Sixth No. H050115

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

EKATERINA STRULYOV, Petitioner and Respondent, v. **EUGENE STRULYOV**, Respondent and Appellant.	Court of Appeal No. H050115 (Super. Ct. No. 19FL001660)

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

APPELLANT'S OPENING BRIEF

EUGENE STRULYOV
Appellant in Pro Per
18350 Hatteras Street, #138
Tarzana, CA 91356
Telephone: (818) 306-7030

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

ISSUES PRESENTED

1. Did the Trial Court abuse its discretion in denying Eugene's[1] request, based on Ekaterina's fraudulent concealment of her true income, to set aside the April 21, 2020 *Stipulation and Order* obligating him to pay private school tuition because it found Eugene was already obligated to pay the tuition under the November 18, 2019 *Judgment of Dissolution*?

   a. Was there substantial evidence to support the Trial Court's finding that Eugene was already obligated under the November 18, 2019 *Judgment of Dissolution* to pay private school tuition, where the *Judgment of Dissolution* stated only that each party would pay one-half of all "educational costs" without defining said costs, and where it was only subsequently that the April 21, 2020 *Stipulation and Order* defined the costs and detailed the terms of payment?

   b. Even if Eugene was already obligated to pay private school tuition under the *Judgment of Dissolution*, did the Trial Court nevertheless abuse its discretion in failing to find that Eugene would have materially benefitted from his requested relief, where Eugene contends that he only signed the *Stipulation and Order* obligating him to continue paying private school tuition based on Ekaterina's fraudulent concealment of her true income, and where if Ekaterina had disclosed her true income he could have bargained for a termination or modification of the provisions?

2. On de novo review, did the Trial Court err as a matter of law in ordering Eugene's Google stock divided "in kind" as an omitted asset, without ordering Ekaterina to reimburse Eugene for one-half the value of the stock he already paid to her, resulting in an unequal division of the community estate in violation of *Family Code §2550*?

---

[1] For purposes of clarity, the parties' first names are used.

a. Was there substantial evidence to show that the Google stock was an omitted asset when it was not referenced in the *Judgment of Dissolution* but was actually litigated and divided, where Eugene disclosed the Google stock to Ekaterina prior to entry of judgment in an email dated April 8, 2019, and where he transferred to Ekaterina sufficient stock and funds equal to one-half the value of the stock without objection from her?

b. Even if the Google stock is an omitted asset because it was not mentioned in the *Judgment of Dissolution*, did the Trial Court abuse its discretion in failing to find good cause that the interests of justice require an unequal division of the stock, where Ekaterina did not dispute she already received one-half the value of the stock, where the Trial Court ordered she receive the Google stock "in kind" without ordering her to reimburse the payment she already received, and where she waited over a year after receipt of payment before filing her motion?

3. Did the Trial Court abuse its discretion in awarding $60,000 in sanctions to Ekaterina under *Family Code §271*?

a. Was there substantial evidence to show that Eugene's conduct frustrated the policy of the law to promote settlement and reduce the cost of litigation, where he did not divide the Google stock "in kind" but paid to Ekaterina the value of her one-half share thereof, and where due process entitles him to a fair and full hearing on all the issues made by the pleadings?

b. Was there substantial evidence to show that the fees awarded to Ekaterina were tethered to actual attorney's fees and costs she incurred for Eugene's alleged improper conduct when the award included fees incurred for several issues that Ekaterina raised that were unrelated to Eugene's improper conduct for which she was not the prevailing party?

c. Did the Trial Court abuse its discretion in failing to sanction Ekaterina for her improper conduct, which would have offset the fees payable by Eugene, where Ekaterina failed to disclose her true income, requiring Eugene to file his motion to set aside the April 21, 2020 *Stipulation and Order* that he prevailed on with respect to child support, and where she contributed to the protracted litigation by raising issues unrelated to Eugene's conduct for which she was not the prevailing party?

STATEMENT OF THE CASE AND STATEMENT OF FACTS

OVERVIEW

This is an appeal from a Findings and Order After Hearing ("Order") of March 8-9, 2022 (filed April 8, 2022). (2 CT 593-3 CT 620; 3 CT 739). Eugene and Ekaterina were married on October 29, 2010 and separated on April 8, 2019, for a total marriage of 8 years and 5 months. (1 CT 3). They have one minor child of their marriage [redacted] (1 CT 3).

The parties retained a private mediator to assist them in negotiating a global settlement. (1 CT 24). The Judgment of Dissolution ("Judgment") was signed by the parties on May 28, 2019 (1 CT 27) and entered on November 18, 2019 (1 CT 26). However, after finalizing their divorce, the parties had a major disagreement: Ekaterina wanted to enroll Sofia in private school and for Eugene to pay 50% of tuition. Eugene countered that the parties agreed to enroll Sofia in public school, Country Lane Elementary (1 CT 62:3-5). Eugene assisted Ekaterina in co-signing for an apartment in the school district she chose for Sofia. (1 CT 62:1; 77:21-24). Judgment

obligates Eugene to pay for "*one half (½) of all educational costs*" (1 CT 10) but has no specific provision regarding private school tuition.

Ekaterina began sending to Eugene invoices for private school tuition and forced him back to mediation in January 2020 (1 CT 63:1-3). Eugene reiterated his opposition to private school. Ekaterina then threatened to sue Eugene over the private school tuition (1 CT 63:5-7). In February-March 2020 the parties negotiated and signed Stipulation and Order RE: Child Support, Spousal Support and Private School Tuition ("Stipulation"), filed on April 21, 2020 (1 CT 34-47). Stipulation provides for the following:

1. Eugene's child support obligation was reduced from $1606/month to $1498/month (1 CT 35; 44). This was the result of a correction to Eugene's rental income from gross ($2000/month) to net ($667/month).
2. Effective March 1, 2020 both parties waive their right to receive spousal support from the other, with a termination of the Court's jurisdiction over spousal support. (1 CT 36-38).
3. Eugene agreed to pay for private school going forward and to reimburse Ekaterina for one-half of all fees she had already incurred in the 2019-2020 school year. (1 CT 38).

Attached with Stipulation was dissomaster which listed Ekaterina's income as $4389/month (1 CT 44). A few months later, Eugene found out that Ekaterina has a new job. He requested her paystubs and learned two important things:

1. Ekaterina's income nearly tripled, to $11,250 / month.
2. Ekaterina started this job on February 4, 2020.

(1 CT 63:20-26). Ekaterina did not disclose this material fact during negotiation of Stipulation. Based on Ekaterina's true income, no spousal support was due at all. (1 CT 63:12-16).

On August 17, 2020 Eugene filed a Request for Order (RFO) to set aside Stipulation on the basis of Ekaterina's fraudulent concealment of her true income (1 CT 48; 52). Ekaterina retaliated in the following ways:

- Violated custody and started custody litigation, ultimately depriving Eugene of custody of his daughter.
- Launched a baseless child support litigation which she overwhelmingly lost.
- Filed a baseless omitted assets motion, which is the subject of this appeal. Order awards Ekaterina 18 Google shares in kind for which she already received monetary value. It also sanctions Eugene $60,000 while completely ignoring Ekaterina's misconduct.

This protracted litigation has consumed well over $200,000 in legal fees from each side.

CHILD SUPPORT LITIGATION

On 9/30/2020 Ekaterina filed an RFO demanding to increase Eugene's child support obligation from $1189/month to $1890/month (1 CT 66-73). Her claims were:

- 20% reduction in income (1 CT 68).

- She improperly calculated Eugene's timeshare as 8.5% in violation of Santa Clara county local rules (1 CT 68).
- She wanted to impute $2400/month of non-taxable income to Eugene due to the fact that he was living with roommates (1 CT 68).

Eugene agreed to adjust spousal support as a result of Ekaterina's reduction in income (1 CT 78:20-25). He disagreed with the two other claims (1 CT 79 - 81). He submitted a dissomaster which would increase child support to $1268/month (1 CT 85).

