ARB 17)

Court of Appeal did not consider this a problem. That means that there is no limit to this process. A party who had already received more than half of community assets by value can use "omitted assets" as a pretext to extract any and all assets that were retained by the other party. Supreme Court should **definitely** weigh in on this issue. In a sane world, the fact that a party had already received more than half of community property should necessarily preclude any "omitted assets" claims.

How can an order be affirmed when the key finding it was based on is proven to be false?

As noted in AOB 24, Family Court made the following finding:

"Both parties exchanged their unsigned Preliminary Declarations of Disclosure on May 28, 2019, the same day they signed their Judgment. There were no attachments, statements or required backup documentation attached to their Schedule of Assets and Debts." (1CT 243)

This "finding" was used to justify Family Court's decision that GOOG stocks are an omitted asset. Court of Appeal **cited** this same "finding" in its Opinion affirming this decision (H050115 Opinion p.2). Clearly, this "finding" was a necessary element to support this decision.

This “finding” has been conclusively proven to be false. I sent this declaration via email on April 25 2019, more than a month before signing the MSA. The email in question is now part of the record (Exhibit H, 3CT 778). It was not part of the record in the original trial because neither party ever made this argument.

Furthermore, I have good reason to believe that the trial judge **knew** that this finding is false at the time she made it. As noted even in H050115 Petition for Rehearing, the judge asked me when the parties exchanged their declarations. I responded that it was at the end of April and tried to look up this email to give her the exact date. The judge yelled at me and told me to stop looking (AOB 24-25).

To my astonishment there was no court reporter at this trial. I had no idea that this is even legal. I never made the same mistake again and hired court reporters at my own expense for subsequent trials.

As for attachments/statements, I noted the following incongruity. Neither party’s financial disclosure declarations list account numbers (Exhibits N and O, 5CT 1282-1290). They refer only to things like “Chase joint”, “Chase mine”, “Etrade”, “Schwab”, etc. However, the Judgement does (1CT 27). Every single item lists 4-digit account numbers. Ekaterina did not come up with a clear explanation for how that happened (AOB 25). I summarized my recollection in my Closing Statement (5CT 1372).

So I have the following question for the Supreme Court: can a judge simply make up “facts” to support her order? And what happens if Court of Appeal cites these “facts” to affirm said order?

I expected this issue alone to be sufficient for a reversal. Strangely, any discussion about this issue is conspicuously absent from Court of Appeal’s Opinion.

Do procedural irregularities at Family Court amount to denial of due process?

In dismissing concerns about due process, Court of Appeal focuses only on the denial of Peremptory Challenge. It seems to acknowledge that it was improperly denied but insists that this is not reviewable on appeal. However, I listed a whole host of other problems which, taken as a whole, call into question the fairness of the entire process:

- Family Court deprived me of representation by removing my attorney under the pretext of "conflict of interest". Ekaterina moved to disqualify my attorney not when I hired him, but 8 months later, immediately after she filed (but did not serve) her March 8 RFO which started this multi-year litigation. Court of Appeal did not even mention this issue in its H050115 Opinion.
- Family Court made a false finding regarding an issue that neither party raised. Moreover, the trial judge **knew** that this finding is false at the time she made it. Court of Appeal **cited** this finding in H050115 Opinion. In H052147, Court of Appeal was presented with incontrovertible evidence that this finding is false. It failed to even mention this issue in H052147 Opinion.
- In the remand trial Family Court allowed Ekaterina to relitigate issues she had already lost in the original March 8-9 2022 trial, despite my multiple objections. This severely limited my time to cross-examine Ekaterina (AOB 12-13).
- The clerk's office refused to file H050115 Motion for New Trial in blatant violation of Santa Clara county local rules. Family Court then used this failure as a pretext to dismiss Motion for New Trial as "untimely". Court of Appeal refused to review this issue.
- The clerk's office refused to file my Motion to Show Cause which asked Family Court to order Ekaterina to present her argument (AOB 8). Ekaterina's gameplan on remand was the same as it was throughout this litigation: ambush me with last-minute arguments.

etc. (AOB 37) Does this sound like a fair process? If you were on the receiving end of this process, would you consider it fair?

Court of Appeal dismissed any concerns about gender bias despite it being common knowledge that Family Court is biased against men. Plenty of cases besides mine demonstrate this point clearly. Court of Appeal had an opportunity to affirm one important principle: no matter the trial court's personal animosity towards a party, that party still deserves a level playing field and a fair hearing. It utterly failed in this duty.

Consider, for example, the case of Ernesto Miranda. He was not a good man. He kidnapped and raped a woman. And yet, USA Supreme Court held that even a man like that deserves due process and a fair trial. It overturned his conviction on the basis of coercive interrogation. Today Miranda warning is a necessary element of every police interrogation. If even a man like that deserves due process, why don't I?

Conclusion

To recap: Ekaterina files a baseless motion which she loses on all but one issue. She commits multiple counts of perjury in the process. Instead of being sanctioned for that, she gets rewarded. The judge ignores the law and makes up facts to support her order. The clerk's office refuses to file documents that were properly submitted. Court of Appeal does not even mention these things in its Opinion and affirms Family Court's order as-is. It also ignores my actual argument and responds to a different, weaker argument.

If the Supreme Court believes that this is "justice", then there is no hope of justice left in the State of California. I realize that this is not the only case in which the justice system utterly failed, but I do hope that Supreme Court will take notice. My AOB contains "Changes to Rules of Court" section in which I proposed certain changes to mitigate the abuses I experienced at Family Court. The most important change is, of course, the court reporter – I am still baffled that it is legal to conduct a trial without one.

It is up to the California Supreme Court to redress this injustice. Will it do the right thing?

Respectfully submitted,

Dated: 04/21/2025

E. Strulyov

Eugene Strulyov
Appellant in Pro Per

Certificate of Compliance

Pursuant to California Rules of Court, Rule 8.504, I certify that the text of the Petition for Review is proportionally spaced, has a typeface of 13 points or more, and contains no more than 7527 words, including footnotes, as counted by the Microsoft Word processing system used to generate the brief.

Dated: 04/21/2025

Respectfully submitted,

E. Strulyov

Eugene Strulyov
Appellant in Pro Per

Exhibit A

Gmail **Eugene Strulyov <eugene.strulyov@gmail.com>**

divorce settlement proposal

1 message

Eugene Strulyov <eugene.strulyov@gmail.com> Mon, Apr 8, 2019 at 1:01 AM
To: Ekaterina Strulyov <ekaterina.strulyov@gmail.com>

Hi Katia,

I like your idea of going through mediation and avoiding the lawyers. Here are the terms that we already talked about and a few more that I added.

