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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of BERNADETTE
CATTANEO and ANDREAS ABRAMSON.

BERNADETTE CATTANEO,

Appellant,

v.

ANDREAS ABRAMSON,

Respondent.

F069033, F070034, F070069

(Super. Ct. No. FL8992)

OPINION

APPEAL from a judgment of the Superior Court of Tuolumne County. James A. Boscoe, Judge; Kim M. Knowles and Philip A. Pimentel, Commissioners.

Garrett C. Daily for Appellant.

Robert A. Roth for Respondent.

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In these three consolidated appeals, Bernadette Cattaneo challenges orders related to the division of the community estate following the dissolution of her marriage to Andreas Abramson. We find no reversible error and affirm. As will be seen, the trial was unreported, and in many instances (but not all), Bernadette's failure to demonstrate error is rooted in the lack of a complete record.

FACTS AND PROCEDURAL HISTORY

Since there is no reporter's transcript, this statement of the facts is drawn primarily from the trial court's statement of decision. After 12 years of marriage, Bernadette and Andreas separated on April 30, 2009. Bernadette filed a petition for dissolution on the same date. (The petition stated the date of separation as January 4, 2008, but after a contested hearing the trial court found the actual date of separation to be April 30, 2009.) They had one minor child, a daughter (the daughter), who was 12 years old at the time of separation.

The trial court entered a status-only judgment of dissolution on January 11, 2010.¹ The marriage was declared dissolved as of December 23, 2009. Bernadette's last name was restored from Abramson to Cattaneo.

A trial before Commissioner Knowles was conducted on six dates beginning April 24, 2012 and ending June 27, 2012. The issues addressed in the trial were child custody, child support, spousal support, and the division of the marital estate. The court issued a tentative decision on November 21, 2012. After overruling objections submitted by both parties, the court adopted the tentative decision as its statement of decision on June 5, 2013. Judgment was entered upon this statement of decision on January 15, 2014.

In the statement of decision, the court awarded the parties joint legal and physical custody of the daughter. It awarded primary physical custody to Andreas, however, over Bernadette's argument that they should share physical custody equally. Andreas testified the daughter did not like Bernadette's boyfriend, Craig Robinson. Bernadette did not dispute this. Andreas further testified that Robinson had "anger management issues." Robinson himself did not dispute this contention. When the daughter stayed with

¹A status-only dissolution terminates the marriage but leaves the division of property and other matters for later proceedings.

Bernadette, she refused to sleep in the house with Robinson. Instead, she slept in a guest room at the resort Bernadette managed. The court ordered that the daughter would continue to live primarily with Andreas, and Bernadette would have a right to visitation on alternate weekends. Further, Robinson could not be present during the daughter's overnight visits with Bernadette.

The court next discussed child support. It found that, as manager of Lake Tulloch Resort, Bernadette earned \$5,000 and received housing and utilities worth \$1,050 each month. She also was a licensed real estate broker and received one referral fee of \$9,000 in 2012. She had rental income on property, which approximately equaled her loan payments on the property. She had been loaned \$75,000 by Robinson and two other individuals and had no plans to repay them. Finally, there was "an account nicknamed the 'Princess Account' in which Mr. Robinson testified he has approximately \$300,000." This account had been used to pay some of Bernadette's attorney's fees and to make a \$250,000 payment on her behalf against a judgment debt owed by the parties. Bernadette was not a signatory on this account. The court found that, in 2012, Andreas earned \$8,323 from a loan business and \$11,770 from selling things on the internet. He also received \$51,000 in loans from his parents and a friend. Based on these findings and on the percentage of time the daughter would be spending with each parent, the court ordered Bernadette to pay Andreas \$663 per month in child support. The court did not award spousal support to either party.

Turning to real property, the court found that 83 Sanguinetti Court, Copperopolis, was the family home. This was the only home in which the daughter had lived. She and Andreas had lived there continuously since the date of separation. The court found that the daughter should continue living there, so it awarded the house to Andreas. It found the value of the house to be \$1.2 million, with equity of \$62,283.60. Andreas was ordered to pay half the equity value to Bernadette.

Another house, 841 Calais Circle, Hollister, was found to have a value of \$265,000 and equity of \$66,406.15. The court awarded this house to Bernadette, with half the equity value to be paid to Andreas.

The court discussed four other parcels of real property that had been owned by the parties but lost in foreclosure or, in one case, short-sold. It made various orders regarding these, including orders to Bernadette to pay Andreas a portion of rents she received or should have charged on some of the properties. The court retained jurisdiction over the disposition of one property, as to which Bernadette was attempting to have a foreclosure reversed, and over the proceeds of a planned sale of fixtures from another foreclosed property.

The parties owned many vehicles. Some of these had been awarded to one party or the other pursuant to a prior stipulation. In the statement of decision, the court made awards and orders regarding many more, including two Lamborghinis, a Hummer, a Camaro, a Cadillac Escalade, two pickup trucks, a golf cart, two motorcycles, three quad all-terrain vehicles, a motorboat, and a Sea-Doo. The parties had also owned a Beechcraft Bonanza A36 airplane, which Bernadette had rescued from a bank repossession by means of refinancing from a corporation controlled by Robinson, leading to a default and repossession of the plane by the corporation. The court found that Bernadette's actions leading to the transfer of title to her boyfriend's corporation were detrimental to the community and assigned to her any tax liability arising from debt forgiveness obtained through the refinancing. The court made an award to Andreas for storage fees he had paid for some of the vehicles.

Andreas had collections of guns, watches, flashlights, neon lights, knives, silver and currency, portions of which he had sold for living expenses after the separation. The court awarded these collections to Andreas and ordered him to pay half their value to Bernadette.

Bernadette had four diamond rings. The court awarded them to her and ordered her to pay half the value of three of them to Andreas. The fourth was Bernadette's wedding ring and thus was her separate property.

Finally, the court made orders disposing of the contents of a PayPal account and numerous bank accounts, as well as the proceeds of several insurance claims.

The couple had substantial debts. They had defaulted on a \$500,000 loan related to a real property transaction. The creditor, Dick McAbee, obtained a judgment, of which \$526,557 was outstanding at the time of trial. The court assigned each party half of the outstanding balance. There were around two dozen credit card accounts. The court allocated responsibility for only two of these, retaining jurisdiction over the rest pending receipt of additional information. There also were extensive tax debts over which the court retained jurisdiction with small exceptions.

The court totaled the awards and credits to each spouse and found Andreas's net award to be about \$68,000 greater. It ordered him to pay Bernadette half this amount to equalize the award.

