Is there a Domestic Relations Exception to Diversity Jurisdiction?
By George B. Daniels and Joel R. Brandes

The domestic relations exception was initially an exception to the exercise of diversity jurisdiction on the subject of divorce or alimony. Its genesis is the dicta in Barber v Barber (62 U.S.582 (1859). In Barber, the former wife sought to enforce a New York divorce decree, which granted a divorce a mensa thoro (separation from bed and board) and awarded her alimony. In an attempt to place himself beyond the New York courts' jurisdiction and prevent enforcement of the decree, the former husband moved to Wisconsin. He then brought an action for divorce in a Wisconsin court. In that action he did not disclose the prior New York action or decree. He represented to the Wisconsin court that his wife had abandoned him. The former wife brought suit in the Wisconsin Federal District Court, based upon diversity jurisdiction, seeking to enforce the New York alimony judgment. The former husband alleged that the court lacked jurisdiction. The U.S. Supreme Court held, among other things, that a suit to enforce an alimony decree was within the federal courts' jurisdiction. However, in dicta, the opinion stated: "We disclaim altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony, either as an original proceeding in chancery or as an incident to divorce a vinculo, or to one from bed and board." This limitation on federal jurisdiction became known as the “domestic relations exception”.

In Ex parte Burrus (136 U.S. 586 (1890) the domestic relations exception was expanded by the Supreme Court to include child custody cases. Thomas Burrus, and Catherine Burrus, who were residents of Nebraska, were the grandparents of the child. Miller, the father of the child was a resident of Ohio. After Miller’s wife died, he turned the child over to the grandparents. When he remarried, he demanded that the grandparents return the child to him. When they refused, he made application to a United States district judge for the district of Nebraska, for a writ of habeas corpus to obtain the custody of the child. After the Court ordered that the grandparents turn the child over to the father, he returned with the child, by train, to his home in Ohio. The grandparents got the same train and when they reached Council Bluffs, Iowa, they took the child from the father, against his will, and returned to Nebraska with her. Subsequently, Thomas Burrus was held in contempt of court and imprisoned for disobeying the custody orders. Burrus petitioned the Supreme Court, in the exercise of its original jurisdiction, for a writ of habeas corpus, to release him from the unlawful imprisonment in jail in Nebraska. The basis of his claim was that neither the district court of Nebraska, nor the judge of that court, had any jurisdiction in the original habeas corpus case that resulted in the custody order. The Supreme Court held that:” The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States. As to the right to the control and possession of this child, as it is contested by its father and its grandfather, it is one in regard to which neither the congress of the United States, nor any authority of

the United States, has any special jurisdiction. Whether the one or the other is entitled to the possession does not depend upon any act of congress, or any treaty of the United States or its constitution. “This statement has been interpreted by federal courts to apply equally in suits brought pursuant to diversity jurisdiction. Ankenbrandt v Richards, 504 U.S. 689 (1992).

The Barber dictum was formally adopted as law in 1992, in Ankenbrandt v Richards, when the Supreme Court posed the following question: Is there a domestic relations exception to federal jurisdiction? Carol Ankenbrandt, a citizen of Missouri, brought suit in Federal District Court on behalf of her daughters, naming their father (her former husband) and his female companion, both citizens of Louisiana, as defendants. The complaint sought damages for the defendants' alleged sexual and physical abuse of the children. Federal jurisdiction was predicated on diversity of citizenship. The District Court dismissed the case for lack of subject-matter jurisdiction, holding that the suit fell within “the ‘domestic relations' exception to diversity jurisdiction.” The Court of Appeals agreed and affirmed, citing in re Burrus (136 U.S. 586 (1890). The Supreme Court reversed. The opinion by Justice White held that the District Court improperly refrained from exercising jurisdiction over Ankenbrandt’ s tort claim. This lawsuit did not seek a custody decree. It alleged that defendants committed torts against Akenbrandt's children by Richards. Federal subject-matter jurisdiction pursuant to section 1332 was proper.

Justice Whites opinion discussed the domestic relations exception, which the courts below relied upon to decline jurisdiction. He observed that: “The seeming authority for doing so originally stemmed from the announcement in Barber v. Barber that the federal courts have no jurisdiction over suits for divorce or the allowance of alimony.” In his opinion he stated the Court would continue to recognize this limitation on federal jurisdiction based upon respect for this long-held understanding, which was supported by sound policy considerations. “As a matter of judicial economy, state courts are more eminently suited to work of this type than are federal courts.” Noting that some lower federal courts had applied the domestic relations exception “well beyond the circumscribed situations posed by Barber and its progeny,” Justice White clarified that only “divorce, alimony, and child custody decrees” remain outside federal jurisdictional bounds. Justice White concluded that the domestic relations exception, as articulated by the Court since Barber, divests the federal courts of power to issue divorce, alimony, and child custody decrees. “

