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 REPLY BRIEF

EUGENE STRULYOV
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Introduction

Ekaterina attempts to use sophistry and misdirection in her Respondent's Brief. But there is one crucial thing missing from it: **numbers**. Whether or not Google stock is an omitted asset ultimately comes down to one thing: numbers. And numbers are unambiguous.

Corrections to Respondent's Statement of the Case

Child Support Litigation

While my opposition did express doubts about Ekaterina's sudden decrease in income – only a month after I filed my motion to set aside Stipulation – I nevertheless *agreed* to adjust child support as a result of this reduction (1CT 78:20-25). Ekaterina chose to litigate two other issues which she ultimately lost:

- She demanded to impute $2400/month in non-taxable income to me because I was living with roommates (1CT 68).
- She improperly calculated my custody percentage as "8.5%", in violation of Santa Clara County rules (1CT 68).

(AOB 9-10). I submitted a dissomaster which adjusted child support from $1189/month to $1268/month (1CT 84-85). Trial Court adopted this dissomaster but did not award me any attorney fees (1CT 98).

Removal of Eugene's Attorney

Ekaterina put "Katia's motion for disqualification" and "Katia's motion for omitted assets" sections out of chronological order in her Statement of the Case (RB 11-12). However, she does not deny the following:

- She secretly filed – but did not serve – her omitted assets motion on March 8[1] 2021 (1CT 102). The hearing on this motion was initially scheduled for 7/21/2021. She took advantage of Family Court rules which allow a litigant to serve the motion only 16 court-days before the hearing.
- She immediately demanded recusal of my attorney and filed the recusal motion on March 16 2021 (ARp 1). By that point Mr. Camenzind had been representing me for over 8 months and appeared at multiple hearings on this matter (1CT 143:23-24).
- She never consulted with Mr. Camenzind. The attorney she claimed to have consulted, Travis Whitfield, has never met me (1CT 142:17). Mr. Whitfield has no memory of meeting with Ekaterina, has no files related to Ekaterina, and never discussed her matter with Mr. Camenzind. (1CT 142:11-15).

(AOB 11-12). Ekaterina simply asserts that:

1. Recusal of Mr. Camenzind was reasonable under these circumstances.
2. Trial Court did not abuse its discretion when it sanctioned me for opposing the recusal of my attorney.

Statement of Decision

SoD was very carefully worded and does not contain many of the findings of the subsequent FOAH[2]. It also states things that were never argued. For example:

- The fact that "*there were no attachments, statements or required backup documentation attached to their Schedules of Assets and Debts*" (2CT 441) from

[1] The symbolism of this particular date cannot be lost on any feminist. Trial was also held on March 8.

[2] Findings and Order After Hearing

either side was undisputed. Judgment contains mutual waiver of discovery and acknowledgement that both parties "*have each been given reasonable opportunity and time to obtain professional appraisals of the current fair market value of their community property assets*" and "*have been expressly advised to obtain such professional appraisals prior to executing this Stipulated Judgment*" (1CT 17-18). Ekaterina could have requested the supporting documentation but chose not to. And so did I. This finding is also non-sequitur: financial statements corroborating the asset values reported in Schedule of Assets and Debts were presented as evidence at the trial.

- The fact that Ekaterina did not receive any Google stock was undisputed. Trial Court's finding that "*it appears as though Ekaterina did not receive any Google stock*" (2CT 441) simply states what was already acknowledged in prior pleadings (ARp 92-93; 96-98) and the trial brief (ARp 236-239). SoD quotes verbatim from my emails which show that Ekaterina received other stocks and cash of equal value (2CT 441-442).
- Importantly, SoD **does not** contain a finding that "*Eugene takes the position that he may divide assets outside of the terms of the Judgment*" and that "*he justifies an unequal division by arguing that the Judgment did not equally divide the parties' cars*" – this was added in FOAH (3CT 615).
- SoD lists precisely eight reasons for sanctioning Eugene (2CT 447-448). Nothing in the record suggests that these are merely "examples" as Ekaterina asserts. See **Table 3** below.
- SoD does not deny my request for attorney fees and sanctions.

New Trial

Ekaterina does not deny the following:

- My attorney electronically filed – and served – the RFO[3] on April 29 2022, together with Memorandum of Points and Authorities and Proof of Service. Ekaterina admitted to that in her opposition. (3CT 727:18-25)
- Trial Court properly filed the P&A Memorandum and PoS on April 29, but sat on the RFO for 3 weeks and finally "filed it" on May 20 2022 (3CT 712).
- Trial Court did not consider the merits of this motion and instead denied it on the basis that it was "untimely submitted to Court" (N 27).