Eugene ultimately prevailed on both of the contested claims. At the 12/02/2020 hearing, the court adopted "*Father's proposed dissomaster at $1268 per month*" (1 CT 98). However, he was not awarded any attorney fees.

Nevertheless, Ekaterina eventually succeeded in increasing child support to $1877/month. As of January 2021 Eugene no longer has physical custody of Sofia. Existing law allows Ekaterina to profit from parental alienation.

OMITTED ASSETS RFO

On March 8, 2021 Ekaterina filed her RFO which alleged the following:

- That Eugene hid Google stock valued at $49,721.86 (1 CT 103)
- That Eugene failed to disclose and divide his vacation pay of "over $7000" (1 CT 104)
- That Eugene committed fraud and duress in connection with assigning the condo title back to him (1 CT 105)

- That Eugene breached his fiduciary duty when he used $130,000 of community money to pay down the condo mortgage (1 CT 105)
- That Eugene failed to properly divide his PartnersFCU checking account (1 CT 108)

In total, this RFO demanded well over $250,000 in compensation (about 4x more than Eugene had) plus attorney fees and sanctions (1 CT 102-136).

Ekaterina did not even attempt to meet and confer with Eugene prior to filing this motion. Rather, she filed it in secret, obtained a hearing date of 07/21/2021, and did not serve Eugene until the last possible day (Augmented Record[2] BS 91:23-27). This would have given Eugene only 10 days to prepare his response. Fortunately, Ekaterina's attorney inadvertently mentioned this RFO at the 04/12/2021 recusal hearing.

REMOVAL OF EUGENE'S ATTORNEY

On March 16, 2021 Ekaterina filed an (Ex Parte) RFO against Eugene, seeking to recuse Eugene's attorney, Joseph Camenzind, and seeking sanctions related thereto (AR BS 11-17). The basis for Ekaterina's request is that in 2018 she consulted with another attorney, Travis Whitfield, who leases office space to Mr. Camenzind and employs Mr. Camenzind as "Of Counsel" on cases that they specifically agree for him to work on. (1 CT 141:22-24). In his March 29, 2021 Responsive Declaration, Eugene contended that recusing Mr. Camenzind would be detrimental to his case, as he has been working with Mr. Camenzind since July 1, 2020, and has already paid thousands of dollars towards his legal fees. (1 CT 140; 143:22). Mr. Camenzind, who has his own law practice and employees,

[2] Henceforth AR

appeared at multiple hearings on this matter, including two hearings where Ekaterina was present. (1 CT 143:23-24; 145:8-9). Mr. Camenzind had no knowledge that Ekaterina consulted with Mr. Whitfield. (1 CT 145:10-16). Mr. Whitfield provided a declaration stating he is in no way involved with Mr. Camenzind's cases and does not meet with Mr. Camenzind's clients. (1 CT 141:27-142:1). Mr. Whitfield has never met Eugene and does not represent him. (1 CT 142:17). Mr. Whitfield further estimates he has over 100 consultations a year where the prospective clients do not retain him, and Mr. Camenzind is not informed of who he consults with. (1 CT 142:3-5). Mr. Whitfield has no memory of meeting with Ekaterina, has no files related to Ekaterina, and never discussed her matter with Mr. Camenzind. (1 CT 142:11-15).

The Trial Court nevertheless granted Ekaterina's request to recuse Mr. Camenzind. (AR BS 59). Eugene was then sanctioned for opposing the recusal of his attorney.

FINANCIAL DISCLOSURES

In April 2019 Eugene began consulting with a divorce attorney. Somehow Ekaterina found out, confronted Eugene about it, and proposed to do a mediated divorce instead (AR BS 93:1-4). Eugene agreed and on 04/08/2019 wrote to Ekaterina an email entitled "divorce settlement proposal". This email contained a detailed description of the parties' financial assets. It was attached as Exhibit 1 to Eugene's 07/06/2021 responsive declaration (AR BS 104) and presented as Respondent's Exhibit[3] A (BS 1) at trial. Portions of this email were also quoted verbatim in the 04/08/2022 Order.

[3] Henceforth R_Ex

As to the community property investment accounts, it disclosed the following:

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).

(3 CT 609:15-16) Note that the Schwab balances added up to $204,565.35. Total investment account balances added up to $270,838.55. Financial statements corroborating these numbers were presented as R_Ex B (BS 4), C (BS 17), and H (BS 25).

As to the condo it stated:

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).

(3 CT 603:10-16)

As to the mortgage payoff, it explained:

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

(R_Ex A BS 1)

Eugene subsequently filled out his Schedule of Assets and Debts (form FL-142). The information disclosed on this form closely mirrored the information disclosed in 04/08/2019 email but with two key differences:

1. Schwab was listed as a single line item with a balance of $205,620.38 (1 CT 119). Note that this number is actually slightly greater than the sum of the Schwab sub-account balances from the 04/08/2019 email. This is explained by normal market fluctuations.
2. Eugene forgot to list his HealthEquity HSA account ($1567.56 balance) in the email, but did include it in FL-142. (1 CT 119).

(Petitioner's Exhibit 3 BS 190; 193).

JUDGMENT

Judgment once again closely mirrors the property division described in the 04/08/2019 email. It awards to Eugene:

- "all right, title, and interest in the residence located at 18350 Hatteras Street, #138, Tarzana, CA" subject to $65,000 equalization payment.

(1 CT 13; 17)

It Awards to each party:

- "A one-half (½) interest in Charles Schwab Investment account no. -6350"
- "A one-half (½) interest in E*Trade Investment account no. -7709"

(1 CT 15)

The Schwab account actually consisted of two sub-accounts:

- Schwab Brokerage, a.k.a. Schwab-6350 (item 5.2 in the email)
- Schwab Equity Awards, a.k.a. Schwab-GOOG (item 5.3 in the email)

And this is the basis for Ekaterina's "omitted assets" claim: Judgment explicitly refers to Schwab-6350 and does not mention Schwab-GOOG.

The basis for Eugene's counterargument is as follows:

- He interpreted this line of Judgment as referring to the entire Schwab account. He entered the total Schwab balance ($205,620.38) in his FL-142. This amount **includes** the value of Google stock.
- He acted in good faith to divide this balance. He transferred to Ekaterina $200,947.79 worth of assets as a combination of stocks and cash. This matches the amount Ekaterina was owed under Judgment and for ½ value of Google stock. (see "Omitted Assets" below)

- This is not the only mistake in Judgment. It does not list Eugene's HSA account despite it being listed in his FL-142. The parties divided this account without court involvement.

TRIAL

Trial on Eugene's set-aside RFO and Ekaterina's Omitted Assets RFO was held on March 8 and 9, 2022. Decision was issued on April 8, 2022.

On the second day of the trial, Eugene was informed that there is no video recording and no court reporter present. This was truly shocking – Eugene would never have agreed to proceed with the trial without a court reporter. The Order contains a number of inaccuracies. Trial was conducted over Microsoft Teams, so video recording would be trivial.

Eugene hired court reporters at his own expense for all subsequent hearings.

VALID ISSUES

Eugene acknowledged two inadvertent mistakes in property division:

- He was not aware that he would be receiving vacation pay or that it was also considered community property, as it was received after the separation (AR BS 98-99). The after tax amount was $6630.56, not "over $7000". He paid Ekaterina 50% of that income, $3315.28 (2 CT 451:28).
- His PartnersFCU checking account and Ekaterina's Chase checking account were not properly divided. He received $20,000 while

Ekaterina received only $10,000. He made a $5,000 payment to Ekaterina to correct this mistake (2 CT 452:1-7).

This amounted to $8315.28 in total. Eugene argued that this could and should have been settled via meet & confer (2 CT 452:8-15). Despite these mistakes, Ekaterina still received more than 50% of marital property: she kept 100% of her car ($36,000 value), which was purchased only a month before the divorce (AR BS 100:12-23). Eugene kept his motorcycle and trailer ($7000 + $1000 value).

Eugene denied all other claims.

