STATEMENT OF DECISION AND JUDGMENT TIMELINE
(CASES LONGER THAN ONE DAY)

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Court may extend times by written order per CRC 3.1590(m).
No apparent authority to shorten times or skip steps –
judgment may only be entered when the Statement of Decision process is complete.

Court's Announcement or Service of Tentative Decision (whichever is later)
[CRC 3.1590(a) and (b)]

In the tentative decision, the court may:

1. State that it is the court's proposed statement of decision, subject to a party's objection under (g);
2. Indicate that the court will prepare a statement of decision;
3. Order a party to prepare a statement of decision; or
4. Direct that the tentative decision will become the statement of decision unless, within 10 days after announcement or service of the tentative decision, a party specifies those principal controverted issues as to which the party is requesting a statement of decision or makes proposals not included in the tentative decision.

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10 DAYS
Party's request for SOD
[CRC 3.1590(d)]
(with list of controverted issues to be addressed per CCP 632 – but see below)

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10 DAYS
Other party's proposals as to the content of SOD
[CRC 3.1590(e)]

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30 DAYS FROM TENTATIVE DECISION
Judge or assigned party prepares proposed SOD
[CRC 3.1590(f)]

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10 DAYS
If no proposed SOD submitted by court or party ordered to prepare it,
other parties may submit proposed SOD
or set motion to deem SOD waived.
[CRC 3.1590(f)]

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15 DAYS
Serve and file objections to proposed SOD and/or proposed judgment
[CRC 3.1590(g)]

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NO TIME SPECIFIED
Judge may set hearing on objections to proposed SOD and/or proposed judgment
[CRC 3.1590(k)]

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10 DAYS FROM OBJECTION HEARING
(if no hearing from objection deadline)
Judge issues SOD

↓

Before judgment (objections)
or per CCP 657 or CCP 663
Bring omission or ambiguity to the attention of the Court.
50 DAYS FROM THE ANNOUNCEMENT OR SERVICE OF THE TENTATIVE DECISION, whichever is later, or, if a hearing was held under (k), WITHIN 10 DAYS AFTER THE HEARING.
[CRC 3.1590(l)]

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Judgment must be entered
(see statutory time frames for motions for reconsideration or to vacate)

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30 DAYS
Stay per CCP 917.7 on removal of kids from jurisdiction expires if not extended (where applicable)

EXAMPLE OF OBJECTIONS BEING MADE, NOT ADDRESSED AND REVERSAL

UNPUB 2003

In re Marriage of Dawe (Cal. Ct. App., Mar. 28, 2003, No. D039876) 2003 WL 1605768

We agree the court erred by refusing to make findings on these pertinent subsidiary issues and facts. Our conclusion of error is based not on the adequacy of the court's statement under section 632; under that provision the statement "need do no more than state the grounds upon which the judgment rests, without necessarily specifying the particular evidence considered by the trial court in reaching its decision." (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1125, 94 Cal.Rptr.2d 579; see also *Haight v. Handweiler* (1988) 199 Cal.App.3d 85, 89-90, 244 Cal.Rptr. 488.) **Rather, we conclude the court erred by failing to make findings on relevant subsidiary facts and issues upon George's timely request for them under Code of Civil Procedure section 634.** All of the issues and facts outlined above bear on the question of the parties' date of separation, and on our review of the judgment we may not infer findings favorable to Monica on them. **Thus, for example, we may not infer in Monica's favor the court found her to be the more credible witness to rely upon her testimony that she and George frequently discussed reconciliation between January 1998 and July 1999. Absent findings on the issue of George's intent, the nature and extent of the parties financial ties and attempts to reconcile, if any, during the January 1998 to July 1999 time period, the trial court's conclusion that "the parties did not come to a parting of the ways with no present intent to resume their marriage and their conduct did not demonstrate a complete and final breakdown in the marital relationship before July of 1999" is without sufficient support.**

EXAMPLE OF OBJECTIONS NOT BEING MADE, AND RULE OF IMPLIED FINDINGS APPLIED

In re Marriage of Destiny and Justin C. (2023) 87 Cal.App.5th 763, 769–770 review denied (Apr. 26, 2023)

Mother's argument runs afoul of the doctrine of implied findings and the rule that requires a party to object to the proposed statement of decision on the grounds that it is somehow unclear or ambiguous.[6] "Under the doctrine of implied findings, the reviewing court must infer, following a bench trial, that the trial court impliedly made every factual finding necessary to support its decision. **Securing a statement of decision is the first step in avoiding the doctrine of implied findings, but is not always enough: The appellant also must bring ambiguities and omissions in the factual findings of the statement of decision to the trial court's attention. If the appellant fails to do so, the reviewing court will infer the trial court made every implied factual finding necessary to uphold its decision, even on issues not addressed in the statement of decision.**" (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 48, 58 Cal.Rptr.3d 225 (*Fladeboe*).)