On December 5, 2013, after the tentative decision became the court's statement of decision but before judgment was entered, Bernadette filed a motion to reopen the trial. The motion informed the court that Bernadette had negotiated with the bank to remove a second mortgage from the Sanguinetti Court house. The balance on the second mortgage was \$198,240. The bank agreed to extinguish the loan in exchange for a discounted sum paid by Bernadette from noncommunity funds. Bernadette asked the court to reopen the trial to receive evidence of this transaction and to modify the division of property to take account of it. After judgment was entered, Bernadette filed a motion to set it aside, for the same reason. The court heard the motions on July 7, 2014, and denied them in an order filed August 25, 2014.

The July 7, 2014, hearing also addressed a request by Bernadette for a settled statement of the evidence presented at trial, to be used on appeal as a substitute for a

reporter's transcript. The request was denied. In support of the request for a settled statement, Bernadette asked the court to give her access to notes taken during the trial by Commissioner Knowles, who had retired. The court said it believed there was no authority under which litigants could be provided with a judicial officer's personal notes, but it would consult with the presiding judge on the matter. This request was later denied.

On May 20, 2014, while the motions discussed above were pending, Andreas filed an ex parte request for an order directing the clerk of the court to execute a deed transferring Bernadette's interest in the Sanguinetti Court house to him, unless Bernadette did so herself within three days. The request was supported by Andreas's declaration that he had executed a deed conveying his interest in the Calais Circle house to her, but she had refused to reciprocate. The court granted the request on June 4, 2014.

Bernadette filed three notices of appeal. The first, filed March 10, 2014, was from the judgment entered upon the statement of decision on January 15, 2014. The second, filed August 5, 2014, was from the court's order of June 4, 2014, directing the clerk of the court to execute a deed conveying Bernadette's interest in the Sanguinetti Court house to Andreas. The third, filed September 2, 2014, appealed from the court's orders of August 25, 2014, including the orders denying Bernadette's motions to set aside the judgment and reopen the trial and for issuance of a settled statement. On December 9, 2014, Bernadette filed a motion in this court requesting that we receive evidence outside the record of the proceedings below. This was evidence related to Bernadette's actions in extinguishing the second mortgage on the Sanguinetti Court house.

This court consolidated the three appeals and deferred ruling on the motion. Andreas submitted a letter stating he would not be filing a brief in this court as he had exhausted his funds.

DISCUSSION

I. Denial of motion for settled statement

Toward the end of her brief, Bernadette argues the trial court erred when it denied her motion for issuance of a settled statement. Because Bernadette's failure to demonstrate error on many of the issues she raises depends on the lack of a record of the trial proceedings, we will consider the settled-statement issue first.

An appellant wanting to rely on a settled statement instead of a reporter's transcript must proceed under California Rules of Court, rule 8.137 (Rule 8.137). Under that rule, the appellant must file a motion in the superior court supported by a showing of one of the following: (1) using a settled statement will result in substantial cost savings and will not significantly burden the parties or court; (2) the oral proceedings were not reported or cannot be transcribed; or (3) the appellant cannot pay for a transcript, and funds are not available from the Transcript Reimbursement Fund. (Rule 8.137(a)(2).) The court may grant or deny the motion. If the court grants the motion, the appellant must submit a condensed narrative of oral proceedings the appellant believes are necessary for the appeal. If the condensed narrative describes less than all of the testimony, the appellant must state the points to be raised on appeal, and the appeal will be limited to those points. The respondent may then submit proposed amendments to the narrative. (Rule 8.137(b).) Next, the court must conduct a hearing and must settle the statement. After the statement is prepared, the respondent has an opportunity to object to it. Finally, the court certifies the statement. (Rule 8.137(c).)

Except for stating the minimum showing the appellant must make, Rule 8.137 sets forth no standards for deciding whether a motion for a settled statement should be granted or denied and no standard of appellate review. It has been held, however, that under the rule's predecessor, former rule 7 of the Rules on Appeal, "full and plenary power over [the decision on a request for a settled statement to be used in an appellate record] is reposed in the trial judge, subject only to the limitation that he *does not act arbitrarily.*"

(Eisenberg v. Superior Court (1956) 142 Cal.App.2d 12, 18.) In other words, the decision under rule 7 was committed to the sound discretion of the trial judge. We have found no authority suggesting that it is otherwise under the current rule. Consequently, we review the denial of the request under the abuse of discretion standard. We must affirm the decision if it was within the bounds of reason and supported by substantial evidence. (See *In re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1286 (*Geraci*); *In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 625.)

In this case, Bernadette filed a request for an order that the court approve the use of a settled statement. The request stated that Bernadette needed a settled statement to support her appeal from the judgment because no court reporter was present at the trial. She stated she believed there would be no dispute about the evidence that was presented, and it would not be difficult or expensive to agree on a settled statement. Andreas filed a responsive declaration in which he acknowledged the trial was unreported. He explained that the parties had stipulated to proceed without a court reporter. This explanation was supported by a copy of a page from Bernadette's posttrial brief in which her counsel affirmed the lack of a court reporter was by stipulation of counsel. Andreas further declared that, over the course of the litigation, he and Bernadette "rarely agreed upon any issue of fact or law," and "[i]t is highly unlikely that she and I will agree to any settled statement of the facts which were presented" at trial. Bernadette and her counsel had not provided any proposed statement. The trial had taken place two years earlier, had lasted six days, and had been conducted before a different judicial officer. Andreas said he was unlikely to agree to the inclusion in a settled statement of any facts not already recited in Commissioner Knowles's statement of decision. An effort to settle a statement of the evidence would be costly and time-consuming.

At the hearing, the trial court stated that, because Commissioner Knowles was not available and a reporter's transcript could not be obtained, it did not "believe there's a method to determine the testimony or other evidence presented other than as recited by

the [c]ourt in [the statement of decision], which was specific and extensive.” Further, “it would be impossible ... and/or extremely expensive for both parties to attempt to work on” a settled statement. The court denied the request.

As mentioned above, the court and parties discussed the notion of obtaining notes taken by Commissioner Knowles, but the court ultimately concluded this would be improper. Bernadette’s counsel also suggested that Commissioner Knowles “can appear telephonically” to help with the settled statement, but conceded the court probably did not “have the authority to bring her back here.” On appeal, Bernadette concedes that Commissioner Knowles’s notes would be “meaningless, except to the judicial officer who took them,” but she continues to maintain that Knowles’s assistance might somehow have been obtained.

