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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No. EC-11-1346-PaDMk
	)	
CHRISTINE M. EMMERSON,	)	Bankr. No. 09-36284-C
	)	
Debtor.	)	Adv. No. 09-02626-C
_____	)	
	)	
CHRISTINE M. EMMERSON,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>M E M O R A N D U M</b> <sup>1</sup>
	)	
TONY D. REGIS,	)	
	)	
Appellee,	)	
	)	
MICHAEL MCGRANAHAN, Chapter	)	
13 Trustee; UNITED STATES	)	
TRUSTEE,	)	
	)	
Interested Parties.	)	
_____	)	

Argued and Submitted on March 22, 2012  
at Sacramento, California

Filed - April 3, 2012

Appeal from the United States Bankruptcy Court  
for the Eastern District of California

Honorable Christopher M. Klein, Chief Bankruptcy Judge, Presiding

Appearances: \_\_\_\_\_  
Mark J. Hannon, Esq. for Appellant Christine M.  
Emmerson; Herman Franck, Esq. for Appellee Tony D.  
Regis

Before: PAPPAS, DUNN and MARKELL, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may have  
(see Fed. R. App. P. 32.1), it has no precedential value. See 9th  
Cir. BAP Rule 8013-1.

1 Chapter 7<sup>2</sup> debtor Christine M. Emmerson ("Emmerson") appeals  
2 the bankruptcy court's judgment entered June 28, 2011, declaring  
3 that a state court judgment against her in favor of creditor Tony  
4 D. Regis ("Regis") was excepted from discharge under § 523(a)(6)  
5 based on the application of issue preclusion. We AFFIRM.

6 **FACTS**

7 This is the second appeal to the Panel from the bankruptcy  
8 court's judgment in this adversary proceeding. Our Memorandum  
9 deciding the previous appeal contained a detailed recitation of  
10 the relevant facts. Emmerson v. Regis (In re Emmerson), BAP case  
11 no. EC-10-1150-MoDH (9th Cir. BAP Mar. 25, 2010). Because the  
12 parties are also familiar with the facts, we need only summarize  
13 them here, and describe the events following our remand of the  
14 judgment to the bankruptcy court in connection with the first  
15 appeal.

16 Emmerson and Regis are the parents of a minor child ("the  
17 Child"). Their relationship ended acrimoniously, prompting a  
18 multi-year child custody battle in Sacramento Superior Court,  
19 Family Court Department (the "Family Court Proceeding"). While  
20 the Family Court Proceeding was pending, Emmerson commenced an  
21 action against Regis seeking a partition of the parties' jointly-  
22 owned former residence in Sacramento Superior Court, Civil Court  
23 Department (the "Partition Action"). Regis filed a cross-  
24 complaint in the Partition Action, alleging claims against  
25 Emmerson for child abduction and child enticement in which he

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26  
27 <sup>2</sup> Unless otherwise indicated, all chapter, section and rule  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The  
Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 sought, inter alia, an award of compensatory and punitive damages  
2 pursuant to Cal. Civ. Code § 49.<sup>3</sup>

3 In August 2008, before the trial in the Partition Action, the  
4 Family Court awarded full legal custody of the Child to Emmerson,  
5 with no visitation rights to Regis unless initiated and sought by  
6 the Child.

7 Trial was scheduled in the Partition Action for October 6,  
8 2008. Emmerson failed to appear at trial, and the state court  
9 conducted a nonjury trial. The evidence and testimony offered by  
10 Regis were uncontroverted. On February 5, 2009, the state court  
11 entered an Order Following Trial in the Partition Action (the  
12 "Civil Court Order") awarding Regis \$473,500 in damages, including  
13 \$50,000 in punitive damages, and \$400,000 in general damages as  
14 compensation for the "loss of his relationship with [the Child]  
15 for a period of eight years and extreme and severe emotional  
16 distress suffered by that loss [at \$50,000 per year]." The state  
17 court also awarded Regis \$23,500 in damages for breach of  
18 contract.<sup>4</sup> Emmerson did not appeal the Civil Court Order.

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19  
20 <sup>3</sup> **Cal. Civ. Code § 49. Protection from abduction,  
21 seduction, and injury to servant.**

22 The rights of personal relations forbid: (a) The abduction or  
23 enticement of a child from a parent, or from a guardian entitled  
24 to its custody; (b) The seduction of a person under the age of  
25 legal consent; (c) Any injury to a servant which affects his  
26 ability to serve his master, other than seduction, abduction or  
27 criminal conversation.

