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CONCLUSION

We find no error in the evidentiary rulings challenged on appeal. Further, the district court did not err when it determined that, even if there had been a vehicular pursuit under § 81-8,215.01(5), Kavan's actions were not a proximate cause of Cotton's injuries. We affirm the district court's order entering judgment in favor of the State.

AFFIRMED.

AMERICAN NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, APPELLEE AND CROSS-APPELLEE, V. MICHAEL MEDVED, AN INDIVIDUAL, APPELLANT, HIGHWAY LEASING, LLC, A NEBRASKA LIMITED LIABILITY COMPANY, AND GET GOING, LLC, DOING BUSINESS AS MPG CARRIERS, A NEBRASKA LIMITED LIABILITY COMPANY, APPELLEES, AND LAURA MEDVED, APPELLEE AND CROSS-APPELLANT.

801 N.W.2d 230

Filed July 1, 2011. Nos. S-10-611, S-10-616.

1. **Jurisdiction: States.** When there are no factual disputes regarding state contacts, conflict-of-law issues present questions of law.
2. **Judgments: Appeal and Error.** An appellate court reviews questions of law independently of the lower court's conclusion.
3. **Parties: Words and Phrases.** An indispensable or necessary party to a suit is one whose interest in the subject matter of the controversy is such that the controversy cannot be finally adjudicated without affecting the indispensable party's interest, or which is such that not to address the interest of the indispensable party would leave the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience.
4. **Parties: Jurisdiction.** If necessary parties to a proceeding are absent, the district court has no jurisdiction to determine the controversy.
5. **Contracts: Judgments: Merger.** As a general rule, when a claim on a contract is reduced to judgment, the contract between the parties is voluntarily surrendered and canceled by merger in the judgment and ceases to exist.
6. **Actions: Damages: Judgments: Merger.** When a cause of action for the recovery of money damages is merged in a valid and final judgment in favor of the plaintiff, the cause of action is extinguished and a new cause of action on the judgment is created.

7. **Courts: Jurisdiction: States.** Before entangling itself in messy issues of conflict of laws, a court ought to satisfy itself that there actually is a difference between the relevant laws of the different states.
8. ____: ____: ____. In answering any choice-of-law question, the court first asks whether there is any real conflict between the laws of the states.
9. **Jurisdiction: States.** In conflict-of-law analysis, an actual conflict exists when a legal issue is resolved differently under the law of two states.
10. **Interventions.** The interest required as a prerequisite to intervention under Neb. Rev. Stat. § 25-328 (Reissue 2008) is a direct and legal interest—an interest of such character that the intervenor will lose or gain by the direct operation and legal effect of the judgment which may be rendered in the action.
11. ____. To be filed as a matter of right, a petition in intervention under Neb. Rev. Stat. § 25-328 (Reissue 2008) must be filed before the trial.

Appeals from the District Court for Douglas County: GREGORY M. SCHATZ, Judge. Affirmed.

Patrick R. Guinan and Heather B. Veik, of Erickson & Sederstrom, P.C., and Paul Sala and Leslie Hendrix, of Allen, Sala & Bayne, P.L.C., for appellant.

Aaron D. Weiner and Nicole Seckman Jilek, of Abrahams, Kaslow & Cassman, L.L.P., for appellee American National Bank.

Steven E. Achelpohl for appellee Laura Medved.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

STEPHAN, J.

These consolidated appeals arise from actions taken by American National Bank (ANB) to execute on a judgment against Michael Medved, an Arizona resident with business interests in Nebraska. Medved's wife, Laura Medved (Laura), unsuccessfully sought to intervene in an action ANB filed against Medved in the district court for Douglas County. This action resulted in the issuance of charging orders against Medved's transferable interest in three Nebraska limited liability companies. Laura also unsuccessfully sought to intervene in an action filed in the district court for Sarpy County. The Sarpy County action resulted in a garnishment of Medved's wages. In Medved's appeals and Laura's cross-appeals, they argue that

the Nebraska orders violated their rights under Arizona community property law. We conclude that under either Arizona or Nebraska law, there was no error in the enforcement of the judgment.

