

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of KARI and TODD
BUSTILLO.

KARI BUSTILLO,

Appellant,

v.

TODD BUSTILLO,

Respondent.

G046725

(Super. Ct. No. 09D010394)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Lon F. Hurwitz, Judge. Affirmed.

Law Offices of Michel & Rhyne and Michael L. Michel for Appellant.

Law Offices of Saylin & Swisher and Brian G. Saylin for Respondent.

*

*

*

Kari Bustillo appeals from the trial court’s denial of her motion to set aside the property division agreement she reached with Todd Bustillo, incorporated in the judgment dissolving their marriage.¹ Kari sought to reopen the judgment under Code of Civil Procedure section 473, subdivision (b), and Family Code section 2121 (all further undesignated statutory references are to this code) on grounds that perjury, mistake of fact, and undue influence tainted the couple’s property division.

Specifically, Kari hired new attorneys following the dissolution judgment and, “[a]fter a limited review of the documents that could be obtained without further discovery,” counsel premised Kari’s perjury and mistake of fact claims on Todd’s alleged failure to disclose to her community assets, including retirement funds, bank accounts, and substantial transactions within the bank accounts.

Our review of the record, however, shows counsel apparently overlooked or did not obtain discovery by the attorneys and firms formerly representing Kari, which established she knew of the assets and indeed closed one of the bank accounts herself more than a year before the divorce. Kari waived an evidentiary hearing below on her motion to reopen the judgment, and counsel retreated to the position that Todd failed to disclose specific transactions or to specifically identify the potential community portion of his employer-based retirement funds. But the record shows Kari and Todd expressly discussed the transactions Todd supposedly never revealed, and that he made full disclosure of his pension and retirement funds to Kari and her attorneys. On appeal, Kari abandons her undue influence claim, based on Todd’s alleged controlling and abusive manner, by mentioning it only in passing and without any argument, citation to authority,

¹ Because the parties share the same last name, we use their first names for ease of reference and intend no disrespect. (*In re Marriage of Olsen* (1994) 24 Cal.App.4th 1702, 1704, fn. 1.)

or specificity in the table of contents or headings or subheadings, thus forfeiting the issue. (Cal. Rules of Court, rule 8.204; see, e.g., *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 (*Badie*).

Based on the foregoing, we conclude the trial court did not err in denying Kari's motion to reopen the judgment, and we therefore affirm the trial court's order.

I

FACTUAL AND PROCEDURAL BACKGROUND

Kari and Todd married in October 2004 and separated in October 2009. They had one son, born in May 2007. Todd worked for the Southern California Gas Company and Kari worked as an educator, including as a high school dance instructor and choreographer, and she obtained her master's degree in physical education with a teaching credential as the divorce case drew to a close in 2011.

Kari filed for divorce in November 2009. In January 2010, she retained an attorney to represent her, and Todd had counsel throughout the proceedings. The parties engaged in extensive discovery throughout 2010 and 2011, including form interrogatories, document subpoenas and standard demands for document production to each other and to their respective financial institutions. The parties voluntarily exchanged financial information, submitted sworn declarations of disclosure in June and November 2010 concerning their assets, and proposed ways to fairly divide their property, including using software-generated "Propertizer" spreadsheets. They also e-mailed each other frequently to discuss specific topics in dividing their property. Neither had to resort to a motion to compel the other to produce any discovery.

In late 2010, Kari's attorney notified her she could not continue working on the case without payment for arrears, and Kari e-mailed Todd that she was "thinking

[about] finalizing my decision to unretain” her attorney and proceed in propria persona. Kari later asserted Todd pressured her with constant demands to “get rid” of her attorney.