28 <sup>4</sup> Recall that the original complaint filed by Emmerson in  
state court was for partition of a residence jointly owned by her  
and Regis. As to that cause of action, the state court found her  
in breach of contract by failing to pay her half of mortgage  
payments on that residence for thirty-two months. The state court  
awarded Regis \$23,500 in damages for her breach. The bankruptcy

(continued...)

1           When Emmerson thereafter filed a petition under chapter 7,  
2 Regis commenced this adversary proceeding seeking to except the  
3 entire amount awarded to him by the state court, \$473,500, from  
4 discharge by Emmerson under § 523(a)(6). After Emmerson filed an  
5 answer, Regis filed a motion for summary judgment relying on the  
6 issue preclusive effects of the Civil Court Order. Emmerson  
7 opposed the motion.

8           The bankruptcy court conducted a hearing on Regis's motion  
9 for summary judgment on April 27, 2010. After hearing from  
10 counsel for both Regis and Emmerson, the court held that the Civil  
11 Court Order's award of damages under Cal. Civ. Code § 49 met the  
12 requirements for an exception to discharge under § 523(a)(6), and  
13 thus, issue preclusion applied. The bankruptcy court granted the  
14 summary judgment motion and entered a judgment on April 29, 2010,  
15 declaring that \$450,000 of the award in the Civil Court Order to  
16 Regis was nondischargeable under § 523(a)(6). Emmerson appealed  
17 the bankruptcy court's judgment to the Panel.

18           On appeal, the Panel agreed with the bankruptcy court that,  
19 under the facts of the case and applicable state law, the award of  
20 damages to Regis made by the state court under Cal. Civ. Code § 49  
21 met the five threshold requirements for issue preclusion. In re  
22 Emmerson, Mem. Dec. at 17 ("[W]e conclude that all five threshold  
23 elements have been satisfied."). However, the Panel noted that,  
24 under California law, a bankruptcy court's decision to apply issue  
25

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26           <sup>4</sup>(...continued)  
27 court would later determine that only the \$450,000 damage award,  
28 based on Cal. Civ. Code § 49, was nondischargeable under  
§ 523(a)(6). Tr. Hr'g 13:14-14:6, April 27, 2010. The amount of  
the nondischargeable award is not at issue in this appeal.

1 preclusion does not end with analysis of the five threshold  
2 elements. Instead, in California, a trial court is required to  
3 conduct a "mandatory 'additional' inquiry into whether imposition  
4 of issue preclusion would be fair and consistent with sound public  
5 policy." Mem. Dec. at 15, citing Khaligh v. Hadeqh (In re  
6 Khaligh), 338 B.R. 817, 824-25 (9th Cir. BAP 2006). The Panel  
7 determined that "the record [in this appeal] is devoid of any  
8 indication that the bankruptcy court conducted the mandatory  
9 fairness/public policy inquiry." In re Emmerson, Mem. Dec. at 17.  
10 Therefore, although affirming that the bankruptcy court had  
11 properly determined that issue preclusion was available in this  
12 case, the Panel remanded the action to the bankruptcy court with  
13 instructions that it make an inquiry whether application of issue  
14 preclusion in this case would be fair and consistent with  
15 California public policy. Id. at 18.

16 On remand, Emmerson filed a motion for summary judgment,  
17 arguing that the state court did not have subject matter  
18 jurisdiction to enter its order, and that principles of fairness  
19 and public policy warranted against the application of issue  
20 preclusion. Emerson asserted that the Civil Court Department  
21 lacked subject matter jurisdiction of the child abduction and child  
22 endangerment claims which should instead have been raised in the  
23 Family Court Proceeding pending before the Family Court  
24 Department. Emmerson argued that because the Civil Court  
25 Department lacked subject matter jurisdiction, it would be unfair  
26 to apply issue preclusion to the Civil Court Order. Regis opposed  
27 Emmerson's motion and filed yet another motion for summary  
28 judgment.

1           The bankruptcy court held another hearing on June 21, 2011.  
2 After taking the issues under submission, the bankruptcy court  
3 entered a memorandum of decision on June 28, 2011 ("Memorandum").  
4 In it, the court first noted that, as a result of the BAP's  
5 decision, the Memorandum was the law of the case that the five  
6 threshold requirements for issue preclusion had been satisfied.  
7 Consequently, the court reasoned, the only question for decision  
8 was whether the application of issue preclusion in this case would  
9 be fair and consistent with sound public policy and would not  
10 result in injustice.