DECISION

SET ASIDE OF STIPULATION

The basis for Eugene's request to vacate Stipulation is Ekaterina's fraudulent concealment of her true income. (1 CT 52; 64:1-3, 9-10). He contends that he signed Stipulation based upon Ekaterina's representation that she earned only $4,389 per month. (1 CT 64:2-3). Specifically, Eugene agreed to pay one-half of Sofia's private school tuition in exchange for Ekaterina's agreement to terminate spousal support. (1 CT 63:9-10). Had Ekaterina been truthful about her actual new salary, Eugene would have owed no spousal support and thus her "agreement" to terminate spousal support as consideration for him paying Sofia's tuition, was meaningless. (1 CT 63:11-15). Ekaterina intentionally failed to disclose her true income to obtain the benefit of Eugene's help with Sofia's private school tuition and to defraud him into paying more child support. (1 CT 63:23-26). Had he known Ekaterina actually earns nearly three times the amount she claimed

to have earned, he would have never agreed to pay one-half of Sofia's private school expenses. (1 CT 64:3-6).

The fact that Ekaterina concealed almost 3x increase in her income was undisputed. The court found that:

"At the time of negotiations, Katia was earning $11,249 per month, while she knowingly allowed an incorrect figure of $4,389 to be used on the calculations. Instead of disclosing the income from her new job obtained on February 4, 2020, she included language that neither party verified the other parties' income. Katia allowed Eugene to believe her income had remained at the same amount despite the fact that her salary had almost tripled. Katia further agreed to use guideline child support, which means she agreed to use her actual income."

(3 CT 606:1-6)

However, the court did not set aside Stipulation as Eugene requested. It ruled as follows:

1. The mere fact that Ekaterina's income nearly tripled does not entitle Eugene to a reduction in spousal support:

"Computer programs cannot substitute for the exercise of judicial discretion in considering and weighing the appropriate statutory factors under Family Code section 2030."

(3 CT 606:14-15)

"Eugene's position that a Dissomaster calculation should be used is erroneous. Moreover the Court did not receive testimony regarding the marital standard of living and this is not addressed in the November 18,

2019 Judgment. Eugene's request to set aside the spousal support provision of the April 21, 2020 Stipulation is without merit." (3 CT 606:18-21)

2. Judgment already obligated Eugene to pay for private school tuition:

"Under both the November 18, 2019 Judgment and April 21, 2020 Stipulation, Eugene is obligated to split the private school tuition with Katia." (3 CT 607:23-24)

While Stipulation explicitly spells out that Sofia will attend Monticello Academy (1 CT 38:9-19), Judgment does no such thing. Nor does it define "educational costs".

The court set aside only the child support portion of Stipulation:

"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." (3 CT 607:4-6).

Thus, the court acknowledged that Stipulation is tainted by Ekaterina's failure to disclose her true income but refused to set it aside.

TARZANA CONDO

In 2008, 2 years before marriage, Eugene purchased a condo in Tarzana. After he met Ekaterina he rented out the condo and moved in with her (AR BS 94:5-16). For the entire duration of the marriage, the condo was a rental property (2 CT 599:1-4). In 2012 the condo was refinanced at a lower interest rate. In 2017 Eugene added Ekaterina to the title after she

threatened to divorce him and in connection with their estate planning. (2 CT 599:7-12). Judgment awarded the condo back to Eugene (1 CT 13).

Ekaterina's alleged basis for setting aside the award of the Tarzana residence to Eugene is that during marriage she endured emotional abuse and during divorce she was scared to doubt or ask for anything in return. (1 CT 106:4-11). She claimed that Eugene held her "financially hostage" and did not allow her access to funds (1 CT 106:18-23). Ekaterina asserted that the condo is community property and demanded "half of its fair market value" (1 CT 107:7).

Eugene responded that Ekaterina's claims are false and that it was, in fact, Ekaterina who abused him during the marriage (AR BS 94-96). He contended that her name was added to the title under duress (AR BS 96:15-20). Further, he argued that even if this transmutation is valid, "*she would only be entitled to 50% of appreciation between the date this asset was converted into marital property until the date of divorce*". (AR BS 94:12-16)

The court ignored Eugene's claim of duress but ruled as follows:

Eugene was the only witness who testified regarding the value of the condominium. His undisputed testimony was that the condominium did not increase in value from October 24, 2017, the date of transmutation, (i.e. giving rise to Eugene's Family Code § 2640 interest in the condominium) to May 28, 2019 (the date the parties' signed the Judgment). (3 CT 603:4-7)

Ekaterina was not sanctioned for bringing this claim.

MORTGAGE PAYOFF

Ekaterina alleged that Eugene breached his fiduciary duty when he sold community stocks and used $130,000 to pay down the condo mortgage. She claimed to have learned about it "on the brink of divorce" (1 CT 105:20-21). Eugene produced bank statements for their **joint** Chase bank account which showed that the two lump-sum payments were made in February and March 2018, more than a year before the divorce (R_Ex K BS 36 and L BS 43). Ekaterina received automatic notifications for these payments (AR BS 97:1-8). Judgment awards Ekaterina $65,000 equalization payment to compensate her for the mortgage payoff (1 CT 17).

The court did not find Eugene's sale of community stock to be in breach of his fiduciary duty. (3 CT 611:18-25). Ekaterina was not sanctioned for bringing this claim.

OMITTED ASSETS

Ekaterina received all of Eugene's financial statements as part of discovery and had also received the 04/08/2019 "divorce settlement proposal" email which explains the parties' financial situation in plain english (R_Ex A BS 1). Ekaterina included the statement for Schwab-GOOG sub-account with her RFO (1 CT 122) but omitted Schwab-6350 statement. A single look at both these statements together shows that "Schwab $205,620.38" line in Eugene's FL-142 (1 CT 119) is simply the total value of the entire Schwab account.

It was undisputed that the balances of the investment accounts were as follows:

Schwab brokerage (04/30/2019)	153,858.47
Schwab Equity Awards (06/30/2019)	49,721.86
Total Schwab	**203,580.33**
E*TRADE brokerage (04/30/2019)	66,552.14
Grand Total	**270,132.47**

(R_Ex B BS 4, C BS 17, and H BS 25). These numbers are somewhat different from the ones listed in 04/08/2019 email because statements closed on the dates indicated.

It was also undisputed that Ekaterina received the following assets in June-July 2019:

VCAIX (Vanguard tax-free bond fund)	67,628.11
FB (Facebook)	38,802.00
IAU (Gold ETF)	67,225.00
T (AT&T)	10,641.17
Cash	16,651.51
Total	**200,947.79**

The court quotes verbatim from the emails listing these assets (3 CT 610:17-21). These numbers were corroborated by R_Ex N (BS 48; 55) and O (BS 59-60).

This equates to what Ekaterina is owed under Judgment and for ½ value of Google stock:

	Balance	**Half**
One-half of Schwab-6350	153,858.47	76,929.24
One-half of Schwab-GOOG	49,721.86	24,860.93
One-half of E*Trade-7709	66,552.14	33,276.07
Tarzana condo equalizing payment		65,000
Total		**200,066.24**

(Ekaterina received a slightly higher value of $200,947.79 due to market fluctuations).

Nevertheless, the court ruled that Google stock is an omitted asset and awarded 18 Google shares[4] (approximately $48,000 value at that time) to Ekaterina (3 CT 616:16-17). Thus, Ekaterina gets paid twice: she already received cash value of Google stock in June-July 2019 and Order awards her the same stocks in kind. This has the effect of increasing Ekaterina's share of marital assets **far** beyond 50%.

The court quotes directly from Eugene's email:

5.2. Shwab brokerage: $161107.95

5.3. Schwab equity awards $43457.40 (Google stock vests here).

---

[4] On 06/15/2022 Google executed a 1:20 stock split, so 18 shares became 360.

(3 CT 609:15-16), acknowledges that "*His Schedule of Assets and Debts listed Schwab in item 11 with a value of $205,620.38*" (2 CT 597:6-7) but comes to the bizarre conclusion that "*Despite the email of April 8, 2019 listing an account for google shares, Eugene's Schedule of Assets and Debts made no mention of this account.*" (3 CT 609:19-20).

