



California

Trusts and Estates Quarterly

Volume 25, Issue 4 • 2019

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TILL DEATH DO WE LITIGATE THAT DIVORCE

*Adam F. Streisand and Meghan K. McCormick**

MCLE Article

Dorothy: Now which way do we go?

The Scarecrow: Pardon me, this way is a very nice way.

Dorothy: Who said that?

[Toto barks at scarecrow]

Dorothy: Don't be silly, Toto. Scarecrows don't talk.

The Scarecrow: *[points other way]* It's pleasant down that way, too.

Dorothy: That's funny. Wasn't he pointing the other way?

The Scarecrow: *[points both ways]* Of course, some people do go both ways.

After the death of a spouse, litigation can frequently look a lot like a divorce. Often the death of a spouse occurs while a divorce action is pending. Other times, disputes arise after the death of a former spouse. In such circumstances, which way do I go—to the family court or to the probate court? What happens next can be reminiscent of that famous scene from “The Wizard of Oz” when Dorothy, intrepidly following the Munchkins’ advice to follow the Yellow Brick Road, comes to a fork in that road. Unsure of which way she must go, the Scarecrow, still hanging from his perch, speaks up offering advice that “this way is a very nice way,” but “[i]t’s pleasant down that way, too,” and finally, pointing in both directions, “some people do go both ways.” Of course, Dorothy had an even more fundamental question: “How can you talk, if you haven’t got a brain?” The Scarecrow’s response, though inexact, was rather wise: “I don’t know. But, some people without brains do an awful lot of talking, don’t they?” This article is intended to take a step beyond the Scarecrow’s inexact advice to help the brain make a reasoned choice of courtrooms.

The California superior court has jurisdiction over proceedings arising under the Probate Code and the Family Code assuming other jurisdictional requirements are met.¹ For example, in a decedent’s estate proceeding, the superior court has jurisdiction if the decedent died while domiciled in California or left property in this State.² In the case of a trust, the superior court has exclusive jurisdiction over a trust if California is the principal place of the trust’s administration.³ The superior court has jurisdiction over a marriage if California is the last place where the married couple resided together and there is personal

jurisdiction over the parties.⁴ All courts in proceedings that arise under the California Probate Code or California Family Code are courts of general jurisdiction.⁵ However, many superior courts of the State of California are organized into divisions that include a family law court (“Family Court”) and a probate court (“Probate Court”).

When a local superior court is organized by division, the probate division exercises jurisdiction over matters under the Probate Code and the family division exercises jurisdiction over matters under the Family Code. Judges and counsel commonly refer to the probate division and family division as the Probate Court and Family Court, even though all “courts” can exercise the powers of courts of general jurisdiction and are divisions of one California superior court. While the organization of the superior court into divisions (generally by the county in which the court is located) is for administrative purposes and is not required because of differences in jurisdictional power, the practical effect is that in most superior courts in California the question of which division, probate or family, one must proceed with a case is not purely academic. Indeed, “where a distinct subject matter jurisdiction is exercised by a special department or ‘court,’ such as the probate, criminal or juvenile court, choice of the wrong department is more than mere error. If the wrong department attempts to exercise this special subject matter jurisdiction, it acts in excess of jurisdiction, and prohibition will lie to restrain the proceeding.”⁶

Where a matter will proceed largely depends on persuading the Probate Court or the Family Court that it has jurisdiction. In the authors’ experience, the Probate Court and Family Court are often unsure of which court has jurisdiction after the death of a spouse or former spouse when a divorce proceeding is either pending or recently concluded.

Although both the Probate Court and Family Court are courts of general jurisdiction, both courts also tend to be so highly specialized and procedurally idiosyncratic that the difference may be strategically significant in a given case. Expecting one court to be immediately familiar with the laws and procedures of the other is unrealistic. What is more likely and potentially destructive is that the Probate Court exercises jurisdiction because it incorrectly believes the matter arises under the Probate Code, or the Family Court improperly exercises jurisdiction over a matter it incorrectly believes arises under the Family Code. In either circumstance, the court may apply incorrect legal principles and procedures that lead to an erroneous decision.

Because the decision to proceed in either the Probate Court or the Family Court can be complicated, and in some cases having no clear answers or single source of authority, this article may be of use.



I. PRIOR TO ADJUDICATION OF STATUS, FAMILY COURT JURISDICTION ABATES AT DEATH, EXCEPT TO ENTER ORDERS ON ADJUDICATED ISSUES

Family Code section 310 provides that marriage is dissolved by one of three means: (1) the death of one of the parties, (2) a judgment of dissolution, or (3) a judgment of nullity of the marriage. Under Family Code section 2337, the Family Court “may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues.” When a spouse dies during the pendency of a marital dissolution action and before the status of the marriage is terminated, the death of the spouse terminates the marriage under Family Code section 310. In that circumstance, the Family Court’s jurisdiction abates.⁷ If there are disputes between the surviving spouse and the deceased spouse’s personal representative, those disputes must be litigated in the Probate Court. For example, the surviving spouse who seeks to establish community property rights in property must do so in Probate Court.