11           In addressing the parties' arguments, the bankruptcy court  
12 observed that there was no statutory restriction on the power of a  
13 California civil court to enter orders in family law-related  
14 matters. The court reviewed the case law and noted that, at most,  
15 the cases cited by Emmerson "articulate prudential considerations  
16 to be taken into account in management of conflicting and  
17 multiplicitous litigation." The court observed that, at the time  
18 it made its prior decision, it had been "mindful" of the seemingly  
19 inconsistent positions taken by the family and civil court in  
20 their orders. Nevertheless, the bankruptcy court considered that  
21 it would be "unseemly" for it to interfere with the "harmonization  
22 of inconsistent decisions rendered by the same state court." In  
23 this respect, it was significant to the bankruptcy court that  
24 Emmerson could still request review of the Civil Court Order  
25 either by the civil court or, failing relief there, in the state  
26 appellate courts.

27           The bankruptcy court concluded that application of issue  
28 preclusion in this case was indeed consistent with notions of

1 fairness and public policy considerations, and concluded it should  
2 reaffirm its judgment declaring Regis's claim against Emmerson  
3 nondischargeable based on the Civil Court Order. Since the  
4 parties' latest summary judgment motions were not necessary to  
5 trigger the bankruptcy court's analysis on remand, both motions  
6 were denied. The bankruptcy court entered another judgment on  
7 June 28, 2011, determining that the Civil Court Order awarding  
8 Regis \$450,000 was excepted from Emmerson's discharge pursuant to  
9 § 523(a)(6).

10 Emmerson filed a timely notice of appeal on July 1, 2011.

11 **JURISDICTION**

12 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
13 and 157(b)(2)(I). The Panel has jurisdiction under 28 U.S.C.  
14 § 158.

15 **ISSUE**

16 Whether the bankruptcy court abused its discretion in  
17 applying issue preclusion.

18 **STANDARD OF REVIEW**

19 If issue preclusion is available, the decision to apply it is  
20 reviewed for abuse of discretion. Dias v. Elique, 436 F.3d 1125,  
21 1128 (9th Cir. 2006); Lopez v. Emergency Serv. Restoration, Inc.  
22 (In re Lopez), 367 B.R. 99, 108 (9th Cir. BAP 2007).

23 In applying an abuse of discretion test, we first "determine  
24 de novo whether the [bankruptcy] court identified the correct  
25 legal rule to apply to the relief requested." United States v.  
26 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009)(en banc). If the  
27 bankruptcy court identified the correct legal rule, we then  
28 determine whether its "application of the correct legal standard

1 [to the facts] was (1) illogical, (2) implausible, or (3) without  
2 support in inferences that may be drawn from the facts in the  
3 record." Id. (internal quotation marks omitted). If the  
4 bankruptcy court did not identify the correct legal rule, or its  
5 application of the correct legal standard to the facts was  
6 illogical, implausible, or without support in inferences that may  
7 be drawn from the facts in the record, then the bankruptcy court  
8 has abused its discretion. Id.

9 **DISCUSSION**

10 I.

11 It is helpful to note first what the issues are, and are not,  
12 in this appeal.

13 The bankruptcy court determined that, through the application  
14 of preclusion in this action, Regis has shown that, under  
15 § 523(a)(6), the \$450,000 debt from the Civil Court Order was  
16 excepted from discharge in Emmerson's bankruptcy case. The  
17 bankruptcy court's decision was appealed to this Panel. The Panel  
18 remanded the action to the bankruptcy court with the single  
19 instruction that it should review the application of issue  
20 preclusion solely to determine if it was consistent with fairness  
21 and public policy. On remand, the bankruptcy court concluded that  
22 its decision, as affirmed on appeal by the Panel, that the five  
23 threshold elements of issue preclusion were satisfied constituted  
24 the law of the case, something Emmerson has not challenged in  
25 this appeal. Consequently, the only issue presented to the Panel  
26 here is whether, on remand, the bankruptcy court abused its  
27 discretion in deciding that fairness and public policy were not  
28 offended in applying issue preclusion to the Civil Court Order.



1 II.

2 The bankruptcy court addressed both public policy and  
3 fairness in its decision. We discern no abuse of discretion in  
4 its decision.