(AOB 29-30). Ekaterina also points out – correctly – that she filed her opposition to this motion on May 9 2022 – 11 days before my RFO was "filed" by Trial Court. Did she travel back in time?

I hired a court reporter at my own expense for this hearing. Trial Court could have, but chose not to, address the issue of **numbers** on the record. This RFO specifically raises the following questions:

"Let's consider another scenario: What if, instead of a combination of cash + stocks, I sold the stocks and gave Ekaterina $200,947.79 all in cash? Would assets still be "omitted"? And if not, how is this different from the scenario that actually occurred?" (3CT 735:1-3)

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

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[3] Request For Order

All references have been properly cited

It strains credulity to believe that Ms. Finelli, an experienced attorney, would be unable to discern the page numbering in AOB and make such a disingenuous argument (RB 24), particularly since abbreviations have already been explained in footnotes.

AR = Augmented Record
BS = Bates Stamp

Ms. Finelli refers to the very same Augmented Record as "Aug". I am not an attorney and I should be afforded some leeway if this is not the right nomenclature. Nevertheless, page numbers (and even line numbers, where possible) have been properly cited in accordance with Cal. Rules of Court, Rule 8.204(a)(1)(C).

All of these documents have been attached with my Motion to Augment the Record which was filed on 09/28/2022 and granted on 10/24/2022. Exhibits start on pdf page 9 of that motion and are stamped 1-290. Pleadings/Orders start on pdf page 299 and are stamped 1-245. The fact that these documents have *also* been uploaded to my website is irrelevant.

It is unclear why the stamp numbers restart. To improve clarity I will continue to use **AR** for exhibits but use **ARp** for pleadings/orders.

The only documents that are truly not part of the record at this time are those designated N. They are related to the Motion for New Trial which was heard on 06/21/2022 – long after the statutory deadline to file Notice of Appeal. I submit that in the interests of justice these documents should be admitted (http://h050115.com/new_docs.pdf). Otherwise it creates a loophole which allows Family Court to blatantly violate the law and then hide the evidence from the Court of Appeal. As Ms. Finelli already informed me, Motion for

New Trial is not independently appealable but is reviewable when the underlying matter is appealed. Regardless, the only pertinent facts from these documents are those set out in the New Trial section, which Ms. Finelli does not deny.

Also, contrary to Ms. Finelli's assertion, my attorney electronically filed Notice Designating Record on Appeal on June 13 2022, as was required to comply with the 10-day deadline (3CT 772). However, on June 16 Trial Court issued a default notice claiming that the required fees were not paid (they were) and that notice designating reporter's transcript was not filed (I elected to proceed without reporter's transcript). After receiving additional communication from my attorney, Trial Court finally filed the Notice on June 30 (3CT 769).

Ekaterina's reliance on Foust is misplaced

Ekaterina urges the Court of Appeal to refuse to consider the merits of this case because there is no reporter's transcript (RB 22-24). In support of this, she cites Foust vs. San Jose Construction Company, Inc.

This attempt falls short. In Foust, "*The record consists solely of a partial clerk's transcript which includes the following documents: Foust's initial complaint; his amended complaint; the statement of decision; the judgment; and two of the exhibits introduced at trial*" (Foust v. San Jose Construction Co., Inc. (2011) 198 Cal.App.4th at pp. 186-187). Moreover, the issue being appealed was the credibility of a witness, which would necessitate the review of the oral testimony: "*Foust seems to want this court to reevaluate his credibility and reweigh the evidence presented below, but we can do neither.*" The court further noted that "*Without a reporter's transcript* ***or the exhibits presented at trial*** *we cannot undertake a meaningful review of Foust's argument on appeal.*" (emphasis added).

In the present case, Trial Court made a **mathematical error**. Witness testimony is irrelevant to the calculation. Numbers come from the evidence presented. Record includes **all** evidence presented at trial, including Ekaterina's own evidence.

The California Rules of Court sensibly require a transcript only if "*an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court.*" (Rule 8.120(b).) Consistent with that standard, courts have held that no transcript is required where an appeal presents a purely legal issue subject to de novo review. Chodos v. Cole (2012) 210 Cal.App.4th 692, for example, held that the appellate court does not need the transcript of an anti-SLAPP hearing to determine whether the anti-SLAPP statute applied to the pleadings.

Ekaterina's other citations are likewise unavailing. None of those cases involve a mathematical error that is readily apparent from the evidence presented at trial. Some were missing other documents besides the reporter's transcript. For example, in Stasz v. Eisenberg the court noted that "*Some of the documents she relies on are not included in the record on appeal.*" (Stasz v. Eisenberg (2010) 190 Cal.App.4th at p.1039). Some involve completely different circumstances. For example, Maria P. v. Riles does not apply because in the present case there was no hearing on attorney fees: this matter was addressed entirely via Attorney's Fees Declarations. (Maria P. v. Riles (1987) 43 Cal.3d). All of these declarations were filed *after* the March 8-9 2022 trial and they are all part of the record.

