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Court of Appeal, Fourth District, Division 3, California.

IN RE MARRIAGE OF Hong-

Lien T. and Huu N. PHAM.

Hong-lien T. Pham, Respondent,

v.

Brent V.N. Pham et al., as Personal

Representatives, etc., Respondents; Nga T. Nguyen,

Appellant; Max H.D.N. Pham, Respondent.

G056996

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Filed 06/02/2020

Appeal from a judgment of the Superior Court of Orange County, Erick L. Larsh, Judge. Reversed and remanded with directions. Respondents' motion to dismiss appeal, denied. Respondents' motion to augment the record, denied. Respondents' motion for sanctions, denied. Appellant's request for judicial notice, denied. (Super. Ct. No. 11D006275)

#### Attorneys and Law Firms

Alan S. Yockelson for Appellant.

Flyer and Flyer, David R. Flyer and Raquel Flyer for Respondents, Hong-Lien T. Pham, and Brent V.N. Pham and Sean T.N. Pham, as personal representatives of Huu N. Pham's estate.

No appearance on behalf of Respondent Max H.D.N. Pham.

#### OPINION

GOETHALS, J.

\*1 Appellant Nga Nguyen, a non-party to this marital dissolution case, successfully opposed repeated attempts by

petitioner Hong-Lien T. Pham to join her as a party in the trial court so Nguyen could protect whatever ownership interest she claimed in the presumptively community funds that Hong-Lien's former husband (and Nguyen's son), Huu N. Pham, deposited into investment accounts he held jointly with Nguyen.

Nguyen's refusal to take part in the dissolution proceedings continued after Huu died, and two of his sons appeared as representatives of his estate. Her refusal continued even after the family court issued an order freezing the investment accounts in which she claimed an interest, thus making clear that the family court was asserting exclusive jurisdiction over the disposition of any community funds in those accounts.

Nguyen now challenges the stipulated judgment, which was entered after extensive forensic tracing by an accountant jointly retained by Hong-Lien and Huu in 2011, who concluded the funds deposited by Huu were community property. In direct opposition to the position she took—repeatedly—in the family court, Nguyen now argues the court lacked jurisdiction to enter the judgment without naming her as an indispensable party to the proceedings because she claims an interest in the investment accounts in which the community funds were deposited. We reject the claim.

Nguyen's belated acknowledgment that her claimed interests in the funds would be affected by the family court's adjudication of the parties' own interests in them does not constitute grounds for challenging the judgment on appeal. Whatever error the trial court might have made by failing to grant Hong-Lien's petitions to join Nguyen as a party was repeatedly invited by Nguyen. Having prevailed on that point below, Nguyen cannot now claim she was aggrieved by the ruling.<sup>1</sup>

Nonetheless, because Nguyen was not a party below, the trial court could not bind her to an adjudication of her distinct ownership interest in the investment accounts held in her name. Although Nguyen repeatedly objected to being joined as a party, she never disclaimed an ownership interest in the accounts. Thus, to the extent the court's judgment went beyond the division of Huu's interest in the accounts—i.e., the division of the community funds he deposited in those accounts—as between Hong-Lien and Huu,<sup>2</sup> and purported to rule directly on the issue of whether Nguyen has any distinct ownership interest in the accounts, the trial court exceeded its jurisdiction.

\*2 Consequently, we reverse the judgment and remand the case to the trial court with directions to modify the judgment to delete any ruling regarding whether Nguyen has an ownership interest in the investment accounts and to confine its ruling to the division of community property—including Huu's ownership interest in the investment accounts—as between Hong-Lien and Huu.<sup>3</sup>

## FACTS

Hong-Lien and Huu were married in August 1983; they separated 28 years later, in June of 2011. Hong-Lien petitioned for dissolution of the marriage.

Among the assets in dispute between the parties were funds deposited by Huu in various E\*Trade investment accounts held either in his own name or jointly with his mother, Nguyen. Consequently, in November 2011, Hong-Lien petitioned to add Nguyen as a party to the marital dissolution case. She claimed there was sufficient grounds to impose a constructive trust on investment accounts held in Nguyen's name, or held jointly by Huu and Nguyen, based on evidence that Huu had transferred community funds into those accounts, totaling “not less than \$1,455,000.00,” without Hong-Lien's knowledge or consent.