“[T]he death of a party to a dissolution proceeding abates the cause of action, as the status of the parties is no longer before the court, and . . . the court thus loses jurisdiction to make any *further determination* of property rights, alimony, costs or attorney’s fees.”⁸ The Court of Appeal explained in *In re Marriage of Allen*:

[T]here is a meaningful difference between cases in which a party dies before a judgment of dissolution is entered and cases in which a party dies after the entry of judgment. Where a party dies before the marriage is dissolved, the dissolution action must abate and the court can make no further orders with respect to property rights, spousal support, costs or attorney fees. [Citations omitted.] On the other hand, when a judgment of dissolution has been entered and a party later dies, the court retains jurisdiction to adjudicate the reserved issues.⁹

In *In re Marriage of Williams*, wife filed a dissolution petition and sought custody of the two children, spousal support, and child support.¹⁰ The court issued a *pendente lite* order awarding custody to wife.¹¹ Several months later, wife became critically ill, entered the hospital, and became comatose.¹² Husband petitioned the court for an order transferring custody to himself.¹³ The same day, wife’s brother and mother (“Claimants”) filed a noticed motion to be joined to the dissolution proceeding, alleging they had an “active interest in the children’s welfare,” and claimed custody and visitation rights over the children based on the alleged unfitness of husband.¹⁴ Wife died, and the court awarded custody to husband, without prejudice to Claimants’ motion.¹⁵

Husband sought dismissal of the dissolution proceeding on the grounds of wife’s death.¹⁶ The court granted husband’s motion to dismiss, finding that the dissolution proceeding had terminated as a matter of law, and that there was therefore no pending action to which Claimants could join.¹⁷ Claimants appealed. The Court of Appeal affirmed the dismissal, finding that wife’s death terminated the marriage before the motion for joinder was adjudicated, and whatever rights Claimants may have had in the marriage dissolution proceeding thus abated.¹⁸

While the rule is that a dissolution action abates due to the death of a spouse prior to the entry of judgment, “the [family] court retains the power to enter judgment in conformity with matters already adjudicated before the death, but it can make no further adjudication of issues.”¹⁹

In *In re Marriage of Lisi*, husband filed a petition for dissolution of marriage, and the court appointed private counsel (Ms. Vogel) to represent the couple’s children. Ms. Vogel in turn hired an attorney (Ms. Amado) to assist her in that court appointment.²⁰ A year later, the court relieved Ms. Vogel of her duties, and ordered that she be paid a reasonable attorney’s fee, the amount of which was to be determined at the time of trial, and payable from the sale of the family residence subject to allocation between husband and wife.²¹ Wife’s mother later shot and killed husband.²² The court had not entered a judgment for dissolution. Thereafter, Ms. Vogel sought an order fixing the amount of her and Ms. Amado’s fees, and apportioning the obligation between the husband and wife’s community assets.²³ Wife opposed the motion, claiming that the fees were unreasonable, and that the Family Court had no jurisdiction to enter the order because the dissolution action abated upon husband’s death.²⁴ The court awarded the fees, and wife appealed.²⁵ The Court of Appeal affirmed the trial court’s award, reasoning that, under Family Code section 3150 *et seq.*, the payment of fees is mandatory, and an attorney’s right to receive fees vests at the time an order for fees is made.²⁶ Although the Family Court had postponed determination of the amount of fees until trial, it had entered the order adjudicating Ms. Vogel and Ms. Amado’s right to the fees prior to husband’s death, thus the Family Court retained jurisdiction to calculate and allocate the fees as a part of enforcing Ms. Vogel’s and Ms. Amado’s vested property rights.²⁷

Similarly, in *In re Marriage of Shayman*, after a divorce trial, the court filed written findings of fact and conclusions of law, setting forth the parties’ rights with regard to characterization of property, child custody, support, and attorneys’ fees and costs.²⁸ Notably, “[t]he section entitled Conclusions of Law contained provisions for the disposition of these matters in the same form that they would ordinarily appear in a judgment, and the document concluded with the statement ‘Let Judgment be entered



accordingly.”²⁹ Less than a month later, prior to the court entering the judgment, husband passed away.³⁰ Husband’s attorney filed a motion to have an interlocutory judgment entered *nunc pro tunc* to the date the court filed the findings and conclusions.³¹ The court granted the motion, relying in part on Code of Civil Procedure section 669, which “provides that, if a party dies after trial and submission of his case to a judge sitting without a jury for decision, the court may nevertheless render judgment thereon.”³² Wife appealed, claiming that the Family Court lacked jurisdiction to enter the judgment following husband’s death.³³ The Court of Appeal affirmed the entry of judgment, holding that the court was empowered to enter judgment in conformity with a decision issued prior to husband’s death.³⁴ It reasoned,

Although the document entitled Findings of Fact and Conclusions of Law, which was filed in this case, did not expressly state that it contained the “judgment” of the court, the document in fact comprised the court’s decision. Not only were findings and conclusions set forth, but orders for the disposition of property and other matters were expressed. Had judgment been set forth in the proper form as prescribed by rule 1287, it would have been subject to immediate entry in accordance with section 664 of the Code of Civil Procedure.³⁵

In other words, the court had rendered its decision prior to husband’s death, just not in form. Therefore, it retained jurisdiction to enter a formal judgment after husband’s death.

II. POST-TERMINATION OF STATUS BUT PRE-DIVISION OF PROPERTY, FAMILY COURT RETAINS JURISDICTION ON RESERVED ISSUES

Family Code section 2337 authorizes the Family Court to enter judgment on the status of marriage while reserving jurisdiction to divide the property. Section 2337, subdivision (f) provides: “A judgment granting a dissolution of the status of the marriage shall expressly reserve jurisdiction for later determination of all other pending issues.” When the Family Court enters judgment dissolving the status of the marriage and reserves all other pending issues, and one of the parties dies prior to adjudication of those reserved issues, the Family Court has continuing jurisdiction to adjudicate those pending issues notwithstanding the death.³⁶

III. POST-JUDGMENT: IT GETS COMPLICATED

A judgment of dissolution of marriage terminates the marital relationship, thereby restoring the parties to the status of single

persons, and adjudicates the parties’ property rights, including spousal support and child support, if applicable. “A judgment is final when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined.”³⁷