1. Custody. I agree that Sonia will live with you. I want to have 1.5 days/week with her. That will mean, in practice, 1 day / 2 half-days on the weekend + visits a few times during the week. 1.5 / 7 = 21.4%. I want to round it up to 25%, so you will have 75% custody.

2. I want to have advance notice and veto power over any international trips. Since you will have primary physical custody of Sonia, I want to have her passport in my possession. I will keep it in the safety deposit box. In particular, I am concerned about trips to Russia. I don't mind Sonia seeing her grandparents, but I want to have some assurance that you will come back. As a Ukrainian, there is no realistic way I can travel to Russia at this time.

3. Separate property:
3.1. Partners FCU savings account. Balance: $1,050.41. Partners is the credit union for Disney employees. I had it before I met you. I had to maintain > $1000 balance to keep it a free account.
3.2. Fidelity Investments Roth IRA: $92187.60. This is from Disney 401k conversion. I quit Disney before we got married and I always kept this account separate. You have no claim to it.
3.3. Disney pension. $823.90 / month assuming retirement date of September 1 2044. You have no claim to it but you are listed as a beneficiary in case I die.
3.4.My car, 2008 Subaru WRX. I bought it before we got married.
3.5. My condo. 18350 Hatteras St. #138. I bought it long before I met you and it is rightfully mine. Yes, you were added to the title last year, so you are technically entitled to half of any appreciation since then. But that should be minimal. Also, it is simply not fair for you to assert any claim to the condo. You had no right to demand that I add you to the title in the first place. The rental income went to our joint checking account, so that money is hopelessly commingled and I'm not going to even try disentangling it. But the title should be returned to me.
(See below about the mortgage).

4. Retirement accounts:
4.1. Vanguard IRA: $255,430.09. Old Google 401k conversion.
4.2. Vanguard 401k: $59,745.61. Reopened after I rejoined Google.
I am trying to consolidate these two accounts into a single account, but in either case, the total is $315k. I earned all of this money, but per the community property laws, you will take half (less whatever you have in your 401k).
4.3. e-trade roth IRA: $16954.09. You will take half of this one as well.

5. Cash and investments:
5.1. e-trade brokerage: $66273.20
5.2. Schwab brokerage: $161107.95
5.3. Schwab equity awards: $43457.40 (Google stock vests here).
5.4. Partners FCU checking account: on the advice of my lawyer, I transferred $20k into this account. He told me horror stories about how spouses drain joint accounts making the other spouse unable to pay the lawyer or any other bills. So I stashed away some emergency cash. But I'm not trying to hide it -- this is still part of community property.
Total: $271k. And yes, you will take half of this. (actually more, see below).

We also have ~67k in the Chase checking account, but ~33k in taxes due and ~20k credit card balance. I'll have to see what the exact amount is once all the payments go through. My paychecks continue to be deposited into this account.

6. Mortgage. Last year I expected a recession, so I sold a lot of stocks and bought mostly bonds and gold (that's why we have the tax bill). But I also dumped $130k into the mortgage. This had the effect of taking $130k away from common property, so you can claim half of that money. I will give you $65k out of my portion of cash & investments. So the $271k will be divided as follows:
you get $200k

I get $71k

+ we each get half of what remains in the joint checking account once this agreement becomes final.

7. Vehicles:
2016 Mercedes GLE 350: $36000
2012 Suzuki GSX-R 750: $7000
Trailer: $1000

So I technically own half of your new car and you own half of my bike & trailer. I propose that we just keep our own vehicles. You are getting a much better deal than me here. (Note that my car is separate property).

8. Life insurance. You want me to keep you as the beneficiary. No objection.

9. Health insurance. I was planning on keeping you & Sonia on my health insurance. If I can only keep Sonia, you'll have to get a separate insurance for yourself.

10, Child & spousal support: to be calculated according to the standard formula. My income at Moveworks is going to be $170k / year.

11. Personal property: to be divided in a way that makes sense. For example, I keep my computer, desk, snowboard, tools, etc. You keep your bags & jewelry.

So in total, you will get get over $400k worth of property, cash, and investments + child & spousal support.

Let me know what you think.

Eugene

Exhibit N

THIS FORM SHOULD NOT BE FILED WITH THE COURT

FL-142

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name and Address)*: TELEPHONE NO.:

ATTORNEY FOR *(Name)*:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

PETITIONER:

RESPONDENT:

SCHEDULE OF ASSETS AND DEBTS
☐ **Petitioner's** ☐ **Respondent's**

CASE NUMBER:

— INSTRUCTIONS —

List all your known community and separate assets or debts. Include assets even if they are in the possession of another person, including your spouse. If you contend an asset or debt is separate, put P (for Petitioner) or R (for Respondent) in the first column (separate property) to indicate to whom you contend it belongs.

All values should be as of the date of signing the declaration unless you specify a different valuation date with the description. For additional space, use a continuation sheet numbered to show which item is being continued.

ITEM NO.	ASSETS DESCRIPTION	SEP. PROP	DATE ACQUIRED	CURRENT GROSS FAIR MARKET VALUE	AMOUNT OF MONEY OWED OR ENCUMBRANCE
1.	REAL ESTATE *(Give street addresses and attach copies of deeds with legal descriptions and latest lender's statement.)* 18350 Hatteras St. #138, Tarzana, CA, 91356	yes	11/2008	$350,000	$0
2.	HOUSEHOLD FURNITURE, FURNISHINGS, APPLIANCES *(Identify.)* Cabinets, beds, TV, couch, desks, computer, chairs, kitchen table, microwave, etc.	var.	various	10,000	0
3.	JEWELRY, ANTIQUES, ART, COIN COLLECTIONS, etc. *(Identify.)* wedding ring	no	10/2010	500	0

Form Approved for Optional Use
Judicial Council of California
FL-142 [Rev. January 1, 2005]

SCHEDULE OF ASSETS AND DEBTS
(Family Law)