The cort goes on to make an astute observation: "*Further, it appears as though Katia did not receive any Google stock.*" (2 CT 597:20). However, that was not in dispute: Ekaterina received other stocks of equal value.

Before the trial began, the judge announced her tentative ruling: she agreed with Eugene on omitted assets issue, but disagreed on set-aside. Ekaterina accepted this deal, but Eugene requested to file additional briefs to address the issue of private school tuition. No deal was reached and the trial proceeded. After receiving the final ruling, Eugene discovered to his great surprise and shock that the judge reversed herself on omitted assets issue. This is most curious because none of these numbers changed during the trial.

It should also be noted that after Eugene filed his 06/07/2021 responsive declaration, Ekaterina attempted to morph her claim from "omitted assets" to "breach of fiduciary duty". She argued that all stocks should have been divided in kind rather than by value. Ekaterina's Request for Statement of Decision asks the court this question: *"Did Eugene breach his fiduciary duties to Katia by: Failure to Disclosure and Divide Community Property Google Shares of Stock?"* (2 CT 444:17). As the court noted, this stance is very different from omitted assets. (2 CT 444:20-22).

ATTORNEY FEES

The court sanctioned Eugene $60,000 for the following alleged misconduct:

1. Not accepting the court's tentative decision (3 CT 614:1-5). The only thing Eugene "did not accept" was that he wanted to file additional briefs regarding private school tuition while Ekaterina wanted an all-or-nothing deal.
2. Failed settlement conferences (3 CT 614:6-8), despite the fact that Ekaterina is also at fault for their failure.
3. Canceling Sofia's health insurance (3 CT 614:9-11), 7 months after Ekaterina enrolled her in a much better insurance through her new husband.
4. Requiring Ekaterina to go through counsel to obtain a copy of Eugene's life insurance policy (3 CT 614:14-16).
5. Not following up on E*Trade Roth IRA division until contacted by Ekaterina's attorney (3 CT 614:19-20).
6. Opposing continuance of the 12/02/2021 trial (3 CT 614:24).
7. Filing a motion for reconsideration of MTC#2 (3 CT 615:4).
8. Opposing the recusal of his attorney (3 CT 615:5-8).

The court also notes that *"Eugene did not divide the Google RSU. Further, throughout Trial and even in his closing arguments, Eugene takes the position that he may divide assets outside of the terms of the Judgment. In his.March 24, 2022 closing statements, he justifies an unequal division by arguing that the Judgment did not equally divide the parties' cars. In other words, Eugene takes this upon himself to remedy."* (3 CT 615:9-13).

However, a review of Eugene's March 24, 2022 Closing Argument Statement shows that his contention with regard to the parties' vehicles was in relation to only the Partners FCU account that the Trial Court found was not an omitted asset and denied Ekaterina's request related thereto. (2 CT 434:4-17; 3 CT 609:12-14)

According to Ekaterina's last attorney's fee declaration filed on 08/23/2022, she claims to have incurred:

1. $1,575 in negotiation following receipt of the Trial Court's tentative decision. (1 CT 287:14).
2. A total of $9,170 for settlement negotiations:
    a. $2,695 for preparation and attendance at a Judicially Supervised Settlement Conference. (1 CT 286:24).
    b. $2,310 in settlement discussions. (1 CT 286:28).
    c. $4,165 for preparation and attendance at a Settlement Officer Conference and two Mandatory Settlement Conferences. (1 CT 287:8).
3. $2,637.50 over Sofia's health insurance coverage. (1 CT 289:13).
4. $2,205 over Eugene's life insurance policy. (1 CT 290:5).
5. $1,610 for having to file a motion to continue the trial (1 CT 292:27).
6. $1,357.50 for defending against Eugene's motion for reconsideration. (1 CT 293:16).
7. $5,790 for having to file a motion to recuse counsel. (1 CT 294:4).
8. $1,225 over division of the E*Trade Roth IRA. (1 CT 294:21).

Total: $25,570. The court sanctioned Eugene more than double this amount.

It should also be noted that Ekaterina's attorney completely misrepresented the nature of child support litigation in her declaration. She claimed that depreciation was a point of contention. (1 CT 295:18-23; rebuttal: 2 CT 535:6-19).

Conversely, the court completely ignored Ekaterina's own egregious conduct, including conduct that the court found to have instigated litigation and frustrated settlement. The court found that "*Katia's failure to disclose her increased income resulted in Eugene's RFO to set aside*" (3 CT 613:24). Yet, Ekaterina was not sanctioned **at all**.

Per his last attorney's fee declaration filed 03/23/2022 (1 CT 281), Eugene incurred:

1. $35,085 on Ekaterina's omitted assets motion (1 CT 283).
2. $27,735 on Eugene's set aside motion (1 CT 283).
3. $12,965 on child support issues (1 CT 283).

Total: $75,785.

The above amount does not include fees that Eugene incurred on custody and discovery matters, or fees he incurred through prior counsel and other professionals involved in the case. (1 CT 283).

OTHER PROCEDURAL VIOLATIONS

MOTION TO COMPEL DISCOVERY #2

Just before departure, Mr Camenzind filed MTC#2 on 04/08/2021 (1 CT 170-239). There was an inexplicable 3 week delay at the clerk's office such that the filed copy of this motion was not available until 04/24/2021. Consequently, Mr Camenzind had been unable to serve it before his departure. It was finally served by Eugene's new attorney on 05/10/2021 (1 CT 247:8-11). Eugene argued that *"Petitioner should not be able to game the system in order to evade producing discovery"* (1 CT 248:6). The court disagreed. It denied MTC#2 because:

"Given the express notice requirements, Husband had to serve Wife with a filed copy of the instant motion, including the date, time, and place of the the hearing 45 days from the agreed upon extension of February 26, 2021. It is undisputed Husband timely filed the instant motion on the agreed-upon deadline on February 26, 2021. It was, however, untimely served on Wife". (AR BS 182).

Eugene was also sanctioned for this motion. He won MTC#1 and requested $7365 in attorney fees. Instead of actually granting him this amount, the court offset it against MTC#2 and deemed both fees paid (AR BS 191:9-14).

Upon being served with the order, Eugene noticed two factual errors:

- The motion was actually filed on 04/08/2021 (1 CT 170), not "February 26, 2021". This was before the deadline of 04/15/2021.

- Filed copy of "instant motion, including the date, time, and place of the hearing" was not available until 04/24/2021 (AR BS 190:23).

Eugene filed a motion for reconsideration pointing out these factual errors (AR BS 189-192). It appeared that the court used the dates related to MTC#1 and ignored Eugene's Reply declaration which contained the correct Timeline of Events (1 CT 246-247).

Both the RFO and Proof of Service were electronically filed on 1/6/2022 but the court actually recorded a filing date of 1/14/2022 for the RFO (AR BS 183), while correctly filing PoS on 01/06/2014 (1 CT 267). This motion was denied because:

"Husband has not alleged any 'new or different facts, circumstances, or law'. Moreover, this motion is untimely."
(AR BS 184)

Eugene was subsequently sanctioned for filing the motion for reconsideration. Interestingly, Ekaterina's responsive declaration in opposition was filed on 01/13/2022 – a day before Eugene's RFO was filed by the court.

NEW TRIAL

After receiving the 04/08/2022 Order, Eugene filed a motion for new trial (3 CT 712-723) over the issue of omitted assets: this ruling contradicted both the evidence and the judge's own tentative ruling which she announced just before trial. The motion asked the court to either grant a hearing on this issue or, in the alternative, to act sua sponte to correct the error.

Eugene's attorney electronically filed this motion on 04/29/2022. Memorandum of Points & Authorities and Proof of Service were accepted on the same day, but Eugene's declaration was inexplicably rejected with a comment saying that it must be filed on paper (N 3:3-10). This contradicted Santa Clara county rules which **mandate** electronic filing for parties represented by counsel (N 23:7-8). Eugene's attorney complied with the request and resubmitted the RFO on paper on 03/05/2022, together with a cover sheet explaining that it should be stamped 04/29/2022 (N 3:11-21). The court nevertheless stamped it 05/20/2022 (3 CT 712), after yet another inexplicable 3 week delay.

