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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of JOE ARVISO and DAWN JACKSON.	
JOE ARVISO, Appellant, v. DAWN JACKSON, Respondent.	F089507 (Super. Ct. No. 21CEFL02694) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Glenda S. Allen-Hill, Judge.

Joe Arviso, in propria persona, for Appellant.

No response for Respondent.

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[*] Before Levy, Acting P. J., Meehan, J. and Snauffer, J.

Joe Arviso and Dawn Jackson, both self-represented below, obtained a divorce judgment (marital status only). Thereafter, the family court resolved certain reserved issues, including the division of the marital home. A judgment on reserved issues was subsequently entered. Arviso, who is self-represented, appeals from the judgment on reserved issues. Arviso contends the court erred in dividing the equity in the home, for buyout purposes, based on the home's value at the time of trial, rather than its value at the time of separation. Jackson did not appear on appeal.

We conclude Arviso has not shown the family court erred. Accordingly, we affirm the court's order dividing the marital home.

FACTS AND PROCEDURAL HISTORY

Petitioner Arviso and respondent Jackson were married on June 17, 2017. On June 25, 2021, Arviso filed a petition for dissolution of marriage (petition) in the Fresno County Superior Court, seeking a divorce on grounds of irreconcilable differences. The petition indicated the couple had no minor children and had separated as of March 1, 2020.

On July 19, 2021, Jackson filed a response to Arviso's petition. Jackson also requested a divorce based on irreconcilable differences; however, she specified the couple had separated as of June 25, 2021. Jackson listed, in an attachment to her response, the marital home on Norwich Avenue in Fresno (marital home or Norwich home) as a community asset. Jackson requested the court to determine the parties' interests in the marital home.[1]

On July 25, 2022, Arviso filed a request for order (RFO) seeking the removal of Jackson's name from the deed for the Norwich home. Arviso's RFO stated: "The

[1] It appears Arviso made a similar request in his petition, but the record does not reflect the details of Arviso's request.

respondent and I own a home together. Ever[] since the respondent has moved out … which was well over a year ago, she doesn't help me with the mortgage payments and now the house is at risk of foreclosure and for this reason I am requesting that she be moved off the deed so that I can save the residence." (Some capitalization omitted.)

On October 25, 2022, Jackson filed a responsive declaration to Arviso's RFO, noting she did not consent to the RFO. Jackson indicated she would consent to a different order; she stated: "The family residence should be sold and the net proceeds divided between us." Jackson further noted: "Since I moved out of the [marital] home and have to pay my own expenses, [Arviso] should be able to keep up with the mortgage without me. If he can't, I want the home sold and the net proceeds divided between us." Jackson added: "He should not be permitted to keep the home if he can't pay the mortgage, and I am proposing that he be ordered to sell the home and give me my half of the net equity so I can get my own home."

The family court heard the matter on October 25, 2022, and, thereafter, issued a minute order reflecting the outcome of the hearing. The minute order stated: "Matter is on calendar at the request of the petitione[r] regarding property control and removing respondent's name from deed of the house." The minute order further provided: "Court denies the request to remove respondent, Ms. Jackson[,] from the deed of the house. Court informs Mr. Arviso, he cannot refinance without the approval from Ms. Jackson." The minute order concluded: "Petitioner, Mr. Arviso[,] is granted temporary exclusive use, control, and possession of the [Norwich] property[.]"

On March 28, 2023, Arviso filed a "community and quasi-community property declaration." (Unnecessary capitalization omitted.) The declaration listed the Norwich property and confirmed it was acquired during the marriage; specified that the value of the property was $357,000; and requested that Arviso be awarded the property, with Jackson taking nothing. The declaration further indicated that Arviso accumulated retirement/pension assets during the marriage, in the amount of $5,000.

On April 17, 2023, the family court set a contested hearing or court trial for October 18, 2023. The court's minute order setting the contested hearing indicated the underlying pleading was a motion, but did not further identify the pleading.

The record reflects that the family court eventually held a contested hearing in the matter on December 20, 2024. Both parties appeared in propria persona (the parties were self-represented throughout the proceedings below). Thereafter, on January 27, 2025, the court presented its post-hearing ruling in open court.