Code of Civil Procedure, §§ 2030(c), 2033.5
www.courtinfo.ca.gov

ITEM NO.	ASSETS DESCRIPTION	SEP. PROP	DATE ACQUIRED	CURRENT GROSS FAIR MARKET VALUE	AMOUNT OF MONEY OWED OR ENCUMBRANCE
				$	$
4.	VEHICLES, BOATS, TRAILERS *(Describe and attach copy of title document.)*	yes	06/2010	7000	0
		no	04/2013	7000	0
	2008 Subaru WRX	no	03/2019	36000	0
	2012 Suzuki GSX-R 750	no	09/2016	1000	0
	2016 Mercedes GLE 350				
	Utility trailer				
5.	SAVINGS ACCOUNTS *(Account name, account number, bank, and branch. Attach copy of latest statement.)*	yes	01/2006	1,050.41	
	Partners FCU	no	05/2010	1,002.12	
	Chase				
6.	CHECKING ACCOUNTS *(Account name and number, bank, and branch. Attach copy of latest statement.)*	no	01/2006	20,867.60	
		no	05/2010	31,701.02	
	Partners FCU				
	Chase				
7.	CREDIT UNION, OTHER DEPOSIT ACCOUNTS *(Account name and number, bank, and branch. Attach copy of latest statement.)*				
8.	CASH *(Give location.)*				
9.	TAX REFUND				
10.	LIFE INSURANCE WITH CASH SURRENDER OR LOAN VALUE *(Attach copy of declaration page for each policy.)*				

ITEM NO.	ASSETS DESCRIPTION	SEP. PROP	DATE ACQUIRED	CURRENT GROSS FAIR MARKET VALUE	AMOUNT OF MONEY OWED OR ENCUMBRANCE
				$	$
11.	STOCKS, BONDS, SECURED NOTES, MUTUAL FUNDS *(Give certificate number and attach copy of the certificate or copy of latest statement.)*				
	Schwab	no	10/2010	205,622.38	
	eTrade	no	02/2016	66,273.20	
12.	RETIREMENT AND PENSIONS *(Attach copy of latest summary plan documents and latest benefit statement.)*				
	eTrade Roth IRA	no		16,982.37	
	Vanguard 401k	no		313,027.38	
	Fidelity Investments Roth IRA	yes		89,684.54	
13.	PROFIT - SHARING, ANNUITIES, IRAS, DEFERRED COMPENSATION *(Attach copy of latest statement.)*				
14.	ACCOUNTS RECEIVABLE AND UNSECURED NOTES *(Attach copy of each.)*				
15.	PARTNERSHIPS AND OTHER BUSINESS INTERESTS *(Attach copy of most current K-1 form and Schedule C.)*				
16.	OTHER ASSETS				
	HealthEquity	no	05/2018	1567.56	
17.	TOTAL ASSETS FROM CONTINUATION SHEET				
18.	TOTAL ASSETS			$	$

ITEM NO.	DEBTS—SHOW TO WHOM OWED	SEP. PROP.	TOTAL OWING	DATE INCURRED
19.	STUDENT LOANS *(Give details.)*		$	
20.	TAXES *(Give details.)*			
21.	SUPPORT ARREARAGES *(Attach copies of orders and statements.)*			
22.	LOANS—UNSECURED *(Give bank name and loan number and attach copy of latest statement.)*			
23.	CREDIT CARDS *(Give creditor's name and address and the account number. Attach copy of latest statement.)*			
	Chase	no	16,252.64	05/2019
	Citi	no	2,485.88	05/2019
	Amazon		770.75	05/2019
24.	OTHER DEBTS *(Specify.):*			
25.	TOTAL DEBTS FROM CONTINUATION SHEET			
26.	TOTAL DEBTS		$19509.27	

27. ☐ *(Specify number):*_____ pages are attached as continuation sheets.

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

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

Filed 3/20/2025

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of EKATERINA and EUGENE STRULYOV.	H052147 (Santa Clara County Super. Ct. No. 19FL001660)
EKATERINA STRULYOV, Respondent, v. EUGENE STRULYOV, Appellant.	

This dissolution of marriage action returns to us for the second time on appeal. Appellant Eugene Strulyov asserts that the trial court, after conducting a limited hearing on the division of an omitted stock asset, erred in ordering him to transfer half of the shares of the community's omitted Google stock to respondent Ekaterina (Katia) Strulyov. Eugene[1] also challenges the trial court's denial of his request for a statement of decision and his peremptory challenge against the trial judge. Katia disputes Eugene's contentions and asks this court to levy sanctions against him.

[1] Because the parties share a last name, for clarity we refer to them by first name.

For the reasons explained below, we affirm the trial court's findings and order after hearing and deny the motion for sanctions.

I. FACTS AND PROCEDURAL BACKGROUND

A. The Prior Appeal

The prior appeal in this case addressed three trial court rulings challenged by Eugene and affirmed two of the three, reversing and remanding on the limited issue of the division of the Google stock. (*In re Marriage of Strulyov* (July 27, 2023, H050115) [nonpub. opn.].)[2] Specifically, in *Strulyov*, we upheld the trial court's determination under Family Code[3] section 2556 that the Google stock was an omitted asset in the November 2019 judgment of dissolution (2019 judgment). Nevertheless, we concluded that the trial court had abused its discretion by failing to address Eugene's argument that there was good cause to order the Google stock should *not* be divided equally, based on his assertion that Katia had received the equivalent value for her share of the Google stock in the division of assets under the 2019 judgment. We remanded "for the limited purpose of a determination by the trial court whether the interests of justice require an unequal division of the Google stock" under sections 2556 and 2550. We expressly refrained from dictating how the trial court should exercise its discretion with respect to the division of the Google stock and left to the trial court whether it should make its determination based on the existing record or consider additional evidence.

The remittitur transferring jurisdiction back to the trial court issued on September 26, 2023.

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[2] On our own motion, we take judicial notice of the record on appeal filed in this court in H050115, as well as this court's unpublished opinion in that matter. (Evid. Code, §§ 451, subd. (a), 452, subd. (d), 459, subd. (a).) As the parties are already familiar with the facts and procedural history set forth in the unpublished opinion in H050115, we do not repeat them here.

[3] All further unspecified statutory references are to the Family Code.

B. Proceedings on Remand

In October 2023,[4] the parties appeared before the trial court to set the hearing on the remanded issue of the Google stock division. The same bench officer whose findings and orders were the subject of the prior appeal presided at the hearing and scheduled a half-day evidentiary hearing for November 29.