The court granted a hearing on this motion and set the hearing date to 06/08/2022 – one day after the deadline to file notice of appeal (3 CT 712). It was then continued to 06/21/2022. At the hearing, the court denied the RFO on the basis that it was "*untimely submitted to Court*" (N 27). Eugene's attorney filed an extensive legal argument explaining why the RFO was, in fact, submitted timely as a matter of law (N 21-25). The court ignored it and also ignored the alternative request to act sua sponte.

MISSING RECORD

Upon receiving the appeal record from the trial court, Eugene realized that some of the most important documents that were previously designated were missing. For example, Eugene's 07/06/2021 responsive declaration which debunks Ekaterina's omitted assets claims (AR BS 91-178) was missing and instead the trial court included 15 pages of forms (1 CT 251-266) filed on the same day. All trial exhibits were also missing. Eugene was forced to file a motion to augment the record. This consumed even more of his limited resources and caused yet another delay. This motion was

eventually granted, but not with respect to any documents filed after 04/08/2022. However, these new documents pertain only to the motion for new trial which was heard on 06/21/2022 – long after the statutory deadline to file notice of appeal. If this hearing had occurred before the deadline, these documents could have been included in the original designation of record.

At this time, Eugene is in a dire financial situation. He has lost his job and Ekaterina has obtained an order which allows her to seize the $60,000 – far more than Eugene has remaining. Eugene has no resources to file yet another augmentation motion. Therefore, he uploaded all the documents to https://h050115.com/. If the court chooses not to review them, "New Trial" section above can be ignored. Ekaterina's strategy appears to be to bankrupt Eugene before this case can be heard by the appeals court.

DVRO

For an encore, Ekaterina filed a Domestic Violence Restraining Order against Eugene. (3 CT 654-673). April 7, 2022 was Sofia's birthday. By that time Eugene had not seen Sofia for 1.5 years and he missed her greatly. So he took a trip to San Jose to bring her gifts (3 CT 687:15-26).

On 04/29/2022 Ekaterina filed her DVRO accusing Eugene of "emotional abuse and attempted kidnapping" (3 CT 655:24). She asked the court to deprive Eugene of his legal custody of Sofia. (3 CT 662:15). Eugene filed his responsive declaration on 05/16/2022 (3 CT 686-711). Among other things, it proved that both Ekaterina and her attorney committed perjury (3 CT 690:7-9). This motion was heard on 07/08/2022 and Ekaterina lost (N 29). However, Eugene once again was not awarded any attorney fees. Eugene hired a court reporter at his own expense for this hearing.

SUMMARY

In summary, Eugene contends that:

1. The Trial Court abused its discretion in denying Eugene's request, based on Ekaterina's fraudulent concealment of her true income, to set aside the April 21, 2020 Stipulation obligating him to pay private school tuition;
2. The Trial Court erred as a matter of law in ordering Eugene's Google stock divided "in kind" as an omitted asset, without ordering Ekaterina to reimburse Eugene for one-half the value of the stock he already paid to her, resulting in an unequal division of the community estate in violation of Family Code §2550; and
3. The Trial Court abused its discretion in awarding $60,000 in sanctions to Ekaterina under Family Code §271.
4. Several times the Trial court caused an inexplicable delay and then denied the motion for not being timely.

Eugene timely appealed from the Findings and Order After Hearing of March 8 and 9, 2022 (filed April 8, 2022), on June 3, 2022. (3 CT 739-768).

STATEMENT OF APPEALABILITY

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

Code of Civil Procedure §904.1(a)(2) provides that an appeal may be taken from an order made after a judgment made appealable by *§904.1(a)(1).* The judgment contemplated by this statute is "one final

judgment" in an action, which in effect ends the suit in the court in which it was entered and finally determines the rights of the parties in relation to the matter in controversy. (*In re Marriage of Garcia* (2017) 13 Cal.App.5th 1334, 1342). A judgment or order is final when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined. (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1216, citing *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304).

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

Here, the *Findings and Order After Hearing* of March 8 and March 9, 2022 (filed April 8, 2022), is a post-judgment order that is final and leaves nothing to be done but to enforce by execution what has been determined. It also directs Eugene to pay sanctions in an amount far in excess of $5,000. The Trial Court denied Eugene's request to set aside the April 21, 2020 *Stipulation and Order*, leaving him obligated to pay one-half of Sofia's private school tuition, ordered him to transfer to Ekaterina 18 shares of Google stock, and ordered him to pay sanctions in the amount of $60,000.

STANDARDS OF REVIEW

Issue 1. A Trial Court's exercise of discretion in refusing to set aside a judgment under *Family Code §2122* is reviewed for abuse of discretion. (*In re Marriage of Varner* (1997) 55 Cal.App.4th 128, 138). Whether the facts alleged as the grounds for relief materially affected the original outcome and whether the moving party would materially benefit from the granting of the relief, a finding required under *Family Code §2121(b)* before granting relief, is also reviewed for abuse of discretion,

though the findings of fact are reviewed for substantial evidence. (*In re Marriage of Walker* (2012) 203 Cal.App.4th 137, 146).

The ultimate construction placed on a contract might call for different standards of review. (*In re Marriage of Minkin* (2017) 11 Cal.App.5th 939, 948) When no extrinsic evidence is introduced or when the competent extrinsic evidence is not in conflict, the Court of Appeal independently construes the contract. (*Id.*). When the competent extrinsic evidence is in conflict and thus requires resolution of credibility issues, any reasonable construction will be upheld if it is supported by substantial evidence. (*Id.*).

Issue 2. Questions of law, including application and interpretation of statutes such as *Family Code §2550* concerning the Trial Court's duty to divide the community estate equally, are reviewed de novo. (*Coker v. JPMorgan Chase Bank, N.A.* (2016) 62 Cal.4th 667, 674; *In re Marriage of Huntley* (2017) 10 Cal.App.5th 1053, 1058).

A Court of Appeal reviews factual findings of a Trial Court for substantial evidence, examining the evidence in the light most favorable to the prevailing party. (*In re Marriage of Rossi* (2001) 90 Cal.App.4th 34, 40; *In re Marriage of Honer* (2015) 236 Cal.App.4th 687, 701-702). Thus, whether an asset was actually litigated and divided in a previous proceeding, and therefore not an omitted asset under *Family Code §2556*, should be reviewed pursuant to the substantial evidence standard.

If the Trial Court determines an asset was omitted or unadjudicated under *Family Code §2556*, the Trial Court shall equally divide the omitted or unadjudicated community asset, unless the Trial Court finds upon good cause shown that the interests of justice require an unequal division of the asset. (*Fam. Code §2556*). Whether good cause exists, is reviewed for abuse of discretion. (*In re Marriage of Stupp & Schilders* (2017) 11

Cal.App.5th 907, 912; *In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 563).

Issue 3. A sanctions order under *Family Code §271* is also reviewed for abuse of discretion. (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1225; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 828). Accordingly, a Court of Appeal will overturn such an order only if, considering all of the evidence viewed most favorably in its support and indulging all reasonable inferences in its favor, no judge could reasonably make the order.

The findings of fact that form the basis for an award of sanctions under *Family Code §271* are reviewed pursuant to the substantial evidence standard. (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1479).

ARGUMENT

1. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING EUGENE'S REQUEST, BASED ON EKATERINA'S FRAUDULENT CONCEALMENT OF HER TRUE INCOME, TO SET ASIDE THE APRIL 21, 2020 *STIPULATION AND ORDER* OBLIGATING HIM TO PAY PRIVATE SCHOOL TUITION BECAUSE IT FOUND EUGENE WAS ALREADY OBLIGATED TO PAY THE TUITION UNDER THE NOVEMBER 18, 2019 *JUDGMENT OF DISSOLUTION.*

The grounds and time limits for a motion to set aside a judgment, or any part thereof, include actual fraud where the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding. (*Fam. Code §2122(a)*). A motion based on fraud shall be brought within one year after the date the moving party discovered or should have discovered the fraud. (*Id.*).

