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

PETITION for REHEARING & PUBLICATION

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Introduction

This is an appeal from Findings and Order After Hearing (FOAH) of March 8-9 2022 (filed April 8 2022). Eugene and Ekaterina were married on October 29 2010 and separated on April 8 2019. They have one minor child of their marriage, Sofia Strulyov, born April 7 2013.

On July 27 2023, the Court of Appeal issued its Opinion in this matter. This Opinion dashed my hopes of getting back on my feet. It still leaves me $90,000 in debt and the resolution of Google stocks uncertain. It also leaves a number of important questions unanswered. At a minimum, I ask the Court of Appeal to clarify its stance on these questions.

To what extent is unequal division of community property permissible?

Opinion affirms trial court's determination that the Google stock is an omitted asset, essentially because the Judgment contains a typo: it refers to "Schwab-6350" instead of simply "Schwab". It remands the matter to trial court for the limited purpose of a determination whether the interests of justice require an unequal division of the Google stock. (Fam. Code, § 2556.)[1] However, it does not provide any guidance as to how Google stock is to be divided.

The Court of Appeal appears to be endorsing Ekaterina's hair-splitting argument that she was underpaid via one asset but overpaid via a different asset. In reaching this Opinion, the Court of Appeal notes:

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[1] Did the Court of Appeal actually mean § 2550?

"The mere mention of an asset in the judgment is not controlling. [Citation.] '[T]he crucial question is whether the benefits were actually litigated and divided in the previous proceeding.' "

But that is precisely what I argued on appeal. The benefits (in the form of cash value of Google stocks) were divided. I specifically raised the following questions in both my Motion for New Trial and on appeal:

"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?"
(ARB 8)

Opinion does not answer these questions. It also does not address another crucial argument: that Ekaterina had already received more than half of community estate, and then was granted Google shares in addition to that.

While I understand the Court of Appeal's desire to leave matters of fact for the trial court, it should, at a minimum, reaffirm that under Family Code § 2550, Family Court is required to divide community estate equally. Where one party had already received more than half of community estate, Family Court should not be permitted to award even more community estate to that party. On the contrary, Family Court should have the discretion to claw back any overage. (Family Code does not contemplate equal division of each individual asset, but rather community estate as a whole).

Without this guidance, Family Court will be able to implement unequal division again. Ekaterina already indicated that she will seek to do so.

To what extent should impossible conclusions be trusted?

Trial Court made a finding that is mathematically impossible and contradicts the plain language of both my Closing Argument Statement and Reply Closing Argument Statement (ARB 12; 18).

Trial Court made another finding wherein it contradicted itself (ARB 13-14).

In reaching this Opinion, the Court of Appeal relied on yet another incorrect finding:

"In May 2019, Katia and Eugene executed a stipulated judgment of dissolution of marriage. That same day, Katia and Eugene exchanged unsigned preliminary declarations of disclosure about their finances (see Fam. Code, § 2104)".

We actually exchanged our FL-142 declarations via email (which is why they are both unsigned). I sent my email to Ekaterina and the mediator on April 25 2019, more than a month before signing Judgement. Trial court's finding does not make sense: the mediator needed our declarations well in advance, in order to prepare the stipulated Judgment. Also, this finding would mean that on May 28 2019 we signed and notarized everything *except* the FL-142 declarations. Notice also that while neither party's declarations list account numbers, the Judgment does.

At the trial, the judge actually asked me when I provided my FL-142 declaration to Ekaterina. I tried to look up this email in order to give her the exact date. She yelled at me and told me to stop looking. I realize that without a reporter's transcript I have no way of proving this interaction, but the April 25 2019 email does exist. It is not in the record because this issue was never brought up by either party.

My question is simple: at what point do all these misstatements rise to the level where the trial court's entire ruling becomes suspect? At a minimum, the Court of Appeal should not base its Opinion on false findings.

Finally note that the issue of *when* FL-142 declarations were served was **not raised** by either party on appeal and is not included in either party's briefs. This provides an automatic right to rehearing[2].

Am I entitled to be represented by an attorney of my choice?

Ekaterina forced the recusal of my attorney under a dubious claim of "conflict of interest" (AOB 11-12; ARB 6). She did this immediately after she secretly filed – but did not serve – her March 8 RFO. Opinion does not address the following questions:

- Was the recusal of my attorney warranted?
- Did the trial court abuse its authority when it sanctioned me for opposing the recusal of my attorney?

The latter question is particularly relevant as it relates to sanctions.

Was the law applied equally?

Court of Appeal notes that:

Section 271 is "designed to punish 'a party [who] has unreasonably increased the cost of litigation.' "

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[2] That's what it says on the Court of Appeal website but the exact rule or regulation is not cited.

That party is Ekaterina. The overwhelming majority of attorney fees were spent on litigating Ekaterina's March 8 RFO. She lost on almost all counts, with the notable exception of omitted assets.

However, Family Court did not sanction Ekaterina for multiple counts of perjury. It did not sanction her for **any** motion that she lost, throughout this litigation. It did not sanction her for any part of her March 8 motion that she lost.

Instead, Family Court sanctioned me. This decision perversely punishes the victim and rewards the perpetrator. It flies in the face of *"public policy of promoting settlement of family law litigation"*.

I specifically raised unequal application of law (Amendment 14) as an issue. Opinion does not contain any discussion of this argument. If Court of Appeal does not believe that this argument has merit, I respectfully request it state so.

Publication

I respectfully request that this Opinion be published, as it contains a number of important and precedent-setting decisions. I am not aware of any other "omitted assets" case where the prevailing party had already received 53% of community estate and then had her share increased to 64%.

Conclusion

For reasons set forth above, I request that rehearing be granted and that the court modify the judgment.

Respectfully submitted,

Dated: 8/8/2023

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 1595 words, including footnotes, as counted by the Microsoft Word processing system used to generate the brief.

Respectfully submitted,

Dated: 8/8/2023

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 8/8/23, pursuant to CCP §1013A(2), I served **Petition for Rehearing & Publication**

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

Stephanie J. Finelli
Steph@finellilaw.com

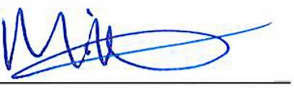
By **MAIL**: by depositing a copy of said document in the United States mail in San Jose, California, in a sealed envelope, with postage fully prepaid, addressed as follows:

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

Supreme Court of California
350 McAllister St.
San Francisco, CA

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

Date: 8/8/23

Signature: 

Print Name: Michael Mezzetti