In addition, the family court issued, also on January 27, 2025, a minute order memorializing its post-hearing ruling. The court's minute order stated: "The Court notes that it took status on marriage and the status-only judgment was prepared. The status-only judgment was filed on 9/13/2024."

The minute order then documented the court's ruling on reserved issues, based on the December 20, 2024 contested hearing, as follows:

> "The Court notes that this is a short-term marriage.
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> "The Court makes the following findings:
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> "—Petitioner is to keep 2016 Ford F150 as his separate property along with any associated debt. Respondent is to keep 2017 Chrysler 300 as her separate property along with any associated debt.
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> "—On the issue of [the Norwich home], the Court notes that the appraisal amount was $350,000. The Court finds that the Petitioner supplemented the down payment from his separate property in the amount of $10,414.
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> "—The Court finds that the mortgage amount of $215,306.40 remains. The equity of the home totals $134,693.60. The Petitioner shall have a credit of $10,414 back to his separate property. The remaining amount totals $124,279.60. After the credit, each party shall be awarded $62,139.80.
>
> "—the Court finds that there's not enough information regarding the Petitioner's 401K.
>
> "—The Court reserves the issue of retirements.
>
> "The Court makes the following orders:

"—Petitioner shall pay equalization to Respondent in the amount of $62,139.80 within 90 days by cashiers check. . . . If the Petitioner is unable to pay, the [Norwich home] shall be put up for sale. The parties will have to jointly select the realtor. Respondent is to select three (3) names and send to the Petitioner. The Petitioner is to select one (1) from the list.

> "—The Court orders that each party will keep all household furniture, furnishings, appliances, utensils, supplies, clothing, and personal effects currently in their possession.
>
> "The Court sets the matter for a Status Review hearing regarding the reserved issue of retirement and if the Respondent has been paid or if the home has been sold. The Petitioner is ordered to bring to court proof of payment or proof that the home has been placed on the market. Both parties are ordered to file updated Income and Expense Declarations … with attached information regarding their retirement accounts. The Respondent is to include information regarding her CalPers account. The Petitioner is to include information [about] his 401K [at] Principle or Fidelity from the years 2017–2021."

On March 13, 2025, a judgment on reserved issues was filed. The judgment was based on the contested hearing held on December 20, 2024. The judgment indicated the family court had set a subsequent "Status Review" on May 5, 2025, to resolve the issue of the parties' retirement assets and to assess the progress regarding the division of the Norwich home.

Arviso filed a notice of appeal on March 18, 2025.

DISCUSSION

I. ARVISO HAS NOT SHOWN ERROR BY THE TRIAL COURT

Arviso challenges the family court's valuation of the marital home, for purposes of buyout and division. He contends the trial court erroneously valued the Norwich home as of the date of trial rather than the date of separation. Specifically, he argues: "[My] main argument is that Dawn Jackson should not have been entitled to any of the equity in the home from the date of separation [of] June 25, 2021 to the trial date [of December 20,

2024,] because [I] was making the mortgage payments on [my] own and Dawn Jackson had moved out of the residence[.]" Arviso also contends that the trial court erred in ordering, in the alternative, that should he be unable to buy Jackson out and instead have to sell the house, Jackson would be entitled to half the total equity in the home, instead of half the equity accrued up to the separation date.[2]

As reflected in the family court's January 27, 2025 posthearing, written ruling (minute order) and the March 13, 2025 judgment on reserved issues, the court, in dividing the equity in the marital home for buyout purposes, utilized a valuation amount of $350,000. While the court's written ruling mentions an appraisal that indicated the value of the home was $350,000, there is no mention of the date of the appraisal in question.

The record on appeal does not contain a reporter's transcript of the underlying December 20, 2024 contested hearing. Similarly, the record on appeal does not contain any appraisals presented at that hearing.

Thus, while Arviso complains the family court improperly used a time-of-trial valuation to divide the marital home between the parties, we cannot confirm, based on the record, whether or not the $350,000 home valuation used by the court was in fact a time-of-trial valuation.