Settled Statement would be impossible due to distortion of my testimony

As already stated in AOB, I was absolutely shocked that there was no court reporter or any kind of record. It is incredible that this is actually legal! Trial was conducted over Microsoft Teams, so video recording would be trivial.

Trial Court's findings do not accurately reflect my testimony. For example, Trial Court found 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.*" (3CT 615:9-12; RB 16).

Fortunately, Closing Argument Statement is a written document[4] and it is abundantly clear that my contention with regard to the parties' vehicles was in relation only to the PartnersFCU account which the Trial Court found was not an omitted asset and denied Ekaterina's request related thereto (2CT 434:4-17; 3CT 609:12-14). I acknowledged that the $20,000 deposit to my PartnersFCU account and $10,000 deposit to Ekaterina's Chase account were unequal and paid her $5,000 to equalize these deposits (2CT 434:4-17). This amount was de minimis compared to the total amount of assets Ekaterina received (over $200,000 in liquid assets plus $160,000 in retirement assets). Trial Court could have deemed the $5,000 paid since Ekaterina also received 100% of her car ($36,000 value), but chose not to.

As to the Google stock, my Closing Argument Statement says in the very first paragraph:

"*Respondent disclosed his Google stock to petitioner, who accepted the equal division by value. Respondent's email of 4/8/19 (Exh A bates 6) stated which of the two listed Schwab account held the Google stock. Respondent's FL-142 (Exh S bates 127) matched the total value of the two Schwab accounts in the email. The Schwab statements (Exh B bates 8, C bates 21, N bates 70) matched these values. Petitioner accepted the equal*

[4] Also, the previous paragraph is mathematically impossible.

division of Google stock by cash value (Exh J bates 54, I bates 52) Therefore, Respondent did not beach his fiduciary duty to disclose or divide the Google stock."
(2CT 433:14-17).

My Reply Closing Argument Statement further elaborates on these points (2CT 451:6-13; 452:1-15).

Note that the Closing Argument Statement refers to "breach of fiduciary duty" rather than "omitted assets". That is because Ekaterina morphed her "omitted assets" claim: she argued that all stocks should have been divided in kind rather than by value. That is also what she claimed at her deposition. Her 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?"* (2CT 444:17-18). As Trial Court noted, this stance is very different from "omitted assets" (2CT 444:20-22). Indeed, by even making this argument Ekaterina admits that Google stock was not omitted.

Trial Court also found that "*Though Eugene took a contrary position at Trial, his deposition testimony reflects his awareness at the time of Katia's move. The Court finds that Eugene was aware of Katia's decision to cohabitate, at the time of her move, as Eugene helped her hire the movers and looked at her apartment. (Deposition of Eugene Strulyov, November 5, 2021, page 38.) Eugene's position to the contrary lacks credibility.*" (3CT 604:9-13; RB 17). This, again, is not an argument that was ever made.

The issue that I brought to Trial Court's attention is that we signed the mediated Judgement on May 28 2019 – 4 days before Ekaterina moved in with her then-boyfriend (1CT 27). At no point during the mediation did Ekaterina disclose her intent to cohabitate (1CT 62). The fact that I found out about cohabitation on June 1 and "invited to tour the place" is completely irrelevant – Judgment was already signed at that point (1CT 273). This issue was addressed in my Reply Closing Argument Statement:

Petitioner committed fraud by concealment when she failed to disclose her intent to cohabitate during MSA negotiations. As a result, she gained an advantage in division of marital property to the tune of $28,000.00. She also received far more than she should have in spousal support... ***At that time Respondent let it go and did not pursue the issue.*** *However, that was not enough for Petitioner. She came back to harass him for more money and induced him to sign the 04/2020 stipulation under false pretenses. In doing so, she committed fraud by concealment yet again.*
(2CT 452:16-24, emphasis added).

In any case, this is a completely moot point. Trial Court ruled in SoD that the law does not permit retroactive modification of spousal support, prior to filing the RFO, not even in the cases of fraud by concealment:

"The Court finds that Eugene is not able to retroactively modify his support obligation to pay Spousal support without first filing a motion with the Court. Eugene testified that before the judgment was filed in November 2019, he had consulted with attorneys and knew that cohabitation can reduce his spousal support obligations, but decided not to pursue it at that time and continue paying spousal support to Katia. Knowing that Eugene is now essentially requesting to be retroactively reimbursed and awarded for his failure to properly file a motion with the court."
(2CT 446:24 - 447:3).

