24-P-658 Appeals Court

DEVAN ARANGA RAMANUJAM vs. ANUSHA AIYALOO KANNAN.

No. 24-P-658.

Essex. May 14, 2025. – August 7, 2025.

Present: Sacks, Englander, & Walsh, JJ.

Divorce and Separation, Appeal, Child support, Judgment, Jurisdiction. Probate Court, Divorce, Jurisdiction. Jurisdiction, Child support, Divorce proceedings, Probate Court. Uniform Interstate Family Support Act. Judicial Estoppel.

Complaint for divorce filed in the Essex Division of the Probate and Family Court Department on March 16, 2018.

The case was heard by Elizabeth Teixeira, J.

Matthew P. Barach (Francesca M. Blazina also present) for the husband.
Jennifer M. Lamanna for the wife.

ENGLANDER, J. In this appeal from a judgment of divorce nisi, the husband's principal complaint is that the judgment's award of child support must be reversed because the Probate and Family Court allegedly lacked subject matter jurisdiction over

that particular issue. The husband argues that the wife initially sought child support in New York, where she and the children reside, and accordingly that under G. L. c. 209D, § 2-204 (§ 2-204), applicable to simultaneous child support proceedings, the Massachusetts court lacked "jurisdiction."

Applying § 2-204 in this case, however, we conclude that the Massachusetts judge properly exercised jurisdiction over the child support issue. Most fundamentally, this is because the husband's first-in-time complaint for divorce was filed in Massachusetts, where the husband resides and the family resided together until 2017; that complaint established subject matter jurisdiction in Massachusetts over child support issues, and no subsequent actions of the wife had the effect of shifting jurisdiction to New York under § 2-204. We note, in addition, our skepticism that the husband can raise this § 2-204 issue for the first time on appeal (as purportedly involving "subject matter jurisdiction") -- particularly where the husband succeeded in having competing child support proceedings in New York dismissed, after arguing that the New York courts lacked personal jurisdiction over him.

The husband challenges two other provisions in the judgment. These two provisions required the husband to make additional payments to the wife -- in numbered paragraph 3 (paragraph 3), based on a percentage of the husband's potential

future income from bonuses, and in numbered paragraph 4 (paragraph 4), based on a percentage of future income from the husband's business ventures. Notably, the wife agrees that the provision in paragraph 4 of the judgment regarding payments based upon the husband's business ventures must be vacated, as do we. For the reasons discussed below, the judgment is otherwise affirmed.

Background. The husband and the wife married in 2002, and last lived together, in Massachusetts, in July of 2017. They have two children, born in 2007 and 2012. In 2017, the wife and the children went to live in New York. The husband filed this Massachusetts divorce case in March 2018.

As to child support, the history is a bit convoluted. The wife filed the first express request for an order of child support in a counterclaim in this Massachusetts divorce case, on April 1, 2019. Shortly thereafter, on April 22, 2019, the wife filed a petition for child support in New York, and on June 24, 2019, the wife dismissed her Massachusetts request for child support. Although the husband filed for divorce in 2018, it appears that the husband's first specific request to adjudicate child support in Massachusetts was a motion for a temporary order as to child support, filed on or about June 27, 2019.

Subsequently, in August of 2019 the husband filed a motion to amend his divorce complaint to seek "court ordered . . .

child support," as well as court-ordered custody and parenting time. The wife opposed the motion, citing G. L. c. 209D, § 2-204, among other authority. In September of 2019, the wife moved to have the Massachusetts judge decline to exercise jurisdiction over all issues as to the children -- custody, parenting time, and child support -- in favor of the courts in New York, where the children reside. The wife specifically argued that as a result of § 2-204 the Massachusetts courts could not exercise jurisdiction over child support; the husband opposed the wife's motion. In November of 2019, a Massachusetts judge issued an order declining jurisdiction over the issues of custody and parenting time; as to child support, however, the court retained jurisdiction.

By November of 2019, the wife had filed two requests for child support in New York, including her original April 2019 petition, and a subsequent petition filed in October 2019. Following the November 8, 2019 order of the Massachusetts judge retaining jurisdiction over child support, on November 18, 2019 the New York court dismissed the wife's April 2019 child support petition. Evidently, however, another of the wife's child support petitions remained pending in New York. Thereafter, the husband filed a motion to dismiss the remaining New York child support petition on the ground, among others, that the New York courts lacked personal jurisdiction over him. Thus, a New York

filing by the husband in August of 2020 averred and argued that Massachusetts "certainly has jurisdiction to address the issue of child support," that the husband "does not consent to New York jurisdiction over child support," and that "New York lacks jurisdiction over the [husband]." In September of 2020, the New York court dismissed the wife's extant petition for child support "due to lack of jurisdiction," noting that "the Essex Probate [and] Family Court . . . has continued to have jurisdiction over support issues."