The record reflects Kari soon began to pressure Todd to resolve their property division quickly. E-mails she sent Todd over the next few months included the following: “Jan. 6, 2011: ‘I really think it’s important that we meet to finalize the divorce rather than waste our time and money in court. I think if we can schedule a meeting we can hammer it all out in one sitting and be done.’ [¶] Jan. 11, 2011: ‘When can I expect the proposed settlement offer from your attorney?’ [¶] . . . [¶] Jan. 24, 2011: ‘Any word from Ann [Todd’s attorney] on [the] settlement proposal? It’s been almost 3 weeks’ [¶] Jan. 24, 2011: ‘Okay . . . [.] maybe it would help if I emailed them??’ [¶] . . . [¶] Feb. 3, 2011: ‘where’s the settlement proposal??’ [¶] Feb. 3, 2011: ‘Well then get on Ann to get the settlement out so we can be done! I mean, it[’]s been almost a month already and of course fees are going to keep incurring the more time that goes by without a settlement proposal.’ [¶] Feb 10, 2011: ‘Any word from Ann on the draft that you should have received a week ago? [¶] Feb. 25, 2011: ‘Okay . . . [.] I would prefer it be a meeting with all 3 of us present. That way maybe we can just get it all done in one shot.’”

The parties signed an agreement in March 2011 dividing their property and specifying spousal support for Kari. They agreed the “unallocated support” of \$2,000 per month the parties had agreed upon a year earlier “shall be characterized as spousal support and shall continue as and for spousal support” until the end of August 2011. The parties included their agreement as an “Attachment to Judgment” in their marital dissolution judgment, which the trial court entered on April 8, 2011. The judgment did

not resolve issues of custody, visitation, or child support, reserving those issues for later determination.

The property division portion of the agreement specified particular property and debts, “whether community or separate, is awarded and confirmed to” Kari or Todd, respectively, enumerating each vehicle, real or personal property interest, bank account identified by its last four digits, debt, or other item. The agreement specifically awarded Kari all “right, title and interest” in her school district retirement accounts, and gave Todd the same interest in his gas company pension and retirement accounts. The property division did not specify the value of any item awarded to either party.

The parties expressly waived in the agreement their right from each other to a “Final Declaration of Disclosure as provided in Family Code section 2105.” They also waived in the agreement any right to “[a]ll financial information addressing the extent, nature and value of the community estate, including assets and liabilities, obligations and debts, and each party’s separate estates” The agreement further noted: “Petitioner and respondent have agreed to abstain from engaging in any investigation, discovery, appraisals, due diligence, accounting or financial analysis and/or evaluation of any kind. Petitioner and respondent have each been advised of their right to engage in discovery, to complete appraisals, to demand accounting and other financial disclosures. Petitioner and respondent have each made a full and complete waiver of these rights.”

Two months later, in late June 2011, Kari hired new attorneys and filed a motion to set aside the judgment’s property division. She asserted Todd committed perjury in his sworn declarations of disclosure concerning property assets, and that his failure to disclose all financial assets, retirement funds, bank accounts, and substantial transactions within those accounts resulted in a unilateral mistake on Kari’s part

concerning the marital estate and the couple's division of property in their agreement. The parties submitted competing declarations, replies, and voluminous supporting evidence for a hearing held in late November 2011. At the outset, the parties declined the court's invitation to present evidence, so the court heard argument and decided the matter on the parties' submissions. The court denied Kari's motion to set aside the judgment, and she now appeals.

II

DISCUSSION

A. *The Appeal Is Not Premature*

Todd suggests Kari's appeal is premature because the judgment did not address issues of custody, visitation, and child support, which the parties excluded from their agreement pending further proceedings, and therefore no final, appealable judgment (Code Civ. Proc., § 904.1) has been entered. Todd reasons that denial of the motion to set aside the judgment is not appealable because the judgment itself is not final and appealable given the outstanding issues. In a similar vein, we note also that the trial court specifically observed in denying Kari's motion that, "[t]o the extent there were undisclosed assets that were not adjudicated or addressed is the subject of another motion which can be brought by the Petitioner." In other words, as the court explained at the hearing denying Kari's motion, if there were indeed assets Todd had not disclosed, those items constituted "unadjudicated assets" that would be subject to a "separate trial," which *might* suggest the judgment remained open and incomplete concerning the couple's property division, thereby precluding an appeal at this stage. (But see Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2012) ¶ 16:287, p. 16-86.2

[orders on postjudgment issues may not reopen judgment, but may instead be directly appealable as an order after judgment under Code Civ. Proc., § 904.1, subd. (a)(2)].)

