VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 8th day of May, 2025.

Present: All the Justices

ERIC LISANN, APPELLANT,

against Record No. 230718

ELIZABETH LISANN, APPELLEE.

FROM THE COURT OF APPEALS OF VIRGINIA

In a published opinion, the Court of Appeals in this case affirmed the trial court's entry of a final divorce decree pursuant to Code § 20-91(A)(9) in favor of Elizabeth Lisann, *see Lisann v. Lisann*, 78 Va. App. 225 (2023), which we today affirm on other grounds, *see Lisann v. Lisann*, ___Va. ___ (2025) (this day decided). In a separate unpublished opinion, the Court of Appeals addressed other aspects of the trial court's final judgment. *See Lisann v. Lisann*, Record No. 0120-22-4, 2023 WL 5020939 (Va. Ct. App. Aug. 8, 2023). The husband contends that the Court of Appeals erred in its opinions in three respects.[1] We now address these issues.

I.

A.

The husband frames his first argument with the observation that the Court of Appeals correctly held that the trial court failed to classify the Daniel Lewis property for equitable distribution, and thus the case must be remanded to the trial court for factual findings on this issue. *See* Appellant's Br. at 33. But in doing so, the husband contends, the Court of Appeals offered an advisory opinion that "went beyond the record" to offer a factual scenario in which the Daniel Lewis property "*could* have been" legally transmuted into the wife's separate

[1] One such aspect is the husband's challenge to the trial court's determination, affirmed by the Court of Appeals, of the separation date for purposes of calculating the statutory period. Though using different reasoning, we agree with the Court of Appeals that the trial court did not err in determining the separation date. This conclusion moots any need for us to address how a different separation date would affect the trial court's determinations affecting spousal support, Code § 20-107.1(E)(3), equitable distribution, Code § 20-107.3(E)(3), and the classification of retirement benefits as separate or marital, Code § 20-107.3(G)(1).

property. *Id.* (citing *Lisann*, 2023 WL 5020939, at *9-10) (emphasis in original). Because the trial court never engaged the classification issue for the Daniel Lewis property, the Court of Appeals should not have advanced a theory (unasserted by the wife) positing that the evidence permits the inference that any marital funds contributed to the purchase of the Daniel Lewis property could be legally transmuted into the wife's separate property. This foray into transmutation principles, the husband argues, does not honor the maxim that Virginia's appellate courts seek to decide cases "on the best and narrowest grounds." *Id.* (citation omitted).

We agree that the transmutation theory was not advanced by the wife before the Court of Appeals or in the trial court and was thus unnecessarily raised sua sponte by the Court of Appeals. We need not unpack this issue in any detail. The unpublished opinion of the Court of Appeals should not be read to forecast any evidentiary inferences that would interfere with the trial court's discretionary factfinding tasks on remand. Nor should any dicta in the opinion regarding transmutation principles be treated as law-of-the-case determinations that are binding upon the trial court. On remand, the trial court should make its factual findings in a tabula rasa manner consistent with settled principles requiring the classification, valuation, and distribution of the property under Virginia law.[2]

B.

Second, the husband makes a similar argument about the way the Court of Appeals handled the remand of spousal support. Rather than simply stating that the issue was remanded, the husband contends, the Court of Appeals "inexplicably spent 7 pages speculating as to why [on remand] it would be proper for the trial court to award the husband no spousal support." *Id.* at 38. He interprets this discussion as the Court of Appeals implicitly signaling its preapproval on remand of a "potential ruling" denying spousal support to the husband. *Id.* at 1; *see also id.* at 39-40.

On remand, we direct the trial court to address the spousal support factors in a tabula rasa manner and offer no views expressly or implicitly on what conclusion the court should reach.

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[2] The husband also contends that the Court of Appeals should have held that the evidence was insufficient as a matter of law to classify the Daniel Lewis property as wholly separate property of the wife. *See* Appellant's Br. at 34-37 (engaging the issue with a harmless-error analysis). We believe it to be more prudent for the trial court on remand to first make the necessary classification decision and, in doing so, to evaluate the probative weight of the evidence based upon the applicable burdens of production and persuasion.

We doubt that the Court of Appeals intended to do otherwise with its discussion of the issue. But if it could be interpreted otherwise, we hold that it has no dispositive bearing on the trial court's discretionary review of the evidence on the issue of spousal support.

C.

Finally, the husband asserts that a "substantial portion" of the factual "recitation" in the opinions of the Court of Appeals "contains (at times egregious) errors, misreadings, missing context, or even readings that were completely opposite of what was in the record." *Id.* at 40; *see also id.* at 41-48 (listing specific examples).[3] In her brief, the wife does not address in detail the husband's specific claims of factual misstatement. She merely states in a single paragraph that "sufficient facts in the record" support the trial court's "equitable distribution award and spousal support decisions, and this court should not (and cannot) vacate those rulings." Appellee's Br. at 45.

We again see no need to unpack these allegations. Because our published opinion relies solely on its own factual recitation, which we deem to be wholly sufficient to justify our legal conclusions, it necessarily supplants any factual recitations in the published and unpublished opinions of the Court of Appeals that the husband challenges as inaccurate. Thus, no further review of this dispute is necessary.

II.

In sum, we affirm the mandate of the Court of Appeals to the extent that it (i) remands the case to the trial court for the tasks of classifying, valuing, and distributing the Daniel Lewis property and (ii) directs the trial court to thereafter reconsider anew equitable distribution and spousal support. In all other respects, our published opinion and this unpublished order supersede the opinions issued by the Court of Appeals in this case.

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[3] For example, the Court of Appeals stated in both its published and unpublished opinions that the husband never contributed to the monthly rental payments for the parties' McLean rental house, *see Lisann*, 78 Va. App. at 232; *Lisann*, 2023 WL 5020939, at *3, but the wife testified that in 2012, the husband paid $600 of the monthly rent and that it "was the biggest thing that he paid for," R. at 2587. In another example, the Court of Appeals stated that the rental income from the condominium that wife eventually sold to pay for the Daniel Lewis property "was deposited into wife's separate bank account," *Lisann*, 2023 WL 5020939, at *3, but the wife testified that this bank account was the one to which she deposited her marital income, *see* R. at 1276-79.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of Fairfax County.

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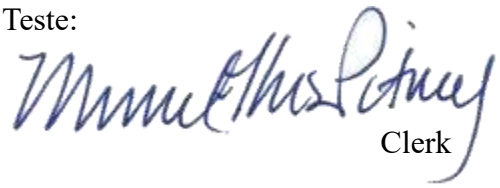

Clerk