I. FACTS

1. Case No. S-10-611 (District Court for Douglas County)

In a 2008 complaint, ANB alleged that Medved; Paul Gardner; Highway Leasing, LLC (Highway); and Get Going, LLC, had defaulted on various loans and guaranties. Three of the loans had been guaranteed by Medved, Gardner, and Get Going (collectively Highway Loans). Medved and Gardner had also guaranteed a loan for Get Going (Get Going Loan). In addition, Medved had allegedly defaulted on a personal loan evidenced by a promissory note (Medved Loan). Approximately $2 million was alleged due on the Highway Loans, $76,580 was alleged due on the Get Going Loan, and $565,801 was alleged due on the Medved Loan. ANB sought judgments on all the loans and recovery of costs and attorney fees.

On November 14, 2008, Medved, Highway, and Get Going entered into a stipulation to settle the litigation and to enter judgment in the amounts agreed to be past due. The Douglas County District Court entered a judgment for ANB against Medved, Highway, and Get Going in the amount of $2,097,609.20 plus interest for the Highway Loans (Highway Judgment). The court entered a separate judgment for ANB against Medved personally in the amount of $574,068.38 plus interest for the Medved Loan (Medved Judgment).

On April 20, 2010, ANB filed three applications for charging orders with the Douglas County District Court.[1] The applications sought to charge any transferable interest that Medved had in three limited liability companies—MMMM Holdings, LLC; MM Finance, LLC; and Medved Properties, LLC—with payment of the judgments entered against Medved. As of that date, ANB alleged that Medved owed $2,594,117.04

[1] See Neb. Rev. Stat. § 21-2654 (Supp. 2009).

on the Highway Judgment and $704,421.22 on the Medved Judgment.

Medved filed a resistance to the applications. He alleged that he alone, and not Laura, had signed the underlying promissory note, guaranties, and stipulated judgment. He alleged that ANB was not entitled to relief against his earnings and distributions from the limited liability companies, because they were community property belonging to him and Laura and protected under Arizona law.

Laura sought to intervene in the action. In her intervention complaint, she alleged that she was married to Medved, that both were residents of Arizona, and that Medved's earnings and distributions from the limited liability companies were community property and, as such, were protected under Arizona law from satisfying Medved's sole and personal debt. Laura asked for an order finding that the community property assets could not be charged or executed upon to satisfy ANB's judgment and an order denying the applications for charging orders. Medved filed a motion to dismiss the applications, alleging that the court lacked jurisdiction because ANB failed to join Laura as a necessary party.

The district court conducted a hearing at which it received evidence from ANB, Medved, and Laura. ANB's evidence established that the Medved Loan, the Highway Loans, and all related guaranties were executed in Omaha, Nebraska, and contained provisions stating that they would be governed by Nebraska law. Laura stated in an affidavit that she and Medved had been married since 1987 and were residents of Arizona at all relevant times relating to the litigation and judgment. Laura further stated that ANB did not name or serve her in either the Nebraska litigation or "the domestication of the Nebraska judgment in Arizona," which she referred to by a specific Arizona case number. During the hearing, ANB orally informed the court that it was no longer seeking a charging order in relation to the guaranty judgment. ANB stated that it was pursuing the charging order only with respect to the judgment for the amount due on the Medved Loan.

After the hearing, the district court entered an order denying Laura's motion to intervene. The court reasoned that Nebraska law applied to all issues, that Arizona law did not apply, and that Laura had no interest affected by the action and was not an indispensable or necessary party. In a separate order, the court overruled Medved's motion to dismiss, again finding that Laura was not an indispensable and necessary party, that Nebraska law applied, and that the property sought to be charged was not community property under Arizona law.

The court then entered three charging orders directing Medved Properties, MMMM Holdings, and MM Finance to transfer Medved's transferable interest to ANB. The charging orders referred only to the Medved Judgment. Medved perfected a timely appeal from these orders, and Laura cross-appealed.

2. Case No. S-10-616 (District Court for Sarpy County)

On April 22, 2010, ANB filed two praecipes and affidavits for garnishee summons, alleging that ANB had recovered a judgment against Medved in the amount of $574,068.38, which with interest currently totaled $704,421.22. We understand this amount to refer to the judgment on the Medved Loan entered by the district court for Douglas County on November 14, 2008. ANB alleged that both MMMM Holdings and MM Finance had property of and were indebted to Medved. Summonses and orders of garnishment in aid of execution to both companies were entered on April 23. Medved requested hearings and alleged that the funds asked for were exempt from garnishment.