Huu opposed the motion, arguing that he had made only two payments to his mother, by check, in the total amount of \$410,000, as repayment of a loan. He denied the contention that he had paid his mother the much larger sum alleged by Hong-Lien, and asserted that “[t]he accounting by the jointly retained forensic accountant, Joel Danenhauer, will establish that fact beyond any doubt.” The court denied the joinder motion, without prejudice, in February 2012.

A bifurcated judgment dissolving the marital status was entered approximately four years later, in April 2016, reserving jurisdiction over the disposition of marital property.

In November 2016, the court made findings and entered an order relating to various real properties and Huu's medical practice. Huu passed away on March 1, 2017.

On March 17, 2017, Hong-Lien once again moved for an order joining Nguyen as a party based on her alleged receipt of community funds from Huu. The motion alleged that Danenhauer had “identified and traced sums in excess of \$1,851,000.00 which were transferred from [Huu] to his

mother Nga T. Nguyen, during the parties['] marriage, and after the filing of this dissolution action.”

Nguyen opposed the joinder motion, arguing that as an elderly woman who lives primarily in Virginia, she “should not be burdened by being joined into family law litigation, which would result in financial and emotional burdens being imposed on me.” Nguyen did not dispute that she was subject to the court's jurisdiction, however, and acknowledged she “maintain[s] a house in California.”

Nguyen also argued that it was improper for Hong-Lien to seek her joinder before a representative of Huu's estate could be substituted into the case on his behalf. Finally, Nguyen disputed the claim that she was an indispensable party, arguing that the tracing evidence provided by Hong-Lien was not sufficient to establish that any of the funds transferred to her were community property.<sup>4</sup> Having disputed the evidence relied upon by Hong-Lien to establish a community interest in the funds in the accounts, Nguyen characterized the joinder motion as “a sham ... meant to harass me,” and requested an order of attorney fees.

\*3 In September 2017, pursuant to stipulation, the court appointed a representative for Huu's estate to appear in this case on behalf of the estate. In October 2017, the court entered an order for partial judgment by stipulation, transferring four pieces of real property to Hong-Lien as her separate property.

On October 31, 2017, the trial court denied Hong-Lien's second motion to join Nguyen as a party to the action, while at the same time explicitly freezing all of the E\*Trade investment accounts in which Huu and/or Nguyen have held or claim an interest, and prohibiting any withdrawals, transfers, or other transactions from those accounts until further order of the court.

In March 2018, Hong-Lien moved for an order allowing funds from the E\*Trade accounts to be disbursed for the payment of her attorney fees and the forensic accounting fees, but otherwise prohibiting Nguyen from unfreezing the accounts. Nguyen opposed the motion, arguing that the E\*Trade account from which Hong-Lien sought disbursement of funds was held jointly by Nguyen and Huu, with a right of survivorship, and Nguyen was claiming full ownership of the account in the wake of Huu's death. She further claimed the disposition of any funds in that account “is best resolved in probate court, a proceeding in which ... Nguyen is a party.”<sup>5</sup>

Despite that argument, on April 12, 2018, the trial court ordered that funds be disbursed from the account ending in 0696 for payment of Hong-Lien's attorney fees and the forensic accountant's fees; otherwise the P.O.D. accounts remained frozen.

In June 2018, the probate court appointed Hong-Lien and Huu's sons, Brent V.N. Pham, and Sean T.N. Pham, to act as co-administrators of Huu's estate, and they were substituted into this case in that capacity. The court entered another order for partial judgment, ordering the transfer of other real properties, plus shares of stock in specified securities, into a trust that was created as part of Huu's estate plan.

In June 2018, Hong-Lien renewed her motion for an order joining Nguyen as a party to the marital dissolution action. Her motion highlighted the fact Nguyen had filed a petition in the probate case asserting her sole ownership over the disputed investment accounts in the wake of Huu's death. Hong-Lien argued that if Nguyen was intent on enforcing her ownership claim, she was required to do so in the marital case, which had exclusive jurisdiction over the characterization and disbursement of any community property in the accounts.