At oral argument, Todd cited the fact Kari obtained no certificate of probable cause for her appeal (Cal. Rules of Court, rule 5.392), but that requirement “applies only to appeals on bifurcated interim rulings in family law marital status actions. The [r]ule does *not* apply to appeals from a judgment terminating marital status as a separate issue . . . i.e., a ‘status only’ judgment[.]” (Eisenberg, Horvitz & Wiener, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2012) ¶ 2:57, p. 2-34, original italics.) Here, the judgment incorporating the parties’ final division of property also dissolved their marriage. A “judgment dissolving a marriage, and collateral issues decided with finality that are embodied in the judgment of dissolution, are appealable,” including “the division of marital property.” (*In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429, 1433.) And an order denying a motion to set aside an appealable judgment, including marital dissolution and property division judgments, is itself appealable. (See, e.g., *Marriage of Varner* (1997) 55 Cal.App.4th 128, 136 (*Varner*) [denial of motion to set aside marital property division is appealable]; see generally Hogoboom & King, *supra*, ¶ 16:299, p. 16-88 [ruling on set aside motion under Code Civ. Proc. § 473 is appealable].) We therefore turn to the merits of Kari’s appeal.

B. *Governing Law and Standard of Review*

Kari contends the trial court erred in failing to grant her motion under Code of Civil Procedure section 473, subdivision (b) (hereafter CCP § 473(b)) and sections 2121 and 2122 to set aside the judgment and the property division to which she agreed. Her motion specified the grounds for setting aside the judgment rested on “Perjury by the Respondent” and her “Mistake of Fact” because Todd failed to comply

with his disclosure obligations. In particular, she alleged Todd committed perjury during the dissolution proceedings when he failed to disclose or to fully disclose marital assets in his two sworn declarations of disclosure. Similarly, Kari argued the court should set aside the judgment because of her mistake of fact in relying on Todd's disclosures concerning the parties' assets.

Under CCP § 473(b), a party may bring a motion for relief from a “judgment, dismissal, order, or other proceeding taken against him or her through his or her *mistake*, inadvertence, surprise, or excusable neglect.” (Italics added.) Similarly, section 2121 provides specifically in marital dissolution proceedings that “the court may, on any terms that may be just, relieve a spouse from a judgment, or any part or parts thereof, adjudicating support or division of property,” provided the court finds “that the facts alleged as the grounds for relief materially affected the original outcome and that the moving party would materially benefit from the granting of the relief.” (§ 2121, subds. (a) & (b).)

The court will not grant relief under section 2121 unless the moving party demonstrates one of the five statutory grounds for relief, including “perjury in the preliminary or final declaration of disclosure, the waiver of the final declaration of disclosure, or in the current income and expense statement.” (§ 2122, subd. (b).) As pertinent here, section 2122 also provides for relief against “stipulated or uncontested judgments or that part of a judgment stipulated to by the parties” for “mistake, either mutual or unilateral, whether mistake of law or mistake of fact.” (§ 2122, subd. (e).)

Mistake under CCP § 473(b) and section 2122 is not easily defined. (See *Varner, supra*, 55 Cal.App.4th at p. 142[“Less clear is the meaning and the nature of the ‘mistake’ which permits the setting aside of a judgment”].) But courts have noted under

other circumstances — where the six months have passed for setting aside a judgment under CCP § 473(b) and a judgment can only be set aside for extrinsic fraud or mistake — that “[e]xtrinsic mistake involves the excusable neglect of a party. [Citation.]” (*In re Marriage of Melton* (1994) 28 Cal.App.4th 931, 937.)