Note that Trial Court's finding in SoD **directly contradicts** its own finding in FOAH. (2CT 446:24 vs. 3CT 604:9)

Settled Statement is a long and complicated process. Trial Court's decision plus Ekaterina's subsequent DVRO litigation left me very short on funds. More importantly, due to inaccurate representation of my testimony, Settled Statement would be futile. My

limited resources were better spent ensuring that all exhibits are part of the appeal record. Numbers don't lie.

All numbers come from Exhibits

Ekaterina argues that there is no way to know the values of the investment accounts because there is no reporter's transcript (RB 34). This argument is patently absurd. The source for all the numbers are the financial statements that were presented as evidence at the trial. By making this argument, Ekaterina is effectively asserting that one can simply make up numbers during oral arguments without reference to any evidence. Why not then claim that the value of an account is $1,000,000 and demand $500,000 as compensation?

AOB makes references to Respondent's Exhibits B and C to show the values of the Schwab sub-accounts. Was there, perhaps, some dispute about these numbers? Did Ekaterina present any evidence that could have called these numbers into question? No. In fact, she presented **exact same** financial statements as Petitioner's Exhibits 8 and 9. Thus, Ekaterina's own evidence shows the values of the Schwab sub-accounts to be as follows:

Table 1: Schwab sub-account balances

Account	**Value**	**Petitioner's Exhibit**	**AR Bates Stamp**
Schwab-6350	153,858.47	8	203
Schwab-GOOG	49,721.86	9	213
Total Schwab	**203,580.33**		

No amount of oral arguments can overcome the fact that Ekaterina's own Exhibit 8 states in bold letters "**Account Value as of 04/30/2019: $153,858.47**"[5]. No evidence exists that could even conceivably call these numbers into question.

Determination of the values of Schwab sub-accounts is necessary in order to make conclusions about whether or not Google stock is an omitted asset. Indeed, *any* property division must necessarily consider the values of the assets being divided. FOAH is **silent** on this issue and so is Ekaterina's RB. Ekaterina simply urges the Court of Appeal not to look at the numbers. She attempts to cast doubt on the evidence she herself presented, but does not explain what the numbers should be or where they would come from if not from the financial statements. This is the epitome of obfuscation.

It is impossible to miss the discrepancy in value between "Schwab $205,620.38" in my FL-142 (1CT 119) and the actual value of Schwab-6350 (**Table 1**), which Ekaterina claims was the only account divided. Ekaterina had conducted discovery and received all of my financial statements from January 1 2018 to September 30 2020. She included Schwab-GOOG statement with her RFO (1CT 122) but omitted Schwab-6350 statement.

Amount of money Ekaterina received is well supported by evidence

Next Ekaterina attempts to cast doubt on the amount of assets she received, despite never having questioned that before. She suggests that perhaps the reason Trial Court awarded her Google stocks was because of "*unquantified debts each of Katia and Eugene were required to pay, and the awards of separate and community property to each of them*" (RB 36).

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[5] This was the last monthly statement immediately preceding May 28, the day we signed Judgement.

First, this argument is false. There were no debts, hence none are listed in Judgement. Trial Court quoted verbatim from my September 25 2019 email which lists the assets Ekaterina received (3CT 610, quoting Petitioner's Exhibit 10). In doing so, Trial Court chose to trust the numbers listed in that Exhibit. These numbers were also corroborated by Respondent's Exhibits N and O (AR Bates Stamps 51 and 60). Ekaterina's replies to this email show that she did not dispute the accuracy of the information provided therein but was only following up regarding the status of the Roth-IRA division (Petitioner's Exhibit 10, AR Bates Stamps 217-218). No evidence exists that could even conceivably call these numbers into question.

Table 2: Assets Ekaterina Received

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**

Second, this argument is non-sequitur. Trial Court explained its reasoning for awarding Google stocks to Ekaterina:

- Its mistaken conclusion that "Schwab $205,620.38" line in my FL-142 refers to Schwab-6350 sub-account rather than the total Schwab value (3CT 609:19-20).
- The fact that item 6I of Judgement says "Schwab-6350" rather than simply "Schwab" (3CT 609:22-24; 1CT 15).

In other words, if item 6I of Judgement is interpreted to mean the entire Schwab account (to be consistent with the $205,620.38 value that I entered in my Schedule of Assets and Debts) then Ekaterina's "omitted assets" claim falls apart.