5 Under California case law, the public policies underlying the  
6 doctrine of issue preclusion must be examined before concluding  
7 that it should be applied in a particular setting. Lucido v.  
8 Super. Ct., 795 P.2d 1223, 1226 (Cal. 1990). Those policies  
9 include:

10 conserving judicial resources and promoting judicial  
11 economy by minimizing repetitive litigation, preventing  
12 inconsistent judgments which undermine the integrity of  
13 the judicial system, and avoiding the harassment of  
14 parties through repeated litigation. (Allen v. McCurry  
15 (1980) 449 U.S. 90, 94 [66 L. Ed. 2d 308, 101 S. Ct.  
411]; Montana v. United States (1979) 440 U.S. 147,  
153-154 [59 L. Ed. 2d 210, 99 S. Ct. 970]; [People v.]  
14 Sims, [651 P.2d 333 (Cal. 1982)]; Syufy Enterprises v.  
15 City of Oakland (2002) 104 Cal. App.4th 869, 878 [128  
Cal. Rptr. 2d 808].)

16 Murray v. Alaska Airlines, 237 P.3d 565, 577 (Cal. 2010);

17 Vandenburg v. Super. Ct., 21 Cal. 4th 815, 829 (1999) (policies  
18 include "to preserve the integrity of the judicial system, promote  
19 judicial economy, and protect litigants from harassment by  
20 vexatious litigation."). The bankruptcy court examined several  
21 different policy considerations before it reached its decision.

22 First, the bankruptcy court observed that policies of  
23 judicial economy and preserving the integrity of the judicial  
24 system are promoted by allowing the state courts to resolve  
25 alleged inconsistencies in their judgments. As the court noted,  
26 in this case, the superior court that entered the two judgments in  
27 question is presumably in a better position to address any  
28 inconsistencies in the orders. Moreover, if after Emmerson asks

1 the state court for relief she remains dissatisfied with its  
2 decision, she may resort to the district court of appeal. The  
3 bankruptcy court reasoned that, under the principle of comity,  
4 this review function should be performed at the state court level.

5 We agree with the bankruptcy court. The comity doctrine  
6 counsels lower federal courts to resist engagement in certain  
7 areas otherwise falling within their jurisdiction. The doctrine  
8 reflects "a proper respect for state functions, a recognition of  
9 the fact that the entire country is made up of a Union of separate  
10 state governments, and a continuance of the belief that the  
11 National Government will fare best if the States and their  
12 institutions are left free to perform their separate functions in  
13 separate ways." Levin v. Commerce Energy, Inc., 130 S. Ct. 2323,  
14 2330 (2010). Comity between state and federal law may be  
15 considered in examining the public policy implications of issue  
16 preclusion. Murray, 237 P.3d at 577.

17 The importance of comity with state law is heightened under  
18 the facts of this case because Emmerson has asked the bankruptcy  
19 court to rule in a dispute implicating the state law of domestic  
20 relations. The Supreme Court has historically cautioned against  
21 involvement of the federal courts in the relations of parent and  
22 child:

23 One of the principal areas in which this Court has  
24 customarily declined to intervene is the realm of  
25 domestic relations. Long ago we observed that "[t]he  
26 whole subject of the domestic relations of husband and  
27 wife, parent and child, belongs to the laws of the  
28 States and not to the laws of the United States." In re  
Burrus, 136 U.S. 586, 593, 34 L. Ed. 500, 10 S. Ct. 850  
(1890). See also Mansell v. Mansell, 490 U.S. 581, 587,  
104 L. Ed. 2d 675, 109 S. Ct. 2023 (1989) ("[D]omestic  
relations are preeminently matters of state law"); Moore  
v. Sims, 442 U.S. 415, 435, 60 L. Ed. 2d 994, 99 S. Ct.

1 2371 (1979) ("Family relations are a traditional area of  
2 state concern").

3 Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12-13 (2004).

4 The damages awarded in the Civil Court Order were based on  
5 "loss of [Regis's] relationship with [the Child] for a period of  
6 eight years and extreme and severe emotional distress caused by  
7 that loss." Civil Court Order at 7. Although the domestic  
8 relations exception is not directly applicable here because the  
9 Civil Court Order does not affect a divorce, alimony, or child  
10 support, Ankenbrandt v. Richards, 504 U.S. 689, 703 (1992), the  
11 longstanding policy of the federal courts to avoid entanglement in  
12 disputes related to the parent-child relationship is clearly  
13 implicated, something that reinforces the bankruptcy court's  
14 decision to apply the doctrine of comity.