“Generally, once a marital dissolution judgment has become final, the court loses jurisdiction to modify or alter it[,]” and a party’s sole remedy is to file a timely set-aside motion under Code of Civil Procedure section 473 or Family Code section 2120.³⁸ After the time for an appeal has expired, the parties cannot relitigate the division of property disposed of by the final judgment.³⁹ “In short, marital property rights and obligations adjudicated by a final judgment cannot be upset by subsequent efforts to ‘modify’ the judgment.”⁴⁰ The Family Court’s jurisdiction to adjudicate matters after entry of a final judgment is therefore limited to circumstances involving: (1) child support, child custody, and spousal support; (2) when a judgment contains a reservation of jurisdiction; (3) when there are community property assets or liabilities unadjudicated by the judgment; and (4) when the court gives equitable relief from an otherwise valid judgment for extrinsic fraud or mistake.⁴¹

In addition to its limited jurisdiction to adjudicate matters post-judgment, the Family Court may also have jurisdiction to enforce the terms of its judgments. When the Family Court’s jurisdiction to adjudicate new or further issues or to enforce its judgments ends, and the jurisdiction of the Probate Court or civil court begins, is a question that is not easily answered but discussed more fully in the next sections.

A. Reservation of Jurisdiction

1. *The Court’s Ability to Reserve Jurisdiction is Limited*

The Family Court’s ability to “reserve jurisdiction” is limited by California Rule of Court 5.18, subdivision (b), which states: “If the court is unable to resolve the issue in the proceeding under the Family Code, the court may reserve jurisdiction over the particular issue until such time as the rights of such person and the parties to the proceeding under the Family Code have been determined in a separate action or proceeding.”

Nearly every published family law case concerning a reservation of jurisdiction pertains to benefits from an existing retirement plan that the court could not divide at that time due to the contingent nature of the asset, but could be divided in the future when/if the asset vested (*e.g.*, when the party retired).⁴² However, when exercising its jurisdiction to adjudicate the reserved issue, the Family Court cannot modify the terms of the judgment to, in effect, “rewrite” the agreement of the parties.⁴³ In *In re Marriage*



of *Melton*, the court entered a judgment of dissolution formally dissolving the parties' marriage, and reserving jurisdiction over the division of community property and community obligations.⁴⁴ Two years later, the parties entered into a stipulated judgment regarding the remainder of the issues whereby they divided all of their community property equally.⁴⁵ The stipulated judgment also divided husband's future pension benefits in a plan that conferred two types of payments: a fixed benefit and a variable benefit.⁴⁶ Paragraph (f) of the stipulated judgment provided,

‘that the fair and reasonable manner in which to dispose of and divide the parties’ respective interests in the Benefit Plan is to require [William] to direct the Benefit Plan’s Administrator ... to pay to [Judith], subject to the eligibility conditions of the Benefit Plan, the following amounts: (1) one half of the Monthly Fixed Retirement Benefit to which [William] is entitled, the whole amount being \$238.00 ... , the one half amount being \$119.00 ... ; and (2) one half of the sum of the Monthly Variable Retirement Benefit applicable to [William] ...’⁴⁷

A letter from the plan administrator assumed husband would retire at age 45 as a class 6 member, and stated that husband's monthly fixed rate would be \$238. That monthly payment was based on the plan in effect the year the parties separated.⁴⁸ The letter was incorporated into the stipulated judgment.⁴⁹ Likewise, the judgment set forth a formula to determine wife's entitlement to half of the variable benefit, and authorized the issuance of a separate order directing the plan administrator to pay wife directly, so long as husband was entitled to his benefits.⁵⁰ The stipulated judgment reserved jurisdiction in the Family Court “for the sole purpose of implementing the provisions of this paragraph ‘F’ in accordance with the intent of the parties as described herein.”⁵¹ Husband subsequently retired at age 46 (not 45), as a class 7 member (not class 6), and therefore received significantly more from the benefit plan than contemplated in the stipulated judgment.⁵² The benefit payments were larger because he retired later than assumed, the plan administrator had mistakenly informed him that he was a class 6 and not a class 7 member, and the plan had been amended several times between 1979 (the year the parties separated) and 1991 (the year he retired).⁵³

Wife brought a motion for an order interpreting and implementing the judgment or setting it aside for extrinsic fraud or mistake. She argued that the parties intended to share equally in the plan, and that the stipulated judgment should be set aside because husband concealed the true amount of his expected retirement benefits and misled wife into accepting a smaller amount.⁵⁴ The trial court denied wife's extrinsic fraud claim, but

“[r]elying on the reservation of jurisdiction to implement the plan, and on its inherent equitable powers, the trial court determined the parties’ intent was to divide the pension benefits equally” and ordered the plan administrator to compensate wife and husband equally, both retroactively and going forward.⁵⁵ The Court of Appeal held that the Family Court exceeded its jurisdiction when it effectively rewrote the stipulated judgment, explaining:

The judgment expressly reserved jurisdiction in the court to implement paragraph F ‘in accordance with the intent of the parties as described herein.’ The trial court found that in order to implement the pension division provision it first had to interpret the judgment. In interpreting the judgment, the court found that the parties intended an equal division of the pension benefits. The court found that the word “half” was controlling, and that the dollar amounts in the judgment were illustrative. The trial court also relied on its inherent equitable powers.

We think the trial court exceeded the narrow jurisdiction reserved for it in the stipulated judgment.