\*4 Nguyen again opposed Hong-Lien's motion. In her opposition, Nguyen disputed the merits of Hong-Lien's contention that the investment accounts she claimed ownership of included any community funds. Nguyen claimed there was no evidence to support the assertion that funds transferred by Huu into the disputed investment accounts were community property.<sup>6</sup> Nguyen again declared she “should not be burdened with” having to participate in this case, and asserted there was insufficient evidence to support Hong-Lien's claim that any of the money in the accounts was community property. She characterized Hong-Lien's attempt to join her as a party as a “sham and meant to harass [her]” and again sought an award of fees.

Nguyen argued the decision to join a third party in a marital dissolution case was discretionary, rather than mandatory, and that joinder should be compelled “ ‘only in the rarest of circumstances.’ ” While she acknowledged the family court had already asserted jurisdiction over the investment accounts and had issued an order freezing them, she argued that because she had chosen to participate in the probate case, the family court should refuse to join her in the marital dissolution action. Further, she asserted the family court should order a stay of the marital dissolution action until after the probate case had been completed, thus allowing the probate court

to first “deal[ ] with my son's estate, including the accounts which by operation of law are my accounts.”

In July 2018, the court once again denied the motion for joinder, finding there were insufficient “ ‘new facts’ ” to support the request. Moreover, the court stated that “[e]ven if there were new facts and the Court reconsiders based on those facts, the Court exercises [its] discretion to not change [its] ruling to deny joining Nga Nguyen to the action.” However, the court also reiterated that “[t]he Family Law Court has continuing exclusive jurisdiction over characterization and division of the community property.”

In October 2018, the probate court issued an order staying its proceedings as they pertained to Nguyen's petition for an order confirming her ownership of the investment accounts, and deferred to the family court's assertion of jurisdiction over the accounts.

Approximately two weeks later, Danenhauer, the forensic accountant who had been jointly retained by Huu and Hong-Lien years before, filed his final report detailing his findings regarding tracing contributions from community and separate property. In accordance with that report, and based on a stipulation between the parties, the court entered judgment.

As it relates to the investment accounts, the judgment included findings that when Huu “filed and served his preliminary declaration of disclosure (“POD”) on October 26, 2015,” he listed “financial accounts with total disclosed value of \$2,000,231.00,” which he acknowledged were community property. “However, all of the financial accounts identified in [Huu's] POD were closed ... and the funds/securities were transferred to other accounts under [Huu's] control. Some accounts were titled to [Huu] and some were created and titled as joint accounts with his mother, Nga T. Nguyen.”

The court found Huu “violated his fiduciary duties by (1) creating well over 100 financial accounts; (2) completely depleting all of the funds/securities in the community accounts he had disclosed in his POD; ... (4) raiding the profits from other community income producing real properties, including rents, and placing the profits into financial accounts under his control; (5) commingling the income of the community and his separate property; (6) wrongfully diverting community income to [a colleague] in exchange for kick-backs as determined in the report of the referee, Commissioner Hickman (Ret.); and then (7) ... transferring most of the valuable accounts to “joint tenancy”

or “pay on death” accounts where his mother, Nga T. Nguyen, was designated as joint tenant with right of survivorship (“JTWROS”) or as beneficiary, without disclosure to nor consent by [Hong-Lien].”

\*5 Relying on the forensic accountant's report, the judgment concluded that “During the period from date of separation until death, [Huu] diverted \$831,121.00 in payments to his mother, Nga T. Nguyen without disclosure to or consent by [Hong-Lien].”

Referring specifically to the E\*Trade account ending in 0696, the judgment relied on the forensic accountant's report as the basis for findings that it “is the principal financial account used for stock trading, and the only account with substantial balance now holding \$5,011,425.00.” Although the account is held in the names of Huu and Nguyen jointly, with a right of survivorship, the judgment concluded “[t]he titling on the account does not reflect the contributions of the community and separate property. This account is entirely community property based on contributions. Nga T. Nguyen has zero interest in this account.” However, somewhat inconsistently, the judgment also determined Nguyen “contributed \$391,119.00 to community E\*Trade Account # [ ]0696,” and that although “[Huu] diverted payments to his mother, the amount contributed by her exceeded the amount of payments to her by ... \$154,998.00.” That latter amount was identified as a “potential obligation to Nga T. Nguyen.”

Other potential obligations to Nguyen are also identified, including her two JAMS arbitration claims in the amounts of \$350,000 and \$433,000, both of which allege liability arising out of disputed loan obligations, as well as obligations to pay the forensic accountant and “to defend and indemnify the Trust” against various claims.