Here, the trial court's proposed statement of decision included a factual finding that there were no incidents of domestic violence within five years of the court's hearing and resulting custody order. This determination necessarily implied that Father did not "whack" Mother on the side of the head three or four years prior to the hearing**. If Mother believed the court had somehow "overlooked" the neighbor's testimony, making the factual finding ambiguous, she was obligated to lodge an objection to the proposed statement of decision explaining why it required clarification.** (*Fladeboe, supra*, 150 Cal.App.4th at p. 59, 58 Cal.Rptr.3d 225 ["a party claiming omissions or ambiguities in the factual findings must bring the omissions or ambiguities to the trial court's attention"].) It makes no difference that the court made no express finding rejecting the believability of the neighbor's testimony, because a reviewing court "will infer the trial court made implied factual findings favorable to the prevailing party on all issues necessary to support the judgment, including the omitted or ambiguously resolved issues." (*Id.* at p. 60, 58 Cal.Rptr.3d 225.)

MOTION FOR A JUDGMENT DIFFERENT THAN ANNOUNCED

If you want to do more than object to a statement of decision and you want the judge to change his/her mind. You can file a simple RFO for a Judgment Different Than Announced or wait until Judgment is entered and file a complicated Motion for New Trial. This is all you need and then go reargue where you think the judge erred.

Prior to entry of Judgment, after hearing and before entry of judgment, a party brought a motion to enter a different order than announced. No new facts were presented. The trial court denied the motion on the ground it was advised of no authority for the presentation of such a motion. The appellate court stated:

> "We perceive no impropriety in the motion presented by plaintiff. Although no authority for such a motion has been brought to our attention, it is fundamental that a court is not bound by its statement of intended decision and may enter a wholly different judgment than that announced. There is no impropriety in a party's requesting the court, by noticed motion, to exercise its power to enter a judgment different than that announced." (*Canal-Randolph Anaheim, Inc. v. Wilkoski* (1978) 78 Cal.App.3d 477, 494.)

REQUEST FOR STATEMENT OF DECISION

Petitioner, Danielle [redacted] (hereinafter "Danielle"), by and through her attorney of record, [redacted], submits the following Request for Statement of Decision on the controverted issues (CCP section 632, Fam. Code section 2127), including but not limited to:

1. Whether Gregory has proved extrinsic fraud, perjury, duress, incapacity or mistake (Fam.Code § 2122, CCP § 473);
2. Whether Gregory has ratified the agreement by retaining the benefits and in the alternative, whether on equitable grounds Gregory must restore the funds he received pursuant to the agreement he now wants to set aside; and,
3. Whether Danielle is entitled to attorney's fees and sanctions for defending against Gregory's set aside request.

Pursuant to Code of Civil Procedure §632, Petitioner requests that the Court issue a Statement of Decision setting forth the factual and legal basis for its decision as to each of the principal controverted issues with respect to Petitioner's Request to Modify Child Support, including the issues set forth below:

1. Petitioner's claim that Wesley[1] and/or Nanci's financial circumstances have materially changed since the Stipulation and Order filed 12/24/2012 ("12/24/2012 Stipulation").

2. Petitioner's claim that Nanci receives unearned income in an amount that meets the needs of the parties' minor child, Cabot, even if zero child support were payable.

3. Petitioner's claim that Guideline child support per the 12/24/2012 Stipulation will result in Nanci receiving an excessive and/or inappropriate amount of child support for the calendar year 2016 if Wesley receives bonus income of more than $1,250,000 in 2016.

4. Petitioner's claim that Guideline child support per the 12/24/2012 Stipulation is unjust and is not appropriate in this case, if Wesley receives bonus income above $1,250,000, because it would far exceed the historic and current reasonable needs of the child, will only enrich Nanci, is tantamount to a shifting of wealth, and/or violates the mandate of Family Code section 770.

5. Petitioner's claim that bonus child support payable by Wesley at a rate of 5.5% up to a maximum of $1,250,000 of bonus income will allow the minor child to live at the appropriate level in both parent's respective households.

6. Petitioner's claim that if bonus income to him is capped at $1,250,000 pe year, resulting in a "below guideline" child support award if he actually receives greater bonus income, then an award of below-guideline child support is consistent with the best interest of the child. Guideline child support calculated based on annual bonus income to Wesley above $1,250,000 does not serve the best interest of the child because guideline support above that amount exceeds the reasonable and/or actual needs of the child.

7. Petitioner's claim that if the 12/24/2012 Stipulation is not modified to limit the level of annual bonus income for Wesley that is used to determine the annual guideline bonus child support amount, then the resulting guideline bonus child support award will inappropriately and/o unnecessarily transfer Wesley's separate property income and wealth to Nanci, rather than meet any legitimate need for child support. This resul is not contemplated under California child support laws and is contrary t their underlying public policies.