In light of the foregoing, we conclude the court did not act arbitrarily in declining to set a hearing and denying the motion. Andreas had already declared his unwillingness to agree to any facts not in the statement of decision. The presiding officer had no knowledge of the trial proceedings. By the parties’ stipulation, there was no court reporter, so a transcript was impossible to obtain. The court found Commissioner Knowles was not available. It could, within the bounds of reason, conclude that holding a hearing to attempt to create a settled statement would be a costly exercise in futility.

Bernadette points out, in addition to the points discussed above, the trial court also said it was denying the motion because, “under [rule] 8.137(a)(2), the factors set forth by the rule of court are not demonstrated by wife in the moving pleadings.”

Rule 8.137(a)(2) is the provision requiring the moving party to show one of three preconditions to the granting of a settled statement. The second of these is “[t]he designated oral proceedings were not reported or cannot be transcribed”

(Rule 8.137(a)(2)(B).) It was undisputed that the trial was not reported and the trial court indicated its awareness of this. Its reference to a failure to establish this point clearly is mistaken. We agree with Bernadette that the court erred in this regard.

To show that an error of California law in the trial court warrants reversal on appeal, an appellant must make an affirmative showing that the error resulted in a miscarriage of justice. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 801-802.) A miscarriage of justice should be declared only when the appellate court, having examined the entire case, is of the opinion it is reasonably probable the appellant would have obtained a better result absent the error. (*Id.* at p. 800; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

The error just described is harmless under this standard. The court said it was denying the motion for two reasons: First, no practical means were available to establish any facts beyond those set forth in the statement of decision, and second, Bernadette did not establish any of the factors in Rule 8.137(a)(2). The first reason is valid and the second is not. It is not reasonably probable that the court would have granted the motion had it realized it could properly rely only on the first reason. The court made it clear it was aware there was no court reporter at the trial and this was the reason why the motion for a settled statement had been made in the first place; but it found there was no realistic prospect that a statement could be settled. There is no likelihood the mistaken reference to the rule played a significant part in the outcome.

As we have said, our conclusion that the trial court did not abuse its discretion in denying the motion for a settled statement has consequences for much of the remainder of Bernadette's appeals. With neither a reporter's transcript of the trial nor a settled statement of the evidence presented at trial, we have only limited access to the facts of the case. In fact, we do not even have a clerk's transcript—only the set of documents Bernadette chose to include in her appendix.

Under these circumstances, Bernadette cannot successfully advance any claim on appeal based on a contention that the evidence was not sufficient to support a result reached by the trial court. Given this record, and absent error appearing on the face of it, facts consistent with the validity of the judgment are conclusively presumed. (*Ballard v.*

Uribe (1986) 41 Cal.3d 564, 574-575; *County of Los Angeles v. Surety Ins. Co.* (1984) 152 Cal.App.3d 16, 23; *Cosenza v. Kramer* (1984) 152 Cal.App.3d 1100, 1102.) Aware of this rule, Bernadette maintains that all her contentions present pure questions of law, are based on facts contained in the statement of decision, and reveal errors that appear on the face of the record. As will be seen, however, she is mistaken. Many of her claims boil down to assertions that various rulings are inconsistent with her description of the facts, when in reality the facts might have been shown to be otherwise at trial. Other claims do not depend on a purported insufficiency of evidence, but these also are without merit.

II. Award of family home to Andreas

Bernadette argues the court erred in awarding the Sanguinetti Court house to Andreas because she had a separate property interest in the house that exceeded the equity. She made the same argument in her objections to the tentative decision.

The trial court found that, before the marriage, Bernadette owned real property at 840 Line Street in Hollister, and that she held this parcel as her separate property during the marriage. In 2000, she sold the Line Street property for \$133,884.13 and used those proceeds to purchase the land on which the couple built the Sanguinetti Court house. For this reason, when the court awarded the house to Andreas, it awarded Bernadette a reimbursement credit of \$133,884.13 pursuant to Family Code section 2640.

Family Code section 2640 provides that if a spouse makes a contribution of separate property to help acquire an item of community property, then upon dissolution, the donor spouse is entitled to reimbursement of that contribution in the original amount, but not to exceed the net value of the item at the time of dissolution. The right to reimbursement can be waived only by the donor spouse's execution of a written waiver.

Bernadette argues that, because the equity in the house as found by the trial court (\$62,283.60) was less than the amount of the separate property cash she contributed to its

acquisition, she should have been awarded the house instead of the cash. She cites *In re Marriage of Witt* (1987) 197 Cal.App.3d 103 (*Witt*) in support of this argument.

Witt and other cases stand for the following propositions: A reimbursement of separate property from the value of an asset is taken off the top, i.e., allocated before the community interest in the asset is divided. If the equity value of the asset at the time of dissolution is less than the amount the donor spouse contributed, the entire asset is awarded to the donor spouse. (*In re Marriage of Walrath* (1998) 17 Cal.4th 907, 913 (*Walrath*); *Geraci, supra*, 144 Cal.App.4th at p. 1286; *Witt, supra*, 197 Cal.App.3d at pp. 108-109.)

Bernadette maintains she should get the family home under these rules. Bernadette's brief, however, reveals the weakness in her argument. She acknowledges that the argument, which is in part I of her brief, can succeed only if she also is correct in her argument in part II. The latter includes the contention that the court should not have granted Andreas credit for mortgage payments he made on the Sanguinetti Court house after the date of separation. The credit was \$168,458.86, and the court ordered Bernadette to reimburse half. As we explain in the next section of this opinion, this argument is without merit. By Bernadette's admission, it follows that her claim the house should have been awarded to her fails as well.

Bernadette does not explain why her part I argument depends on her part II argument, but the reason, presumably, is this: If Andreas is entitled to credit for mortgage payments, this will be because those payments were made from his separate property funds. Payments on a community asset from community funds would not be grounds for any reimbursement, of course. If Andreas made mortgage payments from separate property funds and these payments reduced the principal balance, then Andreas was a contributor spouse. (A contribution for purposes of Family Code section 2640 is defined to include "payments that reduce the principal of a loan used to finance the purchase or improvement of the property" (Fam. Code, § 2640, subd. (a)).) If both

spouses contributed separate property and the asset has at separation a value less than the total of their contributions, they are to be reimbursed pro rata. (*Walrath, supra*, 17 Cal.4th at p. 915.) In this situation, there can be no question of *the* contributor spouse being awarded the asset in lieu of money. The disposition of the asset must be determined by other factors. In this case, the factor controlling the court's decision to award the house to Andreas was that it was the daughter's childhood home and she lived primarily with Andreas, who had primary physical custody.²

The record presented to us does not show all the facts of this situation; for instance, it does not show that Andreas's payments reduced the principal or that they were made with separate property funds. But we are obliged, without a reporter's transcript of the trial, to assume the record contains the facts necessary to support the judgment. (*Ballard v. Uribe, supra*, 41 Cal.3d at pp. 574-575; *County of Los Angeles v. Surety Ins. Co., supra*, 152 Cal.App.3d at p. 23; *Cosenza v. Kramer, supra*, 152 Cal.App.3d at p. 1102.)