The judgment then divides various assets and liabilities between the parties, including investment accounts listed in both Huu's and Nguyen's names. Among other things, the judgment awards the E\*Trade account ending in 0696 entirely to Hong-Lien, and orders that E\*Trade Clearing, LLC and E\*Trade Securities, LLC transfer the account to her, stating again that “Nga T. Nguyen has no interest in this Account.” The judgment awards all identified liabilities to Hong-Lien as well. Other assets, including financial accounts at E\*Trade and at other financial institutions, are awarded to Huu's estate.

## DISCUSSION

After repeatedly objecting to being joined as a party to this action in the court below, Nguyen now appeals from the judgment, arguing the court had an independent obligation to join her, and it exceeded its jurisdiction by entering the judgment without doing so.

### 1. *Standing to Appeal*

A non-party has standing to appeal from a judgment if he or she is aggrieved by it. (*In re FairWageLaw* (2009) 176 Cal.App.4th 279, 285.) “ ‘However, the aggrieved party's interest must be immediate, pecuniary and substantial, and not merely a nominal or remote consequence of the judgment.’ ” (*Ibid.*) In this case, Nguyen meets that standard because the judgment purports to directly rule on—and dispense with—her ownership interest in financial accounts held jointly in her name and Huu's, including one account which apparently contained a net contribution of her own funds. Because Nguyen has standing to appeal, we deny respondents' motion to dismiss the appeal.

We therefore turn to the merits.

### 2. *Nguyen's Claimed Status as an “Indispensable Party”*

In a stunning departure from the position she repeatedly took in the court below, Nguyen now argues she was an “indispensable party” to the marital dissolution action because the “property and funds she held with Huu” were “put at risk” in the proceeding and her “absence clearly impaired or impeded her ability to protect her interest in ... the property and funds ....” She thus contends the trial court had an “independent duty” to join her as a party.

\*6 Although we concur with a portion of her argument, we reject Nguyen's claim to indispensable party status as well as her claim that the court had an “independent duty” to join her as a party over her objection.

Code of Civil Procedure section 389, subdivision (a), sets forth the general rules governing the compulsory joinder of parties in a civil case. It states that “A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is

so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.” (Code Civ. Proc., § 389, subd. (a).)

However, subdivision (b) of the same statute makes clear that the failure to join such a party does not automatically deprive the court of jurisdiction to decide the matter as between the parties already before it: “If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder.” (Code Civ. Proc., § 389, subd. (b).)

“Because the determination of whether a person or entity must be joined as a party to a civil action is a case-specific inquiry that ‘weighs ‘factors of practical realities and other considerations,’ ” a trial court's ruling on joinder is reviewed for abuse of discretion.” (*Bianka M. v. Superior Court* (2018) 5 Cal.5th 1004, 1018.)


For obvious reasons, the court's inability or unwillingness to join a person who is financially intertwined with one of the parties to a marital dissolution action would not lead to the dismissal of that action. A recalcitrant third party could not be allowed, “in equity and good conscience,” to prevent the dissolution. (Code Civ. Proc., § 389, subd. (b).) The Rules of Court governing joinder in a marital dissolution case make clear that the only third parties whose joinder is mandatory are those who have custody or claim custodial or visitation rights with respect to any child of the marriage. All other joinders are “permissive.” (Cal. Rules of Court, rule 5.24 (e).)


\*7 Consequently, we reject Nguyen's assertion that the trial court had an “independent duty” to join her as a party to this case. What the court had was discretion, and to the extent

the court may have erred in exercising its discretion, we conclude Nguyen invited the error. “ ‘Under the doctrine of invited error, when a party by its own conduct induces the commission of error, it may not claim on appeal that the judgment should be reversed because of that error.’ [Citation.] ‘The “doctrine of invited error” is an “application of the estoppel principle”: “Where a party by his conduct induces the commission of error, he is estopped from asserting it as a ground for reversal” on appeal. [Citation.] ... At bottom, the doctrine rests on the purpose of the principle, which is to prevent a party from misleading the trial court and then profiting therefrom in the appellate court.’ [Citation.] The doctrine of invited error is applicable to a situation where a party invites the court to rule against it on a particular issue, and then challenges the merits of that ruling on appeal.” (*Diaz v. Professional Community Management, Inc.* (2017) 16 Cal.App.5th 1190, 1203-1204.)