1. Eugene's Peremptory Challenge

On November 3, Eugene filed a peremptory challenge to the trial judge pursuant to Code of Civil Procedure section 170.6. Eugene asserted that following his successful appeal, he believed he could not "have a fair and impartial trial or hearing before this Judge." Katia opposed the peremptory challenge on the ground that the matter to be decided was not a "new trial" within the meaning of Code of Civil Procedure section 170.6, subdivision (a)(2)[5] and so there was no legal basis for a peremptory challenge. Eugene argued in his reply that the remand did set the matter for a new trial, given the nature of the evidence and findings required to evaluate whether there was good cause for an unequal division of assets and considering the appellate court in *Strulyov* expressly recognized that the trial court might elect to consider additional evidence in making that determination. The trial court denied the peremptory challenge as untimely.

2. Evidentiary Hearing on Division of Google Stock

The parties exchanged trial briefs and Eugene filed motions in limine prior to the evidentiary hearing.

In his trial brief, Eugene requested a statement of decision on specified issues including the "dollar value" of the community asset division, how an asset can be

[4] Unless otherwise stated, further date references are to 2023.

[5] This subdivision provides in pertinent part that a party may bring a motion for peremptory challenge "following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter. . . . The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment." (Code Civ. Proc., § 170.6, subd. (a)(2).)

" 'omitted' " when the party had already received the dollar value of that asset, and why the trial court ruled that the peremptory challenge was untimely despite the timing of the remittitur and filing of the peremptory challenge. Eugene argued that (1) Katia already received the full cash value of her share of the Google stock when the parties divided the community assets in 2019, and (2) Katia already received more than half of the community property, which the trial court's April 2022 order and imposition of sanctions (addressed in the prior appeal) further exacerbated. To remedy these inequities, Eugene requested that the trial court reverse the order requiring equal division of the Google stock, reconsider its prior sanctions order of $60,000, and consider an award of attorney fees in his favor.

Katia filed an amended trial brief in which she identified an additional 10 shares of Google stock that Eugene had received between April and July 2019, and which he disclosed in his trial brief on remand as having vested after the date of separation. These additional 10 shares were not included in the earlier accounting of the 36 shares of stock that the trial court determined were an omitted asset and which were the subject of the remand in *Strulyov*, *supra*, H050115. Katia asserted that Eugene's failure to divide the Google stock constituted a breach of fiduciary duty. Katia argued that Eugene failed to divide the accounts equally by transferring stocks based on their value in April 2019 (when he calculated the division) rather than July 2019 (the date of division), retaining for himself those stocks with a zero or positive cost basis (thereby avoiding taxes or offsetting other gains), and selecting stocks for her on which she would have to pay capital gains tax (thereby shifting the tax burden to her). She asserted that these breaches of fiduciary duty undermined his good cause argument for an unequal division of the Google stock.

The evidentiary hearing took place on February 27, 2024, and was reported by a court reporter. The trial court noted that the issue before the court was "very limited" and that the court would issue "a written order" rather than a statement of decision. The court

heard testimony from both parties, each of whom was cross-examined, and considered their written closing statements. Katia disputed the equitability of the property division carried out by Eugene under the 2019 judgment based on his unilateral decisionmaking about which stocks to transfer, the timing of the security transfers, their cost bases and tax impacts on the respective parties, and Eugene's undisclosed receipt of 10 additional Google stock shares. Katia also argued for an award of attorney fees for what she characterized as Eugene's breach of fiduciary duty. Eugene asserted that his documentation in 2019 accurately reflected the division of the investment accounts, that the Court of Appeal had agreed that the " 'full [investment] value . . . was included in the numbers from which Katia and Eugene determined the total value of the community property' " (citing *Strulyov*, *supra*, H050115, italics omitted), and that her receipt of more than half of the community property in 2019 justified returning the shares of Google stock to him.

3. Findings and Order After Hearing

On March 25, 2024, the trial court issued a written findings and order after hearing (order). The court clarified that it would not address or rule upon any of the additional issues raised by the parties in their briefing or at trial. After summarizing the parties' positions, the court explained that it found persuasive Katia's argument concerning Eugene's unilateral selection of which stocks to transfer, and the tax consequences of those selections, "with respect to the valuation and division of the parties' stock, and in particular, the omitted Google stock." The court did not find credible Eugene's testimony that he was unaware of the impact of the tax basis or its effect on the "actual value" of the assets. It found that Eugene admitted that he had not factored the additional shares of Google stock received between April and June 2019 into the community property division. It further found that "factoring the post-tax value of an asset allows for a more accurate calculation of its value."

Based on its findings, the trial court concluded that "[t]he parties received different values of stock in what was to be an equal division of an asset." Because "there was not an equal division of their stock," the court found there was "good cause for an unequal division of assets." With respect to the omitted asset, the court ordered Eugene to transfer "one-half of the community shares of Google stock (36 shares as of July 2019, including any subsequent stock splits) to [Katia]." The court did not explicitly address, and declined to divide, the additional 10 shares of Google stock Eugene had acquired after separation but before the division of assets. The court also declined to award Eugene any attorney fees.

This appeal followed.

II. DISCUSSION

Eugene raises three primary claims on appeal. He challenges the trial court's decision not to order an unequal division of the omitted Google stock by arguing that the court's findings do not justify its order, that it relied on inapplicable law, and that it abused its discretion in refusing to offset any amount that Katia already received as value for that asset. In addition, he asserts the trial court erred by refusing to issue a statement of decision. He also contends the trial court violated his right to due process by denying his peremptory challenge and failing to explain its decision in the requested statement of decision. Katia challenges Eugene's claims on the merits and further argues the appeal was brought for an improper purpose, warranting the imposition of sanctions.

A. Division of the Google Stock

The remand in *Strulyov* directed the trial court to decide "whether the interests of justice require an unequal division of the Google stock" under sections 2556 and 2550. (*Strulyov*, *supra*, H050115.) The parties agree that this issue, grounded in the principles that govern the division of community property, is reviewed for an abuse of discretion. (See *In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1572; *In re Marriage of*

Schleich (2017) 8 Cal.App.5th 267, 276.) Eugene also asks this court to review de novo the trial court's application of sections 2556 and 2550.