The trial court was empowered to ‘implement’ the pension division portion of the judgment. It was not, however, empowered to rewrite the judgment for the parties. We find the trial court erred in effectively doing so.⁵⁶

Ultimately, given that “[f]or good faith reasons ... only a portion of William’s pension was explicitly divided by the stipulated judgment,” the Court of Appeal held that the portion not governed by the stipulated judgment was an unadjudicated asset, and remanded the case to the trial court to determine how to divide the omitted portion of husband’s pension and to amend the judgment accordingly.⁵⁷

a. Family Court has Continuing Jurisdiction over Unadjudicated Assets

The Family Court has continuing post-judgment jurisdiction to adjudicate and divide community assets or debts that were not previously the subject of a judgment.⁵⁸ The typical scenario is that of a previously unknown or undisclosed asset discovered after judgment is entered. However, as noted above, in the *Melton* case, a retirement benefit that exceeded what the parties had anticipated would be divided upon vesting was, to the extent of that excess, an unadjudicated asset.⁵⁹



b. Family Court Can Modify a Judgment Procured by Fraud or Mistake

Generally, the Family Court has authority to modify an otherwise valid judgment for extrinsic fraud or mistake, notwithstanding the expiration of the appeals period and no retention of jurisdiction.⁶⁰ However, the applicable statutes of limitations, Family Code section 2122 and Code of Civil Procedure section 473, subdivision (b), may bar any such claim. “The courts have required a showing of extrinsic fraud in order to accommodate both the policy in favor of resolving issues in a final judgment and the policy in favor of a fair adversary proceeding in which each party is provided an opportunity to fully present its case.”⁶¹ “The latter policy (permitting relief from a judgment) applies when a party’s adversary, in violation of a duty arising from a trust or confidential relation, has concealed from him facts essential to the protection of his rights.”⁶² “Extrinsic fraud is a broad concept that tends to encompass almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing.”⁶³ “A ... specie[s] of extrinsic fraud has ... been found where fiduciaries have concealed information they have a duty to disclose. [Citations]. This variety of extrinsic fraud recognizes that, even if a potential objector is not kept away from the courthouse, the objector cannot be expected to object to matters not known because of concealment of information by a fiduciary.”⁶⁴ Indeed, “[t]he courts are particularly likely to grant relief from a judgment where there has been a violation of a special or fiduciary relationship. Commentators have observed that breach of a fiduciary duty may warrant setting aside the judgment even though the same conduct in a nonfiduciary relationship would not be considered extrinsic fraud.”⁶⁵ No concrete formula exists for determining whether a particular case involves extrinsic fraud. Courts examine the facts in the light of the competing policies that (i) a party who failed to assemble all of his evidence at trial should not be permitted to relitigate a case, but that (ii) parties shall be able to seek relief from a judgment entered in a proceeding in which he was deprived of a fair opportunity fully to present his case.⁶⁶

B. Judgments Enforceable in Same Manner as Civil Judgments

Family Code section 290 states: “A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary.” “A money judgment or judgment for possession or sale of property that is made or entered under this code, including a judgment for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied.”⁶⁷ Procedures under the Enforcement of Judgments Law (“EJL”) are available

to enforce family law orders and judgments.⁶⁸ Notwithstanding these provisions, Family Code judgments are subject to the law governing enforcement of a judgment after the death of the judgment debtor.⁶⁹ Code of Civil Procedure section 686.020 provides: “After the death of the judgment debtor, enforcement of a judgment against property in the judgment debtor’s estate is governed by the Probate Code, and not by this title.”

How does death impact Family Court jurisdiction when a spouse seeks to enforce a dissolution judgment after the death of the “debtor” spouse? Probate Code section 9300 provides that money judgments against the decedent or personal representative on a claim against the decedent are payable in the course of administration, and are not enforceable against property in the estate under the EJL, except as provided in Probate Code section 9303. Section 9303, in turn, provides that, if property is subject to an execution lien at the time of death, enforcement may proceed under the EJL. That section further requires the levying officer to account to the personal representative for any surplus. If the judgment is not fully satisfied, the deficiency is payable in the course of the estate administration. Probate Code section 9302 provides that a judgment for possession of property or for sale of property may be enforced under the EJL notwithstanding decedent’s death, and a demand for money not satisfied by the judgment for sale of the property shall be filed as a claim as any other claim.

As a result of the decision in *Embree v. Embree*,⁷⁰ the question arises whether a spouse, as a judgment creditor pursuant to a dissolution judgment, would be required to file a creditor claim in the estate of a deceased ex-spouse to enforce that judgment. In a footnote to that case, the Court of Appeal explained that a party entitled to spousal support under a dissolution judgment would be required to file a creditor’s claim within the applicable time requirements.⁷¹ However, a few years later, in *County Line Holdings, LLC v. McClanahan*, the court called that assertion “not only dicta, it is the lowest form of dicta: footnote dicta.”⁷²

Embree involved a “promise to make a will” claim which the court held was barred under Code of Civil Procedure section 363 and required the filing of a timely creditor’s claim.⁷³ The court in *County Line* noted that *Embree* involved a claim, not a judgment. Moreover, *County Line* involved a judgment lien, but was not a case arising out of a probate matter or a family law matter. So how does the decision impact the footnote dicta in *Embree* to the effect that a party entitled to spousal support under a dissolution judgment would be required to file a creditor’s claim within the applicable time requirements?

We begin with the facts and procedural posture of *County Line*. In that case, Harold Mansdorf, as trustee of his revocable



trust, owned property the parties referred to as the “Malibu Property.”⁷⁴ In 2008, Janice McClanahan obtained a \$12 million judgment against Mansdorf and recorded an abstract against the Malibu Property.⁷⁵ In April 2012, John Torjesen obtained a \$2 million judgment against Mansdorf which Torjesen also recorded against the Malibu Property. Mansdorf died in August 2012.⁷⁶ Torjesen executed on his judgment lien by sheriff’s sale, and County Line purchased the Malibu Property for \$500,000.⁷⁷ County Line then filed an action to quiet title against McClanahan and any other lien holders.⁷⁸ The trial court entered judgment for County Line over McClanahan’s assertion of a superior lien.⁷⁹ The court concluded that McClanahan’s judgment lien was extinguished by her failure to file a timely creditor’s claim and by the one-year statute of limitations of Code of Civil Procedure section 366.2.⁸⁰