Here, Eugene contends that Ekaterina fraudulently concealed her true income while negotiating the April 21, 2020 *Stipulation and Order*.

She failed to disclose that she started a new job in February 2020 and that her income increased from $4,389 per month to $11,250 per month. The Trial Court found that she knowingly allowed an incorrect figure to be used in the child support calculations. That instead of disclosing the income from her new job, she included language that neither party verified the other party's income and allowed Eugene to believe her income had remained the same despite it having almost tripled. Thus, the Trial Court found that with regard to child support, Ekaterina's failure to disclose her actual income is grounds for relief which materially affected the April 21, 2020 *Stipulation and Order* and that Eugene would materially benefit from the granting of the relief.

Eugene contends that for these same reasons, the Trial Court abused its discretion in denying his request to also set aside the portion of the *Stipulation and Order* obligating him to pay Sofia's private school tuition. He contends he is not obligated under the *Judgment* to pay private school tuition and only agreed in the *Stipulation and Order* to do so, in exchange for Ekaterina's agreement to terminate spousal support. Yet, her agreement to terminate spousal support was not adequate consideration in light of her actual increased salary. Moreover, even if Eugene is obligated to pay tuition under the *Judgment*, he could have bargained for a termination or modification of the provisions in light of Ekaterina's increased salary and thus would have materially benefited from the granting of the relief.

A. There was no substantial evidence to support the Trial Court's finding that Eugene was already obligated under the November 18, 2019 *Judgment of Dissolution* to pay private school tuition.

The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties and if the contractual language is clear and explicit, it governs. (*In re Marriage of Hibbard* (2013) 212

Cal.App.4th 1007, 1013). "Even if a contract appears unambiguous on its face, a latent ambiguity may be exposed by extrinsic evidence which reveals more than one possible meaning to which the language of the contract is yet reasonably susceptible." (*Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1351)

When the language of a contract is ambiguous, it is the duty of the Trial Court to resolve the ambiguity by taking into account all facts, circumstances, and conditions surrounding the execution of the contract. (*In re Marriage of Factor* (2013) 212 Cal.App.4th 967, 979). If extrinsic evidence is admitted to interpret an ambiguous contract but that evidence is undisputed and the parties draw conflicting inferences, a reviewing court independently draws inferences and interprets the contract. (*Id.*).

The Present Case. Here, the language in the *Judgment of Dissolution* that the parties "will each be responsible for payment of one-half (1/2) of all educational costs incurred on behalf of SOFIA (through high school graduation for SOFIA)," is ambiguous and unenforceable. Eugene contends that if "all educational costs" was intended to mean private school tuition, then the detailed terms and conditions of the April 21, 2020 *Stipulation and Order* would be superfluous.

The *Judgment* could have, but did not, specify what school Sofia would attend or whether "educational costs" includes private school tuition, as opposed to only books, field trips, uniforms, school supplies, or other. Though Ekaterina contends Sofia was enrolled at the Monticello Academy for the 2019-2020 school year, Eugene contends that the parties agreed during negotiations of the *Judgment* to send Sofia to public school, Country Lane Elementary School, because private school was no longer affordable.

Moreover, had the *Judgment* already obligated Eugene to pay one-half of Sofia's tuition, the detailed terms and conditions of the April 21, 2020 *Stipulation and Order* would have been unnecessary. Instead, the

Stipulation and Order provides in detail that Sofia shall continue to attend Monticello Academy through 8th grade with no mention of high school, that Eugene would reimburse Ekaterina for the 2019-2020 tuition, and that going forward they would each pay their one-half share of tuition directly to the school.

The *Stipulation and Order* also provides that "[n]either party shall incur any additional education expenses on Sofia's behalf without the other party's advance written consent, and consent shall not be unreasonably withheld," suggesting that the "all educational costs" language in the *Judgment* is not intended to be an all-inclusive term and there was never a mutual agreement on what was to be included. Eugene thus contends that he was not obligated under the *Judgment of Dissolution* to pay for Sofia's private school tuition.

B. Even if Eugene was already obligated to pay private school tuition under the *Judgment of Dissolution*, the Trial Court nevertheless abused its discretion in failing to find that Eugene would have materially benefitted from his requested relief.

In a set aside proceeding, before granting relief, the Trial Court shall find that the facts alleged as the grounds for relief materially affected the original outcome and that the moving party would materially benefit from the granting of relief. (*Fam. Code §2121(b)*; *In re Marriage of Walker* (2012) 203 Cal.App.4th 137, 146). Similarly, on a request to relieve a party from a support order, before granting relief, the Trial Court shall find that the facts alleged as the grounds for relief materially affected the original order and that the moving party would materially benefit from the granting of relief. (*Fam. Code §3690(b)*).

Support orders may be modified or terminated at any time as the Trial Court determines necessary. (*Fam. Code §3651(a)*). Specifically with regard to child support orders, the Trial Court always has the power to

modify an existing child support order, notwithstanding the parties' agreement to the contrary. (*In re Marriage of Alter* (2009) 171 Cal.App.4th 718, 722). Costs related to the educational or other special needs of the children, such as tuition payments, are characterized as additional child support under *Family Code §4062(b)* and these "add-ons" are also modifiable. (*Alter* at 738).

The Present Case. Here, Eugene contends that even if he was already obligated to pay private school tuition under the *Judgment of Dissolution*, the Trial Court nevertheless abused its discretion in failing to find that he would have materially benefited from his requested relief. He contends that he only signed the *Stipulation and Order* obligating him to continue paying tuition based on Ekaterina's fraudulent concealment of her true income, which led him to believe her agreement to terminate spousal support was adequate consideration for his agreement to reimburse her for past tuition and to pay tuition going forward.

The Trial Court's finding that it has no way to analyze the spousal support termination is irrelevant and even if the *Judgment* already obligated him to pay tuition, Eugene's argument is that had he been made aware of Ekaterina's true income, he would not have considered the termination of spousal support to be adequate consideration. It follows that he would have instead bargained for a termination or modification of the tuition provisions, which are modifiable support add-ons, instead of agreeing to continue paying. He would have materially benefited from his requested relief.

Additionally, Eugene was forced to agree to a **bidirectional** termination of spousal support. Eugene is currently unemployed but *Stipulation and Order* prevents him from being able to claim spousal support from Ekaterina. Eugene would materially benefit from his requested relief, namely set aside of *Stipulation and Order* in its entirety.

2. THE TRIAL COURT ERRED AS A MATTER OF LAW IN ORDERING EUGENE'S GOOGLE STOCK DIVIDED "IN KIND" AS AN OMITTED ASSET, WITHOUT ORDERING EKATERINA TO REIMBURSE EUGENE FOR ONE-HALF THE VALUE OF THE STOCK HE ALREADY PAID TO HER, RESULTING IN AN UNEQUAL DIVISION OF THE COMMUNITY ESTATE IN VIOLATION OF *FAMILY CODE §2550.*

Family Code §2550 requires that the Trial Court divide the community estate of the parties equally. The Trial Court has no discretion to divide the community estate other than equally and if it does so, the Trial Court errs as a matter of law. (*In re Marriage of Peterson* (2016) 243 Cal.App.4th 923, 937).

Here, Eugene contends that the Google stock was not an omitted asset, as he disclosed the stock to Ekaterina on April 8, 2019 and paid to Ekaterina one-half the value of the stock in June and July 2019. Moreover, by ordering division of the Google stock "in kind," without reimbursement to Eugene of the amount already paid to Ekaterina, the Trial Court divided the community estate unequally and in violation of *Family Code §2550.* Ekaterina received the dollar value of the Google stock by way of cash and other stocks from Eugene, and was then granted the Google stock "in kind," resulting in the Google stock being double-counted and an inequitable windfall to Ekaterina.

A. There was no substantial evidence to show that the Google stock was an omitted asset when it was not referenced in the *Judgment of Dissolution* but was actually litigated and divided.