The record on appeal, which lacks a reporter's transcript and contains only a limited number of documents in the clerk's transcript, does not reflect the arguments presented or objections made by the parties at the underlying contested hearing, if any, on the issue of the appropriate valuation date. Nor does the record expressly disclose the family court's resolution of the issue of the appropriate valuation date; the parties do not

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[2] The trial court's order provided that Arviso was entitled to a credit of $10,414 against the total equity in the home because he had "supplemented the down payment from his separate property in the amount of $10,414."

appear to have requested a statement of decision, if applicable, and one is not included in the record on appeal.

Under these circumstances, we can neither assess what information was before the family court on the issue of home valuation, nor what the parties' positions were. Indeed, Arviso has *not* shown he made an appropriate objection below and thereby preserved for appeal, his argument regarding the proper valuation date.

In any event, even were we to assume the $350,000 valuation utilized by the family court reflected the value of the house *at the time of trial* and that Arviso properly preserved his appellate challenge to the family court's reliance on a time-of-trial valuation for purposes of equity division and buyout, his challenge fails, as discussed below.

A. Standard of Review

Where, as here, the trial court is vested with discretionary powers, we review its ruling for an abuse of discretion. (*In re Marriage of Reuling* (1994) 23 Cal.App.4th 1428, 1435.) As long as the court exercised its discretion along legal lines, its decision will be affirmed on appeal if there is substantial evidence to support it. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 480.) "Further, because the reasons for change in value of an asset are ordinarily factual, our role is limited to determining whether there is sufficient evidence to conclude the trial court's decision was within the permissible range of options set by the legal criteria." (*In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 625 (*Duncan*); *In re Michael D.* (2002) 100 Cal.App.4th 115, 126 ["our role as an appellate court is not to make new findings of facts or second-guess the trier of fact"].)

B. Property Valuation Date: Applicable Legal Principles

Family Code section 2556 provides: "In a proceeding for dissolution of marriage … the court has continuing jurisdiction to award community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the

proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability."

Family Code section 2552, subdivision (a) states: "For the purpose of division of the community estate upon dissolution of marriage or legal separation of the parties, except as provided in subdivision (b), the court shall value the assets and liabilities as *near as practicable to the time of trial*." (Italics added.) Family Code section 2552, subdivision (b) states: "Upon 30 days' notice by the *moving party* to the other party, the court *for good cause shown* may value all or any portion of the assets and liabilities at a date after separation and before trial to accomplish an *equal division* of the community estate of the parties in an *equitable manner*." (Italics added; *In re Marriage of Sherman* (2005) 133 Cal.App.4th 795, 800 ["Applying the principle set forth in [Family Code] section 2552, California appellate courts have concluded the proper valuation date for a community property residence for purposes of a dissolution proceeding is the date of trial unless there is some reason which renders this result inequitable." (Fn. omitted)].)

To reiterate, the Family Code directs the court to value the community's assets and liabilities as near to the date of trial as possible, but "[u]pon proper motion the court may use an earlier valuation date where good cause is shown." (*In re Marriage of Walters* (1979) 91 Cal.App.3d 535, 538; *In re Marriage of Imperato* (1975) 45 Cal.App.3d 432, 436; Fam. Code, § 2552.)

Courts value community property as of the date of trial when an increase in value is due to asset appreciation. (*Duncan, supra*, 90 Cal.App.4th at pp. 625–626 [for example, the general rule applies when a business's value " 'is primarily a reflection of … capital assets' " or " 'devolves largely from … the business's capital assets' "].) The general rule accounts for "the inherent growth factor found in many assets, investment

and re-investment of capital, market fluctuations, and numerous other components that can increase the value of most assets." (*In re Marriage of Imperato*, *supra*, 45 Cal.App.3d at p. 437.) " '[W]hen an asset increases in value from nonpersonal factors such as inflation or market fluctuations, generally it is fair that both parties share in that increased value.' " (*In re Marriage of Sherman*, *supra*, 133 Cal.App.4th at p. 801; *In re Marriage of Priddis* (1982) 132 Cal.App.3d 349, 357–358 ["[W]hen the value of community assets *has been affected by inflation or other market factors*, the fairest equal division of those assets lets the parties share equally in either gains or losses." (Italics added.)])

