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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

In re the Marriage of LEIGHTON and  
CHRISTINA RICHARDSON.

LEIGHTON RICHARDSON,

Respondent,

v.

CHRISTINA RICHARDSON,

Appellant.

A127785

(Sonoma County  
Super. Ct. No. SFL-18383)

In dividing the community assets in this marital dissolution action, the trial court was required to value the stock of a closely held corporation. Christina Richardson contends that the court erred in valuing the stock at the date of the parties' separation, rather than at the time of trial. We affirm.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Leighton Richardson (Husband) and Christina Richardson (Wife) were married on February 22, 1980, and separated on September 15, 2001. There were no children of the marriage, and the majority of the property division issues were apparently resolved by stipulation. The parties were unable to reach agreement on the value of a 15 percent community interest in the stock of Winemaker's Database, Inc. (WDB), a closely held corporation.<sup>1</sup>

<sup>1</sup> The balance of the shares are owned by the company founder.

The parties jointly retained a certified public accountant, James Riley Walker, to value the stock. Consistent with the parties' instructions, Walker valued the stock as of August 31, 2001, and as of December 31, 2007. He opined that the valuations were \$31,957 and \$195,819, respectively.

Trial on the stock valuation issue was held on July 2 and July 6, 2009. Husband and Wife both testified. Walker testified as a business valuation expert, with a stipulation as to his qualifications, and his report was received in evidence without objection. Neither party challenges Walker's conclusions here.

On July 10, 2009, the court announced its tentative decision in open court. The court found, based on Husband's testimony, that WDB was predominantly a service based company in which Husband was the "active or frontman who takes care of the customers." The court held that there was good cause to use the date of separation in valuing the community interest in WDB as a "business operated exclusively by a party and the profitability is based on their skills, reputation, industry and guidance." The court accepted Walker's valuation of the shares at \$31,957 and awarded Wife the sum of \$15,979 for Husband's buyout of her interest.<sup>2</sup>

A written tentative statement of decision was entered on October 9, 2009. After consideration of objections to the tentative statement, a judgment incorporating a final statement of decision was entered on December 10, 2009. Wife filed a timely notice of appeal on January 29, 2010.

## **II. DISCUSSION**

The only question presented on appeal is the proper valuation date for the WDB shares. Wife contends that Family Code section 2552<sup>3</sup> mandates valuation of the shares "as near as practicable to the time of trial" in the absence of a noticed motion, under section 2552, subdivision (b), for an alternative valuation date. Since Husband made no

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<sup>2</sup> Wife was also awarded the sum of \$9,000 for her attorney's fees pursuant to Family Code section 2030, based on need.

<sup>3</sup> All further code references are to the Family Code unless otherwise indicated.

such motion, she argues that the trial court was required to adopt the latest valuation provided, i.e., Walker's December 31, 2007 appraisal.<sup>4</sup>

Section 2552, subdivision (a) provides: "For the purpose of division of the community estate upon dissolution of marriage or legal separation of the parties, except as provided in subdivision (b), the court shall value the assets and liabilities as near as practicable to the time of trial." Subdivision (b) of that section states: "Upon 30 days' notice by the moving party to the other party, the court for good cause shown may value all or any portion of the assets and liabilities at a date after separation and before trial to accomplish an equal division of the community estate of the parties in an equitable manner." Wife asserts that use of the term "shall" in subdivision (a) necessarily limited the court here to consideration of the 2007 share value. We disagree.

First, the court found that the parties, by virtue of their stipulation to have Walker provide alternative valuation dates, had agreed to the court's consideration of the issue. We note that Walker's report, made available to counsel for both parties pretrial, recites that he had been given a "two-part assignment" to provide valuations "at the date closest to the date of separation" and "at the current date, including Mr. Richardson's position and the efforts he contributes to the company." The "current date was stipulated by the parties to be December 31, 2007."<sup>5</sup> The court found no prejudice to Wife in consideration of the alternative dates, since "[e]verybody had the parameters of what was at issue before them" and said that it would therefore not "penalize" Husband for not filing a

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<sup>4</sup> Wife alternatively argues that the court was required to make an allocation of the postseparation increase in stock value. (*Pereira v. Periera* (1909) 156 Cal. 1; *Van Camp v. Van Camp* (1921) 53 Cal.App. 17.) She made no such argument in the trial court and directs our attention to no record evidence on this issue. "As a rule, parties are precluded from urging on appeal any points that were not raised before the trial court. [Citation.]" (*In re Marriage of Walker* (2006) 138 Cal.App.4th 1408, 1418.) This is neither a pure question of law on undisputed facts, nor does it present an important issue of public policy. (See *In re Marriage of Hinds* (1988) 205 Cal.App.3d 1398, 1403.) We therefore decline to consider it.