MM Finance submitted answers to interrogatories in which it stated that it owed Medved wages and that $1,982.11 was subject to garnishment. MM Finance stated it did not have any property belonging to Medved. MMMM Holdings submitted answers to interrogatories in which it stated that it did not owe Medved any earnings, but that it held $30,000 in retained earnings.

Medved filed a motion to quash the summonses and orders of garnishment. He alleged the same defenses he raised in the Douglas County proceeding on the applications for charging orders. Laura filed a motion to intervene and quash summonses and orders of garnishment in which she raised the same arguments asserted in her intervention complaint and motion to intervene in Douglas County.

On May 28, 2010, the district court for Sarpy County entered an order denying the intervention and sustaining the motion to quash garnishment. The court found that a charging order is the sole method of attachment for limited liability company distributions. ANB filed a motion to alter or amend, arguing that the court's ruling that a charging order is the sole method of attachment to limited liability company distributions should apply only to the garnishment directed to MMMM Holdings but not to the garnishment directed to MM Finance, which sought to garnish wages. The court sustained the motion to alter or amend to the extent that the previous order should not apply to the garnishment of wages owed to Medved by MM Finance. Medved filed a timely appeal, and Laura cross-appealed.

II. ASSIGNMENTS OF ERROR

In case No. S-10-611, Medved assigns, restated, that the district court for Douglas County erred in (1) denying his motion to dismiss ANB's applications for charging orders; (2) entering charging orders against Medved's interests in MMMM Holdings, MM Finance, and Medved Properties; (3) finding that the property which was the subject of the charging orders was not community property under Arizona law and that Arizona's community property laws did not apply; (4) denying Laura's motion to intervene; and (5) finding that Laura had no interest affected by the action and that she was not an indispensable or necessary party to the action. In her cross-appeal, Laura assigns the same errors.

In case No. S-10-616, Medved assigns, restated, that the district court for Sarpy County erred in (1) sustaining ANB's motion to alter or amend the judgment, (2) permitting ANB to garnish wages owed to Medved by MM Finance, (3) failing

to apply Arizona's community property laws, and (4) denying Laura's motion to intervene. In her cross-appeal, Laura assigns the same errors.

III. STANDARD OF REVIEW

[1,2] When there are no factual disputes regarding state contacts, conflict-of-law issues present questions of law.[2] An appellate court reviews questions of law independently of the lower court's conclusion.[3]

IV. ANALYSIS

1. Contractual Choice-of-Law Provision

The Medveds argue that enforcement of ANB's judgment would violate their rights under the community property law of Arizona, where they reside. ANB argues that Arizona law does not apply, because the promissory note signed by Medved specifically provided that it is to be governed by Nebraska law. We begin by addressing the applicability and scope of the contractual choice-of-law provision.

The promissory note executed solely by Medved on November 13, 2006, reflects his Arizona address but makes no reference to Arizona law. Under the heading "GOVERNING LAW," the note provides: "This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nebraska without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Nebraska."

We have recognized that persons residing in different states may select the law of either state to govern their contract and that the parties' choice of law will govern.[4] This principle is consistent with Restatement (Second) of Conflict of Laws § 187,[5] which provides:

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[2] *Erickson v. U-Haul Internat.*, 278 Neb. 18, 767 N.W.2d 765 (2009); *Christian v. Smith*, 276 Neb. 867, 759 N.W.2d 447 (2008).

[3] *In re Margaret Mastny Revocable Trust, ante* p. 188, 794 N.W.2d 700 (2011).

[4] See *Vanice v. Oehm*, 247 Neb. 298, 526 N.W.2d 648 (1995).

[5] Restatement (Second) of Conflict of Laws § 187 at 561 (1971).

> (1) The law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.
>
> (2) The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either
>
> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
>
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.

We adopt § 187 and conclude that pursuant to the explicit choice-of-law provision of the promissory note, ANB's action against Medved on the note was governed by Nebraska law.