It also does not appear that the trial court employed the procedure of taking the parties' contributions off the top of the house's equity before dividing the community interest, and we do not know whether the court's orders resulted in a division of the current equity value that was proportional to the parties' separate property contributions.

²Bernadette argues that a later order altering the parties' child support obligations stated the daughter had begun spending 50 percent of her time with Bernadette. She says this means "[the daughter] would have stayed in the home regardless of whom it was awarded to." This argument overlooks the fact that the order in question did not alter the award of primary physical custody to Andreas and did not change the visitation order limiting Bernadette's visitation rights to alternate weekends. The amount of time the daughter spent with Bernadette could change again at any time. Further, the order says nothing about where Robinson was when the daughter was visiting Bernadette. The court could reasonably seek to avoid creating a situation in which the daughter's childhood home would become the joint residence of Bernadette and Robinson.

But Bernadette does not argue those points. She only says the court erred in not awarding her the house. In this she is mistaken for the reasons we have stated.

III. Credits to Andreas for house and car payments

As we have just mentioned, the trial court found that Andreas made postseparation payments from separate funds on the Sanguinetti Court house and awarded him reimbursement credit for half the amount. The court also awarded Andreas half the value of the postseparation loan payments he made on one of the Lamborghinis. Bernadette argues that, for several reasons, these credits were awarded erroneously. None of her arguments have merit given her failure to submit a record of the trial proceedings.

Bernadette first contends Andreas failed to prove his payments were made from a separate property source. She says the income information he submitted showed he did not have enough income to make the payments. These are purely factual arguments that, if we had a record of the trial proceedings, we would review under the substantial evidence standard. As it is, without a reporter's transcript, we cannot effectively review the claims at all. This is so even though Bernadette cites income and expense declarations submitted to the court by Andreas. We must presume that, at trial, any additional evidence needed to support the judgment was presented.

Bernadette's next argument is that Andreas was not entitled to the credits because it was undisputed he had exclusive use of the house and car. The lack of a dispute over this fact may appear to relieve Bernadette of the consequences of not submitting a record of the trial proceedings, but it is not so. The case on which Bernadette relies, *In re Marriage of Epstein* (1979) 24 Cal.3d 76, 84-85 (*Epstein*), states: “Reimbursement should not be ordered ... where the payment was made on account of a debt for the acquisition or preservation of an asset the paying spouse was using *and the amount paid was not substantially in excess of the value of the use.*” (Italics added.) We know from the statement of decision how much Andreas paid, but we have no information about the value of the use of the house and car. There may or may not have been evidence

presented at trial about that value. Without a reporter's transcript, we must assume evidence was presented sufficient to support the judgment.

Finally, Bernadette argues the court was mistaken in calling the credits at issue "Watts/Jeffries credits," referring to *In re Marriage of Watts* (1985) 171 Cal.App.3d 366 and *In re Marriage of Jeffries* (1991) 228 Cal.App.3d 548, which, she says, dealt with scenarios different from the one here. She says the credits are *Epstein* credits, as in *Epstein, supra*, 24 Cal.3d 76. As Bernadette acknowledges, however, calling the credits by the wrong name is not reversible error. Having admitted this, Bernadette then merely reiterates her arguments that Andreas did not trace his payments to a separate property source and had exclusive use of the property. Those arguments fail for the reason we have already given.

IV. Denial of credits to Bernadette for car payments

In her objections to the tentative decision and again on appeal, Bernadette argues she was entitled to credit for her postseparation car payments. She says testimony and exhibits presented at trial support her claim that she made these payments from separate property funds. She states that, since Andreas got credit for payments he made on his Lamborghini, there is no reason she should not have gotten credit for payments she made on her vehicle.

This is a strictly factual argument, the persuasiveness of which depends on the evidence presented at trial. If substantial evidence supported the trial court's implicit finding that Bernadette did not make payments eligible for reimbursement, then the ruling was correct; if not, it was incorrect. We have no record of the trial proceedings, so we must presume sufficient evidence was presented. Therefore, Bernadette's argument is precluded.

V. Denial of request to order Andreas to refinance family home to remove Bernadette from mortgage

In her objections to the tentative decision, Bernadette argued that Andreas should be ordered to refinance the Sanguinetti Court house so Bernadette's name could be removed from the loans. The court should order this, she argued, because Andreas was having trouble keeping up with the payments and this would damage Bernadette's credit rating. Bernadette renews this argument on appeal.

Bernadette's argument in essence is that, after weighing the advantages to her of ordering Andreas to refinance against the disadvantages to him of doing so, the trial court ought to have reached the opposite of the conclusion it reached. A question such as this is addressed to the trial court's sound discretion, so we review the decision for abuse of discretion.

The terms of the request Bernadette made to the trial court show why the court might reasonably have decided the balance of factors favored Andreas's position on this issue. Bernadette wanted Andreas to be ordered to refinance and remove her name within 60 days, failing which the house would be awarded to Bernadette. Then Bernadette would have 60 days to refinance, and if she also failed, the house would be listed for sale. Andreas's and Bernadette's credit surely was in ruins, for almost all their assets were distressed at the time of trial, and they had a great deal of unsecured debt as well. At the time, from the court's perspective, there was a likelihood that neither would be able to obtain refinancing of the entire obligation, notwithstanding Bernadette's later success in clearing the second mortgage (discussed below). Granting Bernadette's request could thus nullify the court's decision to award the house to Andreas for the daughter's sake and possibly lead to the sale of the house. The court could, within the bounds of reason, decide to prioritize maintaining the house as the daughter's home over the speculative risk to Bernadette's already-damaged credit. As the court observed in the statement of decision, Andreas had so far kept the house out of foreclosure, unlike some

of the parties' other properties. Leaving it in his hands could reasonably be found to be best, given the goal of keeping the daughter in it. Bernadette has demonstrated no abuse of discretion.