The divorce trial occurred in Massachusetts on January 4, 2022. At that time there was no pending proceeding for child support in New York, as the remaining New York child support petition had been dismissed in September of 2020. In the January 2024 divorce judgment, the judge (1) awarded the wife child support of $540 per week, beginning January 4, 2022; (2) ordered payment by the husband of child support arrears of $74,431; (3) ordered the husband to pay "twenty-three percent of any gross bonus in the future as additional child support"; and (4) ordered the husband to pay to the wife "twenty-three percent of any gross receipts from [his consulting company] or any other business venture." This appeal followed.

Discussion. Jurisdiction under G. L. c. 209D, § 2-204. The husband argues that pursuant to § 2-204, the judge lacked "subject matter jurisdiction" to award child support. Notably,

the husband never made this argument in the trial court -- either at trial, or in a motion for relief from judgment under Mass. R. Dom. Rel. P. 60. In fact, the husband took the contrary position in the Massachusetts court. The husband points out, however, that the court's subject matter jurisdiction may be challenged at any time. See Commonwealth v. Nick N., 486 Mass. 696, 702 (2021). We reject the husband's argument here, however, because under § 2-204 the Massachusetts court properly exercised jurisdiction.

Section 2-204 states in full:

"Simultaneous proceedings.

"(a) A tribunal of the commonwealth may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or a foreign country only if:

"(1) the petition or comparable pleading in the commonwealth is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

"(2) the contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

"(3) if relevant, the commonwealth is the home state of the child.

"(b) A tribunal of the commonwealth may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

"(1) The petition or comparable pleading in the other state or foreign country is filed before the expiration of the

> time allowed in the commonwealth for filing a responsive pleading challenging the exercise of jurisdiction by the commonwealth;
>
> "(2) the contesting party timely challenges the exercise of jurisdiction in the commonwealth; and
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> "(3) if relevant, the other state or foreign country is the home state of the child."

Section 2-204 is part of the Uniform Interstate Family Support Act (UIFSA), which Massachusetts first adopted in 1995 and amended in 2016. On its face, § 2-204 is addressed to the problem that arises when, in addition to a "support" "proceeding[]" in Massachusetts, there is also a simultaneous support proceeding between the same parties in "another state or a foreign country." Under those circumstances, § 2-204 establishes the circumstances when Massachusetts courts may, and may not, "exercise jurisdiction." The object, of course, is to have support proceedings move forward in only one jurisdiction, to avoid conflict and in the interest of efficiency. See Cohen v. Cohen, 470 Mass. 708, 713 (2015), quoting Child Support Enforcement Div. of Alaska v. Brenckle, 424 Mass. 214, 218 (1997) ("UIFSA aims to cure the problem of conflicting support orders entered by multiple courts, and provides for the exercise of continuing, exclusive jurisdiction by one tribunal over support orders").

Section 2-204 is not a model of clarity, but it is helpful to recognize that its two subsections are divided by whether a

"petition or comparable pleading" involving "support" was first filed in Massachusetts, or whether it was first filed in another State or foreign country. The statute does not actually use the term "first filed," but subsection (b) applies if the petition or comparable pleading was filed in Massachusetts "before" a filing in another State, whereas subsection (a) applies if it was filed in Massachusetts "after" a filing in another State. On the facts here we conclude that the provisions of subsection (b) apply because, as discussed below, the first filing involving child support in this case was the husband's complaint for divorce in Massachusetts, filed in 2018.

On appeal, the husband's § 2-204 argument assumes the contrary position; that is, the husband assumes that for purposes of § 2-204 the first filing involving child support was the wife's petition in New York, filed on April 22, 2019. There is more than one problem with the husband's argument,[1] but we will stick with the more straightforward one: the husband's divorce complaint in Massachusetts came first. By statute, the husband's complaint for divorce automatically invoked the jurisdiction of the Massachusetts Probate and Family Court to

[1] The wife first filed a claim for child support in Massachusetts on April 1, 2019. She dismissed that claim in June of 2019. The husband's argument appears to treat the wife's first filing in Massachusetts as a nullity for § 2-204 purposes, although it is not clear why.