Trial Court's conclusion is mathematically impossible

As noted in AOB, Trial Court quoted directly from my April 8 2019 email:

5.2. Schwab brokerage: $161107.95
5.3. Schwab equity awards $43457.40 (Google stock vests here).
(3CT 609:15-16, quoting Respondent's Exhibit A, AR Bates Stamp 1 / also presented as Petitioner's Exhibit 6, AR Bates Stamp 198),

Acknowledged that "*His Schedule of Assets and Debts listed Schwab in item 11 with a value of $205,620.38*" (2CT 597:6-7),

But then came 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.*" (3CT 609:19-20).

This conclusion is mathematically impossible. Evidence presented at trial proved the values of the Schwab sub-accounts to be as shown in **Table 1**. Thus, $205,620.38 **includes** the value of Google stock. Trial Court effectively ruled that 2+2=5 and Ekaterina urges the Court of Appeal to affirm this ruling because there is no transcript of oral arguments.

Even if Schwab-GOOG is omitted, Trial Court violated Family Code §2550

Trial Court found that Schwab-GOOG is an omitted asset because it was not mentioned in Judgment (3CT 609:22-24). Even if this finding is sustained, Trial Court's decision is still wrong. Evidence presented at trial proved that the value of Schwab-6350 was $153,858.47 (**Table 1**). However, the value that was actually disclosed and divided was $205,620.38 (2CT 597:6-7). So if Schwab-GOOG is an omitted asset, then the value of

Schwab-6350 was overstated by $51,761.91 and I need to be compensated for that. By failing to order this compensation, Trial Court divided the family estate unequally in violation of Family Code §2550. Ekaterina received 74% of Schwab-6350 (Exhibit N, AR Bates Stamp 51) and 100% of E-Trade (Exhibit O, AR Bates Stamp 60).

Ekaterina attempts misdirection by arguing that:

1. "*Judgment reflects that the parties equally divided the Schwab account ending in 6350*" (RB 33)
2. *"Katia was also awarded an equalization payment of $65,000 in exchange for Eugene retaining all rights in the Tarzana condominium."* (RB 32)

However:

1. "Judgment reflects" is not what actually happened (see above). The parties signed Judgement on May 28 2019 and divided all non-retirement assets in June-July 2019.
2. The $65,000 equalization payment has already been accounted for (see AOB 22-23). Ekaterina received $200,947.79 worth of assets out of $270,132.47 total.

Pretending to not understand basic math does not help Ekaterina: anyone can look at the numbers and make the same calculation.

I am not challenging the sufficiency of evidence

On the contrary, I am asserting that the only conclusions possible from the evidence presented at the trial are:

A. Google stock is not an omitted asset because its value was included in the $205,620.38 number disclosed on my FL-142; OR

B. Even if Google stock is an omitted asset because Schwab-GOOG was not mentioned in Judgement, the value of Schwab-6350 was overstated by $51,761.91, because its actual value was $153,858.47.

In either case, if Trial Court's decision stands, Ekaterina ends up with **far** more than 50% of community property. As noted in my Motion for New Trial "*Justice requires that she either keep the equalization payment in lieu of the stock, or that she receive the stock and return the equalization payment, but she cannot have both.*" (3CT 728). Unfortunately, as a result of Trial Court's decision, she did get both.

Trial Court's decision plainly violates the requirement of California Family Code §2550 to divide the community estate equally. It must be reversed and remanded on appeal.

There was no consent to enroll Sofia in private school

Trial Court ruled that Judgement already obligated me to pay for private school (3CT 607:23-24). Ekaterina argues that because of the lack of reporter's transcript this ruling is "unassailable" (RB 26). However, this ruling completely ignores the issue of consent and the economic reality. Judgment obligated me to pay the following:

- $1860/month for spousal support (1CT 10)
- $1606/month for child support (1CT 7)
- About $300 - $400 /month for extra-curricular activities (1CT 10)
- Provide Sofia's health insurance and pay for 50% of out-of-pocket medical expenses (1CT 9)

This was over half of my net income. I was forced to live with roommates to reduce my expenses. Is it reasonable to also require me to pay $870/month[6] for private school, despite my opposition to private school enrollment? Ekaterina's argument is essentially tautological: because Judgment *can* be interpreted so as to have this requirement, then it *must* be interpreted that way (RB 27-28).

However, extrinsic evidence shows that the parties made alternative arrangements during the mediation. Ekaterina picked Country Lane Elementary as Sofia's school and I assisted her in co-signing for an apartment in the school district she chose for Sofia (1CT 62). The fact that the parties had planned for Sofia to attend private school before initiating divorce proceedings is irrelevant: it is self-evident that divorce changes the financial situation of both parties and new arrangements must be made. The fact that Ekaterina later changed her mind about this decision does not help her. Both parties have joint legal custody of Sofia (1CT 3), and despite Ekaterina's attempt to usurp it by litigating her baseless DVRO, this is still the case. Therefore, consent of both parties is required for school enrollment (California Family Code §3003). There was no consent to enroll Sofia in private school.