We begin our analysis mindful that an "order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) We review orders concerning the distribution of marital property upon the dissolution of a marriage for abuse of discretion. (*In re Marriage of Greaux & Mermin* (2014) 223 Cal.App.4th 1242, 1250 (*Greaux & Mermin*).) Where, as here, the trial court has broad discretion to decide whether good cause has been shown to require an unequal division of the omitted asset, " ' " 'appellate courts must act with cautious judicial restraint in reviewing these orders.' " ' [Citation.] An abuse of discretion occurs ' "when it can be said that no judge reasonably could have made the same order." ' " (*In re Marriage of Grimes & Mou* (2020) 45 Cal.App.5th 406, 424 (*Grimes & Mou*).) More specifically, " '[i]f the court's decision is influenced by an erroneous understanding of applicable law or reflects an unawareness of the full scope of its discretion, the court has not properly exercised its discretion under the law.' " (*Wade v. Superior Court* (2019) 33 Cal.App.5th 694, 709.) Thus, an abuse of discretion occurs " 'if the trial court based its decision on impermissible factors [citation] or on an incorrect legal standard.' " (*Ibid*.) We further review the trial court's factual findings for substantial evidence, deferring to the trial judge on issues of credibility. (*Grimes & Mou*, at p. 421; see *Jennifer K. v. Shane K.* (2020) 47 Cal.App.5th 558, 579.) To the extent that Eugene challenges the trial court's application of sections 2556 and 2550, we review de novo the construction of a statute and its applicability to the facts. (*In re Marriage of Thornton* (2002) 95 Cal.App.4th 251, 253–254.)

Examining the statutory law and record on remand, we conclude the trial court neither erred in applying section 2556 nor abused its discretion in ordering Eugene to transfer one-half of the 36 shares of Google stock as of July 2019, including any

subsequent stock splits, to Katia. This court's remand in *Strulyov* expressly directed the trial court to consider the application of sections 2556 and 2550 to the division of the omitted asset. (*Strulyov*, *supra*, H050115.) Section 2550 reflects the broad statutory powers conferred to the family courts "to accomplish a just and equal division of marital property" (*Greaux & Mermin*, *supra*, 223 Cal.App.4th at p. 1250, citing §§ 2550, 2553) and affords the court " 'broad discretion to determine the manner in which community property is awarded in order to accomplish an equal allocation.' " (*Greaux & Mermin*, at p. 1250.) Section 2556 provides the courts continuing jurisdiction to address community assets or community liabilities that were not "previously adjudicated by a judgment in the proceeding." Under the statute, "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." (§ 2556.)

Eugene contends that section 2556 is not applicable to the present case because the omitted asset—here, the Schwab account containing the 36 Google shares previously deemed to be community property—was not, in fact, omitted but was already included in the cash value divided at equalization. He argues that since Katia had already received cash value for the 18 Google shares, the grant of another 18 Google shares in kind effectively awarded her 100 percent of the asset ("50% via equalization + 50% in kind").

This argument disregards this court's prior opinion in which we upheld the determination that the 36 shares of Google stock were not adjudicated in the judgment and thus were an omitted asset.[6] Eugene's argument also misconstrues the sole issue to be determined on remand, which was whether the interests of justice required an unequal

[6] As related in our prior opinion, the determination of an "omitted" asset under section 2556 depends on whether the asset was actually litigated and divided—not whether it was mentioned in the property division. (See *Strulyov*, *supra*, H050115; *In re Marriage of Thorne & Raccina* (2012) 203 Cal.App.4th 492, 501.)

division of the omitted asset (§ 2556), not to relitigate whether the Google stock had been omitted. Eugene's reliance on *In re Marriage of Rossi* (2001) 90 Cal.App.4th 34 to distinguish these facts from a case in which the omitted asset was "truly omitted" (boldface omitted) because one party concealed and retained the asset, while the aggrieved party received nothing at all, is inapt.

Having reviewed the transcript of the evidentiary hearing, we conclude that the trial court did not err in applying section 2556. The court correctly recognized that the question before it was limited to the division of the omitted Google stock. Specifically, this court's remand directed the trial court to determine whether the interests of justice required an unequal division of that specific community asset. (§ 2556.) After conducting the evidentiary hearing and reviewing the parties' written submissions, the court concluded that the interests of justice did *not* require an unequal division of the omitted Google stock. In explaining that decision, the court explicitly found "good cause for an unequal division of assets," citing factors including Eugene's unilateral exercise of control over which stocks to transfer and the financial consequences of those choices. We understand this finding to pertain to the community assets in general—not specifically to the Google stock. In other words, even assuming (as seems likely) the trial court accepted Eugene's arguments about having divided the value of the Schwab investment account as of April 2019, it nevertheless decided the omitted asset in question, i.e., the 36 shares of Google stock, should remain equally divided even if that ultimately led overall to an unequal division of community assets.[7]

[7] Admittedly, the language in the trial court's order is somewhat ambiguous. The ruling that "[t]he 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" and that there is "good cause for an unequal division of assets" could be interpreted to mean that even if the stock value overall was equally divided (as Eugene contends), an unequal division favoring Katia (based on the division of the 36 shares of Google stock) was justified based on Eugene's attempt to capture the tax benefits for himself and the other factors

Eugene argues that the trial court abused its discretion by refusing to apply offsets to the award of in kind Google stock despite his showing that the full value of both Schwab accounts (including the account containing the Google shares) was included in the value calculated at equalization. He points to this court's statement in the prior appeal noting that his exhibits filed in opposition of Katia's motion for determination and division of the Google stock "support[ed] 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" and argues that since Katia admittedly received the equalization payment, the trial court "had the duty to quantify" any alleged underpayment "and award only that amount to [Katia]."

This is not what the statute requires. The family court's broad discretion to award community property "to accomplish a just and equal division" (*Greaux & Mermin*, *supra*, 223 Cal.App.4th at p. 1250) extends to an omitted or unadjudicated community asset or liability after judgment, "unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability." (§ 2556.) The statute does not delineate or constrain the trial court in considering factors relevant to the interests of justice in allocating the omitted asset, nor does it require the court to expressly identify the value of each previously divided asset in determining whether the interests of justice warrant unequal division of the omitted asset.

In this case, the trial court heard evidence and testimony from both sides regarding the division of assets under the 2019 judgment. Eugene sought to establish that Katia received more than half of the community property based on his calculations of stock values—whether applying April 2019 stock values (when Eugene calculated the equalization) or July 2019 stock values (when Eugene divided the accounts). Katia

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cited by the court. Regardless of which interpretation applies, we uphold the trial court's order as a valid exercise of its discretion based on those findings, for which there is substantial evidence.

countered that by transferring those stocks to her with the lowest cost basis and saddling her with potentially significant higher taxes, and by calculating stock values as of April rather than July 2019, Eugene failed to divide the investment account equally. In considering these arguments, the trial court weighed the evidence and assessed each side's credibility.