The Second Circuit has construed the domestic relations exception to require Federal Courts to abstain from exercising diversity jurisdiction over cases “on the verge” of being matrimonial in nature. In American Airlines, Inc. v Block, (905 F.2d 12 (2d Cir.1990) (per curiam) Marsha Block obtained judgments against Robert Block for arrears of support totalling $17,416.88. Marsha served an income execution on American Airlines pursuant to CPLR 5241 directing garnishment of $900 per week of Robert’s wages. American Airlines initially declined to honor the income execution for

fear that the law of Texas, where Robert was a resident, prohibited it from complying. In December 1987, Marsha sued American Airlines in Supreme Court, Nassau County to enforce the income execution. In response, American Airlines commenced an interpleader action in the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1335 (1982) and Rule 22 of the Federal Rules of Civil Procedure. The state court action was subsequently removed and consolidated with the Eastern District action. On April 6, 1988, the district court issued a wage order directing American Airlines to pay $3,600 per month into the registry of the district court pending determination whether Marsha was entitled to the funds. On December 19, 1988, the district court determined that Robert's status as a resident of Texas presented no bar to American Airlines' compliance with the income execution and the district court's distribution of collected funds to Marsha. It referred the matter to a magistrate for determination of amounts to be distributed. By amended order and judgment entered October 10, 1989, the district court awarded Marsha $60,628.29 from the interpleader fund for combined maintenance, arrears, and costs awarded in the prior state court judgments. On February 5, 1990, during the pendency of this appeal, the Nassau County Supreme Court awarded Marsha a judgment of $13,200 for arrears from June 1, 1987, to June 20, 1988.

The Second Circuit observed that although matrimonial actions may ordinarily be instituted in federal court on diversity grounds, in Barber v Barber the Supreme Court went so far as to disclaim all federal subject matter jurisdiction for some classes of matrimonial actions. It noted that it had pointed out that the scope of this matrimonial exception to federal jurisdiction is "rather narrowly confined," only "where a federal court is asked to grant a divorce or annulment, determine support payments, or award custody of a child" does it generally decline jurisdiction pursuant to the matrimonial exception. By contrast, in *Barber* itself, the Supreme Court sustained jurisdiction over an action to enforce a state court alimony award. Here, as in *Barber,* the federal court was not requested to determine marital status or to set the amount of support payments, but only to enforce a state court decree for support payments. Moreover, although there was no independent jurisdiction over Marsha's claims to those arrears or continuing maintenance obligations that were not reduced to any final judgment and therefore remained subject to modification by New York state courts, the non-final judgment claims in this action could be entertained as claims pendent to those pursuant to final state court judgments. Therefore, it found that the district court had jurisdiction over the matter. Nevertheless, the Court stated that even if subject matter jurisdiction lies over a particular matrimonial action, federal courts may properly abstain from adjudicating such actions in view of the greater interest and expertise of state courts in this field. A federal court presented with matrimonial issues or issues "on the verge" of being matrimonial in nature should abstain from exercising jurisdiction so long as there is no obstacle to their full and fair determination in state courts. The Court indicated in a footnote that that the matrimonial exception has been read as an exception to diversity jurisdiction under 28 U.S.C. § 1332, and that it had not considered whether the matrimonial exception applies with equal force where jurisdiction is based on statutory interpleader under 28 U.S.C. § 1335. It declined to do so here.

Since the decision in American Airlines, Inc. v Block, (905 F.2d 12 (2d Cir., 1990) the Second Circuit has reaffirmed that holding in appeals involving the "domestic relations exception", in summary orders which are "not for publication." (See Schottel v. Kutyba, 2009 WL 230106 (2d Cir. 2009); Hamilton v. Hamilton-Grinols, 363 Fed.Appx. 767, 2010 WL 337287 (2d Cir.,2010.)

Conclusion

Yes - there is a domestic relations exception to diversity jurisdiction. In Marshall v. Marshall, (547 U.S. 293, 305–08 (2006) the Supreme Court discussed its holding in Ankenbrandt v. Richards (504 U.S. 689 (1992) The Court indicated that it was "content" in Ankenbrandt "to rest its conclusion that a domestic relations exception exists as a matter of statutory construction, not on the accuracy of the historical justifications on which [the exception] was seemingly based. Rather, it relied on Congress' apparent acceptance of this construction of the diversity jurisdiction provisions in the years prior to 1948, when the statute limited jurisdiction to 'suits of a civil nature at common law or in equity. It further determined that Congress did not intend to terminate the exception in 1948 when it replaced the law/equity distinction with the phrase 'all civil actions. Absent contrary indications, it presumed that Congress meant to leave undisturbed the Court's nearly century-long interpretation of the diversity statute to contain an exception for certain domestic relations matters. It noted that it emphasized in Ankenbrandt that the exception covers only "a narrow range of domestic relations issues. The Barber Court itself, it reminded, "sanctioned the exercise of federal jurisdiction over the enforcement of an alimony decree that had been properly obtained in a state court of competent jurisdiction." Noting that some lower federal courts had applied the domestic relations exception "well beyond the circumscribed situations posed by Barber and its progeny," it clarified that only "divorce, alimony, and child custody decrees" remain outside federal jurisdictional bounds.

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