Kari asserted the root of her mistake lay in Todd withholding financial information from her, so that “she was not aware of all of the material facts concerning their community assets.” In *Varner*, for example, the court explained that “the failure of a spouse to disclose the existence or the value of a community asset, as occurred in the present case, constitutes a basis for setting aside a judgment on the grounds of mistake under section 2122.” (*Varner, supra*, 55 Cal.App.4th at p. 144.) As the *Varner* court observed, “Like perjury, the failure to disclose would induce the other spouse to stipulate to a judgment on the basis of incomplete or inaccurate information.” (*Ibid.*)

“The standard for appellate review of an order denying a motion to set aside under section 473 is quite limited. A ruling on such a motion rests within the sound discretion of the trial court, and will not be disturbed on appeal in the absence of a clear showing of abuse of discretion, resulting in injury sufficiently grave as to amount to a manifest miscarriage of justice. Where a trial court has discretionary power to decide an issue, an appellate court is not authorized to substitute its judgment of the correct result for the decision of the trial court. [Citations.] . . . The burden is on the complaining party to establish abuse of discretion, and the showing on appeal is insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion. [Citation.]” (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 118.)

Similarly, the trial court’s exercise of discretion under section 2122 in refusing to vacate a judgment in a dissolution proceeding is also reviewed for abuse of

discretion. (*Varner, supra*, 55 Cal.App.4th at p. 138.) The appellate court “must not merely substitute its own view as to the proper decision: ‘[T]he showing on appeal is wholly insufficient if it presents a state of facts . . . which . . . merely affords an opportunity for a difference of opinion. An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’ [Citation.]” (*Ibid.*) The burden of proving an abuse of discretion in denying a set aside under section 2122 rests with the party challenging the decision. (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682.)

C. *The Record Shows Todd Disclosed the Assets Kari Claimed He Hid*

Preliminarily, Kari claims the trial court “recognized that the division of property was unfair and inequitable” with an express finding that it was “a bad deal.” She insists, “This fact, standing alone, requires the judgment to be set aside.” She is mistaken both in her characterization of the record and her legal conclusion.

The court did not find the couple’s property division amounted to a “bad deal” for Kari. To the contrary, the court merely observed that “[a] deal is a deal” and that “[i]f *Petitioner* thinks *Petitioner* made a bad deal, too bad. That is not inadvertent, that is not excusable neglect, that is not mistake.” (Italics added.)

More to the point, a “bad deal” by itself furnishes no basis to set aside a judgment under section 2122 or CCP § 473(b). Section 2123 expressly provides that a judgment in dissolution proceedings may not be set aside “simply because the court finds that it was inequitable when made, nor simply because subsequent circumstances caused the division of assets or liabilities to become inequitable, or the support to become inadequate.” Indeed, if the moving party presents nothing more than an inequitable judgment, the court has *no* discretion to grant relief under section 2122 or CCP § 473.

(*In re Marriage of Heggie* (2002) 99 Cal.App.4th 28, 29-30, 33-34; see *Hogoboom & King, supra*, ¶ 1644, p. 16-12 [per § 2123, marital judgments may not be “set aside under any law solely on ground that it was ‘inequitable’”].)

Conceding, in her words, that whether she was “**entitled to make a bad deal sadly begs the question**” (original boldface), Kari pivots to her main claim: based on Todd’s lack of disclosure, she “can not be held responsible for what she does not know!” As Kari’s counsel put it in the hearing below, in the course of reaching a marital settlement agreement, a spouse may elect to give up his or her interest in joint assets “to buy my p[ea]ce,” provided “there is an informed consent” and “knowledgeable waiver” of his or her interest in the asset, but “this particular case is devoid of that component.” Not so. Opposing Kari’s set aside motion, Todd presented detailed records showing Kari knew of the accounts and transactions she claimed he hid.

For example, she claimed in her set aside motion that Todd never disclosed a Bank of America account with an account number ending in 2727. But Todd demonstrated with bank account statements attached to his opposition to Kari’s motion that the account was a joint account in Kari’s name that she accessed over the Internet to make transfers, used regularly for debit card purchases and to write checks, and indeed that Kari herself had closed the account in January 2010, more than a year before the April 2011 divorce judgment finalized the couple’s property division agreement. Todd explained in his opposition that he had sent an “entire package” of bank statements for account number 2727 and another account Kari claimed he never revealed to her, 2710, to “Attorney Michael Fisher, petitioner’s attorney at the time” in the discovery phase of the dissolution proceedings, but either Kari did not disclose this information to her new attorneys who filed her set aside motion or they ignored it. The record also shows that

Kari herself included account number 2710 in *her* disclosure declaration and that Todd had disclosed it in a Propertizer statement, a software-generated list of assets he provided to Kari and her attorney during discovery. The record also shows Todd and Kari had discussed account number 2710 in e-mails they exchanged.