Here, Hong-Lien made repeated efforts to join Nguyen as a party. Nguyen vigorously and successfully opposed those motions, insisting she had no interest in any property that might be at issue in the marital case. The theory underlying her contention—resting primarily on her insistence that investment accounts opened by Huu years after the date of marital separation could not possibly contain community funds—was wholly mistaken, but she nonetheless prevailed in her opposition to the joinder. She cannot now be heard to complain of her victory on this issue in the trial court.

We also conclude Nguyen has not been aggrieved by the court's failure to name her as a party to the family court case. “A party is not aggrieved by a consent judgment, or one which

he has requested the court to decree.” (  *In re Estate of Gurnsey* (1923) 61 Cal.App. 178, 182.) “It is an elementary and fundamental rule of appellate procedure that a judgment or order will not be disturbed on an appeal prosecuted by a party who consented to it.” (*Sorensen v. Lascy* (1941)

42 Cal.App.2d 606, 608; see  *Delagrang v. Sacramento Sav. & Loan Assn.* (1976) 65 Cal.App.3d 828, 831 [“Having consented to the judgment of dismissal, [plaintiff] may not appeal therefrom”]; see also *Hensley v. Hensley* (1987) 190 Cal.App.3d 895, 898-900 [holding that a party could not appeal the trial court's order setting aside a default judgment—rather than merely modifying it—because the party had argued to the court that it could set aside the judgment].) In this case, Nguyen did not merely consent to being left out of the marital dissolution case, she demanded it.

We recognize that Nguyen now asserts there was a fundamental change in circumstances when the court was presented with the proposed stipulated judgment, and it was that change in circumstances which suddenly triggered the court's duty to join Nguyen as a party so she could advocate for her own interests in light of the proposed judgment. But we find the assertion unpersuasive.

Throughout this case, Hong-Lien has been unwavering in both her claim to a share of Huu's financial accounts and her assertion of the basis for that claim. These arguments are not new. Hong-Lien contended from the beginning that Huu had engaged in a lengthy and convoluted campaign to hide community property from her, and that a substantial portion of the hidden community property ended up in the E\*Trade investment accounts that Huu had set up in his and Nguyen's names. She relied on tracing information provided by Danenhauer as evidence to support her claims. When Hong-Lien cited that evidence in support of her repeated motions to join Nguyen as a party, Nguyen's response was to dismiss the evidence as insubstantial and to argue the investment accounts, which were opened long after the parties' separation, could not and did not contain community property. In effect, Nguyen's position was that Hong-Lien's assertion of a community property interest in the accounts was completely unfounded, and thus it would be unreasonable to force Nguyen to become a party to the action.

\*8 Because Nguyen succeeded in resisting joinder, she was not a party to this case when Hong-Lien and the representatives of Huu's estate proposed a stipulated judgment based explicitly on the tracing conclusions in Danenhauer's final report. We presume, as we are obligated to do in all cases, that the evidence submitted was sufficient to support the court's findings. (👉 *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) Nguyen does not contend otherwise.

The proposed judgment reflected the vindication of Hong-Lien's theory and was based on the same facts and evidence she had pointed to in arguing for Nguyen's joinder. The judgment did not result from any change in circumstance. It is clear why Nguyen now laments her lost opportunity to be heard before the court entered the judgment: she wanted the opportunity to convince the court that Danenhauer's tracing conclusions should be disregarded, or to offer other evidence that might have convinced the court to make different findings regarding the characterization of funds Huu deposited in the disputed accounts. But Nguyen's case of buyer's remorse

is not a legally sufficient changed circumstance to warrant sustaining her appeal.

If Nguyen had any concerns about the intent or ability of her grandsons to advocate for the positions that might have favored her interests in this case, she eschewed the opportunity to raise them when she opposed her joinder in the case. Ultimately, Nguyen long ago made tactical decisions which she apparently believed would serve to vindicate her position with respect to the contested investment accounts. Now that those issues have been resolved against her, it is too late for her shift to a different legal strategy.