[3,4] That being so, we find no merit in Laura's argument that she was an indispensable or necessary party to the action and that the court lacked jurisdiction to adjudicate Medved's liability on the note because she was not joined. An indispensable or necessary party to a suit is one whose interest in the subject matter of the controversy is such that the controversy cannot be finally adjudicated without affecting the indispensable party's interest, or which is such that not to address the interest of the indispensable party would leave the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience.[6] If necessary parties to a proceeding are absent, the district court has no

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[6] *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 759 N.W.2d 464 (2009); *In re Adoption of Kenten H.*, 272 Neb. 846, 725 N.W.2d 548 (2007).

jurisdiction to determine the controversy.[7] Laura was not a comaker on the note and therefore could have no joint and several liability on the note.[8] Her presence as a party was not necessary to determine Medved's liability on the note under Nebraska law.

[5,6] But this does not end the inquiry, because these are not appeals from the judgment on the promissory note but from orders entered to enforce the judgment. As a general rule, "[w]hen a claim on a contract is reduced to judgment, the contract between the parties is voluntarily surrendered and canceled by merger in the judgment and ceases to exist."[9] Applying this principle, the New Mexico Supreme Court held that a choice-of-law provision in a promissory note does not apply in proceedings to enforce a judgment entered on the note, because the note merged into the judgment and it constitutes a new obligation.[10] We agree with this reasoning, which is consistent with the statement found in Restatement (Second) of Conflict of Laws § 95 that when a cause of action for the recovery of money damages is merged in a valid and final judgment in favor of the plaintiff, "the cause of action is extinguished and a new cause of action on the judgment is created."[11]

Because the promissory note merged into the judgment, the choice-of-law provision in the note does not control the question of whether the law of Nebraska or that of Arizona should apply to ANB's attempt to enforce its judgment against Medved, an Arizona resident with property situated in Nebraska.

2. Law Applicable to Enforcement of Judgment

[7-9] The Medveds argue that because Arizona is the matrimonial domiciliary state and the Nebraska judgment was domesticated there, its law should apply to ANB's attempts to

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[7] *Pestal v. Malone*, 275 Neb. 891, 750 N.W.2d 350 (2008).

[8] See Neb. U.C.C. § 3-116 (Reissue 2001).

[9] 46 Am. Jur. 2d *Judgments* § 459 at 750 (2006). See, also, *Glissman v. Orchard*, 152 Neb. 500, 41 N.W.2d 756 (1950).

[10] *Huntington Nat. Bank v. Sproul*, 116 N.M. 254, 861 P.2d 935 (1993).

[11] Restatement, *supra* note 5, § 95, comment *c*. at 283.

enforce its judgment in Nebraska. We have noted that before entangling itself in messy issues of conflict of laws, a court ought to satisfy itself that there actually is a difference between the relevant laws of the different states.[12] Thus, in answering any choice-of-law question, the court first asks whether there is any real conflict between the laws of the states.[13] An actual conflict exists when a legal issue is resolved differently under the law of two states.[14] Enforcement of ANB's judgment against Medved through charging orders and wage garnishment is clearly permissible under Nebraska law. We must therefore determine whether the result would be different if Arizona law were applied.

(a) Absence of Laura's Signature on Promissory Note

The Medveds pled the applicability of two Arizona statutes, Ariz. Rev. Stat. Ann. §§ 25-214 and 25-215 (2007), and we take judicial notice of them pursuant to Neb. Rev. Stat. § 25-12,101 (Reissue 2008). Ariz. Rev. Stat. Ann. § 25-214 provides as follows:

> **A.** Each spouse has the sole management, control and disposition rights of each spouse's separate property.
>
> **B.** The spouses have equal management, control and disposition rights over their community property and have equal power to bind the community.
>
> **C.** Either spouse separately may acquire, manage, control or dispose of community property or bind the community, except that joinder of both spouses is required in any of the following cases:
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> 1. Any transaction for the acquisition, disposition or encumbrance of an interest in real property other than an unpatented mining claim or a lease of less than one year.

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[12] *Christian v. Smith, supra* note 2; *Malena v. Marriott International*, 264 Neb. 759, 651 N.W.2d 850 (2002).

[13] *Erickson v. U-Haul Internat., supra* note 2; *Yoder v. Cotton*, 276 Neb. 954, 758 N.W.2d 630 (2008).

[14] *Erickson v. U-Haul Internat., supra* note 2*; Heinze v. Heinze*, 274 Neb. 595, 742 N.W.2d 465 (2007).

2. Any transaction of guaranty, indemnity or suretyship.

3. To bind the community, irrespective of any person's intent with respect to that binder, after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment.