<sup>5</sup> The report was dated January 14, 2009, well more than thirty days prior to trial.

section 2552, subdivision (b) motion. The court also noted its obligation to exercise its discretion as court of equity in dividing the community.

A court has broad discretion to determine the valuation date to accomplish equitable division of community property. (*Bono v. Clark* (2002) 103 Cal.App.4th 1409, 1430–1431.) Where the trial court is vested with discretionary powers, we review its ruling for an abuse of discretion. (*In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 625 (*Duncan*).)

The trial court cited *Duncan* in support of its decision to use the date of separation in valuing the asset. *Duncan* affirmed a trial court determination to value the community interest in an investment advisory business as of the date of separation. (*Duncan, supra*, 90 Cal.App.4th at pp. 626–629.) The reviewing court noted that a 1976 amendment to Civil Code section 4800, subdivision (a), the predecessor to section 2552, “was designed to remedy certain inequities such as ‘when the hard work and actions of one spouse *alone* and after separation . . . greatly increases the “community” estate which must then be divided with the other spouse.’ [Citation.]” (*Duncan*, at p. 625.)

In *In re Marriage of Stevenson* (1993) 20 Cal.App.4th 250 (*Stevenson*), a case also relied upon by the trial court, the exception to trial date valuation was applied to two small businesses (a general contracting business and a Christmas tree business). This exception developed from rules for valuation of professional practices because the value of such businesses, “including goodwill, is primarily a reflection of the practitioner’s services (accounts receivable and work in progress) and not capital assets such as desks, chairs, law books and computers. Because earnings and accumulations following separation are the spouse’s separate property, it follows the community interest should be valued as of the date of separation—the cutoff date for the acquisition of community assets. [Citations.]” (*Id.* at pp. 253–254.)

As explained in *Duncan* and *Stevenson*, this rationale is not limited to small law practices. “ ‘It applies with equal logic to other small businesses which rely on the skill and reputation of the spouse who operates them.’ [Citation.] Thus, an alternative valuation date may apply to a business when its value ‘devolves largely from the personal

skill, industry and guidance of the operating spouse,’ rather than the business’s capital assets. [Citations.]” (*Duncan, supra*, 90 Cal.App.4th at p. 626; *Stevenson, supra*, 20 Cal.App.4th at p. 254.)

Wife acknowledges the applicable rule, and states that “[i]t is conceded that if this is a business that depended on Husband’s ‘skills, reputation, industry, and guidance’ an alternate valuation date might be used.” She asks “[b]ut where is the factual support for such a conclusion?” Perhaps a good question, but not one properly directed to us. “It is not the task of this court to search the record for evidence that supports statements in an appellate brief[.]” (*In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1310, fn. 3.)

As noted above, the trial court specifically credited Husband’s testimony in making this determination. “[B]ecause the reasons for change in value of an asset are ordinarily factual,” our role would be normally “limited to determining whether there was sufficient evidence to conclude the trial court’s decision was within the permissible range of options set by the legal criteria. [Citation.]” (*Duncan, supra*, 90 Cal.App.4th at p. 625.) However, “‘[t]he rule is well established that a reviewing court must presume that the record contains evidence to support every finding of fact, and an appellant who contends that some particular finding is not supported is required to set forth in his brief a summary of the material evidence upon that issue. Unless this is done, the error assigned is deemed to be waived. [Citation.] It is incumbent upon appellants to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings.’ [Citations.]” (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887; see also *In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 530 [failure to summarize the evidence adduced by the other side waives any issue in this regard].) Wife does not even attempt to cite to the evidentiary record or to fairly summarize the evidence in support of the court’s findings, and thereby forfeits this claim.

We find no basis to conclude that the trial court abused its discretion, either in its decision to consider alternative valuation dates, or in its determination on the merits.

### **III. DISPOSITION**

The judgment is affirmed. Husband shall recover his costs on appeal.

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Bruiniers, J.

We concur:

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Simons, Acting P. J.

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Needham, J.