Ultimately, Nguyen's reasons for contesting joinder were her own. However, the record strongly suggests she elected to pursue her claim to ownership of the jointly-held investment accounts through the probate case, with the hope that a ruling in her favor there would render the issue moot in this case. Indeed, Nguyen asserts in her appellate brief that “[h]er objections to joinder were based on the fact *that she was already litigating her rights to the property at issue in the probate action brought by Huu and Hong-Lien's[ ] children.*”

If that was Nguyen's strategy, it failed miserably. As explained by our Supreme Court in *In re Marriage of Hilke* (1992) 4 Cal.4th 215, the family court had jurisdiction to divide all marital property wherever situated, as a consequence of the filing of the marital dissolution action. Because the parties' marital status had already been formally dissolved before Huu died, his death did not divest the court of that jurisdiction. Instead, the court retained jurisdiction to complete the division of property and resolve other financial issues. (*Hilke*, at p. 220 [“The death of one of the spouses ... does not deprive the court of its retained jurisdiction to determine collateral property rights if the court has previously rendered judgment dissolving the marriage”].) Thus, the court presiding over the marital dissolution retains jurisdiction to complete that dissolution by dividing the marital assets.

Moreover, the priority of the family court action can also affect the status of the decedent's interest in joint tenancy property. (👉 *In re Marriage of Allen* (1992) 8 Cal.App.4th 1225.) In *Allen*, the wife died after the marriage was dissolved, but before the family court had determined the parties' respective interests in the marital property—including property the spouses had owned as joint tenants with a right of survivorship. Although the husband argued that he became sole owner of the property upon the wife's death by operation of law, the court disagreed. Instead, the court held that where

“one former spouse dies before the court determines the marital property rights of the parties, property held by the parties in joint tenancy does not pass to the other ... surviving joint tenant, but is divided in the marital dissolution action pursuant to the principles of the Family Law Act.” ( *Id.* at pp. 1226-1227.)

\*9 Consequently, the assets subject to the jurisdiction of Huu's probate case would ultimately be those determined in the marital case to be Huu's separate property, or his share of the marital property. It is only after the marital case is resolved, and the parties' separate assets confirmed and marital assets distributed, that Huu's assets would be subject to distribution by the probate court.

Perhaps if Nguyen had understood that the family court's jurisdiction to characterize and divide the marital assets could not be avoided for better or worse, as a consequence of Huu's death, she might have made different choices. But her choices were her own, and she has demonstrated no legal grounds for relieving her of their consequences.

Finally, as we noted at the outset, we do not disagree with Nguyen's assertion that the court's resolution of marital property issues, as between Hong-Lien and Huu's estate, will likely have an effect on her interests. But that did not deprive the court of the authority to make those rulings in her absence. As explained in *Bianka M. v. Superior Court*, *supra*, 5 Cal.5th at p. 1020, what the non-party is entitled to is notice and an opportunity to be heard, and to assert his or her rights in the action. However, if the non-party declines to participate after notice “there is no bar to adjudicating the rights of those parties who are present.” (*Ibid.*)

Based on the foregoing, we find no error in the court's failure to join Nguyen as a party in this case.

### 3. Modification of the Judgment

Our conclusion that the court had no obligation to join Nguyen as a party before entering the judgment does not mean we believe the judgment was flawless. The court's subject matter jurisdiction in a marital dissolution case is established by statute, and includes the authority to render judgments and make orders concerning “the property rights of the parties.” (Fam. Code, § 2010, subd. (e).) Thus, the court had the authority to determine, as between the spouses, which property was owned by the community, and how that property should be distributed. Here, that meant the trial court

had jurisdiction to determine all of the money deposited by Huu in a financial account was community property, and to award that community property to Hong-Lien.


However, the court lacked jurisdiction to directly adjudicate the property rights of anyone not a party to the action. “A court lacks jurisdiction in a fundamental sense when it has no authority at all over the subject matter or the parties.” ( *People v. Ford* (2015) 61 Cal.4th 282, 286.) If a court lacks such “ ‘fundamental’ ” jurisdiction, its ruling is void. ( *People v. Lara* (2010) 48 Cal.4th 216, 225.) A claim based on a lack of fundamental jurisdiction may be raised for the first time on appeal. (*Ibid.*)

Because the court did not join Nguyen as a party, it could not directly adjudicate that she had no interest in the financial accounts—especially, where, as here, the court's judgment expressly acknowledges that Nguyen made a net contribution of funds into at least one of the accounts. Likewise, the court had no authority to dispose of whatever funds Nguyen may have contributed to the accounts, without her consent, by awarding an entire account to Hong-Lien or to the trust.