consider and to award child support. General Laws c. 208, § 28, states: "Upon a judgment for divorce, the court may make such judgment as it considers expedient relative to the care, custody and maintenance of the minor children of the parties . . . ." This power is not dependent on a party specifically requesting a support order in the complaint for divorce or answer. Indeed, even where the parties enter into a separation agreement fixing child support, which agreement is not incorporated in the decree nisi, such an agreement does not "oust the jurisdiction of the Probate Court under G. L. c. 208, §§ 28, 37, over continuing problems of support of the minor children." Kates v. Kates, 347 Mass. 783, 783 (1964). See White v. Laingor, 434 Mass. 64, 68 (2001) ("[T]he presence of a negotiated agreement between the parents does not exempt judges from the need to protect children"); Taverna v. Pizzi, 430 Mass. 882, 882-885 (2000) (court had authority to award child support, including retroactive child support, where prior divorce judgment -- which reflected parties' agreement -- had not addressed only child of marriage). In short, the husband's divorce filing vested the Massachusetts Probate and Family Court with jurisdiction over the support of the parties' minor children, and accordingly the divorce filing qualifies under § 2-204 as a "petition or comparable pleading" for a "support order."

Once it is established that § 2-204 subsection (b) applies (because a child support petition or comparable pleading was filed in Massachusetts before one was filed elsewhere), then under that subsection (b) a Massachusetts court may "exercise jurisdiction" unless the "contesting party" can meet each of subsections (b) (1), (b) (2), and (b) (3). Here the husband has not shown facts that meet at least subsection (b) (1). In particular, the facts do not demonstrate that the wife's April 22, 2019 child support petition in New York (on which the husband now relies) was filed "before the expiration of the time . . . for filing a responsive pleading challenging the exercise of jurisdiction by the commonwealth." § 2-204 (b) (1). To the contrary, after the husband filed his complaint for divorce in 2018, the wife filed for child support first in Massachusetts, on April 1, 2019. Moreover, at that time her answer to the husband's divorce complaint did not contest Massachusetts jurisdiction over child support.[2] Put differently, this is not a case where the husband filed for divorce in Massachusetts, and the wife responded by filing for child support in New York and timely contesting Massachusetts jurisdiction over that issue. Quite the contrary. Because the facts do not satisfy the

[2] The wife's "Answer & Amended Counterclaim," filed on April 1, 2019, omitted a challenge to jurisdiction over child support.

requirement of subsection (b) (1), the husband's jurisdictional challenge fails.

While the above analysis disposes of the husband's jurisdictional argument, we would be remiss if we did not address the manifest unfairness of the husband's argument. The husband filed for divorce in Massachusetts, and the husband successfully argued against child support proceedings in New York -- including an argument that the New York courts lacked jurisdiction over him. It is quite remarkable for the husband now to reverse course, and seek to overturn the Massachusetts child support order on jurisdictional grounds.

The foundation of the husband's argument on appeal is that § 2-204 is about "subject matter jurisdiction," and that a party may raise the lack of subject matter jurisdiction at any time, even after judgment. By labeling § 2-204 as affecting "subject matter jurisdiction," the husband thus seeks to absolve his failure to raise the issue in the trial court. Equally important, by labeling the issue as one of subject matter jurisdiction, the husband also seeks to avoid the application of judicial estoppel, which otherwise likely would have pretermitted his jurisdictional argument.[3]

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[3] Judicial estoppel "precludes a party in certain circumstances from asserting a position in one proceeding that is contrary to a position that the party previously asserted successfully in another proceeding." Commonwealth v. Ng, 489

We need not decide, but we note that it is not at all clear that § 2-204 addresses the existence of subject matter jurisdiction. Rather, § 2-204 appears to regulate the exercise of jurisdiction. Indeed, that is the plain language of the statute -- that the Massachusetts courts may, or may not "exercise" jurisdiction, suggesting that the courts have subject matter jurisdiction, but should forego its exercise.[4] This reading of § 2-204 is also consistent with traditional understandings of subject matter jurisdiction. As we recently explained in V.M. v. R.B., 94 Mass. App. Ct. 522, 525-526 (2018):

Mass. 242, 255 (2022), S.C., 491 Mass. 247 (2023), quoting East Cambridge Sav. Bank v. Wheeler, 422 Mass. 621, 621 (1996). While the elements of judicial estoppel appear to be met here, it appears that the doctrine would not apply if subject matter jurisdiction is truly at issue. See Lee v. Mt. Ivy Press, L.P., 63 Mass. App. Ct. 538, 547 & n.20 (2005).

[4] Courts in other States have reached inconsistent conclusions as to whether UIFSA § 204 establishes a principle of subject matter jurisdiction, as traditionally understood. The District of Columbia Court of Appeals held that "jurisdiction" established under UIFSA § 204 is "waivable." Upson v. Wallace, 3 A.3d 1148, 1155-1156 (D.C. 2010), cert. denied, 565 U.S. 862 (2011) (describing UIFSA jurisdiction as "analytically similar to improper venue"). Cf. Kasdan v. Berney, 587 N.W.2d 319, 324 (Minn. Ct. App. 1999) (noting that Minnesota court had subject matter jurisdiction over child support modification matter, even though under circumstances it was "precluded from exercising that jurisdiction under [UIFSA § 204]"). In contrast, other States have considered their analogs to § 2-204 to control the existence of subject matter jurisdiction. See Richardson v. Stogner, 958 So. 2d 235, 240 (Miss. Ct. App. 2007); Ellithorp v. Ellithorp, 212 W. Va. 484, 492-493 (2002).