The record similarly belied Kari's claim in her set aside motion that Todd failed to disclose large transactions he made without her consent in the 2727 and other accounts before the couple separated. Kari claimed Todd breached his fiduciary duty as a spouse because he made these transfers solely for his personal benefit, and his failure to disclose the transactions required the court to set aside the judgment because she agreed to the property division on mistaken premises. In his opposition, however, Todd included detailed correspondence with Kari precisely on the transactions she claimed in her motion that Todd hid from her. For example, their e-mails revealed the couple had agreed to purchase their marital home using funds borrowed from a home equity line of credit (HELOC) on the townhome Todd owned before marriage, which the couple agreed was his separate property. Kari further agreed that these separate funds should be paid back, which explained large transactions in account number 2727, including one for \$88,000. In their e-mail correspondence during discovery, Kari expressly "acknowledge[d] that my consent was given for the HELOC paydown"

The correspondence similarly revealed Kari knew of other large transactions she later claimed Todd hid from her, including a \$26,000 gift to Todd's parents for their retirement accounts, financed by Todd's separate funds and assets obtained before the marriage, including proceeds from the sale of Todd's separate vehicle. Todd also pointed to the couple's oral and written agreement before separation that he would make the gift to his parents. Similarly, Todd disclosed to Kari's attorney

and reminded Kari in an e-mail during discovery that a \$5,000 disbursement from their 2710 account was to fund the 529 college savings plan they set up for their son. These few examples account for virtually all of the \$130,000 Kari claims Todd hid from her in undisclosed transactions, and Todd introduced additional evidence of their detailed communication regarding other transactions and accounts. Moreover, Kari herself acknowledged in her own Propertizer that she *knew* of the “large transactions in 2009” in account 2727. Despite this evidence, Kari and her new attorneys cited these very transactions and accounts as a basis to set aside the judgment on grounds of mistake because Todd failed to disclose them. Based on Todd’s evidence, the trial court was entitled to take a jaundiced view of her claims, and we may not second-guess the trial court’s credibility determinations.

For similar reasons, the trial court reasonably could conclude Kari’s perjury claims did not warrant setting aside the judgment. Kari premised her claim on Todd’s declarations of disclosure in June and November 2010 in which he identified his gas company pension and 401(k) balances as separate property. Kari claimed in her set aside motion that Todd committed perjury by stating the balances were his separate property because he knew the assets necessarily had a community property component. (See Pen. Code, § 118 [perjury occurs when person, “contrary to the oath, states as true any material matter which he or she knows to be false”].)

But Todd reiterated in his opposition, as he had in his interrogatory responses during discovery, that the couple agreed orally and in writing *before* their separation that his retirement benefits were his separate property, noting he claimed no interest in her retirement plan. He also pointed out Kari and her attorney could not have been misled by his characterization of the funds as separate property because in her

May 2010 response to interrogatories, filed before his June and November disclosure declarations, she asserted, “I have an interest in the Respondent’s 401(k), pension and deferred compensation related to his employment at Southern California Gas.”

Todd also noted that in the divorce judgment incorporating their property division agreement, he and Kari expressly waived making final declarations of disclosure to each other. He argued their earlier declarations therefore could not support a perjury charge because they were provisional and superseded by their final disclosure waiver; consequently, there was no basis to rely on them. Specifically, the judgment provided: “The parties, and each of them, waive service of the Final Declaration of Disclosure as provided in Family Code section 2105. The parties, and each of them, acknowledge execution of a formal Waiver of Final Declaration of Disclosure, an independent document filed contemporaneously with this Judgment of Dissolution.”