At the request of either party, an order modifying, terminating, or setting aside support order shall include a statement of decision. See, Family Code Section 3654.

Dated: April 20, 2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CENTRAL DIVISION – FAMILY LAW COURTHOUSE

Petitioner: HUSBAND and Respondent: WIFE	Case No. D 562265 RESPONDENT'S WIFE OBJECTIONS TO THE COURT'S PROPOSED STATEMENT OF DECISION (Cal. Rules of court, Rule 3.1590, subd. (g).)

The Honorable David Oberholter, Judge presiding, served a Minute Order/Proposed Statement of Decision ("PSOD") on May 15, 2019. Respondent (Wife) objects to the Court's PSOD to the extent that it is ambiguous, incomplete and contains omissions, as set forth below. (*In re Marriage of Acerneaux* (1990) 51 Cal.3d 1130, 1133.) These objections are intended to bring these issues to the attention of the trial court, so they may be addressed in the trial court. (See *In re Marriage of Whealon* (1997) 53 Cal.App.4th 132, 144.) In light of these objections, the Court may consider modifying its PSOD.

Objection 1: Effective Date of Support and Retroactivity to November 1, 2018. At page 4 of the PSOD, the court sets an initial level of $3,500 spousal support with a commencement date of May 1st 2019. At page 8 of the PSOD, there is no date stated for the commencement of child support. On October _, 2018, Wife filed an RFO to modify support and the RFO was continued to trial. Lauri requests an expressly stated date for commencement and further a ruling that the initial support should commence to the date she filed her October RFO. The PSOD is incomplete and omits a ruling on the retroactivity issue. The circumstances and proof on income were the same in October 2018 as at trial, and the order should be the same but commence November 1, 2018. Request that the support orders commence November 1, 2019 but the future step down dates of May lst set forth in the PSOD dates remain the same.

Objection 2: Double Reimbursement Should be Eliminated. Under the reimbursements section on page 4 of the PSOD, it states that Wife is to reimburse Husband $96,832 for community stock she sold. But in the next section the Court states Wife need not reimburse Husband $72,911 for college expenses for the child because it would be "inequitable to reimburse Husband for money used to educate his son." These two provisions conflict and are ambiguous because the $72,911 Wife paid for college was sourced from the community stock she sold that the court ordered Wife to reimburse Husband in the preceding section. Request that the $96,832 be reduced and the net

reimbursement after considering both rulings be set at $23,921. ($96,832- $72,911 = $23,921.)

Objection 3: Double Charge for DOS Balance and 2016 Bonus Eliminated. On page 2 of the TSOD the court ordered "the bank accounts are to be divided equally based on the balance at date of separation (DOS)." The date of separation was April 29, 2016. (TSOD p. 1) On page 3 of the TSOD it states that Wife is to pay Husband one half of her bonus earned in 2015 but paid in 2016 in the amount of $95.000 less taxes as computed. It was testified that Dr. Strawn received her bonus in March of each year. Since the parties separated at the end of April by the time they separated her 2016 bonus had already been received and deposited by the parties. It is ambiguous as to why the bonus is being charged twice, once in the division of the bank accounts and again as a bonus. It being the same money, one of the charges should be eliminated. Request is made to eliminate the bonus division on page 3 of the TSOD.

Objection 4; Objections Are to Identify Ambiguity and Omission Not to Reargue the Case. Wife anticipates that Husband will file re-argument on most of the issues he did not prevail in the guise of Objections. *Marriage of Acerneaux* (1990) 51 Cal.3d 1130, makes clear that under Code of Civil Procedure section 664, Objections are limited to omissions and ambiguities. The PSOD provides the court's grounds for its ultimate findings. (*Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1318.) The court has provided an explanation for the its decision on the principal controverted issues at trial and is not required to provide precise evidence supporting each individual fact. (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230 (1992). A court is not required to answer specific questions "so long as the findings in the statement of decision fairly disclose the court's determination of all material issues." (*People v. Casa Blanca Convalescent Homes, Inc. (*1984)159 Cal.App.3d 509, 524-25.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA
ANACAPA DIVISION

JIM Petitioner, v. VEE FEE Respondent.	Case No. **RESPONDENT RESPONSE TO PETITIONER [redacted] OBJECTIONS TO COURT'S STATEMENT OF DECISION**

Respondent ("Respondent") provides the following Response to Petitioner ("Petitioner") Objections to court's Statement of Decision.

A. <u>Petitioner Waived His Rights in Connection with the Statement of Decision</u>

Our Supreme Court in *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133, explained the statement of decision process requires two steps. First, a party must request a statement of decision specifying the controverted issues. (Code of Civ. Pro. § 632.) Once the court issues a statement of decision under Code of Civil Procedure section 634, a party must then object if there are omissions or ambiguities in the statement of decision.