Trial Court abused its discretion in refusing to find good cause to set aside Stipulation

There are two separate issues which Ekaterina conflates:

1. Whether Stipulation needs to be set aside because of Ekaterina's fraudulent concealment of her true income.
2. Whether in the absence of Stipulation I would still be obligated to pay for private school, despite my opposition to private school enrollment.

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[6] This cost has now increased to $1010/month.

Ekaterina argues that because Trial Court sided with her on (2) then there is no prejudice in denying (1). But there is.

As already noted in AOB, I was forced to agree to a *bidirectional* termination of spousal support. Ekaterina has successfully used this fact to deny paying spousal support to me when I lost my job. As Ekaterina correctly noted in RB, in the absence of Stipulation, Trial Court's jurisdiction over spousal support would have extended until September 2023 (RB 8). Meanwhile, Ekaterina's own right to claim spousal from me terminated because she remarried on October 4 2020.

Trial Court's finding that it has "no way of analyzing" spousal support is an abdication of its responsibilities. And Ekaterina urges the Court of Appeal to affirm this abdication.

Trial Court further ruled that I am required to pay for private school even when I'm unemployed. This resulted in me paying more money to Ekaterina than I received as income.

Overall, Stipulation is a completely one-sided contract. It provides all the benefits to Ekaterina and absolutely no consideration to me.

Trial Court abused its discretion in issuing certain sanctions

While Trial Court is well within its authority to issue sanctions, some of the sanctions were clearly improper.

Not accepting Trial Court's Tentative decision

The only thing I "did not accept" was the issue of private school tuition. Trial Court noted that "*Eugene wanted to proceed with litigating the one area he deemed to have lost*" (3CT 614). I offered to file additional briefs to address this issue, in lieu of the trial, but Ekaterina wanted an all-or-nothing deal.

Failed Settlement Negotiations

I argued in AOB that I "*was entitled to a full and fair hearing on the issues raised in the parties' pleadings*" and for that reason failure to settle is not sanctionable, as there was no showing that failure to settle was frivolous or in bad faith (AOB 44). Ekaterina disagreed. This raises an interesting question: what if one party makes unreasonable demands in settlement discussions (as Ekaterina did)? Does the other party deserve to be sanctioned for rejecting these demands?

Sofia's Health Insurance

In May 2021 Ekaterina enrolled Sofia in much better insurance through her employer and informed me via her attorney. She stopped using the insurance that I was providing. In November 2021, while doing open enrollment, I did not renew Sofia's insurance, so it expired at the end of the year. My attorney informed Ekaterina that if, for any reason, Sofia loses coverage, I can re-add her to my insurance. Is this deserving of sanctions?

Life Insurance

The policy documents I received from my insurance company do not list who the beneficiary is (Petitioner's Exhibit 16, AR Bates Stamps 239-284). Unfortunately, this is out of my control.

Continuance of 12/10/2021 trial

Immediately after the failed 12/02/2021 settlement conference in which Ekaterina made unreasonable demands, she informed me that her father passed away and demanded to continue the trial. Under the circumstances, and keeping in mind her past behavior, it was reasonable for me to be skeptical of her assertion until presented with evidence. Also, contrary to Ekaterina's assertion, she did not need to put her father's death certificate in public record. She could have filed her motion under seal. Better yet, she could have provided it to my attorney in private when making her demand to continue the trial.

Motion to Compel Discovery #2

As noted in AOB, I was sanctioned for this twice. First, instead of granting me attorney fees for MTC#1 (which I won), Trial Court offset them against MTC#2 and deemed both fees paid (ARp 191). That was despite the fact that Ekaterina successfully gamed the system (ARp 190). Also, MTC#1 was the larger of the two, with correspondingly more attorney fees. Then, when I pointed out the factual errors in Trial Court's ruling, it sanctioned me again (AOB 28-29).

Recusal of my attorney

I had valid objections to the recusal of my attorney. By the time Ekaterina made this demand, Mr. Camenzind had been my attorney for over 8 months and appeared at multiple hearings on this matter, including hearings where Ekaterina was present. Moreover, Ekaterina had secretly filed – but did not serve – her "omitted assets" motion immediately before demanding the recusal of my attorney (AOB 11-12).

Overall, I am not saying that my behavior was perfect. But any objective look at all the facts would show that Trial Court abused its discretion in issuing these sanctions.