The trial court found that Eugene's unilateral selection of those stocks he transferred to Katia (rather than transferring one-half of all stock holdings valued at the time of transfer), through which he allocated capital gains to her but not to himself, resulted in Katia receiving less than one-half of the community stock assets. The court further found Eugene's testimony not credible regarding his lack of awareness about the impact of the tax basis when deciding which stocks to transfer to Katia. The court found it was undisputed that Eugene did not factor into his calculations the additional 10 shares of Google stock that he received between the parties' separation in April 2019 and the division of community assets in July 2019, but simply kept those shares. The court thus concluded that "there was not an equal division" of the community property stock assets and rejected Eugene's request for unequal division of the omitted asset. It ordered Eugene to transfer "one-half of the community shares of Google stock (36 shares as of July 2019, including any subsequent stock splits)" to Katia. Furthermore, the court declined to address additional issues raised by the parties at the hearing on remand, including Katia's breach of fiduciary duty claim and her request for division of the 10 additional Google shares.

Examining the entire record, we perceive no abuse of discretion in the trial court's evaluation of the evidence or its good cause determination. Substantial evidence in the record, including the April 8, 2019 e-mail from Eugene to Katia cited in the trial court's order, demonstrated Eugene's sophisticated financial literacy and understanding of investment strategy and tax consequences. This evidence supports the court's credibility finding in which it rejected Eugene's claim that he was unaware of the impact of the tax

basis or its effect on the value of the assets he transferred. The record also supports the trial court's determination that factoring the post-tax value of an asset provides a more accurate picture of value and that the parties "received different values of stock in what was to be an equal division of an asset." Based on its finding that Eugene failed to divide the investment account equally, the trial court did not act arbitrarily in ordering Eugene to transfer one-half of the 36 Google shares previously held to be an omitted asset. On this record, we decide it cannot be said " ' "that no judge reasonably could have made the same order." ' " (*Grimes & Mou*, *supra*, 45 Cal.App.5th at p. 424.)

Eugene contends that the trial court's order dividing equally the 36 shares of Google stock exacerbates what he maintains was an already unequal division of community assets. However, Eugene's argument is based on the faulty premise that the trial court's task was to divide the omitted Schwab account to ensure that each party received an equal division of overall community assets. This was not the posture of the case on remand, nor could it have been given the nature of the property division under the 2019 judgment, which was by agreement of the parties pursuant to a stipulated order.

Division of the community estate by agreement negates the requirement that the community estate be divided equally. (§ 2550 ["*Except upon the written agreement of the parties*, . . . the court shall, either in its judgment of dissolution of the marriage, . . . divide the community estate of the parties equally." (Italics added)].) Thus, the relative value of the property divided in the 2019 judgment (including vehicles, Eugene's condominium, and other assets raised in the parties' arguments and testimony on remand) and whether it reflected equal division or was skewed slightly in favor of one party, as Eugene contends, might have been a relevant factor for the court's consideration but was by no means determinative in the court's assessment of good cause under section 2556 to order the omitted asset be divided unequally.

In sum, the purpose of the hearing on remand was not to relitigate the fairness or relative values of the original division of property under the 2019 judgment. The remand

required the trial court to decide whether the omitted asset—here, the 36 shares of Google stock—should be equally divided between the parties pursuant to section 2556, or whether the interests of justice required an unequal division under that provision. We conclude that substantial evidence in the record supports the trial court's finding of good cause as to the overall division of assets, based on the factors it considered in relation to Eugene's unilateral control over that division, its rejection of Eugene's request for unequal division of the omitted Google stock, and its implicit rejection of Katia's request for an award of additional stock shares and attorney fees. The court thus did not abuse its discretion in ordering Eugene to transfer one-half of the 36 Google shares in the account as of July 2019 to Katia.

B. Statement of Decision

Eugene contends the trial court was required to issue a statement of decision and the error requires reversal. We disagree.

Code of Civil Procedure section 632 provides that "upon the trial of a question of fact by the court," the trial court "shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial." The rule of court governing procedures for issuance of a statement of decision similarly applies "[o]n the trial of a question of fact by the court." (Cal. Rules of Court, rule 3.1590.)

It is settled law that Code of Civil Procedure section 632 generally "applies when there has been a trial followed by a judgment. [Citation.] It does not apply to an order on a motion. [Citation.] This is true even if the motion involves an evidentiary hearing and the order is appealable." (*In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040 (*Marriage of Askmo*); see also *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1294; accord *City and County of San Francisco v. H.H.* (2022) 76 Cal.App.5th 531, 544.) Although courts have created exceptions to the general rule for special proceedings (often for decisions involving child custody), application of the exception is based on " ' "(1) the

importance of the issues at stake in the proceeding, including the significance of the rights affected and the magnitude of the potential adverse effect on those rights; and (2) whether appellate review can be effectively accomplished even in the absence of express findings." ' " (*Marriage of Askmo*, at p. 1040; *H.H.*, at p. 545.)

Katia argues that a statement of decision was not required here because the limited issue on remand was "not a 'trial of a question of fact' " within the meaning of Code of Civil Procedure section 632 but "more akin to a hearing on a motion." Eugene does not directly address the applicability of Code of Civil Procedure section 632 and appears to assume that a statement of decision was required in light of his timely request to the trial court.[8]

We agree with Katia that the narrow scope of this court's remand in *Strulyov*, *supra*, H050115, requiring only a decision on whether there exists good cause to divide the omitted Google stock asset unequally, falls outside the purview of a "trial of a question of fact" as specified in the statute. The evidentiary hearing that took place and the trial court's factfinding role in weighing the credibility of the parties' testimony concerning Eugene's 2019 division of the investment account does not render it a trial of fact for purposes of requiring a statement of decision. (*Marriage of Askmo*, *supra*, 85 Cal.App.4th at p. 1040.) Nor has Eugene shown that the issue on remand, confined solely to the disputed division of the omitted Google shares, is of such importance and magnitude, or so infeasible to review on appeal in the absence of express findings, as to except it from the general rule on issuance of a statement of decision.