Here, Petitioner has jumped to step two without first completing step one. As a result, he has waived/forfeited a statement of decision or the right to make objections under section 632. (See e.g., *Hebbring v. Hebbring* (1989) 207 Cal.App.3d 1260, 1274 [parties waive a statement of decision by express consent, by failure to timely request it].)

SEVEN WAYS TO LEAVE YOUR LOVER OR SEVEN WAYS HOW TO FORFEIT YOUR APPEAL IN THE TRIAL COURT - (PART 1)

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Improper compliance with the Evidence Code, the Code of Civil Procedure, or the Rules of Court can lead to forfeiture of issues on appeal.

1. Research your theories before trial, not afterwards, because a smart appellate lawyer can not save the day.

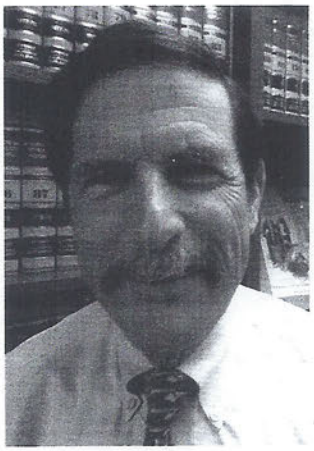
Finally, it is axiomatic that "*[a] party is not permitted to change his position and adopt a new and different theory on appeal.* To permit him to do so would not only be unfair to the trial court, but manifestly unjust to the opposing litigant." (*Ernst v. Searle* (1933) 218 Cal. 233, 240-241, italics added; *In re Marriage of Karlin* (1972) 24 Cal.App.3d 25, 33; In *re Marriage of Broderick* (1989) 209 Cal.App.3d 489, 501.)

2. Trial Forfeiture—Guidance on Objections

Counsel Must Make the Objection in the Trial Court

To preserve an issue for appeal, a party ordinarily must raise the objection in the trial court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) "The rule that contentions not raised in the trial court will not be considered on appeal is founded on considerations of fairness to the court and opposing party, and on the practical need for an orderly and efficient administration of the law." (*People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468; accord, *In re Dakota S.* (2000) 85 Cal.App.4th 494, 501.) Otherwise, opposing parties and trial courts would be deprived of opportunities to correct alleged errors, and parties and appellate courts would be required to deplete costly resources "to address purported errors which could have been rectified in the trial court had an objection been made." (*People v. Gibson, supra,* 27 Cal.App.4th at pp. 1468, 1469.) In addition, it is inappropriate to allow any party to "'trifle with the courts by standing silently by, thus permitting the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable.' (*In re Urayna L.* (1999) 75 Cal.App.4th 883, 886.)" (*In re S.C.* (2006) 138 Cal. App.4th 396, 406.)

Mother argues the trial court erred, and it should have sustained Mother's "objection" on the ground that Father's testimony lacked foundation. Mother, however, did not raise at trial the arguments against the court's evidentiary rulings that she raises here. *Because Mother did not raise those arguments at trial, she has forfeited the right to raise them on appeal.* "'[A] party cannot argue the court erred in failing to conduct an analysis it was not asked to conduct' (*People v. Partida* [(2005)] 37 Cal.4th 428, 435) . . ." (*People v. Thornton* (2007) 41 Cal.4th 391, 443, italics added [defendant forfeited arguments challenging trial court's exclusion of hearsay evidence where he failed to raise them at trial in opposition to plaintiff's objections].)



Stephen Temko is a Certified Family Law Specialist and Certified Appellate Law Specialist (State Bar of California, Board of Legal Specialization). Mr. Temko is a fellow of the American Academy of Matrimonial Lawyers and former co-chair of the ACFLS Amicus Committee. Mr. Temko's practice is limited to appellate matters and he was the attorney in over 70 published decisions including Feldman, Duncan, Kerr, Georgiou, Simmons, Shaughnessy, Sorge, & Macilwaine.

Dennis Temko is a lawyer who specializes in family law appeals and writs with his office in San Diego. He is a former board member of the San Diego Family Law Bar Association. He handled numerous family law appeals and writ proceedings including published opinions in Winternitz, Minkin, Marriage of G., S.P. v. F.G., Lief v. Superior Ct, & David L. v. Superior Ct.