The Trial Court has continuing jurisdiction to award community estate assets to the parties that have not been previously adjudicated by a judgment in the proceeding. (*Fam. Code §2556*). " ' "The mere mention of an asset in the judgment is not controlling. [Citation.] '[T]he crucial question is whether the [community property] benefits were actually

litigated and divided in the previous proceeding.""" (*In re Marriage of Huntley* (2017) 10 Cal.App.5th 1053, 1061, citing *In re Marriage of Georgiou & Leslie* (2013) 218 Cal.App.4th 561, 575, quoting *In re Marriage of Thorne & Raccina* (2012) 203 Cal.App.4th 492, 501). There does not need to be an exhaustive adversarial hearing or oral testimony, though there must be a showing that the evidence was not restricted. (*Barker v. Hull* (1987) 191 Cal.App.3d 221, 226).

In dividing community property, each asset need not be divided in half, and the Trial Court can award different assets to each party. (*In re Marriage of Barnert* (1978) 85 Cal.App.3d 413, 421). The Trial Court has discretion in deciding whether to divide assets, such as stock, in kind. (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 603). Other methods of division include asset distribution or cash out, and sale and division of proceeds. (*In re Marriage of Cream* (1993) 13 Cal.App.4th 81, 88).

The Present Case. Here, Eugene contends that his Google stock was not an omitted asset. He acknowledges the Google stock was not referenced in the parties' *Judgment of Dissolution*, but the mere mention of an asset in a judgment is not controlling. In his April 8, 2019 email to Ekaterina, he candidly listed the community property Schwab equity awards account of $43,457.40, with the disclosure that his "Google stock vests here." His *Schedule of Assets and Debts* listed the combined value of both his Schwab investment account #6350 and Schwab Google stock account.

The parties acknowledged in their *Judgment of Dissolution* that they were advised to obtain professional appraisals of community assets including brokerage accounts and were given reasonable opportunity to do so. They further acknowledged that they had a right to discovery and by failure to engage in discovery either one may not fully appreciate the full extent of the assets and debts of the parties.

Moreover, despite omission of the Google stock and Schwab Google stock account from the *Judgment of Dissolution*, in good faith Eugene transferred to Ekaterina the value of $200,745.39 in stocks (VCAIX, FB, IAU, AT&T) and cash to cover both Schwab accounts and the equalizing payment for the Tarzana residence. Ekaterina knew about the Google stock and never objected to this transfer of other stocks and cash. Eugene thus contends the Google stock was actually litigated and divided, and not an omitted asset.

B. Even if the Google stock is an omitted asset because it was not mentioned in the *Judgment of Dissolution*, the Trial Court abused its discretion in failing to find good cause that the interests of justice require an unequal division of the stock.

In a proceeding to obtain adjudication of any community asset omitted or not adjudicated by a judgment, the Trial Court shall equally divide the omitted or unadjudicated community asset, unless the Trial Court finds upon good cause shown that the interests of justice require an unequal division of the asset. (*Fam. Code §2556*). " '[T]he essential ingredients of ["good cause" are] reasonable grounds and good faith.'" (*In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 558). "Good cause" as a standard is relative and depends on all the circumstances. (*Tanguilig v. Valdez* (2019) 36 Cal.App.5th 514, 527). The Trial Court must utilize common sense based upon the totality of the circumstances, which includes the purpose underlying the statutory scheme. (*Id.*). "Good cause" includes reasons that are fair, honest, in good faith, not trivial, arbitrary, capricious, or pretextual." (*Id.*).

The Present Case. Here, there is good cause showing why the interests of justice require an unequal division of the Google stock. At a minimum, if the Trial Court was intent on dividing the Google stock "in kind," the Trial Court should have ordered Ekaterina to reimburse to

Eugene the payment he already made to her for the value of the stock. In June and July 2019, Eugene transferred to Ekaterina sufficient stock (VCAIX, FB, IAU, AT&T) and cash equal to one-half the value of the Google stock, which again was disclosed to her in his April 8, 2019 email.

Ekaterina does not deny receiving the stocks and cash. Nor does she contest the amounts received. Moreover, she did not file her motion for adjudication of the Google stock until March 8, 2021, over a year and a half after her receipt of the stocks and cash without any prior objection. She made no attempt to meet and confer with Eugene before filing her motion. Her motion also conveniently comes on the heels of Eugene's August 17, 2020 motion to set aside the April 21, 20202 *Stipulation and Order*, suggesting she filed her motion and several other motions purely in retaliation.

Without an unequal division of the Google stock or, at a minimum, reimbursement to Eugene of amounts previously paid, the Trial Court's order results in the Google stock being double-counted and an inequitable windfall to Ekaterina. This contradicts the purpose underlying *Family Code §§2550 and 2556* and must be reversed and remanded on appeal.

3. THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING $60,000 IN SANCTIONS TO EKATERINA UNDER *FAMILY CODE §271.*

The Trial Court may base an award of attorney's fees and costs on the extent to which the conduct of each party furthers or frustrates the policy of the law to promote settlement of litigation and to reduce the cost of litigation by encouraging cooperation between the parties. (*Fam. Code §271*).

Here, Eugene contends that the Trial Court abused its discretion in sanctioning him $60,000 payable to Ekaterina. He contends there was no

substantial evidence to show that his conduct warranted an award of $60,000 to Ekaterina, or that the $60,000 awarded to Ekaterina was tethered to her actual fees and costs incurred as a result of his alleged conduct. Moreover, Eugene contends that the Trial Court abused its discretion in failing to sanction Ekaterina for her own improper conduct.

A. There was no substantial evidence to show that Eugene's conduct frustrated the policy of the law to promote settlement and reduce the cost of litigation.

"Due process includes the right to notice and to be heard." (*In re R.F.* (2021) 71 Cal.App.5th 459, 470). In *Webber v. Webber* (1948) 33 Cal.2d 153, where the Court of Appeal reversed an interlocutory judgment denying the wife's request for spousal support because the Trial Court's bias and prejudice deprived her of her day in court, the Court of Appeal held that both parties are entitled to a full and fair hearing on all the issues made by the pleadings. (*Webber* at 165).

The Present Case. Here, Eugene was entitled to a full and fair hearing on the issues raised in the parties' pleadings. There was no showing that his failure to settle the case at the two Mandatory Settlement Conferences or Judicially Supervised Settlement Conference, was frivolous or in bad faith. The fact that the case did not settle and proceeded to trial, is not sanctionable.

Although the Trial Court found that Eugene did not divide the Google stock "in kind" and that he justifies an unequal division by arguing that the *Judgment of Dissolution* did not equally divide the parties' cars, he paid to Ekateria the value of her one-half share of the stock in good faith. She neither objected nor disputed the amount she received until over a year and a half later in her motion. Moreover, per his March 24, 2022 *Closing Argument Statement*, Eugene's contention with regard to the parties' cars, was in relation to the Partners FCU account that the Trial Court found was

not an omitted asset. Contrary to what the Trial Court stated, Eugene did not take it upon himself to remedy anything.

Finally, although the Trial Court sanctioned Eugene for refusing to recuse his counsel, his objections were valid and made in good faith. Mr. Camenzind had already been representing Eugene for nine months, incurring substantial fees on this case, before Ekaterina filed her motion to recuse him on the basis that he leases office space from Mr. Whitfield with whom Ekaterina consulted in 2018 and 2019. Despite sharing a suite with Mr. Whitfield and working as "Of Counsel" for him from time to time, Mr. Camenzind has his own law office and employees, and was never informed that Mr. Whitfield consulted with Ekaterina. Mr. Whitfield does not recall who Ekaterina is and has never met Eugene.

B. There was no substantial evidence to show that the fees awarded to Ekaterina were tethered to actual attorney's fees and costs she incurred for Eugene's alleged improper conduct.