Eugene accuses the trial court of subjecting him to unequal treatment (because he is male) and violating his right to equal protection, based on the court issuing a statement of decision in response to Katia's request in the earlier proceeding while refusing to issue

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[8] Given Eugene's request to the trial court for a statement of decision and his arguments on appeal concerning the court's failure to provide the requested statement of decision, we decline to resolve this aspect of the appeal on the basis of forfeiture.

a statement of decision in this proceeding. However, this differential treatment derives from the statutory distinction between a limited scope hearing on remand and a "trial of a question of fact" (Code Civ. Proc., § 632), such as occurred in this case in March 2022, giving rise to the appeal in *Strulyov*, *supra*, H050115. In that two-day bench trial, the parties litigated multiple issues, including, among others, the parties' breach of fiduciary duty claims, the community or separate property status of certain real property, the division of the investment account, and Katia's entitlement to attorney fees, costs, and sanctions. The trial court did not err in its application of Code of Civil Procedure section 632, and its decision on remand to issue an order rather than a statement of decision does not evince bias against Eugene.

Even assuming that a statement of decision was required, Eugene has not shown that the failure to issue a statement of decision meets the standard for reversal. Eugene relies on *Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126, 1127, 1130 for the proposition that a trial court's failure to provide a statement of decision when timely requested is per se reversible error. However, our Supreme Court has since clarified that a trial court's erroneous failure to issue a statement of decision is not reversible per se but is subject to harmless error analysis. (*F.P. v. Monier* (2017) 3 Cal.5th 1099, 1108 (*Monier*); see Cal. Const., art. VI, § 13; *Alafi v. Cohen* (2024) 106 Cal. App. 5th 46, 61 (*Alafi*).)

As explained in *Monier*, the California Constitution "explicitly identifies 'any error as to any matter of procedure' ([Cal. Const., art. VI, § 13]) as error that warrants reversal only if a miscarriage of justice would otherwise result." (*Monier*, *supra*, 3 Cal.5th at p. 1113.) The " 'express terms' " of the Constitution " 'weigh against automatic reversal' [citation] for a court's procedural error in failing to issue a statement of decision." (*Ibid*.) Reversible error in this context thus "requires a demonstration of prejudice 'arising from the reasonable probability the party "would have obtained a better outcome" in the absence of the error.' " (*Alafi*, *supra*, 106 Cal. App. 5th at p. 62.)

Eugene argues that this case "easily meets" the miscarriage of justice and reversible standard discussed in *Monier*. He maintains that the trial court could not meaningfully evaluate good cause for unequal division of the Google shares without addressing the specific issues, particularly the "dollar value of community property" (boldface omitted) divided in 2019, which he asked the court to address in a statement of decision. He disputes Katia's assertion that there can be no prejudice because the court's order after hearing adequately addressed the bases for the court's ruling and thus sufficed as a statement of decision.

We are not persuaded by either argument. For the reasons discussed *ante*, the trial court was not obligated on remand to make factual findings on the precise value of the community property divided at equalization to exercise its discretion on remand to decide whether good cause justified unequal division of the omitted asset. Furthermore, the trial court's order adequately set forth the basis for its decision, finding that Eugene's prior allocation of stock to Katia did not result in an equal division of the assets in that account and that Eugene's testimony explaining the allocation was not credible. The issues that Eugene contends the trial court failed to address in its order are not, in fact, necessary for determination and do not compromise this court's ability to exercise appellate review. Thus, this is not a situation in which one or more material issues "left unaddressed by a court's failure to issue" a statement of decision effectively inhibits adequate appellate review. (*Monier*, *supra*, 3 Cal.5th at p. 1116.) We conclude that any failure by the trial court to issue a statement of decision or expressly address the questions posed by Eugene in his trial brief is, at most, harmless error.

C. Peremptory Challenge

Eugene challenges the trial court's denial of his Code of Civil Procedure section 170.6 peremptory challenge, and its refusal to explain the basis for its untimeliness ruling in a statement of decision, as a violation of his right to due process.

Code of Civil Procedure section 170.6 authorizes a motion to disqualify the assigned judge "following reversal on appeal of a trial court's decision, . . . if the trial judge in the prior proceeding is assigned to conduct a new trial on the matter." (Code Civ. Proc., § 170.6, subd. (a)(2).) A party must bring the disqualification motion "within 60 days" after being notified of the assignment following reversal on appeal. (*Ibid*.) The denial of a disqualification motion may be reviewed only by petition for writ of mandate filed and served within 10 days of written notice of the court's decision on disqualification. (Code Civ. Proc., § 170.3, subd. (d).) Thus, " '[a]n order denying a peremptory challenge is not an appealable order and may be reviewed only by way of a petition for writ of mandate.' " (*People v. Superior Court (Tejeda)* (2016) 1 Cal.App.5th 892, 900; see *People v. Hull* (1991) 1 Cal.4th 266, 275 (*Hull*) ["The Legislature, through [Code of Civil Procedure] section 170.3[, subdivision] (d), has specifically determined that a writ of mandate shall be the exclusive means of challenging a denial of a motion to disqualify a judge."].) A trial court's denial of a peremptory challenge under Code of Civil Procedure section 170.6 is reviewed de novo. (*Sandoval v. Superior Court* (2023) 95 Cal.App.5th 1274, 1282.)

In apparent recognition that he may not seek review of the denial of his peremptory challenge on appeal, Eugene frames his argument in terms of due process. He cites *People v. Mayfield* (1997) 14 Cal.4th 668, a death penalty case abrogated on other grounds in *People v. Scott* (2015) 61 Cal.4th 363, 390, footnote 2, and *Marshall v. Jerrico, Inc.* (1980) 446 U.S. 238, as support for his contention that he did not receive a "fair trial before 'an impartial and disinterested tribunal.' " In *Mayfield*, the California Supreme Court recognized that although a petition for writ of mandate is the exclusive method of review of a judicial disqualification motion, "a defendant may assert on appeal a claim of denial of the due process right to an impartial judge." (*Mayfield*, at p. 811.) After examining the entire record, the court declared it found nothing to support the defendant's charge that the judge in that case had to be disqualified for bias and racial

prejudice. (*Id*. at pp. 810–811.) Meanwhile, *Marshall* addresses the potential for bias in the enforcement of federal child labor standards and does not support Eugene's contention that the denial of his peremptory challenge gives rise to a due process violation. (Cf. *Marshall*, at pp. 244–247.)

Eugene lists several examples of alleged prejudice by the trial judge, including the court's "inexplicable denial" of the peremptory challenge, "allowing [Katia] to relitigate old issues that she had already lost" while refusing to rule on his reasserted claim of duress, and the "refusal to issue [a] statement of decision" or "make any determination as to the" dollar amounts. (Some capitalization omitted.) He also asserts bias in relation to several issues raised in the prior appeal.