Award of sanctions to Ekaterina is exorbitant

Trial Court allegedly sanctioned me for the following misconduct:

Table 3: Sanctions

	Item	FOAH Reference	Attorney Fees	Attorney Fees Reference
1	Not accepting the court's tentative decision	3CT 614:1-5	$1,575	1CT 287:14
2.1	preparation and attendance at a Judicially Supervised Settlement	3CT 614:6-8	$2,695	1CT 286:24
2.2	settlement discussions	3CT 614:6-8	$2,310	1CT 286:28
2.3	preparation and attendance at a Settlement Officer Conference and two Mandatory Settlement Conferences	3CT 614:6-8	$4,165	1CT 287:8
3	Canceling Sofia's health insurance	3CT 614:9-11	$2,637.50	1CT 289:13
4	Requiring Ekaterina to go through counsel to obtain a copy of my life insurance policy	3CT 614:14-16	$2,205	1CT 290:5
5	Not following up on E-Trade Roth IRA division until contacted by Ekaterina's attorney	3CT 614:19-20	$1,225	1CT 294:21
6	Opposing the continuance of	3CT 614:24	$1,610	1CT 292:27

	12/02/2021 trial			
7	Filing a motion for reconsideration of MTC#2	3CT 615:4	$1,357.50	1CT 293:16
8	Opposing recusal of my attorney	3CT 615:5-8	$5,790	1CT 294:4
	Total		**$25,570**	

But Trial Court inexplicably sanctioned me **$60,000** (3CT 617:7). While Ekaterina need not establish with great precision the amount directly caused by improper conduct, it strains credulity to assert that more than 2x award is reasonable or based on actual attorney fees and costs incurred.

(Note that this is another discrepancy between SoD and FOAH. SoD does not mention anything about [Eugene] "justifies an unequal division" and "takes this upon himself to remedy". See Statement of Decision, above.)

Ekaterina argues that an award of fees and costs need not be limited to the specific fees and costs incurred as a result of improper conduct by the sanctioned party (RB 41). This effectively means that the amount of sanctions can be completely arbitrary and not related to the conduct that supposedly justified the award of sanctions. By this logic, Trial Court could have cited just one reason to sanction me – say, not accepting the tentative ruling ($1575 per Ekaterina's attorney fees declaration) – and then granted her $60,000 worth of sanctions. This flies in the face of the requirement that an award of sanctions must be based "*on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation*" (California Family Code §271).

Ekaterina justifies the amount of sanctions awarded to her by saying that she requested $109,737 and was only granted $60,000 (RB 42). She fails to mention that she lost on almost all counts, with the notable exception of omitted assets. Specifically, the following of Ekaterina's requests were denied:

- The request to set aside the Tarzana condominium provisions of the November 18 2019 Judgment
- The request for a finding of breach of fiduciary duty
- The request for determination and division of the PartnersFCU account
- The request for reallocation of the Brief Focused Assessment

(3CT 615-617).

This necessarily means that the vast majority of her attorney fees have been denied also. And the issues on which she won do not amount to anywhere near $60,000.

With, perhaps, the exception of settlement discussions (items 1-2), the alleged misconduct I was supposedly sanctioned for was wholly unrelated to the issues tried at the March 8-9 2022 trial. Some were related to previously heard motions where attorney fees were reserved (items 6-8), others were the items I responded to in the "Petitioner's Airing of Grievances" section of my 07/06/2021 responsive declaration (allegations: 1CT 110-114; response: ARp 100-102).

Ekaterina further argues that an award of attorney fees need not be limited to "*attorney fees and costs that have been incurred at the time of the award*", but may include "*anticipated but not-yet-incurred attorney fees*" (RB 43). This effectively means no limit at all. Could Trial Court have sanctioned me $255,700 (10x the total)? Why not $1,000,000? Ekaterina also does not explain what attorney fees were "anticipated but not-yet-incurred".

Finally, how can any part of an Attorney's Fees Declaration be trusted when said attorney commits **perjury** in the very same declaration? (AOB 27)

Trial Court's failure to sanction Ekaterina is arbitrary and capricious

Ekaterina argues that "*Given Eugene's repeated actions, the trial court would have abused its discretion had it refused to award Katia sanctions*" (RB 40). Strangely, she does not apply the same argument to her own misconduct. This misconduct included, but was not limited to:

- She launched a baseless child support litigation which she overwhelmingly lost. (AOB 9-10)
- She lied about being coerced to relinquish the title to my condo (AOB 19-20). In reality, she is the one who coerced me to add her name to the title in the first place (ARp 96). Trial Court refused to even address the issue of duress by Ekaterina despite acknowledging that she threatened to divorce me if I did not add her to the title (2CT 599:7-12). Trial Court simply assumed that this transmutation is valid, but found that the portion of the condo valuation attributable to community property is zero because the condo did not appreciate in value between the date Ekaterina's name was added to the title and the date the parties signed Judgment (3CT 603:4-7).
- She lied about learning of the mortgage payoff "on the brink of divorce" (AOB 21). Not only was she aware of the conversation that preceded this payoff, but she also received automatic notifications from Chase when these payments went through (ARp 96-97). Trial Court rejected Ekaterina's allegations of breach of fiduciary duty but ignored evidence that she committed perjury in connection with these allegations (3CT 611-612).