In contrast, courts apply an exception to the general rule and value community property at *the date of separation* when an increase in value is due to a spouse's *personal skill* in the operation of an on-going business. "The good cause exception to trial date valuation typically applies to professional practices as well as small personal service businesses which rely on the skill and reputation of the spouse who operates them." (*In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1291 [real estate agency].) " 'This exception to trial date valuation applies because the value of such businesses, "including goodwill, is primarily a reflection of the practitioner's services (accounts receivable and work in progress) and not capital assets such as desks, chairs, law books and computers." ' " (*Ibid*.) "Thus, an alternative valuation date may apply to a business when its value 'devolves largely from the personal skill, industry and guidance of the operating spouse,' rather than the business's capital assets." (*Duncan*, *supra*, 90 Cal.App.4th at p. 626 [investment advising]; see also *In re Marriage of Green* (1989) 213 Cal.App.3d 14, 21 [law partnership valued at date of separation].)

The court has "considerable discretion" in fixing the value of marital assets and, in turn, in setting the *valuation date*. (*Duncan*, *supra*, 90 Cal.App.4th at pp. 625, 631 [the family court "has broad discretion to determine the manner in which community property is divided and the responsibility to fix the value of assets and liabilities in order to

accomplish an equal division"]; *In re Marriage of Connolly* (1979) 23 Cal.3d 590, 603 [Fam. Code, § 2552, subd. (b) (formerly Civ. Code, § 4800) gives the trial court considerable discretion to divide community property in order to assure an equitable settlement is reached].) The party seeking an alternative valuation date bears the burden of showing good cause for any deviation from the general rule. (Fam. Code, § 2552, subd. (b).) In addition, "the mere passage of time alone between the dates of separation and trial is an insufficient basis for setting the valuation date at a time other than 'as near as practicable to the time of trial.' " (*In re Marriage of Priddis, supra,* 132 Cal.App.3d at p. 358.)

C. Property Valuation Date: Analysis

As a preliminary matter, we emphasize the family court enjoys wide discretion with respect to setting the valuation date for purposes of division of community property. Further, " ' "[a] judgment or order of the lower court is *presumed correct.* All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error." ' " (*A.G. v. C.S.* (2016) 246 Cal.App.4th 1269, 1281.)

For purposes of our analysis, we will credit Arviso's contention on appeal that the $350,000 home valuation amount underlying the family court's division of the equity in the house, represented the value of the home at the time of trial. In utilizing the $350,000 valuation amount, the court simply applied the general rule. In other words, the court determined a time-of-trial valuation (rather than a time-of-separation valuation) was appropriate and necessary to achieve an equitable division of the Norwich home between the two parties.

Arviso and Jackson were married in 2017. The record indicates the parties bought the Norwich home during the marriage. In his brief to this court, Arviso suggests the applicable date of separation is June 2021. As noted, the issue of property division and

valuation was addressed at a contested hearing in December 2024. Arviso had exclusive possession and use of the house from the date of separation through the time of trial and beyond. Jackson made other living arrangements over the same period and derived no direct enjoyment or other benefit (such as, half the rental value) from the house. Furthermore, the record reflects the house was an appreciating asset, with its value subject to market forces and fluctuations.

We conclude the family court's decision to apply a time-of-trial valuation for purposes of equitable division of the house, was within the court's sound discretion. We further conclude the court's valuation date determination is supported by substantial evidence. (See *In re Estate of Fain* (1999) 75 Cal.App.4th 973, 992 ["Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct as to all evidentiary matters*. To put it another way, it is presumed that the unreported testimony would demonstrate the absence of error."].)

The family court's order dividing the marital home is affirmed, as is the March 13, 2025 judgment on reserved issues.[3]

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[3] Near the end of the "LEGAL ARGUMENT" section of his brief, Arviso states in a single paragraph: "Joe Arviso makes the same argument for his 401k. Dawn Jackson should not be entitled to receive money from his 401k for the three years and eight months they have been separated and not living together[; rather,] that portion of his 401k should be considered his sole and separate property as a married man." However, we cannot consider Arviso's argument with respect to the division of his 401k account because the family court had not ordered division thereof at the time Arviso filed the instant notice of appeal.

DISPOSITION

The judgment is affirmed. Since Jackson did not appear on appeal, we need not award costs on appeal to her.