VI. Rejection of Bernadette's claim of a separate property interest in 841 Calais Circle

Bernadette received title to the Calais Circle house as her separate property in 1991, pursuant to a settlement following the dissolution of a previous marriage. In this case, she asked the trial court to award it to her with no equalizing payment to Andreas. It declined to do so, instead finding the house to be community property and awarding it to Bernadette with an equalizing payment of half the current equity. Bernadette now argues this was error and also was inconsistent with the court's finding that she was entitled to reimbursement for her contribution of separate property funds to the acquisition of the Sanguinetti Court property. We disagree. As will be seen, the crucial factor once again is the lack of a record of the trial proceedings.

The parties conveyed the Calais Circle property to their trust in 2002. The grant deed by which this transfer was effected stated that the property was granted to Andreas and Bernadette as trustees of the trust by themselves as grantors, described as follows: "ANDREAS ABRAMSON who may have acquired title as an unmarried man, and BERNADETTE F. ABRAMSON, who may have acquired title as Bernadette F. Wilson or Bernadette Wilson, an unmarried woman, husband and wife."

In rejecting Bernadette's request to treat the house as her separate property, the trial court stated:

"The grant deed whereby the parties put this property into [their trust] shows Andreas on title as one 'who may have acquired title as an unmarried man.' Because the burden is on Bernadette to establish any right to a [Family Code section] 2640 reimbursement, the Court finds that in this instance, because of the wording on the grant deed, Bernadette has not adequately established any separate property interest in this property."

Bernadette claims this analysis is erroneous because the question under Family Code section 2640 is whether she executed a written waiver of her right of reimbursement, and the deed language cannot be interpreted as such a waiver. A waiver of the right of reimbursement must indicate that the contributing spouse knew of the right and intended to relinquish it. Even a deed expressly stating that one spouse grants property as a gift to the couple as husband and wife is not enough. (*In re Marriage of Perkal* (1988) 203 Cal.App.3d 1198, 1201-1203.) In light of this, Bernadette says, even the trust document itself (which the trial court did not rely on) does not amount to a waiver of Bernadette's right of reimbursement, although it says the Calais Circle house is community property. As for the peculiar description of the grantors as persons who "may have acquired title" while unmarried, Bernadette says she provided testimony at trial stating this was done to enable the language to cover several properties that were conveyed to the trust and that had come to the parties by various paths.

We agree that, if the record showed Bernadette still held the house as her separate property just before conveying it to the trust, the words of the deed and the trust document would not constitute a waiver of her right of reimbursement under Family Code section 2640. The trial court, however, did not rest its conclusion on a finding that Bernadette had executed a waiver by means of the deed or trust document (or otherwise). It found she had not "established any separate property interest" in the house in the first place. We acknowledge that the statement of decision does not contain a complete recitation of the evidence leading to the conclusion that no separate property interest was established, but the court was not required to provide a complete recitation of the evidence, and it is Bernadette, as appellant, who is obliged to demonstrate that the record mandates reversal.

The court's conclusion that a separate property interest was not established is not inconsistent with its finding that Bernadette received the house as her separate property in 1991. We do not know what happened to the property between 1991 and 2002, and we

do not know what information, besides the 1991 transfer and the 2002 deed, might have gone into the court's finding that Bernadette failed to demonstrate that a separate property interest still existed in 2002. For all we can tell from the record presented to us, title to the house could, for example, have been lost by Bernadette sometime after 1991 and regained by the couple prior to 2002. This example is speculative, of course, but we *must* presume the existence of evidence sufficient to support the judgment when there is no reporter's transcript of the trial and no suitable substitute. "In the absence of a contrary showing in the record, *all* presumptions in favor of the trial court's action will be made by the appellate court. '[I]f any matters could have been provided to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.'" (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127, italics added.) The form of Bernadette's own argument in her appellate brief reveals the difficulty she confronts: "No testimony or evidence was presented" from which the court could conclude Bernadette no longer had a separate property interest by the time the trust was created. She has not presented an adequate record of the "testimony or evidence" presented at trial, and the basic appellate principles we have just mentioned do not permit us to take her word for it.

VII. Denial of Bernadette's request to charge Andreas for unexplained bank deposits

In the statement of decision, the trial court discussed one bank account in Andreas's name, saying it had a balance of \$6,100, the source of which Andreas did not recall. The court discussed three other accounts in Andreas's name that, "[a]ccording to Bernadette," had a total of about \$220,000 in deposits of "unknown" origin. Bernadette argued the money must have come from sales by Andreas of community assets. The court ruled that Bernadette was entitled to no portion of this money, stating there was "insufficient evidence to attribute the unknown deposits ... to proceeds from sales of community property." Bernadette now maintains the ruling "had to be an abuse of

discretion” because the deposits were made “[a]t a time when we know that Andreas was selling community property and at a time when we know that he was not earning any separate property income” As there is no record of the trial proceedings, Bernadette has not established error.

The record before us fails to show when the deposits were made, for the most part. The statement of decision says the \$6,100 portion was deposited between March 2010 and October 2011. Regarding the remaining \$220,000, however, it only says when the deposits were made “[a]ccording to Bernadette.” We also do not know what evidence was presented at trial about what Andreas’s separate property income might have been at any point. Bernadette refers to income and expense statements submitted by Andreas and included in her appendix, but without a reporter’s transcript, we cannot assume these statements tell the whole story, even if we assume they were authenticated and admitted into evidence. In other words, Bernadette’s claim that the deposits were made when Andreas was selling community assets and not earning income—and therefore the money must have been proceeds of the community assets—is merely a factual claim set up in opposition to the court’s factual findings. Without a record of the trial proceedings, we simply cannot say the evidence did not support the trial court’s view.

Bernadette cites *In re Marriage of Margulis* (2011) 198 Cal.App.4th 1252, 1258, for the proposition that, if one spouse makes a prima facie showing of the existence of community assets in the other spouse’s control, then the burden of proof shifts to the spouse having control, who must then account for the assets or be charged for them. She says, under this reasoning, Andreas should have been compelled either to account for the deposits in a way that established his separate ownership or else to divide the money with her. Without a reporter’s transcript, however, we must assume Bernadette made no prima facie case that the deposits were community assets, or else that Andreas established his separate ownership, as those are states of evidence that would support the judgment.

VIII. Lost rents on Arlington Road house

The trial court found that Bernadette allowed Robinson, her boyfriend, to live in the house at 2720 Arlington Road, Hollister, free of charge. The court found the house to be community property and credited Andreas with half the value of the rent Bernadette could reasonably have collected while Robinson was living there from July 1, 2011, through April 2012. Bernadette now argues this was error because the court also stated “Bernadette testified that on June 25, 2011, Andreas informed her that the property was going into foreclosure”; the foreclosure proceeded at some point; and Bernadette was “attempting to reverse the foreclosure” but had not done so at the time of trial. She says this means she had no power to collect rent starting in July 2011.

