

Subject Matter Jurisdiction of Supreme Court and Family Court By Joel R. Brandes

The question of whether the court has subject matter jurisdiction frequently arises when counsel has to decide whether to bring a support or custody proceeding in the Supreme Court or the Family Court. A judgment or order made without subject matter jurisdiction is void. The defect may be raised at any time and may not be waived. *Lacks v Lacks*, 41 N.Y.2d 71, 390 N.Y.S.2d 875 (1976). Bringing an action in a court that lacks subject matter jurisdiction will result in dismissal.

Subject matter jurisdiction has been defined as the “power to adjudge concerning the general question involved,” It does not depend upon the existence of a good cause of action. It is the power to deal with the subject involved in the action. *Hunt v. Hunt*, 72 N.Y. 217, 229 (1878). There is a distinction between a court's competence to entertain an action and its power to render a judgment on the merits. “The absence of competence to entertain an action deprives the court of subject matter jurisdiction; the absence of power to reach the merits does not.” *Thrasher v. United States Liab. Ins. Co.*, 19 N.Y.2d 159, 278 N.Y.S.2d 793 (1967).

The Supreme Court is a court of general jurisdiction, and it is competent to entertain all causes of action unless its jurisdiction has been specifically proscribed. *Thrasher v. United States Liab. Ins. Co.*, supra. It is endowed with general original jurisdiction in law and equity. N. Y. Const., art. VI, §7, (a). Its subject matter jurisdiction may only be preempted under the Supremacy Clause of the United States Constitution. U.S. Const., art. VI, cl. 2; *Doomes v Best Transit Corp.*, 17 N.Y.3d 594, 935 N.Y.S.2d 268 (2011). For example, if state-court jurisdiction over native Americans or activities on their lands would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of federal law. *Iowa Mut. Ins. Co. v LaPlante*, 480 US 9, 15 (1987); *New Mexico v Mescalero Apache Tribe*, 462 US 324, 334 (1983).

The principle that lack of subject matter jurisdiction makes a final judgment absolutely void does not apply to cases that do not involve jurisdiction, but merely substantive elements of a cause of action. In *Lacks v Lacks*, 41 N.Y.2d 71, 390 N.Y.S.2d 875 (1976) the Court of Appeals held that the residence requirements in Domestic Relations Law §230 for the commencement of an action to annul a marriage, to declare the nullity of a void marriage, for divorce or separation were elements of the cause of action and did not go to its subject matter jurisdiction.

In contrast to the general jurisdiction of the Supreme Court, the Family Court is a court of limited jurisdiction. It may exercise only those powers granted to it by Art. 6, § 13 of the State Constitution or by statute. *Matter of H.M. v E.T.*, 14 NY3d 521, 904 N.Y.S.2d 285 (2010); *Matter of Johna M.S. v Russell E.S.*, 10 N.Y.3d 364, 859 N.Y.S.2d 594 (2008). The parties may not confer subject matter jurisdiction on the family court by acquiescence or stipulation. Family Court's subject-matter jurisdiction is a non-waivable issue, not subject to preservation requirements for an appeal, that may

be raised at any time. *Samantha I. ex rel. Emily K. v. Luis J.*, 122 A.D.3d 1090, 997 N.Y.S.2d 510 (3d Dep't 2014). The Family Court cannot act beyond its express powers, even where the parties consent. *Commissioner of Social Services of City of New York v. Harris*, 26 A.D.3d 283, 810 N.Y.S.2d 175 (1st Dept. 2006).

The Family Court does not have equity jurisdiction. *Eden M. v. Ines R.*, 97 Misc. 2d 256, 410 N.Y.S.2d 997 (Fam. Ct. 1978). It has no jurisdiction to direct a husband to turn over to his wife money representing her one-half interest in a joint bank account or to award him exclusive occupancy of the marital residence. *Borkowski v. Borkowski*, 38 A.D.2d 752, 330 N.Y.S.2d 106 (2d Dept. 1972). It does not have jurisdiction over matters concerning personal property. *Matter of Ruth H.*, 159 A.D.3d 1487, 72 N.Y.S.3d 694 (4th Dep't 2018).

Unlike actions in the Supreme Court, Family Court's authority to act must be found in the State Constitution and the Family Court Act. It is said to lack subject matter jurisdiction when it is without authority to act in a case. In determining whether the Family Court has subject matter jurisdiction in a case, counsel must navigate the relevant provisions of the Family Court Act. The issue frequently arises in cases involving modification of Supreme Court orders and judgments, although it is not limited to those cases.

Family Court Act § 439 (a) limits the subject matter jurisdiction of Support Magistrates. Support Magistrates are not empowered to hear, determine and grant any relief with respect to issues specified in Family Court Act §455, issues of contested paternity involving claims of equitable estoppel, custody, visitation including visitation as a defense, and orders of protection or exclusive possession of the home, which must be referred to a judge. The subject matter jurisdiction of Support Magistrates is to be strictly construed. *Matter of Rubino v Morgan*, 203 A.D.2d 698, 609 N.Y.S.2d 977 (3 Dept., 1994).

The Family Court has subject matter jurisdiction to modify a child support order of the Supreme Court or another court under Family Court Act §451(2) unless the order of the supreme court provides that the supreme court retains exclusive jurisdiction to modify the order. Under Family Court Act § 451(2) a proceeding to modify an order of support must be commenced by the filing of a petition which must allege facts sufficient to meet one or more of the grounds enumerated in Family Court Act § 451(3). Family Court Act § 451(3)(a) provides, in relevant part, that the court may modify an order of child support, including an order incorporating without merging an agreement or stipulation of the parties, upon a showing of a substantial change in circumstances. This provision confers subject matter jurisdiction on the Family Court.