The Court of Appeal reversed. It held that Code of Civil Procedure section 366.2 limits the time for bringing a “cause of action,” but a judgment lien is not a cause of action and has a much longer life.⁸¹ The court also explained that McClanahan was not aided by Code of Civil Procedure section 686.020, which provides that “[a]fter the death of the judgment debtor, enforcement of a judgment against property in the judgment debtor’s estate is governed by the Probate Code, and not by [the EJL].”⁸² The court explained that this statute by its language is limited to property in a decedent’s “estate” and not to a trust. This limitation is unfortunate and appears to be dicta of its own. The court indicated that section 686.020 has no application because the Malibu Property was not owned by an estate or by a trust, but by County Line.⁸³ Thus, according to the court, the statute’s policy goal, to encourage expeditious settlements of estates, was not implicated.⁸⁴ The court further explained that even if the Probate Code applied, the result would be same under the California Supreme Court’s explanation of the rule.⁸⁵ According to the Supreme Court, the usual and ordinary method of enforcement of a judgment lien is by execution sale. After death of the judgment debtor, the right of a judgment creditor to enforce a judgment lien by execution and sale terminates.⁸⁶ But, the court explained, death does not terminate the judgment lien itself.⁸⁷ “Thus, under [the Supreme Court’s decision in] *Corporation of America*, the judgment creditor has an option: file a timely claim in the estate probate proceeding and seek a deficiency; or, without filing a claim, bring an action to foreclose the lien during its statutory duration, waiving any right to a deficiency.”⁸⁸

The *Embree* court indicated in its (allegedly dicta) footnote that even if an abstract of a spousal support judgment were recorded against the ex-spouse’s real property, the lien would be extinguished by death pursuant to Probate Code section 9300.⁸⁹ The court in *County Line* rejected that assertion as dicta that was contradicted by the Supreme Court’s decision in *Corporation of*

America. Thus, are we to assume that a dissolution judgment for money, such as spousal support, if recorded against real property, would provide the creditor spouse with an option, either to file a timely claim and seek payment in the ordinary course of administration of the estate, or without the necessity of filing a creditor claim, foreclose on the real property and waive any right to a deficiency? We think not, since money judgments are payable in the ordinary course of administration under Probate Code section 9300, and without the necessity of a creditor’s claim. Moreover, Probate Code section 9300 provides that money judgments are not enforceable under the EJL except as provided in section 9303. Section 9303 provides that an execution lien existing at the time of death is enforceable under the EJL and any deficiency may be satisfied in the ordinary course of the administration of the estate, without the necessity of a claim.

We agree that *Embree* got it wrong. Unless the dissolution judgment is a judgment for the possession of specific property or sale of property, a probate creditor’s claim would not be required within the statutory time periods.⁹⁰ Regardless of the need for a creditor’s claim, the attorney must determine which is the proper court for enforcing a family law judgment after the death of a spouse. Family Code section 291, subdivision (d) provides: “Nothing in this section supersedes the law governing enforcement of a judgment after the death of the judgment creditor or judgment debtor.” Reading Probate Code sections 9300 *et seq.* in harmony with that section, the enforcement of a judgment against the decedent’s estate must be pursued in Probate Court. In the case of a money judgment, Probate Code section 9300 permits the judgment to be enforced and paid only in the ordinary course of estate administration. Under section 9302, a judgment for the possession or sale of real property could be pursued by writ of possession or sale issued by the court to a levying officer.⁹¹ A demand for any part of a judgment not satisfied by the levy upon real property must be made by filing a creditor’s claim in the decedent’s estate. Such a claim is then payable in the course of administration. If property is subject to an execution lien at the time of death, the levying officer must account to the personal representative of the estate for any surplus, and any deficiency is payable in the course of administration if a timely claim is filed.

If the assets of the decedent’s estate are insufficient to satisfy a money judgment or deficiency, or the property that is subject to a judgment or execution lien is owned by the trustee of the decedent’s revocable trust, the judgment debtor can seek satisfaction from the trust. The trustee may, but is not required to, initiate a creditor claims process.⁹² If the trustee does not initiate the creditor claim process, then the beneficiary may be directly liable to the creditor for the unsecured claims of creditors of the decedent’s estate, subject to the one-year statute of limitations in Code of Civil Procedure section 366.2.⁹³ If assets of the decedent’s



probate estate are insufficient to satisfy a money judgment, and as long as the claim has been preserved in the probate estate, a creditor may proceed against assets in the debtor's revocable trust without having to file a creditor claim in the trust proceedings.⁹⁴

The Probate Court has exclusive jurisdiction over matters concerning the administration of a decedent's estate, and exclusive jurisdiction over proceedings concerning the internal affairs of a trust.⁹⁵ In cases of title controversies over assets belonging to a decedent or a trustee of a trust or in other specified instances listed under Probate Code section 17000, subdivision (b), the Probate Court has jurisdiction under the provisions of Probate Code section 850, concurrently with the jurisdiction exercised by the civil department of the superior court.⁹⁶ Except as provided in Probate Code section 850, the Probate Court's jurisdiction in decedent's estates is *in rem*; it has jurisdiction only over the assets of the decedent's probate estate and has no jurisdiction over assets outside the estate.⁹⁷ With respect to trusts, the Probate Court has personal jurisdiction over trustees as long as the principal place of administration of the trust is in California, regardless of the location of the trust property.⁹⁸ Similarly, the Probate Court has personal jurisdiction over beneficiaries of a trust having its principal place of administration in California to the extent of the beneficiaries' interests in the trust.⁹⁹