Eugene offers no authority to support his otherwise conclusory contentions that these decisions, which he perceives as adverse, were, in fact, the result of prejudice. (See *People v. Avila* (2009) 46 Cal.4th 680, 696 (*Avila*) [" '[A] trial court's numerous rulings against a party—even when erroneous—do not establish a charge of judicial bias, especially when they are subject to review.' "].) Nor does our review of the record reveal support for Eugene's characterization of the trial judge's decisions. On the contrary, the record reflects that the judge attempted to limit both parties at the evidentiary hearing to evidence and examination that was relevant to the narrow issue on remand and did not allow one side to "relitigate old issues" while imposing lopsided limits on the other side.

Whether the trial court erred in calculating the timeliness of Eugene's peremptory challenge based on the 60-day window available on remand (Code Civ. Proc., § 170.6, subd. (a)(2)) is not reviewable in this appeal. (Code Civ. Proc., § 170.3, subd. (d); *Hull*, *supra*, 1 Cal.4th at p. 275.) Moreover, with respect to his due process claim, Eugene has not shown that that any such error in denying the peremptory challenge was because the judge had prejudged the case or was not impartial. (See, e.g., *People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 994 [rejecting capital defendant's judicial bias claim on the merits]; *Avila*, *supra*, 46 Cal.4th at p. 696.)

We conclude that Eugene has failed to provide persuasive support for his claims of judicial prejudice, bias, and deprivation of his due process right to a fair trial.

D. Katia's Motion for Sanctions

Katia seeks sanctions in the form of attorney fees in the amount of $10,475.74 against Eugene because the appeal is "objectively devoid of merit on its face" and was brought "for an improper purpose." In arguing the appeal is meritless, Katia points to the limited question presented for determination on remand, the discretion afforded the trial court to consider additional evidence and decide on the division of the omitted stock asset, and the court's reasoned findings and order, including its rejection of her request for some portion of the additional 10 shares of Google stock and for attorney fees. She maintains that under the circumstances, there "is simply no legal basis on which a reasonable person could believe [the appeal] ha[s] any legal merit." Katia further asserts that Eugene brought the appeal not to raise meritorious legal claims but as a vehicle for airing his grievances with the trial court, repeating the same arguments raised at the hearing and in the prior appeal and causing her to expend additional time and resources to defend against the appeal.

Eugene counters in his reply brief that the appeal is not frivolous but presents an issue of first impression as "the first 'omitted assets' case in history" where the " 'aggrieved party' " (1) "had already received cash value of the 'omitted' asset and then was awarded the asset itself by the Family Court" and (2) "had already received more than half of community property in the initial division and then had her share further increased by [the] Family Court."

"Whether to impose appellate sanctions is a matter within our discretion. [Citation.] Under [Code of Civil Procedure] section 907 and California Rules of Court, rule 8.276(a)(1), we may award sanctions when an appeal is frivolous and taken solely to cause delay." (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1194.) "[A]n appeal should be held to be frivolous only when it is

prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) "The two standards are often used together, with one providing evidence of the other. Thus, the total lack of merit of an appeal is viewed as evidence that appellant must have intended it only for delay." (*Id*. at p. 649.) Furthermore, to avoid chilling the assertion of a litigant's rights on appeal, the sanctions power "should be used most sparingly to deter only the most egregious conduct." (*Id*. at p. 651.)

Having reviewed the record and arguments of the parties, we conclude the threshold for imposing sanctions has not been reached in this case. It is true that the claims raised in the appeal are largely premised on Eugene's misapprehension of the nature of the remand order and his erroneous insistence that the trial court was obligated to ensure an equal division of the overall community property when dividing the Google stock. Nevertheless, we disagree with Katia that Eugene's arguments are entirely unreasonable. Nor do we agree from our review of the record that Eugene's motives were clearly improper.

We therefore decline to exercise our discretion to impose sanctions and deny Katia's motion.

III. DISPOSITION

The March 25, 2024 order after hearing is affirmed. Respondent is entitled to her reasonable costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

_____
Danner, Acting P. J.

WE CONCUR:

_____
Wilson, J.

_____
Bromberg, J.

H052147
Strulyov v. Strulyov

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

In re the Marriage of EKATERINA and EUGENE STRULYOV.

EKATERINA STRULYOV,
Respondent,
v.
EUGENE STRULYOV,
Appellant.

H052147
Santa Clara County Super. Ct. No. 19FL001660

BY THE COURT:

The request for publication of the opinion filed in the above-entitled action by appellant on March 24, 2025, is denied. The opinion does not establish a new rule of law, nor does it meet any of the other criteria set forth in California Rules of Court, rule 8.1105(c).

In compliance with California Rules of Court, rule 8.1120, the clerk of this court shall transmit the request for publication, a copy of this order, and the opinion to the Supreme Court.

(Danner, Acting P. J., Wilson, J. and Bromberg, J. participated in this decision.)

Date: March 28, 2025 _____ Acting P. J.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I am over the age of eighteen (18) years and not a party to the within action. I am a resident of or employed in the county where the mailing took place. My business address is 16360 Monterey Rd., Suite 130, Morgan Hill, CA9 5037.

On April 25, 2025, I served the **PETITION FOR REVIEW**, by enclosing a true and correct copy thereof in a sealed envelope as follows:

[XX] BY FIRST CLASS U.S. MAIL: I enclosed the document in a sealed envelope/package addressed to each addressee listed below and placed it for mailing, following our ordinary business practices. I am readily familiar with the mailing practice of my place of employment in respect to the collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business with first-class postage fully prepaid.

The envelope(s) was/were addressed and mailed to all interested parties as follows:

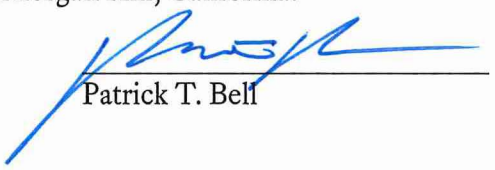
Hon. Brooke A. Blecher — *Trial Court*
Santa Clara County Superior Court
191 N. First Street
San Jose, CA 95113

Clerk, California Court of Appeal — *Appellate Court*
Sixth Appellate District
333 W. Santa Clara St., #1060
San Jose, CA 95113

Ekaterina Strulyov — *Opposing Party*
c/o Stephanie J. Finelli, Esq.
3110 S. Street
Sacramento, CA 95816

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

Executed on April 25, 2025, at Morgan Hill, California.



Patrick T. Bell