In *Sagonowsky v. Kekoa* (2016) 6 Cal.App.5th 1142, where the wife contended that the amount of sanctions awarded was excessive because it was untethered to attorney fees and costs incurred by the husband, the Court of Appeal agreed. (*Sagonowky* at 1153). The Court of Appeal held that the sanctions available under *Family Code §271* are limited to attorney fees and costs. (*Id.*). The party seeking sanctions need not establish with great precision an amount directly caused by the improper conduct because the misconduct may increase attorney fees in ways that are indirect and difficult to prove. (*Sagonowsky* at 1155-1156).

The Present Case. Even assuming Eugene engaged in sanctionable conduct, there was no substantial evidence to show that the fees awarded to Ekaterina were tethered to actual fees and costs incurred because of Eugene's improper conduct. While Ekaterina need not establish with great

precision that the amount was directly caused by Eugene's improper conduct, Eugene contends that some of the amounts were not even indirectly caused by his improper conduct and were entirely unrelated thereto.

In her attorney's fees declaration, Ekaterina claims to have incurred a total of $25,570 on settlement conferences and discussions, issues concerning Sofia's health insurance coverage, Eugene's life insurance policy, having to continue the trial date, Eugene's untimely motion for reconsideration, having to recuse Mr. Camenzind, and division of the E*Trade Roth IRA. The Trial Court found these issues as reasons to sanction Eugene.

Yet, the Trial Court inexplicably sanctioned Eugene for over double that amount.

C. The Trial Court abused its discretion in failing to sanction Ekaterina for her improper conduct, which would have offset the fees payable by Eugene.

Eugene contends that the Trial Court abused its discretion in failing to sanction Ekaterina for her own improper conduct. In addition to not prevailing on her request to set aside the Tarzana residence provisions and Partners FCU account, she filed a frivolous RFO to reallocate fees for a Brief Focused Assessment that was also denied.

The Trial Court found that Ekaterina failed to disclose her increased income which resulted in Eugene's RFO to set aside, which he prevailed on in regards to child support. The Trial Court noted that instead of disclosing the income from her new job, Ekaterina included language that neither party verified the other's income and allowed Eugene to believe her income had remained the same despite it having almost tripled. She agreed to guideline child support, thus agreeing to use her actual income, but

intentionally failed to do so to gain an unfair advantage. The Trial Court's refusal to sanction Ekaterina for her fraudulent conduct is arbitrary and capricious.

Ekaterina should also be sanctioned for her own failure to promote settlement of litigation. There is the fact that she filed several successive motions following Eugene's August 17, 2020 RFO to set aside, seemingly in retaliation for him filing his RFO.

In September 2020 she filed her RFO seeking to modify child support, alleging that Eugene failed to engage in settlement discussions. In reality, Eugene responded a mere one week after Ekaterina informed him of her changed circumstance, he agreed to revise her income, he agreed to a reduced timeshare for purposes of settlement, and after the December 2020 hearing the Trial Court adopted his proposed Dissomaster that Ekaterina rebuffed.

Ekaterina then falsely alleged in her request for sanctions and attorney's fees declaration that Eugene's failure to cooperate with this child support matter led to child support increasing in a subsequent, unrelated DCSS action nearly a year later in November 2021. Ekaterina intentionally conflated the two child support proceedings, without a showing of improper conduct by Eugene, in an effort to inflate her request for fees and sanctions.

After her September 2020 RFO, Ekaterina then filed her March 8, 2021 RFO concerning omitted assets without making any attempt to meet and confer with Eugene before filing. She followed with her March 16, 2021 RFO to recuse Eugene's attorney. The Trial Court's refusal to acknowledge Ekaterina's litigious conduct, including the filing of one motion after another, is also arbitrary and capricious.

CONCLUSION

In conclusion, Eugene contends that:

(1) The Trial Court abused its discretion in denying Eugene's request, based on Ekaterina's fraudulent concealment of her true income, to set aside the April 21, 2020 *Stipulation and Order* obligating him to pay private school tuition because it found Eugene was already obligated to pay the tuition under the November 18, 2019 *Judgment of Dissolution*;

(2) The Trial Court erred as a matter of law in ordering Eugene's Google stock divided "in kind" as an omitted asset, without ordering Ekaterina to reimburse Eugene for one-half the value of the stock he already paid to her, resulting in an unequal division of the community estate in violation of *Family Code §2550*; and

(3) The Trial Court abused its discretion in awarding $60,000 in sanctions to Ekaterina under *Family Code §271.*

Though the Trial Court found Ekaterina's fraudulent concealment of her true income as grounds to set aside the child support provision in the April 2020 *Stipulation and Order*, it incongruently declined to find that as grounds to set aside the private school tuition provisions because it found Eugene was already obligated to pay tuition under the *Judgment* and thus would not have materially benefited from the requested relief.

Yet, the tuition provision under the *Judgment* was ambiguous and had the *Judgment* already obligated Eugene to pay one-half of Sofia's tuition, the detailed terms and conditions of the April 21, 2020 *Stipulation and Order* would have been unnecessary. The *Stipulation and Order* also provides that "[n]either party shall incur any additional education expenses on Sofia's behalf without the other party's advance written consent," suggesting that the language in the *Judgment* is not intended to be all

inclusive and there was never a mutual agreement on what was to be included.

Moreover, even if the *Judgment* already obligated him to pay tuition, Eugene contends that had he been made aware of Ekaterina's true income, he would not have considered the termination of spousal support to be adequate consideration and could have instead bargained for a termination or modification of the tuition provisions, which are modifiable support addons.

The Google stock was not an omitted asset because it was actually litigated and divided. Eugene disclosed the Schwab Google stock account in his April 8, 2019 email to Ekaterina, and included the value in his *Schedule of Assets and Debts*. Ekaterina never asked for additional information, and acknowledged in the *Judgment* her right to obtain an appraisal of brokerage accounts and to conduct discovery.

In June and July 2019, Eugene transferred to Ekaterina stock and cash in the total amount of $200,745.39, to cover her one-half share in both the Schwab investment account #6350 and the Schwab Google stock account. Ekaterina never objected and waited over a year and a half to file her motion to adjudicate omitted assets with any attempt to meet and confer. By ordering the Google stock to be equally divided "in kind" as an omitted asset, without ordering Ekaterina to reimburse Eugene for one-half the value of the stock he already paid to her, the Trial Court violated *Family Code §2550.*

A review of the Trial Court's April 8, 2022 FOAH shows that the Trial Court focused heavily on Eugene's alleged improper conduct while essentially dismissing Ekaterina's fraudulent concealment of her true income. The Trial Court acted arbitrarily and capriciously by sanctioning only Eugene, when Ekaterina engaged in arguably the most egregious of all improper conduct alleged by both parties in concealing her true income.

A review of the record shows that Ekaterina also contributed to the protracted litigation by filing successive motions against Eugene after he filed his RFO to set aside the April 2020 *Stipulation and Order*, seemingly in retaliation, and that she raised numerous issues unrelated to his alleged improper conduct that she did not prevail or agree to settle on.

For the foregoing reasons, in the interest of justice, Eugene respectfully requests that the Court of Appeal reverse and remand the Trial Court's decision.

Respectfully submitted,

Dated: 11/28/2022,

E. Strulyov

Eugene Strulyov
Appellant in Pro Per

CERTIFICATE OF COMPLIANCE

Pursuant to *Rule 8.204(c)* of the *California Rules of Court*, I hereby certify that this brief contains 11,711 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Respectfully submitted,

Dated: 11/28, 2022

E. Strulyov

Eugene Strulyov
Appellant in Pro Per

PROOF OF SERVICE

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action. My business address is 2055 Junction Avenue, Suite 125, San Jose, CA 95131

On November 29, 2022, I served the "Appellant's Opening Brief" by email on all parties to this action, addressed as follows:

Ekaterina Strulyov
c/o Stephanie J. Finelli
Law Office of Stephanie J. Finelli
3110 S. Street
Sacramento, CA 95816
steph@finellilaw.com

Court of Appeal
Sixth Appellate District
333 W. Santa Clara Street, #1060
San Jose, CA 95113
TrueFiling

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 29th of November 2022, in San Jose, California.

Dated: November 29, 2022

Maria Ciravolo