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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re the Marriage of MICHAEL and DELLA  
ALESSO.

MICHAEL ALESSO,

Respondent,

v.

DELLA ALESSO,

Appellant.

F062564

(Super. Ct. No. S1501FL601550)

**OPINION**

APPEAL from a judgment of the Superior Court of Kern County. John D. Oglesby, Judge.

Della Alesso, in pro. per., for Appellant.

Sumalpong & Sumalpong and Joanne S. Sumalpong for Respondent.

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Appellant Della Alesso (Wife), challenges the judgment in the underlying dissolution action. According to Wife, the judgment should be vacated because it was based on fraud. Wife claims that her attorney was incompetent and that he misled both her and the court.

However, the record does not support Wife's allegations. Accordingly, the judgment is affirmed.

### **BACKGROUND**

Wife and respondent, Michael J. Alesso (Husband), dissolved their 25-year marriage. Trial of the matter began in October 2010 and was continued several times.

On January 14, 2011, the parties appeared for another day of trial. Wife was represented by Ira Stoker and Husband was represented by Karen Gaul Wallace. At the beginning of the session, the court explained that the court had had some chambers discussion with counsel and had been able to "work out a negotiation" on the last remaining items. The parties agreed to rely on the reporter's transcript. Husband's counsel then recited a stipulation regarding the outstanding property issues. Wife also agreed to waive any spousal support arrears. Husband's counsel further set forth the court's indicated ruling on spousal support and attorney fees. Wife was to receive \$5,200 per month in spousal support and Husband was to pay \$10,000 to Stoker for Wife's attorney fees.

The court then asked Husband if he accepted the court's indicated ruling and the settlement that his attorney recited. Husband responded "Yes, I do." Thereafter, the court asked Wife "Ms. Alesso, likewise?" Wife responded "I'm sorry. I didn't hear exactly." The court replied "Okay. You have the right to present evidence in this case. I've heard a lot of evidence. I've given an indicated ruling on the support, and Ms. Wallace has indicated the agreement of you ... and Mr. Alesso regarding the property division; so on the property division, is that, in fact, your agreement?" Wife responded "Yes."

Regarding the indicated ruling and further evidence, Wife was concerned about her dental needs and submitted a document outlining Wife's need for reconstructive work on her jaw. The court acknowledged the possible need for this expense but noted that the work should be covered by most medical insurance policies. The court informed Wife

that, if insurance coverage was denied, the court would consider a modification upon a proper motion.

The proceedings concluded on March 22, 2011, and judgment was entered.

### **DISCUSSION**

Wife contends that the January 14, 2011, agreement was the result of fraud, misconduct and incompetence on the part of Stoker, her attorney. According to Wife, Stoker incorrectly told her that she had no choice but to accept the property settlement and then ignored her during the proceedings. However, the facts alleged to support these claims are not part of the record. Wife recites experiences and conversations that she had with Stoker outside of court. Further, although the record demonstrates otherwise, Wife asserts that she did not say “yes” when the court asked her if the property division was in fact her agreement. Wife additionally argues that the attorney fees award of \$10,000 created a conflict of interest between her and Stoker.

Wife’s discussion of facts that are outside the appellate record is improper. In reaching a decision, an appellate court is governed by the record. Accordingly, this court will not consider these facts and will disregard the statements of such facts set forth in Wife’s briefs. (*Oldenkott v. American Electric, Inc.* (1971) 14 Cal.App.3d 198, 207.) Since Wife’s claims of fraud, attorney misconduct and attorney incompetence are based on factual allegations outside the appellate record, Wife has not met her burden to show reversible error by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575.)

Similarly, Wife’s claim that she did not agree to the property division has no support in the record. Rather, according to the reporter’s transcript, Wife answered “yes” when the court asked if that was her agreement.

Finally, Wife states she believes that the award of \$10,000 in fees to Stoker created a conflict of interest. However, Wife provides no support for this claim. Thus, again, Wife has not met her burden of showing reversible error.

In sum, the appellate record provides no support for Wife's claims of error. An appeal was not the proper means for Wife to attempt to set aside the judgment based on allegations of fraud or make claims for attorney misconduct or malpractice.

**DISPOSITION**

The judgment is affirmed. Costs on appeal are awarded to respondent.

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Franson, J.

WE CONCUR:

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Cornell, Acting P.J.

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Kane, J.