> "Subject matter jurisdiction is jurisdiction over the nature of the case and the type of relief sought. Simply put, the question is: Has the Legislature empowered the court to hear cases of a certain genre?
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> "Labeling a particular fact as jurisdictional has far-reaching consequences. The issue of subject matter jurisdiction can be raised at any time. Tardy jurisdictional objections can therefore result in a waste of adjudicatory resources and can disturbingly disarm litigants" (quotations and citations omitted).

Here, as we discussed above, the Probate and Family Court plainly has subject matter jurisdiction to enter a child support order in a divorce case. That is the "genre" of claim at issue. The question the husband's argument begs is whether § 2-204 carves a narrow exception to that fundamental power. Alternatively, § 2-204 could merely embody a jurisdictional concept that is less fundamental and that is accordingly waivable, as with personal jurisdiction, or venue. See American Int'l Ins. Co. v. Robert Seuffer GMBH & Co. KG, 468 Mass. 109, 113-114, cert. denied, 574 U.S. 1061 (2014), quoting Mass. R. Civ. P. 12 (h) (1), as appearing in 450 Mass. 1403 (2008) (personal jurisdiction waivable); Markelson v. Director of the Div. of Employment Sec., 383 Mass. 516, 518 (1981), quoting Paige v. Sinclair, 237 Mass. 482, 484 (1921) (venue waivable). See also Upson v. Wallace, 3 A.3d 1148, 1155 (D.C. 2010), cert. denied, 565 U.S. 862 (2011), quoting B.J.P. v. R.W.P., 637 A.2d 74, 78-79 (D.C. 1994) ("[T]he purported lack of subject matter jurisdiction based on territorial considerations -- a fair

characterization of the asserted defect here -- has been held to be analytically similar to improper venue; it does not go to the power of the court to adjudicate the case, and may be waived if not asserted in [a] timely fashion"). V.M., 94 Mass. App. Ct. at 525-526, quite rightly warns against unnecessarily labeling an issue as "subject matter jurisdiction," and the language and structure of § 2-204 itself speak against the notion that it goes to a court's fundamental power.[5]

The husband raises two additional arguments. As to the husband's challenge to paragraph 4 of the 2024 judgment of divorce, the wife concedes that paragraph 4 should be vacated

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[5] Compare Cohen, 470 Mass. at 713-715. Cohen addresses two provisions of UIFSA, G. L. c. 209D, §§ 2-205 and 6-611, which use different language than § 2-204. These provisions establish the "continuing, exclusive jurisdiction" of a court that has already entered a child support order; when a court has done so, "no other court may modify that order for as long as the obligee, obligor, or child for whose benefit the order is entered continues to reside within the jurisdiction of that court unless each party consents in writing to another jurisdiction." Cohen, supra at 713-714, quoting Brenckle, 424 Mass. at 218. The Cohen decision holds under §§ 2-205 and 6-611 that a Massachusetts court lacked "jurisdiction" to modify the child support order of the court of another State, and that the issue was not waived, notwithstanding that the appellant did not challenge the jurisdiction of the Massachusetts trial court prior to appeal. Cohen, supra at 713-715. As indicated, Cohen is distinguishable because the language of §§ 2-205 and 6-611 is materially different from § 2-204. Moreover, we note that even this "exclusive" jurisdiction of §§ 2-205 and 6-611 is waivable by agreement of the parties. See G. L. c. 209D, § 6-611 (a) (2) (Commonwealth may modify child support order issued in another State where, among other factors, all parties consent).

and the matter remanded. Paragraph 4 states that the husband "shall pay to the Wife twenty-three percent of any gross receipts from [the husband's consulting company] or any other business venture." The paragraph does not state whether this award is child support, alimony, or a division of property, and the award is not addressed in the judge's rationale. As additional findings are required, the paragraph 4 award is vacated.

As to paragraph 3 of the judgment, the award set forth there, from any future "bonus[es]," is explicitly for "additional child support." The twenty-three percent award is consistent with the judge's overall child support award and is supported by the judge's findings and rationale. The award in paragraph 3 is accordingly affirmed.[6]

Paragraph 4 of the judgment is vacated. In all other respects, the judgment is affirmed. The matter is remanded for further proceedings consistent with this opinion.

So ordered.

[6] The wife's request for appellate attorney's fees is denied.