Kari insisted the initial declarations remained relevant despite the couple’s waiver of final declarations. In light of Kari’s indisputable knowledge she might have an interest in Todd’s retirement funds, Kari’s counsel took the position at the set aside hearing that Todd committed perjury in his initial, sworn disclosure declarations by failing to disclose the *amount* of her potential community property interest. Counsel argued Kari therefore could not make an informed decision to waive her interest in Todd’s retirement funds, and consequently the couple’s property division assigning the funds solely to Todd was invalid. But the record dispelled this argument, too. In their e-mail correspondence and in the Propertizer statement Todd provided to Kari and her attorney in November 2010, Todd estimated the community property component of his retirement funds could be as high as \$42,500 for his pension and \$95,320 for his 401(k). This exceeded the \$39,706 estimate by Kari’s expert in her set aside motion.

Based on this record, the trial court reasonably could conclude that even if Todd omitted or misrepresented certain facts in his disclosure declarations (and the court made no finding he did), it would not warrant setting aside the judgment because “the facts alleged as the grounds for relief” must “materially affect[] the original outcome” (§ 2121, subd. (b)). Kari premised her set aside motion on CCP § 473(b) and sections 2121 and 2122, but nothing in these provisions aided her. Simply put, the court could conclude Todd’s alleged perjury did not procure Kari’s agreement to the property division in the judgment by withholding information from her, since the record shows he disclosed his estimate of the community property portion of his retirement funds and she still entered the agreement. (See Cal. Const., art. VI, § 13 [no reversal absent prejudice].)

Given the ample record of Todd’s disclosures in the very matters in which Kari claimed Todd misled her or withheld information, Kari’s reliance on cases in which one spouse fails to disclose information to the other is simply misplaced. (See *In re Marriage of Prentis-Margulis & Margulis* (2011) 198 Cal.App.4th 1252 [spouse managing couple’s finances has continuing duty of disclosure to nonmanaging spouse]; *In re Marriage of Brewer and Federici* (2001) 93 Cal.App.4th 1334 [spouse failed to disclose retirement assets].) As discussed, the detailed record of Todd’s disclosures supports the trial court’s decision to deny Kari’s set aside motion. Kari fails to establish the trial court abused its discretion.

In a belated argument in her reply brief, Kari asserts that because she timely filed objections to Todd’s evidence opposing her set aside motion, the trial court necessarily must have sustained her objections, and therefore no evidence supports the court’s denial of her motion. She is incorrect. Arguments made in passing, without authority, or developed solely in the reply brief are forfeited. (E.g., *American Drug*

Stores, Inc. v. Stroh (1992) 10 Cal.App.4th 1446, 1453.) Moreover, we will not presume the trial court sustained objections on which it did not rule, given we must instead make every presumption in favor of affirming the trial court's ruling. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

While it is generally true that “[i]f the trial court fails to rule, the objections are preserved on appeal” (*Reid v. Google* (2010) 50 Cal.4th 512, 532), the party making the objection must assert it, like any claim on appeal, with specificity, reasoned argument, citation to the record and authority, and proper reference in the table of contents and headings or subheadings. (Cal. Rules of Court, rule 8.204; see, e.g., *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830-1831, fn. 4.) Employing a scattershot approach or waiting until the reply brief does not suffice; the appellant is not at liberty to tax the appellate court to formulate or piece together a basis for reversal, nor to scour the record on the appellant's behalf in a roving search for error. (E.g., *People v. Stanley* (1995) 10 Cal.4th 764, 793.) Kari makes no effort to identify any of her specific objections to any particular evidence, or to explain why an objection or objections should have been sustained. (See *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 [“Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, [they are] waived”].)

Indeed, while it appears she objected to specific statements in Todd's declaration, which she proposed in her response to strike out by interlineation, she did not strike out and it does not appear she objected to much of the evidence he produced in opposition to her set aside motion. This evidence included multiple exhibits of e-mails and attachments documenting his disclosures to her and her attorneys. In any event, Kari's bare reference to unspecified objections furnishes no grounds for reversal.

III

DISPOSITION

The trial court's order is affirmed. Respondent is entitled to his costs on appeal.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.