Example: Failure to Object (From *Marriage of Feldman)*

Aaron Has Waived the Argument that Elena's Attorney Fees Were Not Reasonable and Necessary

> Aaron argues that the trial court abused its discretion in setting the amount of attorney fees at $140,000, because those fees were not shown to be "reasonable and necessary."
> We reject Aaron's argument because he failed to raise a timely objection in the trial court. Elena submitted a series of declarations in support of her request for attorney fees as part of the sanctions motion. *Although Aaron had ample opportunity to do so prior to or during the hearing on the sanctions motion, Aaron did not object to the amount of the fees that Elena was seeking.* He did not argue that Elena had failed to show that the fees were reasonable or necessary, and he raised no other objection to the amount of the fees sought or to the documentation that Elena submitted in support of her fee request. "'An appellate court will not consider procedural defects or erroneous rulings where an objection could have been, but was not, raised in the court below.' . . . . We accordingly reject Aaron's challenge to the amount of the fees awarded to Elena." *(In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1495-1496, fns. omitted, italics added.)

Counsel's Objection Must Be Timely

Preliminarily, defendant forfeited his ability to challenge the court's explanation by failing to make a specific and *timely objection.* (*People v. Mills* (2010) 48 Cal.4th 158, 170.)

Example: As a threshold matter, Ruiz forfeited any argument regarding the gang expert's opinion testimony by failing to lodge a timely objection below. (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1140 [claim that impermissible expert opinion was admitted was not preserved on appeal where no objection was lodged at trial].)

Counsel's Objection Must Be Specific and No Other Grounds May Be Argued on Appeal

An objection must inform the court of the specific ground on which it is based. (Evid. Code, § 353, subd. (a).) "Experienced or not, counsel needed to make a timely and specific objection on the ground asserted on appeal." (*People v. Camacho* (2022) 14 Cal.5th 77, 119 [death penalty affirmed].) The relevancy objection did not inform the court that defendants considered the prosecutor's argument to be improper vouching for the credibility of a witness. (*People v. Boyd* (1990) 222 Cal.App.3d 541, 572.)

The requirement of a specific objection serves important purposes. But, to further these purposes, the requirement must be interpreted reasonably, not formalistically. "Evidence Code section 353 does not exalt form over substance." (*People v. Morris, supra,* 53 Cal.3d at p. 188.) The statute does not require any particular form of objection. Rather, "the objection must be made in such a way as to alert the trial court to the nature of the anticipated evidence and the basis on which exclusion is sought, and to afford the People an opportunity to establish its admissibility." (*People v. Williams* (1988) 44 Cal.3d 883, 906.)

The Objection Rule Applies to Declarations

"Appellate courts will not consider objections that were not presented to the trial court. [Citation.]" (*In re Marriage of S.* (1985) 171 Cal.App.3d 738, 745; see also *In re Marriage of Kerry* (1984) 158 Cal.App.3d 456, 466 [*even if affidavit in support of motion is objectionable, failure to object "waives the defects, and the affidavit becomes competent evidence*"], italics added.) It follows that husband's failure to object to the procedures employed by the trial court impliedly waived any objection. He therefore has failed to preserve any objection he may have had for review on appeal.

3. Counsel's Failure to Obtain a Ruling Results in Forfeiture

Where a party fails to obtain a ruling from the trial court, the objections generally are not preserved on appeal. (*Bussard v. Minimed, Inc.* (2003) 105 Cal.App.4th 798, 801, fn. 1.)

"'(W)here the court, through inadvertence or neglect, neither rules nor reserves its ruling . . . the party who objected must make some effort to have the court actually rule. *If the point is not pressed and is forgotten, he may be deemed to have waived or abandoned it, just as if he had failed to make the objection in the first place.*' (Citation.) There was no reversible error in the failure to rule on the motion." (*People v. Obie* (1974) 41 Cal.App.3d 744, 750, italics added, disapproved of on other grounds by *People v. Rollo* (1977) 20 Cal.3d 109, fn. 4; 6 Witkin, Cal. Crim. Law 4th (2012) Rev Error, § 48, p. 579.)

4. If your evidence was excluded, did you make a proper offer of proof?

If your custody expert or your valuation expert is excluded you must make an "offer of proof." (Evid. Code, § 354, italics added.) Erroneous exclusions—grounds for reversal:

> A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous exclusion of evidence unless the court which passes upon the effect of the error or errors is of the opinion that the error or errors complained of resulted in a miscarriage of justice and it appears of record that:
> (a) *The substance, purpose, and relevance of the excluded evidence was made known to the court by the question asked, an offer of proof, or by any other means*;
> (b) The rulings of the court made compliance with subdivision (a) futile; or
> (c) The evidence was sought by questions asked during cross-examination or recross-examination.

"Moreover, the failure to make an adequate offer of proof in the court below ordinarily precludes consideration on appeal of an allegedly erroneous exclusion of evidence. (Evid. Code, § 354; *Heiner v. Kmart Corp.* (2000) 84 Cal.App.4th 335, 344; *Tudor Ranches, Inc. v. State*

Comp. Ins. Fund (1998) 65 Cal.App.4th 1422, 1433.) The Shaws fail to point to any place in the record where they successfully preserved their evidentiary claims of error in this manner. And they fail to demonstrate how any claim of error in the trial court's exclusion of evidence would have made any difference in the outcome. (Evid. Code, § 354.)" (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 282, italics added.)