The Family Court has subject matter jurisdiction to modify an order or decree awarding alimony, maintenance, or support, granted in an action for divorce, separation, or annulment where there has been a showing of a subsequent change of circumstances, provided the Supreme Court has not retained exclusive jurisdiction. See Family Court Act §466 (c) (ii).

Thus, absent a change of circumstances family court lacks subject matter jurisdiction to modify maintenance or child support.

In *Matter of Johna M.S. v Russell E.S.*, 10 N.Y.3d 364, 859 N.Y.S.2d 594 (2008), the wife commenced a proceeding seeking an upward modification of maintenance and child support under the law in existence before the 2010 amendments to the Domestic Relations Law. The Support Magistrate dismissed the wife's application for additional spousal maintenance for lack of jurisdiction. No proof was offered that the wife was likely to become a public charge; thus, the parties were bound by the terms of the separation agreement on the issue of spousal maintenance. The Court of Appeals affirmed. It held that Family Court generally has no subject matter jurisdiction to reform, set aside, or modify the terms of a valid separation agreement. Nor can an agreement of the parties confer on Family Court the power to modify the terms of a separation agreement. A statutory exception to the rule exists, not applicable here, where a spouse "is likely to become in need of public assistance or care". Family Court lacked subject matter jurisdiction to entertain the wife's application for increased spousal maintenance. Although the parties' agreement purported to permit Family Court to treat any application by the wife as "de novo," this language could not confer jurisdiction upon Family Court. The wife's petition to Family Court for increased maintenance expressly stated that it was "an application to the Court for an upward modification of spousal support," premised on the insufficiency of current maintenance due to a loss of certain Social Security benefits. In practical terms, the wife was not presenting a new, or "de novo," application for maintenance to Family Court. As she was seeking increased maintenance from that forth in a separation agreement, Family Court was without jurisdiction to entertain the petition and grant the requested relief.

In *Matter of Matter of H.M. v E.T.*, 14 NY3d 521, 904 N.Y.S.2d 285 (2010) the Court of Appeals held that because Family Court has the subject matter jurisdiction to ascertain the support obligations of a female parent in a same-sex relationship, Family Court also has the inherent authority to ascertain in certain cases whether a female respondent is, in fact, a child's parent.

The powers of the Family Court, as a court of limited jurisdiction, are restricted to those granted it by the "precise language" of the statute. In *Silver v Silver*, 36 N.Y.2d 324, 367 N.Y.S.2d 777 (1975) the husband agreed to pay the wife support of \$1,250 per month for three years. The separation agreement was incorporated, but not merged, in a bilateral Mexican divorce decree. After the expiration of the three-year term, the wife commenced a proceeding in Family Court to modify the decree to obligate the husband to continue to make the monthly payments until her death or remarriage. The Court of Appeals found that after the three-year term ended, the Mexican decree was not a decree "granting alimony or support" so as to give the Family Court subject matter jurisdiction to modify it under Family Court Act §466 (c). The Family Court is without jurisdiction to modify unless, at the time the proceeding is commenced, there is a

currently effective support or alimony provision. In contrast, the Supreme Court has subject matter jurisdiction to modify a judgment that does not award maintenance. See *Wyser-Pratte v Wyser-Pratte*, 66 N.Y.2d 715, 496 N.Y.S.2d 991 (1985).

In *Savini v. Burgaleta*, 34 A.D.3d 686, 825 N.Y.S.2d 493 (2d Dept. 2006), the Family Court, in effect, invalidated the child support provision of a stipulation which was, incorporated but not merged in a judgment of divorce, and awarded the mother child support. The Appellate Division reversed and held that Family Court was without subject matter jurisdiction, in effect, to vacate as illegal so much of the judgment of divorce as directed the father to pay child support and, thereafter, to determine the issue of child support de novo. Nowhere in the Constitution, in the Family Court Act, or in the judgment of divorce itself, is the Family Court empowered, in effect, to invalidate a stipulation incorporated into the judgment of divorce entered by the Supreme Court.

In *Matter of Perrego v Perrego*, 63 A.D.3d 1072, 884 N.Y.S.2d 70 (2 Dept., 2009) the Appellate Division, citing *Savini*, supra, held that the Family Court has no power to review a Supreme Court judgment determining child support or to determine child support de novo where it already has been determined by the Supreme Court and set forth in a judgment.

[Family Court Act § 423](#) provides that proceedings under article 4 are commenced by the filing of a petition, which may be made on information and belief. In *Matter of Sheehan v Sheehan*, 71 A.D.2d 737, 419 N.Y.S.2d 264 (3d Dept., 1979) the petitioner commenced a proceeding by order to show cause for an upward modification of the child support provisions of the parties' agreement which was incorporated in their judgment of divorce, but no petition was filed. The Appellate Division held that the petitioner's failure to file a petition required dismissal proceeding for lack of jurisdiction, (citing [Family Ct Act § 423](#)). It held that an order to show cause may be served in lieu of a notice of petition to commence a proceeding for an order of support, including modification of support provisions, but it does not relieve a party of the concomitant responsibility to file a petition. The Appellate Division held that the Family Court lacks subject matter jurisdiction to make a support award in the absence of a petition for such relief.

Conclusion

The family court has limited subject matter jurisdiction granted to it by Art. 6, § 13 of the State Constitution, Family Court Act § 115, and numerous provisions in the Family Court Act. When the Family Court exceeds those limited powers and acts in excess of those powers, or fails to act in compliance with the "precise language" of the statute, it is said to lack subject matter jurisdiction.

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