An interesting case that addresses squarely the question of whether a creditor's claim is required to enforce a judgment in a dissolution action also implicitly sheds some light on the question of jurisdiction of the Family Court and Probate Court to enforce such a judgment. The case arose from a very specific set of facts. In *Estate of Bonzi*, the Court of Appeal held that an order in a dissolution case could be enforced by the Probate Court in the deceased spouse's probate proceeding without the necessity of a creditor's claim,¹⁰⁰ though the authors of this article caution that the holding as to the need for a creditor's claim is particularly circumscribed by its unusual facts. Rudy and Mary were married in 1940 and, beginning in 1967, they jointly owned and operated a 128-acre solid waste disposal facility known as the Bonzi Landfill.¹⁰¹ The People of the State of California ex rel. Central Valley Regional Water Quality Control Board ("RWB") and ex rel. Department of Resources Recycling and Recovery ("CalRecycle") (together, "Respondents") sought to enforce a 1991 Order Re: Groundwater Remediation, Closure & Post-Closure of the Bonzi Sanitation Landfill (the "Remediation Order") entered by the court in the dissolution action between Rudy and Mary, incorporating stipulations between them to ensure their compliance with their joint statutory obligations to fund a trust fund for future remediation and closure of the Bonzi Landfill, and to sell and apply the proceeds of sale of jointly owned properties, if necessary, to meet those obligations.¹⁰² Rudy and Mary stated that the shortfall in their trust fund made

it impractical to do anything other than to continue owning and operating the Bonzi Landfill jointly for what they anticipated to be a very long time after the dissolution of the marriage.¹⁰³

Indeed, the executors of their estates were managing the Bonzi Landfill long after their deaths and contributing to the trust fund to meet the statutory obligations of the now deceased couple.¹⁰⁴ Repeatedly throughout the years, proceedings in the Probate Court were initiated and maintained in connection with issues and disputes that arose as a result of the Remediation Order. At no time did any court consider that the Probate Court lacked jurisdiction, or that the Family Court could have exercised jurisdiction over such matters that specifically involved the assets of the probate estates or trusts of Rudy or Mary. In 2012, the executor of Rudy's will petitioned the Probate Court to approve the sale of a property jointly owned by Mary's trust, joined in by the executor of Mary's will and the trustee of Mary's trust (together, "Appellants"). Respondents objected to the petition by which they sought to enforce the Remediation Order by requiring the proceeds of the sale of property to be distributed to the trust fund to discharge the statutory requirement for remediation.¹⁰⁵ Appellants argued that (1) Respondents lacked standing because the Remediation Order in the dissolution action between Rudy and Mary involved only those two parties, and (2) that Respondents were barred in any event for failure to file timely a creditor's claim and by the one-year statute of limitations of Code of Civil Procedure section 366.2. The trial court disagreed. The Court of Appeal affirmed, holding (1) that the court had inherent authority to enforce its orders and Respondents were express, intended beneficiaries of the Remediation Order, and thus had standing; (2) Respondents were not creditors, and were not asserting a "claim," thus, no creditor's claim was required to be filed and Code of Civil Procedure section 366.2 did not apply; and (3) even if a claim had been required, the executors were estopped by their years of conduct in acknowledging their obligations under the Remediation Act.¹⁰⁶ The court explained its rejection of the argument that a creditor's claim was required, as follows:

Rudy and Mary, as the owners of the entities that operated the Bonzi Landfill, had a statutory obligation to create and fund the Landfill Trust to ensure compliance with their duties to remediate, close and maintain the Bonzi Landfill. Respondents do not own the money in the trust, nor will they be paid any of the deposited funds; instead, the Landfill Trust is established and managed solely to assure payment of the costs of closing the Bonzi Landfill. ... Respondents are not demanding payment of money to themselves or any other creditor for work already performed. Instead, they are seeking to enforce



Rudy and Mary’s own agreement, which is a court order, that proceeds from the sale of jointly owned property be used to fund the Landfill Trust if there is a deficiency. For this reason, they are not making a creditor’s claim within the meaning of section 9000; instead, they are enforcing an order of the court.

In sum, respondents are not creditors of either estate to whom a debt is owed and they are not making a demand for another’s benefit, as they are not demanding the payment of money to a creditor. Neither are they asserting that an obligation created by statute is exempt from the claims-filing requirement. Instead, they simply are seeking to enforce the requirement in the Remediation Order that the assets pledged to satisfy the financial assurances requirement be used for that purpose. Therefore, respondents were not required to file a claim under section 9100. Nor were they required to bring suit within one year of Rudy’s death under Code of Civil Procedure section 366.2, as they are not bringing an action for damages against Rudy’s estate, instead, they are asking the trial court to enforce a prior court order.¹⁰⁷

Notwithstanding that Respondents had no obligation to file a creditor’s claim in the estate, the proper court in which to seek to compel the estate’s compliance with the Remediation Order was the Probate Court. The property being sold was owned in part by Rudy’s estate, and the Probate Court had *in rem* jurisdiction over the assets of the estate. It had the jurisdiction to determine whether to approve the sale of the property and the proper disposition of the sales proceeds from the estate. The Family Court could not have effectively taken any action under the guise of enforcing its own orders or judgments, since it no longer had jurisdiction over the assets of the marriage. Thus, there will be times or circumstances in which the Family Court must yield to the Probate Court, or potentially a civil court, to enforce Family Court orders or judgments.