- She lied about omitted assets (AOB 21-24). By the time she filed her motion on March 8 2021, she had long since conducted discovery and received all of my financial statements from January 1 2018 to September 30 2020. She could not have missed the discrepancy in value between "Schwab $205,620.38" in my FL-142 (1CT 119) and the actual value of Schwab-6350, the account she claims was the only one divided (Table 1). She deliberately included Schwab-GOOG statement with her RFO (1CT 122) but omitted Schwab-6350 statement.
- She concealed her intent to cohabitate when she was negotiating Judgement (1CT 62). As a result of that, I agreed to let her keep 100% of her car which was purchased only a month before the divorce (ARp 100). Spousal support calculation did not take her cohabitation into account (1CT 10).
- She concealed her almost 3x increase in income when negotiating Stipulation. On this point Ekaterina argues that "*The trial court properly refused to sanction Katia for failing to disclose her income, where Eugene had also failed to disclose his income.*" (RB 46). This is blatantly false. The dissomaster attached with Stipulation listed my correct income (1CT 44). Trial Court found that "*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.*" (3CT 606:1-6)
- She launched a baseless DVRO litigation which she also lost[7] (N 29). The real purpose of this litigation was to further impoverish me and to usurp legal custody of Sofia. Shortly after this loss, Ekaterina's attorney informed me that a vacation with Sofia had already been scheduled. She demanded my consent for international travel and threatened more litigation if I refuse (AOB 31).
- She used every procedural trick in the book to her advantage, such as secretly filing her RFO and then removing my attorney (AOB 10-11).

[7] I hired a court reporter at my own expense for this trial.

Ekaterina argues that Trial Court did not abuse its discretion when it failed to sanction her… because it failed to find any fault in her behavior: "*The trial court did not find that Katia filed any frivolous motions or that she failed to promote settlement.*" (RB 45). It is difficult to fully express the absurdity of this argument. The vast majority of attorney fees were incurred as a result of Ekaterina's relentless litigious conduct, and yet she was not sanctioned **at all**. This and other Family Court's actions created an unmistakable impression of sexism and systemic bias, which emboldened Ekaterina to escalate this litigation. This flies in the face of constitutional guarantee of equal protection under the law (USA Constitution, Amendment 14).

Overall, Ekaterina fails to rebut the assertion that Trial Court's failure to sanction her for her egregious conduct was arbitrary and capricious.

Conclusion

I challenge anyone to look at the totality of events and conclude that I received a fair trial.

Trial Court awarded Ekaterina Google stocks **in addition** to their cash value that she had already received. (And if this assertion was wrong, it would have been quite easy to disprove mathematically – the fact that Ekaterina did not even try speaks volumes.) This increases her share of community estate **far** in excess of 50%.

Trial Court upheld Stipulation despite acknowledging that Ekaterina concealed her almost 3x increase in income during negotiations. It obligated me to pay for private school without any thought given to the economic impact. It also upheld the termination of spousal support, which allowed Ekaterina to deny paying spousal support to me when I lost my job. Thus, Stipulation is a wholly one-sided contract that provides all the benefits to Ekaterina and absolutely no consideration to me.

Ekaterina engaged in trickery, deception, and other underhanded tactics throughout this litigation. And yet, instead of sanctioning her for this behavior, Family Court actually rewarded her. This decision is, quite literally, the opposite of justice.

I ask the Court of Appeal to restore some semblance of faith in the justice system.

Respectfully submitted,

Dated: 3/27/2023

E. Strulyov

Eugene Strulyov
Appellant in Pro Per

Brief Format Certification

Pursuant to California Rules of Court, Rule 8.204, I hereby certify the text of the Respondent's Brief is proportionately spaced, has a typeface of 13 points or more, and contains no more than 7337 words, including footnotes, as counted by the Microsoft Word processing system used to generate the brief.

Dated: 3/27/2023

Respectfully submitted,

E. Strulyov

Eugene Strulyov

Proof of Service

CASE NAME: Strulyov v. Strulyov
CASE NUMBER: **H050115** Santa Clara County 19FL001660

I declare that:

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

On 3/27/23, pursuant to CCP §1013A(2), I served **Appellant's Reply Brief**

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

Stephanie J. Finelli
Steph@finellilaw.com

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

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

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

Date: 3/27/23 Signature: 

Print Name: Michael Mezzetti