Ariz. Rev. Stat. Ann. § 25-215 provides:

A. The separate property of a spouse shall not be liable for the separate debts or obligations of the other spouse, absent agreement of the property owner to the contrary.

B. The community property is liable for the premarital separate debts or other liabilities of a spouse, incurred after September 1, 1973 but only to the extent of the value of that spouse's contribution to the community property which would have been such spouse's separate property if single.

C. The community property is liable for a spouse's debts incurred outside of this state during the marriage which would have been community debts if incurred in this state.

D. Except as prohibited in § 25-214, either spouse may contract debts and otherwise act for the benefit of the community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or obligation.

For purposes of our analysis, we assume that Medved's Nebraska wages and his transferable interests in the Nebraska limited liability companies constitute community property under Arizona law. Medved argues that because he alone signed the promissory note, the judgment could not bind the community property. But he cites no Arizona law in support of his argument. Ariz. Rev. Stat. Ann. § 25-214(C) specifically provides that either spouse may separately bind the community except in certain circumstances, none of which include the execution of a promissory note. We do not understand this Arizona statute to require the signature of both spouses on a promissory

note in order to bind the marital community. In *National Union Fire Ins. Co. v. Greene*,[15] an Arizona court upheld the enforceability against community property of a New York judgment on a promissory note executed by only one spouse. We conclude that under Arizona law, the absence of Laura's signature on the promissory note would not bar the enforcement of a judgment on the note against community property.

(b) Effect of Failure to Join Laura in Nebraska Action

The Medveds argue that even if Laura was not a necessary party, ANB's failure to join her in its action on the promissory note precludes enforcement of the resulting judgment against their community property. Their argument is based on the provision of Ariz. Rev. Stat. Ann. § 25-215(D), which requires that "the spouses shall be sued jointly" in an action on a debt or obligation contracted by either of them. The question before us is whether, under Arizona law, this provision would preclude the enforcement of a judgment entered by a court of another state in an action where both spouses were not joined.

Although we have not been directed to any authority from the Arizona Supreme Court on this point, several Arizona appellate courts have considered it. The Medveds primarily rely on two cases, *Vikse v. Johnson*[16] and *C & J Travel, Inc. v. Shumway*.[17] *Vikse*, decided in 1983, involved an Arizona proceeding to enforce a judgment entered by a Minnesota court against two Arizona residents. After the judgment was domesticated in Arizona, the judgment debtors resisted enforcement on the ground that the joinder requirement of Ariz. Rev. Stat. Ann. § 25-215(D) had not been met, because their spouses were not named as parties in the Minnesota action. The court reasoned that the judgment could not be enforced, because

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[15] *National Union Fire Ins. Co. v. Greene*, 195 Ariz. 105, 985 P.2d 590 (Ariz. App. 1999).

[16] *Vikse v. Johnson*, 137 Ariz. 528, 672 P.2d 193 (Ariz. App. 1983).

[17] *C & J Travel, Inc. v. Shumway*, 161 Ariz. 33, 775 P.2d 1097 (Ariz. App. 1989).

"[t]he obvious purpose of joining the spouses is to give each notice and an opportunity to defend."[18] In *C & J Travel, Inc.*,[19] decided in 1989, the same division of the Arizona Court of Appeals relied on *Vikse* in holding that a New Hampshire judgment against an Arizona resident was unenforceable in Arizona because his spouse had not been joined in the New Hampshire proceeding.

ANB relies on three more recent decisions from a different division of the Arizona Court of Appeals which reach a different result. In *Oyakawa v. Gillett*,[20] the court held that a California judgment could be enforced against community property in Arizona notwithstanding the fact that the judgment debtor's spouse had not been a party to the California suit. The court reasoned that California community property law differed from that of Arizona with respect to the necessity for joinder and that the judgment was therefore not tainted by the fact that the spouse had not been joined and was entitled to full faith and credit in the Arizona courts.

National Union Fire Ins. Co. v. Greene[21] involved the enforceability of a judgment on a promissory note entered by a New York state court and subsequently domesticated in Arizona, where the judgment debtor and his wife had moved after entry of the judgment. The promissory note included a provision that it was to be governed by the law of New York. Rejecting a claim that the judgment was unenforceable in Arizona because the judgment debtor's spouse had not been joined in the New York lawsuit, the court concluded that failure to comply with Ariz. Rev. Stat. Ann. § 25-215(D) in the New York litigation was not a proper ground to refuse to honor the New York judgment. Noting that the original suit had no connection with Arizona, the court concluded that "[a]n Arizona court may not impress Arizona procedural law upon a foreign judgment and refuse to recognize that judgment merely because Arizona law

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[18] *Vikse v. Johnson, supra* note 16, 137 Ariz. at 530, 672 P.2d at 195.