Consistent with this point, case authority also limits the ability of a court to retain jurisdiction to resolve disputes that may arise under the terms of its own judgments. As stated in *Stump’s Market, Inc. v. Plaza de Santa Fe Ltd., LLC*, “[a]lthough a court may retain jurisdiction to assure compliance with its judgment, such an exercise of jurisdiction is ‘exceptional and limited to special situations.’”¹⁰⁸ Although *Stump’s Market* did not arise under the Family Code, it is nonetheless instructive in light of the

dearth of such authority and the fact that Family Court judgments are enforced in the same manner as civil judgments. In that case, a dispute arose between a grocery store (*Stump’s*) and landlord (*Plaza*) over the calculation of rent, the existence of an option to extend a lease, and the payment of repairs to a parking garage and in a shopping center.¹⁰⁹ “After granting specific performance and other equitable remedies, the court retained jurisdiction ‘to make further orders, including injunctions, if necessary in the future to effectuate and or enforce the Court’s judgment.’”¹¹⁰ *Plaza* appealed, arguing, *inter alia*, that the court’s retention of jurisdiction was improper.¹¹¹ The Court of Appeal agreed, holding that “the court’s unlimited retention of jurisdiction after judgment is improper” and struck that portion of the judgment.¹¹² It explained:

We are concerned with the court retaining jurisdiction for the life of the lease, which may continue for another 17 years, and interjecting itself into a contractual relationship between two business entities to resolve future, hypothetical disputes. In addition, we note the trial court resolved all the issues between the parties and there appears to be little need for the court to be involved with the administration of the lease until its end. Therefore, we conclude the court’s unlimited retention of jurisdiction after judgment is improper and strike that portion of the judgment.¹¹³

IV. CONCLUSION

Dorothy was not wrong to be confused, and determining which way to go can be confusing. The right way down the legal Yellow Brick Road can be summarized as follows:

If death occurs during the pendency of a dissolution action and prior to entry of judgment of dissolution of status, the Family Court action abates though it may enter orders on issues already adjudicated.

If death occurs after status is terminated but prior to division of property, the Family Court has jurisdiction to divide the property.

If death occurs after entry of judgment dissolving status and dividing property, it gets complicated. The Family Court’s jurisdiction to enforce its judgments is somewhat circumscribed, and when the Probate Court’s jurisdiction attaches to assets of the decedent, enforcement of family law judgments must practically occur in the Probate Court.

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- 1 Cal. Prob. Code section 800; Cal. Fam. Code section 200.
- 2 Prob. Code, section 8005, subd. (b)(1)(B).
- 3 Prob. Code, section 17200.
- 4 *In re Marriage of Arnold & Cully* (1990) 222 Cal.3d 499, 503.
- 5 Prob. Code, section 800; Fam. Code, section 200.
- 6 2 Witkin, Cal. Procedure (5th ed. 2008) Jurisdiction, section 298; see also *Fisher v. Sup. Ct. of Ventura Cnty* (1937) 23 Cal.App.2d 528, 534 (“Under our codes probate proceedings are entirely separate and distinct from actions either at law or in equity.”).
- 7 *In re Marriage of Allen* (1992) 8 Cal.App.4th 1225, 1229.
- 8 *In re Marriage of Shayman* (1973) 35 Cal.App.3d 648, 651 (emphasis in original); see *In re Marriage of Williams* (1980) 101 Cal.App.3d 507, 511.
- 9 *In re Marriage of Allen, supra*, 8 Cal.App.4th at 1229.
- 10 *In re Marriage of Williams, supra*, 101 Cal.App.3d at 509.
- 11 *Ibid.*
- 12 *Ibid.*
- 13 *Ibid.*
- 14 *Ibid.*
- 15 *Ibid.*
- 16 *Ibid.*
- 17 *Id.* at 510.
- 18 *Id.* at 511.
- 19 *In re Marriage of Williams, supra*, 101 Cal.App.3d at 511; see *In re Marriage of Lisi* (1995) 39 Cal.App.4th 1573; *In re Marriage of Shayman, supra*, 35 Cal.App.3d at 651.
- 20 *In re Marriage of Lisi, supra*, 39 Cal.App.4th at 1575.
- 21 *Ibid.*
- 22 *Ibid.*
- 23 *Ibid.*
- 24 *Ibid.*
- 25 *Ibid.*
- 26 *Id.* at 1576.
- 27 *Id.* at 1577.
- 28 *In re Marriage of Shayman, supra*, 35 Cal.App.3d at 650.
- 29 *Ibid.*
- 30 *Ibid.*
- 31 *Ibid.*
- 32 *Ibid.*
- 33 *Ibid.*
- 34 *Id.* at 653.
- 35 *Id.* at 650-51.
- 36 *Kinsler v. Superior Court* (1981) 121 Cal.App.3d 808, 812; *In re Marriage of Allen, supra*, 8 Cal.App.4th at 1228 (Family Court had jurisdiction to adjudicate parties’ property rights after wife died because Family Court had entered judgment dissolving marital status and expressly retained jurisdiction over “all other issues.”); see *In re Marriage of Hilke* (1992) 4 Cal.4th 215, 220 (*en banc*) (“The death of one of the spouses abates a cause of action for dissolution, but does not deprive the court of its retained jurisdiction to determine collateral property rights if the court has previously rendered judgment dissolving the marriage.”); *Frederick v. Superior Court* (2014) 223 Cal.App.4th 988, 992-93 (Family Court has jurisdiction to enter judgment and divide property after orally granting judgment to dissolve marriage and divide assets, even though spouse died three days prior to court entering written judgment).
- 37 *In re Marriage of Garcia* (2017) 13 Cal.App.5th 1334, 1343 (internal quotations omitted).
- 38 *In re Marriage of Thorne & Raccina* (2012) 203 Cal.App.4th 492, 499; *In re Marriage of Farrell* (1985) 171 Cal.App.3d 695, 702 (“The division of assets and liabilities cannot be modified after it has become final unless there is an explicit reservation of jurisdiction to do so . . . Any other rule of law would reduce finality of decision in dissolution cases to an illusion.”).
- 39 *In re Marriage of Stier* (1986) 178 Cal.App.3d 42, 47 (reasoning that whatever challenge husband had against final judgment giving wife one-half of retirement benefits should “have [been] brought at that time,” and not asserted nine years later).
- 40 *In re Marriage of Thorne & Raccina, supra*, 203 Cal.App.4th at 499.
- 41 *Id.* at 500-01; *In re Marriage of Armato* (2001) 88 Cal.App.4th 1030, 1040; see *In re Marriage of Bowen* (2001) 91 Cal.App.4th 1291, 1293; see also Fam. Code, section 2556.
- 42 See, e.g., *In re Marriage of Bowen, supra*, 91 Cal.App.4th at 1300 (court retained jurisdiction to divide and distribute interest in pension plans); *In re Marriage of Gowan* (1997) 54 Cal.App.4th 80, 83 (court retained jurisdiction to divide pension plan); *In re Marriage of Melton* (1994) 28 Cal.App.4th 931, 938 (court retained jurisdiction to divide pension plan).
- 43 See *In re Marriage of Bowen, supra*, 91 Cal.App.4th at 1300; *In re Marriage of Melton, supra*, 28 Cal.App.4th at 938.
- 44 *In re Marriage of Melton, supra*, 28 Cal.App.4th at 934.
- 45 *Id.* at 935.
- 46 *Ibid.*