The record does not compel that conclusion. In the statement of decision, the court wrote that the foreclosure took place during active efforts at loan modification, that Bernadette believed the foreclosure was wrongful, and that her efforts to reverse it were ongoing. The court did not award the house to either party, saying it intended to award it to Bernadette but would reserve jurisdiction while her negotiations with the bank were ongoing. Bernadette does not dispute she allowed Robinson to live in the house during the period in question. She says the dispute with the bank was finally resolved, and the bank “return[ed] ownership” on October 9, 2012. All this suggests she never relinquished control over the house and could have collected rent from Robinson. Other evidence supporting the trial court’s decision could have been presented at trial; lacking a reporter’s transcript, we must presume it was. Bernadette says it was “likely illegal” for her to rent the property to anyone, but she provides no authority or analysis.

Bernadette next contends she was under no duty to rent the property. The trial court reasoned in the statement of decision that “Bernadette has a duty to manage community property for the benefit of the community, which means she is expected to rent Arlington at the fair market value, and not let Mr. Robinson reside there for free.” Bernadette avers that this overstates her duty. Citing Family Code section 721,

subdivision (b),³ and Corporations Code section 16404, subdivision (c),⁴ she maintains that her management of a community asset would need to be at least grossly negligent to constitute a breach of her duty to Andreas. She says failing to obtain rental income at fair market value does not rise to the level of gross negligence.

Bernadette does not cite any cases applying the statutes on which she relies to the postseparation management by one spouse of community real property. We will assume for the sake of argument, however, she is correct in claiming the gross negligence standard applies. Under this assumption, the trial court did not err. Family Code section 721 incorporates the gross negligence standard that governs the fiduciary relationship between business partners as set forth in Corporations Code section 16404. We are confident that a business partner, entrusted with the proper management of a residential property belonging to the partnership, would be grossly negligent if he or she provided the property to his or her romantic partner for free instead of attempting to find a paying tenant.

Further, the duties delineated in Corporations Code section 16404 include, in addition to the duty to refrain from grossly negligent conduct, the following duty: “To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from

³“Except as provided in Sections 143, 144, 146, 16040, and 16047 of the Probate Code, in transactions between themselves, spouses are subject to the general rules governing fiduciary relationships that control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in Sections 16403, 16404, and 16503 of the Corporations Code”

⁴“A partner’s duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.”

a use by the partner of partnership property or information, including the appropriation of a partnership opportunity.” (Corp. Code, § 16404, subd. (b)(1).) The trial court could reasonably conclude that, by granting the free use of the property to Robinson, Bernadette derived a benefit—equal to the fair rental value—from property of the community and was required to account to the community for it.

Finally, Bernadette says the ruling was inconsistent with a posttrial order stating rental income would not be imputed for the Arlington Road house because it was in foreclosure. Again, lacking a record of the trial proceedings (and also lacking a reporter’s transcript of the hearing that preceded the posttrial order), we cannot say the two rulings are inconsistent. There could have been evidence at trial establishing that Bernadette had effective control of the property and was letting Robinson live in it for free during the time for which a charge against Bernadette was ordered. This might not have been the case any longer by the time of the posttrial order.

IX. Equalization payment for quad vehicles awarded to Bernadette

On February 10, 2010, the parties filed a stipulation on the preliminary distribution of 21 items of property, mostly vehicles. The statement of decision notes this stipulation and orders Andreas to make an equalization payment of \$18,300, which was consistent with the valuations assigned in the stipulation. In the statement of decision, the court also awarded four quad vehicles (four-wheel all-terrain vehicles) to Bernadette, valued them at \$7,000, and ordered Bernadette to make an equalization payment of \$3,500 to Andreas. Bernadette now argues this order duplicated part of the February 10, 2010, stipulation because the same vehicles are listed in it. She asserts the judgment should be amended to delete the \$3,500 payment. Bernadette’s objections to the tentative decision included this point, but the court made no change.

The record does not support Bernadette’s contention that the same vehicles were disposed of twice. The four quads awarded in the statement of decision are described there as “1995, 1996 (2), and 2005 Yamaha Off-Highway Quads” and assigned a

collective value of \$7,000. In her appellate brief, Bernadette lists three vehicles, describing them as “1995 Yamaha Off Highway Quad—Purple,” “2006 Yamaha Off Highway Quad (Travis),” and “Yamaha Rtd Ltd Edition.” These correspond to three of the vehicles awarded to Bernadette in the February 10, 2010, stipulation. The values assigned to these vehicles in the stipulation were zero, zero, and \$10,000, respectively. The two lists thus do not match. The vehicles awarded to Bernadette via the stipulation were two with no value, made in 1995 and 2006, and one worth \$10,000, with no year of manufacture given. Those awarded in the statement of decision were one made in 1995, two in 1996, and one in 2005, with a collective value of \$7,000. We do not know the reason for the discrepancy. The two lists could represent two completely separate sets of vehicles. There could be overlap between them of one vehicle (made in 1995). Perhaps there is an explanation in the trial testimony of which we have been presented with no record. Regardless of the explanation, Bernadette has not demonstrated the court made orders disposing of the same property twice.

X. *Valuation of jewelry*

The statement of decision awarded four diamond rings to Bernadette. One was her wedding ring and the court found it was her separate property. It valued the other three at a total of \$95,000, found them to be community property, awarded them to Bernadette, and ordered an equalization payment to Andreas of \$47,500. Bernadette now argues that these figures are “[o]bviously” too high and the evidence on which the court relied is “incompetent.”

The court relied on values stated by Mark Areias, a jeweler. Areias had provided the figures in an e-mail message to Bernadette in 2009. The message reads as follows:

“Hi Bernadette,

“Yes I have the rings. As I thought the rings should be repaired and refinished to look like new. Also as I said I would work above the price we agree upon to net to you, and I will work for less than 15% if I don’t have

my own money in the piece the answer is yes. But I want you to [be sure] you want us to work for you on this. I think \$40,000.00 for the 6.03 is all the money for this stone at this time. The 3.03 ct Princess is not a rare stone at all and \$20,000.00 for this stone is about where we would need to be to move it. As for your Yellow [3.31 ct] ring maybe we could put it at \$25,000.00. The stone is a bit shallow and the price on these stones has softened. Hope everything went well in Hollister. Let me know how you would like me to proceed.