[19] *C & J Travel, Inc. v. Shumway, supra* note 17.

[20] *Oyakawa v. Gillett*, 175 Ariz. 226, 854 P.2d 1212 (Ariz. App. 1993).

[21] *National Union Fire Ins. Co. v. Greene, supra* note 15.

was not followed in obtaining it."[22] This principle was cited by the court in *Alberta Securities Com'n v. Ryckman*[23] in support of its holding that a judgment entered by a Canadian court was enforceable against the defendant's community property in Arizona notwithstanding the fact that his spouse had not been joined in the Canadian lawsuit.

In *Gagan v. Sharar*,[24] a federal appellate court considered whether a judgment entered by a federal court in Indiana could be enforced against Arizona community property where only the husband had been a party to the original suit. The court first noted that the Indiana court had personal jurisdiction over the husband, but not his wife, and that therefore she was not personally liable on the judgment. But the court rejected the wife's argument that the judgment was unenforceable against community property because of noncompliance with Ariz. Rev. Stat. Ann. § 25-215(D). Based upon its review of the Arizona appellate court decisions discussed above, the court concluded that the Arizona Supreme Court would most likely adopt the approach taken in the three more recent cases.

We reach the same conclusion here. Although we acknowledge that this case differs from *National Fire Union Ins. Co.* and *Alberta Securities Com'n* in that the Medveds were residents of Arizona at the time the underlying action was commenced, we do not think that this fact dictates a different result. Despite the Medveds' Arizona residence, the action on the promissory note was governed by Nebraska law, and that law did not require that Laura be joined as a party. There would have been no reason for the district court to apply Arizona law with respect to joinder, and we therefore conclude that noncompliance with the joinder provisions of Ariz. Rev. Stat. Ann. § 25-215(D) would not render the judgment unenforceable against community property under Arizona law.

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[22] *Id.* at 108, 985 P.2d at 593.

[23] *Alberta Securities Com'n v. Ryckman*, 200 Ariz. 540, 30 P.3d 121 (Ariz. App. 2001).

[24] *Gagan v. Sharar*, 376 F.3d 987 (9th Cir. 2004).

(c) Laura's Right to Due Process

In *National Union Fire Ins. Co. v. Greene*,[25] the Arizona appellate court held that while due process did not require prejudgment joinder of the Arizona spouse in the action prosecuted in New York, the spouse was entitled, as a matter of due process, to notice and an "'opportunity to be heard at a meaningful time and in a meaningful manner'" before she could be deprived of her interest in community property. Laura argues that she was deprived of this right because she was not joined in the proceedings to enforce the judgment.

But Laura clearly had notice of the proceedings, because she appeared through counsel and sought to intervene. In the Douglas County proceeding, she filed a motion to intervene and an intervention complaint setting forth the basis for her contention that the charging orders would violate her rights under Arizona's community property law. At a hearing which preceded the issuance of the charging orders, Laura's counsel offered and the court received Laura's affidavit in support of her contentions. The district court heard argument from her counsel with respect to her interests under Arizona community property law. Similarly, Laura filed a motion to intervene in the garnishment proceedings in the district court for Sarpy County. The court received evidence and heard argument from Laura's counsel regarding her position that the proceedings would violate her community property rights under Arizona law. Based on these records, we conclude that Laura was afforded a meaningful opportunity to be heard in both proceedings regarding her contention that enforcement of the judgment would deprive her of community property rights under Arizona law.