- 47 *Ibid.*
- 48 *In re Marriage of Melton, supra*, 28 Cal.App.4th at 935.
- 49 *Ibid.*
- 50 *Id.* at 935-36.
- 51 *Id.* at 936.
- 52 *Ibid.*
- 53 *Ibid.*
- 54 *In re Marriage of Melton, supra*, 28 Cal.App.4th at 936.
- 55 *Id.* at 937.
- 56 *Id.* at 938.
- 57 *In re Marriage of Melton, supra*, 28 Cal.App.4th at 939.
- 58 Fam. Code, section 2556.
- 59 *In re Marriage of Melton*, 28 Cal.App.4th at 939.
- 60 *In re Marriage of Thorne & Raccina, supra*, 203 Cal.App.4th at 501.
- 61 *Estate of Sanders* (1985) 40 Cal.3d 607, 614.
- 62 *Orlando v. Orlando* (1966) 243 Cal.App.2d 248, 252.
- 63 *In re Marriage of Modnick* (1983) 33 Cal.3d 897, 904-905; *In re Marriage of Park* (1980) 27 Cal.3d 337, 342.
- 64 *Lazzarone v. Bank of America* (1986) 181 Cal.App.3d 581, 596.
- 65 *Estate of Sanders, supra*, 40 Cal.3d at 615.
- 66 *Estate of Beard* (1999) 71 Cal.App.4th 753, 774.
- 67 Fam. Code, section 291, subd. (a).
- 68 See, e.g., Code Civ. Proc., section 699.510, subd. (b).
- 69 *Id.* at section 291, subd. (e).
- 70 *Embree v. Embree*, (2004) 125 Cal.App.4th 487, 492.
- 71 *Id.* at 495, n.10.
- 72 *County Line Holdings, LLC v. McClanahan* (2018) 22 Cal.App.5th 1067, 1074-75.
- 73 *Embree v. Embree, supra*, 125 Cal.App.4th at 492.
- 74 *County Line, supra*, 22 Cal.App.5th at 1070.
- 75 *Ibid.*
- 76 *Ibid.*
- 77 *Ibid.*
- 78 *Ibid.*
- 79 *Ibid.*
- 80 *Ibid.*
- 81 *County Line, supra*, 22 Cal.App.5th at 1071.
- 82 *Ibid.*
- 83 *Ibid.*
- 84 *Ibid.*
- 85 *Ibid.* (citing *Corporation of America v. Marks* (1937) 10 Cal.2d 218).
- 86 *Ibid.* (citing Prob. Code, section 9300).
- 87 *Id.* at 1072.
- 88 *Ibid.*
- 89 *Embree v. Embree, supra*, 125 Cal.App.4th at 495, fn.10.
- 90 Prob. Code, sections 9302, 9100 et seq., 19100 et seq.
- 91 See Code Civ. Proc., sections 715.010, 716.010.
- 92 Prob. Code, section 19003.
- 93 Prob. Code, section 19400.
- 94 Prob. Code, section 19001, subd. (a); see also *Dobler v. Arluk Med. Ctr. Indus. Group* (2001) 89 Cal.App.4th 530, 537.
- 95 Prob. Code, sections 7050, 17000, subd. (a); see also *Saks v. Damon Raike and Co.* (1992) 7 Cal.App.4th 419, 430 (party may not file suit concerning the internal affairs of a trust “in a civil lawsuit rather than through a verified petition in the probate department”); *Estate of Bowles* (2008) 169 Cal.App.4th 684, 695–696; *Colden v. Costello* (1942) 50 Cal.App.2d 363, 370 (“The Probate Code provides one comprehensive, exclusive method for administration upon the estates of decedents.”).
- 96 Prob. Code, section 17000, subd. (b); see Prob. Code, sections 850-859.
- 97 *Estate of Buckley* (1982) 132 Cal.App.3d 434, 443.
- 98 Prob. Code, section 17003, subd. (a) (“By accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under this division.”).
- 99 Prob. Code, section 17003, subd. (b) (“To the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under this division.”).
- 100 *Estate of Bonzi* (2013) 216 Cal.App.4th 1085, 1105.
- 101 *Id.* at 1088.
- 102 *Id.* at 1090.
- 103 *Ibid.*
- 104 See *Estate of Bonzi, supra*, 216 Cal.App.4th at 1092-98.
- 105 *Id.* at 1099.
- 106 *Id.* at 1101-08.
- 107 *Id.* at 1104-05.
- 108 *Stump’s Market, Inc. v. Plaza de Santa Fe Ltd., LLC* (2013) 212 Cal. App.4th 882, 884 (citing 2 Witkin, Cal. Procedure (5th ed. 2008) Jurisdiction, section 420, p. 1070) (internal citations omitted).
- 109 *Ibid.*
- 110 *Ibid.*
- 111 *Ibid.*
- 112 *Id.* at 885.
- 113 *Id.* at 884-85.