“Regards

“MA”

Bernadette contends that the use of Areias’s figures contravened Evidence Code section 822, subdivision (a)(2). She did not include an objection on this basis in her objections to the tentative decision and does not claim she made such an objection at trial. The issue therefore has not been preserved for appeal and is forfeited. (*People v. Saunders* (1993) 5 Cal.4th 580, 590; *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1.)

Further, the objection is meritless. The statute Bernadette cites reads as follows:

“(a) In an eminent domain or inverse condemnation proceeding, notwithstanding the provisions of Sections 814 to 821, inclusive, the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of property: [¶] ... [¶]

“(2) The price at which an offer or option to purchase or lease the property or property interest being valued or any other property was made, or the price at which the property or interest was optioned, offered, or listed for sale or lease, except that an option, offer, or listing may be introduced by a party as an admission of another party to the proceeding; but nothing in this subdivision permits an admission to be used as direct evidence upon any matter that may be shown only by opinion evidence under Section 813.” (Evid. Code, § 822, subd. (a)(2).)

This is not an eminent domain or inverse condemnation proceeding, so the statute is obviously inapplicable. The case Bernadette cites, *Mears v. Mears* (1960) 180 Cal.App.2d 484, 505, overruled on other grounds by *See v. See* (1966) 64 Cal.2d 778, 785, is a divorce case and endorses the principle that an offer is inadmissible as evidence

of the value of property; but the case predates the adoption of the Evidence Code in 1965 and therefore cannot illustrate the meaning of its provisions. The case is unpersuasive as well, since the authorities it relies on are all eminent domain cases. (*Mears, supra*, at p. 505 [citing *Redwood City Elementary School Dist. v. Gregoire* (1954) 128 Cal.App.2d 766; *People v. La Maccia* (1953) 41 Cal.2d 738; *City of Santa Ana v. Harlin* (1893) 99 Cal. 538].)

Even if the statute were applicable, it would not exclude the evidence in question, as Areias's e-mail was not "an offer or option to purchase or lease the property." It stated an opinion about the prices at which the diamonds could be sold in the market. At least, the trial court could reasonably so find. Nothing in Evidence Code section 822 prevents an expert appraisal from being used as evidence of the value of property. In fact, Evidence Code section 813, subdivision (a)(1), expressly authorizes the use of such opinions in actions in which the value of property is to be ascertained.

Bernadette says she testified at trial that she sold two of the rings for \$10,000 each. She maintains the court should have relied on these prices. As there is no reporter's transcript of the trial and no settled statement, this evidence is not part of the appellate record. Even if it were, it is not our role on appeal to reweigh the evidence or reject the trial court's resolution of conflicts in the evidence. (*People v. D'Arcy* (2010) 48 Cal.4th 257, 293.) No error has been shown.

XI. Division of judgment debt

The parties owed more than half a million dollars on the judgment in favor of Dick McAbee. The court assigned half the balance to Andreas and half to Bernadette.

Bernadette now argues this division of the debt is not "meaningful" and not "practical and equitable." This, she says, is because McAbee has a judgment lien that "attaches to all remaining community assets, regardless of whose possession they are in. Thus, every time an asset is levied upon, the party losing the property is owed one half by the other party. This subjects the parties—and the court—to an indefinite number of

hearings that could have been avoided by ordering community assets liquidated to pay the debt.” Further, if community assets had been “sold in a methodical way to satisfy the debt,” they would not be “lost to execution at a fraction of [their] value.” Bernadette argues the court erred when it denied a motion she made for such an order.

Bernadette’s argument fails for three reasons. First, the motion to which she refers did not ask the court for an order to liquidate community assets to generate cash to pay the McAbee debt. It also said nothing about the allocation of the debt between the parties. Instead, it asked the court to authorize Bernadette to negotiate and fund settlements of the McAbee debt and the second mortgage on the Sanguinetti Court house. “In exchange” for this, Bernadette asked to be awarded possession of the Sanguinetti Court house and one of the cars. The court granted Bernadette authority to act on the debts and awarded her possession of a car, but it declined to displace Andreas and the daughter from the house. Bernadette does not say how the court erred in this ruling. The issue she raises now is thus forfeited for failure to raise it in the trial court. (*People v. Saunders, supra*, 5 Cal.4th at p. 590; *Doers v. Golden Gate Bridge etc. Dist., supra*, 23 Cal.3d at pp. 184-185, fn. 1.)

Second, Bernadette does not explain what relief she is requesting on appeal. She does not ask, for instance, for an order that particular assets be sold or that the McAbee debt be reallocated. She does not ask for a remand with directions to the trial court to alter its order in some way. She merely says the court had a duty to make an order that was “practical and equitable.” The issue, therefore, is forfeited for a second reason: failure to submit adequate briefing. (See *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2.)

Finally, a decision of this kind—whether to divide both the debt and the assets between the parties or instead to undertake to use the assets to satisfy the debt—is committed to the trial court’s discretion. Bernadette certainly has not shown the route chosen by the court exceeded the bounds of reason.

XII. Denial of motion to reopen

After the trial, Bernadette succeeded in removing the second mortgage from the Sanguinetti Court house, which had an outstanding balance of about \$198,000, for a negotiated payment of about \$33,000. In a motion filed on December 5, 2013, several months after the tentative decision became the statement of decision, Bernadette requested the court alter the decision to account for the resulting increase in equity. Judgment was entered upon the statement of decision without any change. After entry of judgment, when Commissioner Knowles had retired and the case had been assigned to a new commissioner, a hearing was held on July 7, 2014, at which this request among others was discussed. The request was denied. Bernadette now argues this was an abuse of discretion. As we will explain, there was no abuse of discretion because the request was denied with the understanding the facts at issue could be heard and accounted for in later proceedings.

Bernadette's argument is based on *In re Marriage of Olson* (1980) 27 Cal.3d 414 in which the trial court issued a decision awarding the parties' house, with equity of \$47,000, to the wife. After the decision, but before judgment was entered, the bank foreclosed on the house and there were no net proceeds to the parties from the foreclosure sale. (*Id.* at p. 418.) The Supreme Court held the trial court abused its discretion in denying the wife's motion to reopen the trial to receive evidence of this new development. "The trial proceedings should have been reopened for the purpose of recalculating the community property valuations and indebtedness An assignment to wife [at the time of judgment] of a family residence which had been lost to the community [prior to entry of judgment] produced a consequence which was neither fair in principle, nor equal in result." (*Id.* at p. 422.) Where in *Olson* the posttrial, prejudgment foreclosure worked an inequitable result for the spouse to whom the house was awarded, here the posttrial, prejudgment forgiveness of debt caused unfairness to the spouse to whom the house was not awarded, according to Bernadette.