(d) Existence of Community Debt

As noted, we assume for purposes of our analysis that the property against which ANB seeks to enforce its Nebraska judgment in Nebraska constitutes community property under Arizona law, which provides that "neither the community

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[25] *National Union Fire Ins. Co. v. Greene, supra* note 15, 195 Ariz. at 110, 985 P.2d at 595, quoting *Huck v. Haralambie*, 122 Ariz. 63, 593 P.2d 286 (1979).

property of spouses nor the separate property of one spouse is liable for the separate debts incurred by the other during marriage."[26] But when only one of the spouses incurs a debt during the marriage, "it does not necessarily follow that the debt is the separate obligation of that spouse. Debt incurred by one spouse while acting for the benefit of the marital community is a community obligation whether or not the other spouse approves it."[27] This is so "irrespective of pecuniary benefit to the community."[28]

Thus, under Arizona law, "debts incurred during marriage are presumed to be community debts, and the party who contends otherwise has the burden of overcoming the presumption by clear and convincing proof."[29] And pursuant to Ariz. Rev. Stat. Ann. § 25-215(C), "community property is liable for a spouse's debts incurred outside of [Arizona] during the marriage which would have been community debts if incurred in [Arizona]."

The Medveds have made no allegation or offered any proof that Medved's indebtedness on the promissory note which formed the basis of the judgment is not a community debt under Arizona law. Thus, we find no basis in the record for the Medveds' argument that the community property against which ANB seeks to enforce its judgment is somehow exempt under Arizona's community property law.

(e) Domestication of Judgment in Arizona

The Medveds argue that the Nebraska judgment was improperly domesticated in Arizona, citing noncompliance with Ariz. Rev. Stat. Ann. §§ 12-1701 to 12-1708 (2003) and 25-215(D). We see no relevance to this argument, in that ANB seeks to

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[26] *Lorenz-Auxier Financial Group v. Bidewell*, 160 Ariz. 218, 220, 772 P.2d 41, 43 (Ariz. App. 1989). See Ariz. Rev. Stat. Ann. § 25-215(A) and (B).

[27] *Lorenz-Auxier Financial Group v. Bidewell, supra* note 26, 160 Ariz. at 220, 772 P.2d at 43.

[28] *Id*. See *Donato v. Fishburn*, 90 Ariz. 210, 367 P.2d 245 (1961).

[29] *Lorenz-Auxier Financial Group v. Bidewell, supra* note 26, 160 Ariz. at 220, 772 P.2d at 43. See, also, *Schlaefer v. Financial Management Service*, 196 Ariz. 336, 996 P.2d 745 (Ariz. App. 2000).

enforce the original Nebraska judgment, not a domesticated Arizona judgment. And to the extent that the Medveds' argument on this point incorporates their position that failure to join Laura in the original action voids the judgment or bars its enforcement under Ariz. Rev. Stat. Ann. § 25-215(D), we reject the argument for the reasons discussed above.

(f) Denial of Motions to Intervene

Pursuant to Neb. Rev. Stat. § 25-328 (Reissue 2008),

> [a]ny person who has or claims an interest in the matter in litigation, in the success of either of the parties to an action, or against both, in any action pending or to be brought in any of the courts of the State of Nebraska, may become a party to an action between any other persons or corporations, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendants in resisting the claim of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant, either before or after issue has been joined in the action, and before the trial commences.

[10,11] The interest required as a prerequisite to intervention under § 25-328 is a direct and legal interest—an interest of such character that the intervenor will lose or gain by the direct operation and legal effect of the judgment which may be rendered in the action.[30] To be filed as a matter of right, a petition in intervention under § 25-328 must be filed before the trial.[31]

The interest upon which Laura sought to intervene was the same as that upon which her husband resisted enforcement of the judgment—a claim that under Arizona's community property law, ANB is barred from enforcing the judgment against Medved's wages and transferable interest in the Nebraska limited liability companies. For the reasons discussed, we conclude that this argument is without merit, and the judgment on the promissory note is enforceable against the Nebraska

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[30] *Douglas Cty. Sch. Dist. 0001 v. Johanns*, 269 Neb. 664, 694 N.W.2d 668 (2005).

[31] *Meister v. Meister*, 274 Neb. 705, 742 N.W.2d 746 (2007).

property, which we assume to be community property, regardless of whether Nebraska or Arizona law is applied to the Nebraska enforcement proceedings. Accordingly, denial of Laura's motions to intervene did not deprive her of a substantial right[32] and was therefore not prejudicial error.

V. CONCLUSION

For the reasons discussed, we affirm the judgments of the district court in each of the consolidated appeals.

AFFIRMED.

WRIGHT, J., not participating.

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[32] See *Emery v. Mangiameli*, 218 Neb. 740, 359 N.W.2d 83 (1984).