Consequently, we must reverse the judgment and remand the case to the family court for the limited purpose of modifying the judgment to make clear that it awards the parties only those funds that Huu contributed to the financial accounts held jointly in his and Nguyen's names, plus any increase in value attributable to those funds. To the extent there are funds in the accounts due to Nguyen's contributions, she remains the owner of those funds. The court may add whatever provisions are appropriate to allow the marital funds awarded in the judgment to be withdrawn from the accounts, or the accounts divided to segregate those funds.

### 4. Sanctions

\*10 Hong-Lien has made a motion for sanctions, arguing that Nguyen's appeal is frivolous. Code of Civil Procedure section 907 provides that “[w]hen it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just.” An appeal is considered frivolous “when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit.” ( *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650; Cal. Rules

of Court, rule 8.276(a.) Moreover, “[t]he two standards are often used together, with one providing evidence of the other. Thus, the total lack of merit of an appeal is viewed as evidence that appellant must have intended it only for delay.” (  *In re Marriage of Flaherty*, *supra*, 31 Cal.3d at p. 649.)

In this case, while we agree with many of Hong-Lien's arguments, our conclusion that the judgment goes beyond the award of marital property, and purports to directly dispose of Nguyen's share of the disputed investment accounts, whatever it is, prevents us from concluding the appeal is frivolous. We therefore deny the motion for sanctions.

### DISPOSITION

The judgment is reversed, and the case is remanded with directions to modify the judgment to make clear it awards the parties only those funds that Huu contributed to the financial

accounts held jointly in his and Nguyen's names, plus any increase in value attributable to those funds. Additionally, the court may add whatever provisions are appropriate to allow the marital funds awarded in the judgment to be withdrawn from the accounts, or the accounts divided to segregate those funds from any funds belonging to Nguyen. The request for sanctions is denied.

Hong-Lien is to recover her costs on appeal.

WE CONCUR:

BEDSWORTH, ACTING P. J.

THOMPSON, J.

### All Citations

Not Reported in Cal.Rptr., 2020 WL 2895447

### Footnotes

- 1 Hong-Lien has requested that we augment the record to include documents reflecting Nguyen's recent attempt to intervene in the trial court proceedings during the pendency of this appeal. We deny the request as the documents played no part in the judgment appealed from and essentially mirror the legal arguments and factual points raised by Nguyen on appeal. Similarly, Nguyen has requested we take judicial notice of documents she filed in the related probate case, arguing they explain her reasons for resisting Hong-Lien's repeated petitions to add her as a party to this case. We also deny this request. In the absence of evidence that Nguyen was misled by another party into relinquishing her right to participate in this case, her reasons for doing so are irrelevant. She prevailed on the issue and cannot complain about her victory in the trial court on appeal.
- 2 Since these parties share the same last name, we refer to them by their first names. We intend no disrespect.
- 3 Hong-Lien has requested an award of sanctions on appeal, alleging the appeal is frivolous. Because we conclude the judgment must be modified to make clear it does not dispose of Nguyen's interests in the investment accounts, we must disagree.
- 4 Specifically, Nguyen pointed out that some of the payments traced by the accountant had come from Huu's business, rather than from him as an individual, and that some were clearly identified as “loan payments for loans made prior to separation.” She also asserted that the investment accounts into which Huu was alleged to have made payments of community funds “were all started after the date of separation.”
- 5 In connection with that assertion, Nguyen also filed a petition in the probate case, asserting that during Huu's lifetime, but after the date of his separation from Hong-Lien, he had “created and/or funded several multiple-party accounts with his mother [Nguyen], either on title as a joint tenant with right of survivorship or a payable on death (‘P.O.D.’) beneficiary.” She sought an order from the probate court confirming that as a consequence of Huu's death, those accounts belonged to her alone. Nguyen's petition listed multiple accounts held at E\*Trade, TD Ameritrade, or Ally Bank. One account, ending in 0696, had “an approximate balance of \$4.8



million as of October 31, 2017.” The other eight accounts were listed as having balances ranging from a high of \$37,000 to a low of \$2.30.

- 6 Nguyen also supported this attack on the merits with an additional declaration filed by an attorney, who also argued the evidence was insufficient, as a matter of law, to support any finding that Huu had diverted any community funds into the disputed accounts.

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