"'*The offer of proof must be specific in its indication of the purpose of the testimony, the name of the witness, and the content of the answer to be elicited.* The judge may properly reject a general or vague offer which does not indicate with precision the evidence to be presented and the witnesses who are to give it....' (Witkin, Cal. Evidence (2d 1966) Form of Offer, § 1311, p. 1212.)

"*Merely setting forth the substance of facts to be proved does not constitute compliance with Evidence Code section 354, subdivision (a). (United Sav. & Loan Assn. v. Reeder Dev. Corp.* (1976) 57 Cal.App.3d 282, 294.) The offer of proof here lacked specificity. Although it contained the names of alternate witnesses who might testify (plaintiff or the hospital evaluator) and the purpose of the testimony, it did not give the precise testimony to be offered by either of these witnesses." (*Semsch v. Henry Mayo Newhall Memorial Hospital* (1985) 171 Cal.App.3d 162, 167-168, italics added.)

"'*An offer of proof must consist of material that is admissible, it must be specific in indicating the purpose of the testimony, the name of the witness and the content of the answer to be elicited.' (Semsch v. Henry Mayo Newhall Memorial Hospital* (1985) 171 Cal.App.3d 162, 167.) *Before an appellate court can knowledgeably rule upon an evidentiary issue presented, it must have an adequate record before it to determine if an error was made. For this purpose, we are limited to reviewing the matters appearing in the record. (Grimshaw v. Ford Motor Co.* (1981) 119 Cal.App.3d 757, 792.) Because of the uncertainty in the record concerning the nature of the proffered evidence, we cannot say that the juvenile court erred in excluding it. (*Semsch v. Henry Mayo Newhall Memorial Hospital, supra,* 171 Cal.App.3d 162, 168-169)" (*In re Mark C.* (1992) 7 Cal.App.4th 433, 445, italics added.)

On appeal, the appellant must demonstrate prejudice. If your evidence is excluded (objection sustained) or expert excluded, you must advise the trial court why this evidence was crucial to your case.

5. Counsel's Failure to Bring Error to the Trial Court's Attention

(E.g., Child Support Guideline Miscalculated)

"For better or worse, California child support law now resembles determinate sentencing in the criminal law: The actual calculation required of the trial judge has been made been [*sic*] so complicated (see generally Fam.Code, § 4055) that, to conserve judicial resources, *any errors must be brought to the trial court's attention at the trial level while the error can still be expeditiously corrected.* (See generally *People v. Scott* (1994) 9 Cal.4th 331, 353 ['*Routine defects in the court's statement of reasons are easily prevented and corrected if called to the court's attention. As in other waiver cases, we hope to reduce the number of errors committed in the first instance and preserve the judicial resources otherwise used to correct them.*'].) *Here, while Steven brought a motion for reconsideration on the move away issue, he failed to mention that his income had been overstated.*" (*In re Marriage of Whealon* (1997) 53 Cal. App.4th 132, 144, italics added.)

(E.g., Income from Rental Properties)

"Father argues that the trial court erroneously allocated to him all of the income from Omid's Unocal and the rental properties. For the first time on appeal, he claims that the business and rental properties were community property, so that only half of the income should have been allocated to him. *Because this issue was not raised in the trial court, it is waived.* 'For better or worse, California child support law now resembles determinate sentencing in the criminal law: The actual calculation required of the trial judge has been made so complicated [citation] that, to conserve judicial resources, any errors must be brought to the trial court's attention at the trial level while the [theoretical] error can still be expeditiously corrected. [Citation.]' (*In re Marriage of Whealon* (1997) 53 Cal.App.4th 132, 144.)" (*In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28, 37, italics added.)

6. No Court Reporter Is Fatal (Settled Statement Alternative)

Failure to Provide a Transcript Is Fatal to an Abuse of Discretion Claim

Unless the absence of a reporter's transcript is not the fault of the party seeking review, "*the absence of a transcript precludes a determination that the trial court abused its discretion.* [Citations.]" (*Fasuyi* v. *Permatex, Inc.* (2008) 167 Cal.App.4th 681, 690, fn. 5, italics added; see Eisenberg, et al., Cal. Prac. Guide: Civil Appeals & Writs (The Rutter Group 2012) ¶ 4:3.1 ["Appellant cannot obtain reversal of a trial court order on the basis of abuse of discretion when there is no record explaining the trial court's reasoning"].) This is because "[a]ll intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140.)

An appeal without a transcript is called an appeal "on the judgment roll." (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083; accord, *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.) In such an instance, the reviewing court "must conclusively presume that the evidence is ample to sustain the [trial court's] findings." (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) The review is limited to determining whether any error "appears on the face of the

record." (*National Secretarial Service, Inc. v. Froehlich* (1989 210 Cal.App.3d 510, 521.)

