

ANALYSIS OF DRAPER v. BURKE

On February 15, 2008 the Supreme Judicial Court granted an application for direct appellate review after defendant's motion to dismiss for want of subject matter jurisdiction was denied by both the trial judge and a single justice. The question of subject matter jurisdiction posed in Draper v. Burke is not novel, but significant because of its prevalence in today's mobile society. Family law attorneys need to have more than a passing understanding of the Federal act, known as the Full Faith and Credit for Child Support Orders Act, codified at 28 U.S.C. Section 1738B (2000)(Federal Act), and its impact on Massachusetts law which incorporates the Uniform Interstate Family Support Act (UIFSA). UIFSA is a uniform law that each state may, or may not, adopt, in whole or in part – with or without changes. Preemption of the Federal Act applies whenever state law and federal law collide, as they do in the instant case on the issue of subject matter jurisdiction. Draper sets forth clearly the federal law with regard to subject matter jurisdiction and personal jurisdiction if neither party lives in the state which granted the parties their divorce. While the opinion is not ground-breaking on the issues of preemption, subject matter jurisdiction, personal jurisdiction or conflict of laws, it presents a remarkable primer for understanding these topics and their application when advising clients as to where an action for modification properly lies – and why it may not be brought in every jurisdiction in which a party ever resided or currently resides.

Facts:

In the instant case, the parties grew up in Massachusetts and lived in Massachusetts for ten years after their marriage in 1980. In 1990, the parties and their

two children – both born in Massachusetts – moved to New Mexico and in 1993 to Oregon. Approximately four years after moving to Oregon, the parties were divorced. One month before entry of the divorce judgment (July, 1997), the wife returned with the children to Massachusetts, where they have continued to reside since that time. In the same month, the husband moved to Idaho. The parties’ Oregon divorce provided in pertinent part that the husband would pay child support of \$750 a month, and provided that the husband’s child support obligation “would continue ‘for so long as said child is under the age of eighteen (18) and thereafter for so long as said child is under the age of twenty one (21) and is ‘child attending school (under Oregon Law)’”. The issue of college expenses for the children was not addressed under Oregon law or the judgment, but it was expected that they would be shared by the parties.

In March, 1999 and in December, 2004, the wife filed complaints in the Probate and Family Court of Massachusetts to revise and amend the Oregon judgment with respect to the provision of child support, seeking ultimately contribution by the husband to the college expenses of the children. The husband moved to dismiss the consolidated complaints on the basis that the Massachusetts court lacked subject matter jurisdiction under G.L.c.209D, Sections 6-611(a)(1), the Massachusetts’ version of the Uniform Interstate Family Support Act (UIFSA), 9 (Part 1B) U.L.A. 513 (Master ed. 2005). Under the Massachusetts’ codification of UIFSA, the Probate and Family Court may modify a child support order issued by another state only in circumstances inter alia where the person seeking modification is a “nonresident” of the Commonwealth. Because the wife resides in Massachusetts, the husband maintained that the Probate and Family Court lacked subject matter jurisdiction to adjudicate the wife’s complaint for

modification and that the matter should have been brought in Idaho, his place of residence.

The trial judge denied the husband's motion to dismiss and entered a modification judgment after finding that a material and substantial change of circumstances had occurred warranting a modification of the Oregon judgment. The persuasive facts were that the children were now faced with college expenses and the husband's income had "increased substantially". The husband filed a notice of appeal from both the underlying judgment and the judge's order denying his motion to dismiss for lack of subject matter jurisdiction.

Discussion and Rationale:

The wife does not dispute that the Probate and Family Court lacks subject matter jurisdiction under G.L.c.209D, Sections 6-611 (a)(1) to modify the Oregon judgment. However, state law cannot be applied in isolation if a federal law exists which preempts the same subject matter. There is no doubt that under G.L.c.209D the wife is barred from bringing a modification as she fails to meet all of the requirements, specifically she is not "a petitioner who is a nonresident of the commonwealth". Agreeing with the wife, the Supreme Judicial Court determined that preemption applied. The Full Faith and Credit for Child Support Orders Act, codified at 28 U.S.C. Sections 1738B(2000) (Federal Act), does not contain the "nonresident" petitioner requirement that appears in all versions of Section 611 of UIFSA and in the Massachusetts state statute, G.L.c.209D, Sections 6-611.

It is important to understand why the Federal Act is less restrictive than UIFSA or the Massachusetts version of it. The opinion sets forth the background of the Federal Act

and the policy reasons for the increased leniency. The Act was intended “(1) to facilitate the enforcement of child support orders among the States; (2) to discourage continuing interstate controversies over the child support in the interest of greater financial stability and secure family relationships for the child; and (3) to avoid jurisdictional and conflict among State courts in the establishment of child support orders.” Congress expressly found that the lack of uniformity of laws determining authority to establish (and modify) child support orders encouraged payors to leave the jurisdiction of their children, contributed to low support payment levels in interstate cases, fostered disregard for court orders, leads to excessive litigation due to conflicting orders and ultimately a diminution of public confidence in the rule of law.

The Federal Act obligates states to enforce child support orders issued by another state, and imposes limitations on a state’s authority to modify child support orders issued by another state. A court of a state may modify a child support order issued by another state if –

“(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

“(2)(A) the court of the other state no longer has continuing, exclusive jurisdiction of the child support order because that state no longer is the child’s State or the residence of any individual contestant....”

The Federal Act further requires that the party or support enforcement agency seeking to modify the child support order issued in another state, register that order in the state “with jurisdiction over the nonmovant for the purpose of modification”. The husband argued that it was unclear whether “jurisdiction” referred to herein was subject

matter jurisdiction and/or personal jurisdiction. The Court held that jurisdiction as used in this statute meant personal jurisdiction only and personal jurisdiction over the husband clearly existed via the Massachusetts Long Arm Statute.

The Federal Act confers subject matter jurisdiction in Massachusetts as neither the husband nor the wife reside in Oregon and no other state has modified the Oregon judgment. The Massachusetts court had personal jurisdiction over the husband. The Federal act seeks and succeeds in “discouraging continuing interstate controversies over child support in the interest of greater financial stability and secure family relationships for the child.” Lastly, the opinion concludes that “Preemption is required by reason of the actual conflict between State and Federal law and to implement the clear objectives of the Federal act.”

Lessons to be learned from Draper v. Burke:

1. The doctrine of preemption controls whenever Federal law conflicts with state law.
2. The interface of Federal law and state law has increasingly become important in the area of family law.
3. Federal law seeks to simplify and promote modification of child support orders in an efficient and clear manner, focusing on the residence of the child as the most critical factor in determining the appropriate jurisdiction.
4. Subject matter jurisdiction of a child support modification action is always in the first instance in the state where the original order entered if either party still resides in that state.

5. If neither party resides in the state which issued the original order and no other state has entered a subsequent order, then either party may seek to modify the original child support judgment/order in the state where the child currently resides.
6. Personal jurisdiction over the obligor can be established fairly readily in most instances under the Massachusetts long arm statute and does not pose an impediment to proceeding with a complaint for modification.
7. The obligation to register the foreign judgment is mandatory but not onerous.
8. Whenever a modification complaint is filed, the Massachusetts trial judge must make a finding that a material and substantial change of circumstances has occurred, warranting a modification of any prior judgment, whether a foreign judgment or not.
9. Modification actions seeking to modify a foreign judgment are subject to Massachusetts' Time Standards.
10. If subject matter jurisdiction is at issue, a motion to dismiss must be timely filed by the defendant.