It is unnecessary, and would be inappropriate, for us to determine whether the authority of *Olson* mandates an alteration of the property division because an examination of the transcript of the July 7, 2014, hearing reveals that the court and parties understood the issue would be decided in later proceedings in the trial court. As indicated in our recitation of the facts and procedural history, the trial court reserved numerous issues regarding credits and reimbursements for later proceedings. The question of how to account for the results of Bernadette's negotiations on the second mortgage was one of those issues. When Mr. Luca, Bernadette's counsel, brought up the matter at the hearing, the following discussion took place:

“THE COURT: [M]y understanding of that liquidation of a debt is that it may or may not be a credit or reimbursement issue or later trial, I don't know.

“MR. LUCA: It was actually reserved by Commissioner Knowles because in September of '13, she granted [Bernadette] the authority to go ahead and do that [i.e., to negotiate with the bank over the second mortgage].

“THE COURT: Right.

“MR. LUCA: And then she went ahead and did it, and then the tentative doesn't come out until November, so I mean, there is a change.

“THE COURT: My understanding was that—unless I hear otherwise, that it's an issue to be dealt with with all the credits and reimbursements.”

Bernadette's counsel went on to say he was worried Andreas would miss payments and lose the house, but he did not disagree with the court's view that the matter had been reserved and would be addressed in later proceedings.

The court did not contravene *Olson* because it did not finally deny the requested relief; it just put the question over for later. The court had discretion to defer the issue to subsequent proceedings already planned instead of reopening the trial, given that it was possible for the court to grant the relief sought in those subsequent proceedings.

Bernadette filed a motion in this court on December 9, 2014, asking us to consider extra record evidence relating to the extinguishment of the second mortgage. The documents submitted also include material related to a home equity loan Andreas allegedly obtained shortly afterward, taking advantage of the additional equity created by Bernadette's action. Because, for the reasons given above, we reject Bernadette's claim the trial court was obliged to reopen the trial to consider the matter, we will deny her motion as moot.

XIII. Denial of motion to set aside judgment

After the judgment was entered, Bernadette moved to set it aside for the reasons stated in her motion to reopen the trial. The motion to set aside the judgment was denied at the July 7, 2014, hearing. Bernadette claims the denial was an abuse of discretion.

The motion was based on the claim that the court was required to set aside the judgment in order to reopen the trial to deal with the matter of Bernadette's extinguishment of the second mortgage. Our conclusion that the court could appropriately deal with that matter as a reserved issue in subsequent proceedings shows there was no need to set the judgment aside. There was no abuse of discretion.

XIV. Order directing clerk to sign deed on behalf of Bernadette

As explained above, after the court awarded the Sanguinetti Court house to Andreas and the Calais Circle house to Bernadette, Andreas executed a deed conveying his interest in the Calais Circle house to Bernadette, but Bernadette refused to execute a deed conveying her interest in the Sanguinetti Court house to Andreas. The court granted Andreas's request to have the court clerk execute the deed in Bernadette's stead. Bernadette asserts this was error.

Bernadette first contends the court lacked power to make the order because an appeal was pending. She cites Code of Civil Procedure section 916, subdivision (a), which, upon perfection of an appeal, stays proceedings in the trial court on the judgment or order appealed from and matters embraced within or affected by that judgment or

order. The purpose of the stay is to “protect the jurisdiction of the appellate court” (*In re Marriage of Horowitz* (1984) 159 Cal.App.3d 377, 381.)

If Bernadette is correct that the trial court should not have ruled, the error was necessarily harmless, for we have decided all the appellate issues regarding the award of the Sanguinetti Court house to Andreas (as well as all the other appellate issues) in Andreas’s favor. The trial court’s action therefore has not interfered with our jurisdiction.

Bernadette next argues that the “relief granted exceeds that which [was] requested” because Andreas’s motion asked for a quitclaim deed, but the clerk executed a grant deed.

Bernadette’s argument fails for multiple reasons. First, Bernadette cites no place in the record where she objected to the form of the deeds, either when Andreas submitted them or when the clerk executed them. She had ample opportunity to object, even though the order was ex parte. She was notified of the ex parte application and filed papers in opposition. The lack of objection forfeits the issue.

Second, the record does not bear out Bernadette’s description of what happened. Andreas’s request asked for execution by the clerk of two documents, which were attached to the request. The first was a grant deed conveying the property from Bernadette and Andreas as trustees of their trust to Bernadette and Andreas as unmarried persons. The second was an interspousal transfer deed, also described on its face as a grant deed, conveying the property from Andreas and Bernadette to Andreas alone. Yet the court’s order, inscribed in a box provided for that purpose on the first page of the form on which the request was submitted, directed the execution of a quitclaim deed. In spite of this, the deeds executed by the clerk were the grant deeds Andreas had supplied.

It is thus not the case that the relief received was other than the relief requested. The court made a clerical error in describing the deeds sought by Andreas, but this turned out to be of no consequence. The clerk executed the deeds Andreas submitted.

The law Bernadette cites also fails to support her argument. She relies on Code of Civil Procedure section 580, part of which provides: “The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded ... but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue.” This statute limits the relief awardable via a default judgment. Its purpose is “to guarantee defaulting parties adequate notice of the maximum judgment that may be assessed against them.” (*Greenup v. Rodman* (1986) 42 Cal.3d 822, 826.) The order at issue here is not a default judgment. Further, contrary to Bernadette’s argument, the fact that the request was ex parte does not make the order similar to a default judgment. The statute functions “to ensure that a defendant who declines to contest an action does not thereby subject himself to open-ended liability.” (*Ibid.*) Bernadette filed an opposition to the request; she did not decline to contest it.

Finally, Bernadette has not shown how the form of the deeds prejudices her. She discusses the difference between quitclaim deeds and grant deeds and says a grant deed, unlike a quitclaim deed, will make her “liable to future purchasers for warranties that she did not make,” such as warranties that she did not convey the same estate to someone else and did not encumber the property. She does not, however, explain how she might end up being concretely harmed by this. She did, in fact, encumber the property during the marriage, but she does not discuss the possible harms that might arise from a deed warranting the contrary. That may be because mortgages are recorded and consequently there is no realistic possibility of anyone being misled. In any event, Bernadette’s brief does not demonstrate prejudicial error.

DISPOSITION

The judgment and the orders appealed from are affirmed. Costs on appeal, if any, are awarded to Andreas. The motion to consider evidence outside the record, filed on December 9, 2014, is denied.

Smith, J.

WE CONCUR:

Franson, Acting P.J.

Peña, J.