In *Ketchum v. Moses, supra,* 24 Cal.4th 1122, 1140, an attorney fee case, the Supreme Court denied relief because a reporter's transcript of the fee motion was not provided.

> As we explained in *Maria P.:* "It is the burden of the party challenging the fee award on appeal to provide an adequate record to assess error. [Citations.] Here, [Ketchum] should have augmented the record with a settled statement of the proceeding. [Citations.] Because [he] failed to furnish an adequate record of the attorney fee proceedings, [Ketchum's] claim must be resolved against [him]." (*Maria P. v. Riles, supra,* 43 Cal.3d at pp. 1295-1296.)

The courts of appeal have applied the rule religiously. (*Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal. App.4th 440, 447 [attorney fee appeal]; see also, *Wagner v. Wagner* (2008) 162 Cal.App.4th 249 [no record led to the forfeiture of discretionary set aside request].)

Failure to Provide a Transcript Is Fatal to a Sufficiency Claim

As noted above, as to the party seeking reversal, it is the appellant's burden to provide an adequate record to overcome the presumption of correctness and show prejudicial error. (See *Denham v. Superior Court.* (1970) 2 Cal.3d 557, 564.) *Thus, an appellant who attacks a judgment or order, but supplies no reporter's transcript of the proceedings, is precluded from asserting that the evidence was insufficient to support the judgment.*

> To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence. (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992; citations omitted.)

It is presumed substantial evidence supports the trial court's findings. (*Stevens v. Stevens* (1954) 129 Cal.App.2d 19, 20.)

Similarly, an appellant who challenges an order without including the underlying written or oral motions in the appellate record waives his or her right to argue the court erred in denying the motion. Unless the error appears on the face of the record, a reviewing court cannot evaluate error unless it knows the evidence and arguments that were before the court at the time it issued its ruling. (See *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575.)

A Settled Statement Obtained in the Trial Court May Save the Day: This Statement Should Be Prepared in Conjunction with Appellate Counsel

(See Judicial Council Forms, form APP-014, Appellate Information; form APP-014, Motion for Settled Statement; form APP-025, Appellant's Proposed Statement; form APP-020, Response to Appellant's Proposed Statement; form APP-022, Order on Appellant's Proposed Statement.)

This is a fairly complicated, time-consuming, and expensive procedure. Counsel are recreating trial testimony from their trial notes. One less expensive alternative is to simply hire a court reporter but not pay for the transcripts unless the case goes on appeal. The only financial obligation is the appearance fee. The cost of the appearance fee might well be shared by the opposition.

7. Statement of Decision Issues

Failure to Identify Controverted Issues (CCP, § 632) and

Failure to Timely Object or Object at All to Proposed Statement of Decision and Doctrine of Implied Findings (CCP, § 634)

Code of Civil Procedure Sections 632 and 634

> CCP, § 632 (italics added)
> In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as *to each of the principal controverted issues at trial* upon the request of any party appearing at the trial. *The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision.* The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested the statement, any party may make proposals as to the content of the statement of decision.
> The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties.
> CCP, § 634 (italics added)
> *When a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record shows that the omission or ambiguity was brought to the attention of the trial court* either prior to entry of judgment or in conjunction with a motion under Section 657 or 663, it shall not be inferred on appeal or upon a motion under sections 657 or 663 that the trial court decided in favor of the prevailing party as to those facts or on that issue.

See and read all of California Rules of Court, rule 3.1590 and in particular these subsections (italics added):

Request for Statement of Decision

> *Within 10 days* after announcement or service of the tentative decision, whichever is later, any party that

appeared at trial may request a statement of decision to address the principal controverted issues. The principal controverted issues must be specified in the request.

(e) Other party's response to request for statement of decision

If a party requests a statement of decision under (d), any other party may make proposals as to the content of the statement of decision *within 10 days* after the date of request for a statement of decision.

(f) Preparation and service of proposed statement of decision and judgment

If a party requests a statement of decision under (d), the court must, within 30 days of announcement or service of the tentative decision, prepare and serve a proposed statement of decision and a proposed judgment on all parties that appeared at the trial, unless the court has ordered a party to prepare the statement. A party that has been ordered to prepare the statement must within 30 days after the announcement or service of the tentative decision, serve and submit to the court a proposed statement of decision and a proposed judgment. If the proposed statement of decision and judgment are not served and submitted within that time, any other party that appeared at the trial may within 10 days thereafter: (1) prepare, serve, and submit to the court a proposed statement of decision and judgment or (2) serve on all other parties and file a notice of motion for an order that a statement of decision be deemed waived.

(g) Objections to proposed statement of decision

Any party may, within 15 days after the proposed statement of decision and judgment have been served, serve and file objections to the proposed statement of decision or judgment.

(k) Hearing

The court *may* order a hearing on proposals or objections to a proposed statement of decision or the proposed judgment.

(n) Trial within one day READ THIS!

When a trial is completed within *one day or in less than eight hours* over more than one day, *a request for statement of decision must be made before the matter is submitted* for decision and the statement of decision may be made orally on the record in the presence of the parties.

The Doctrine of Implied Findings Will Be Applied on Appeal If You Fail to Request a Statement of Decision or Properly Object to a Proposed Statement of Decision

The doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment. (*Sammis v. Stafford* (1996) 48 Cal.App.4th 1935, 1942.) The doctrine is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133 (*Arceneaux*); *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)

In a bench trial, how does an appellant obtain a record affirmatively proving the trial court erred by failing to make factual findings on an issue? The appellant must secure a statement of decision under Code of Civil Procedure section 632 *AND* pursuant to Code of Civil Procedure section 634, bring any ambiguities and omissions in the statement of decision to the trial court's attention.

STEP 1. In *Arceneaux,* the California Supreme Court explained "Sections 632 and 634 [of the Code of Civil Procedure] ... set forth the means by which to avoid application of these inferences in favor of the judgment. When the court announces its tentative decision, a party may, under section 632, request the court to issue a statement of decision explaining the basis of its determination, and shall specify the issues on which the party is requesting the statement; following such a request, the party may make proposals relating to the contents of the statement. Thereafter, under section 634, the party must state any objection to the statement in order to avoid an implied finding on appeal in favor of the prevailing party." (*Arceneaux, supra,* 51 Cal.3d at p. 1133, fns. omitted.)

STEP 2. Securing a statement of decision is the first step, but is not necessarily enough, to avoid the doctrine of implied findings. *Litigants must also bring ambiguities and omissions in the statement of decision's factual findings to the trial court's attention—or suffer the consequences.* Code of Civil Procedure section 634 states if omissions or ambiguities in the statement of decision's factual findings are timely brought to the trial court's attention, "it shall not be inferred on appeal ... that the trial court decided in favor of the prevailing party as to those facts or on that issue."

"[S]ection 634 clearly refers to a party's need to point out deficiencies in the trial court's statement of decision as a condition of avoiding such implied findings, rather than merely to request such a statement initially as provided in section 632." (*Arceneaux, supra,* 51 Cal.3d at p. 1134, italics added.) In contrast, a party does not waive objections to legal errors appearing on the face of the statement of decision by failing to respond to it. (*United Services Auto. Assn. v. Dalrymple* (1991) 232 Cal.App.3d 182, 186.)

Thus, as the Arceneaux court explained, the statutes describe a two-step process for avoiding implied factual findings. First, a party must request a statement of decision pursuant to Code of Civil Procedure section 632. (*Arceneaux, supra,* 51 Cal.3d at p. 1134.) Second, if the trial court issues a statement of decision, a party claiming omissions or ambiguities in the factual findings must bring the omissions or ambiguities to the trial court's attention. (*Ibid.*)

CONSEQUENCE. *If the party challenging the statement of decision fails to bring omissions or ambiguities in it to the trial court's attention, then, under Code of Civil Procedure section 634, the appellate court will infer the trial court made implied factual findings favorable to the prevailing party on all issues necessary to support the*

judgment, including the omitted or ambiguously resolved issues. (*Arceneaux, supra,* 51 Cal.3d at pp. 1133-1134; *SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal. App.4th 452, 462; *Tusher v. Gabrielsen* (1998) 68 Cal. App.4th 131, 140.) The principle was recently applied in *In re Marriage of Destiny and Justin C.* (2023) 87 Cal.App.5th 763, review filed (Feb. 28, 2023) where the court stated, "Mother's argument runs afoul of the doctrine of implied findings and the rule that requires a party to object to the proposed statement of decision on the grounds that it is somehow unclear or ambiguous." The appellate court then reviews the implied factual findings under the substantial evidence standard. (*Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792-793; *Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 48, 58-62 [where trial court made no express factual findings on certain points and no objection was made to the proposed statement of decision in this regard, the doctrine of implied findings applied on appeal and the court was required to infer lower court made every necessary finding and to affirm if such findings were supported by substantial evidence].)

The doctrine of implied findings is applied when the Objections to the Statement of Decision is properly filed but does not object to the actual issue raised on appeal. *(In re Marriage of Sahafzadeh-Taeb & Taeb* (2019) 39 Cal. App.5th 124, 145, fn. 11 [appellant objected on grounds of lack of sufficient evidence but not on ground court failed to make an express finding]; *In re Marriage of Fossum* (2011) 192 Cal.App.4th 336, 346 [failure to object to lack of specificity].)