15 The second area of public policy addressed by the bankruptcy  
16 court relates to Emmerson's argument that the Superior Court Civil  
17 Court Department lacked subject matter jurisdiction to enter the  
18 Civil Court Order because "family law issues can not be addressed  
19 or adjudicated in civil courts and that when a family law case is  
20 pending, the civil court lacks subject matter jurisdiction because  
21 the family court already has subject matter jurisdiction."  
22 Emmerson Op. Br. at 5. The bankruptcy court considered this  
23 argument but rejected it for three reasons: (1) there is no  
24 statutory grounds for restricting the subject matter jurisdiction  
25 of the civil court; (2) Emmerson's argument is based solely on  
26 case law which does not establish that the civil court lacked  
27 jurisdiction and, at most, suggests that prudential considerations  
28 be taken into account in managing conflicting litigation; and

1 (3) sound public policy and fairness counsel in favor of letting  
2 California courts resolve questions of their own jurisdiction over  
3 questions of California law.

4 The bankruptcy court's third reason for its decision warrants  
5 our first comment, because it is supported by a published,  
6 precedential opinion of the Panel. Emmerson commenced the Civil  
7 Court Proceeding for partition of a house jointly owned by her and  
8 Regis. Regis asserted a cross-claim seeking, among other relief,  
9 damages for violation of Cal. Civ. Code § 49. Emmerson answered  
10 the cross-claim, but did not raise the affirmative defense of lack  
11 of subject matter jurisdiction. Emmerson then failed to appear at  
12 trial, and the state court ultimately entered a judgment in favor  
13 of Regis and against her. Emmerson did not appeal. In other  
14 words, Emmerson never raised the jurisdiction issue in the state  
15 court, either in the superior court or in an appeal.

16 In Audre, Inc. v. Casey (In re Audre, Inc.), 216 B.R. 19, 28  
17 (9th Cir. BAP 1997), the Panel examined the claim of a creditor  
18 that asked the bankruptcy court to consider the subject matter  
19 jurisdiction of a California state court judgment. Another  
20 creditor challenged the claim on the grounds that it was based on  
21 a judgment by the family court that did not have jurisdiction over  
22 tort claims. The Panel ruled, "neither [plaintiff] raised lack of  
23 jurisdiction issues at the Family Court trial or in their trial  
24 and post-trial briefs. They should not be allowed to do so for the  
25 first time in the bankruptcy court. The appropriate place for  
26 such argument is the California Court of Appeals." Id. In short,  
27 not only does Audre stand for the proposition that the California  
28 Court of Appeals is the appropriate place for determining the

1 subject matter jurisdiction of a judgment that is based on state  
2 law, but failure to raise the jurisdictional argument in the state  
3 proceeding, as in this case, prevents the jurisdiction argument  
4 from being considered by the bankruptcy court. See generally  
5 Greener v. Workers' Comp. Appeals Bd., 6 Cal. 4th 1028, 1036  
6 (1993) (challenge to subject matter jurisdiction "is properly  
7 brought by demurrer to the complaint.").

8 The bankruptcy court was correct in its conclusion that  
9 Emmerson had access to the civil court and state appellate courts  
10 to seek relief from the Civil Court Order. If Emmerson is correct  
11 that the civil court lacked subject matter jurisdiction, Cal. Code  
12 Civ. Proc. 473(d)(2011) provides that the state court may, at any  
13 time,<sup>5</sup> set aside that order if it is void on its face. Talley v.  
14 Valuation Counselors Grp., Inc., 191 Cal. App. 4th 132, 146 (Cal.  
15 Ct. App. 2010). An order is void on its face if the court  
16 entering the order did not have subject matter jurisdiction.  
17 Sindler v. Brennan, 105 Cal. App. 4th 1350, 1353 (Cal. Ct. App.  
18 2003).

19 Further, as the bankruptcy court correctly observed, if she  
20 does not get the relief from judgment she seeks in the superior  
21 court, Emmerson still has access to the state appellate courts  
22 under Cal. Code Civ. Proc. §§ 100 ("Any party shall have the right  
23 to appeal any judgment or final order consistent with the law  
24 governing appeals."); 904.1 (appeal from an order or judgment of

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25  
26 <sup>5</sup> Cal. Code Civ. Proc. § 473(b) provides that a party seeking  
27 relief from judgment on the grounds of mistake, inadvertence,  
28 surprise, or excusable neglect must bring a motion within six  
months of entry of the order. However, a party seeking to set  
aside a void order or judgment under Cal. Code Civ. Proc. § 473(b)  
has no time limitation.

1 the superior court is to the district court of appeals). Emmerson  
2 is free at either the superior court or court of appeals to pursue  
3 her argument that the civil court division did not have subject  
4 matter jurisdiction: "Lack of subject matter jurisdiction is not  
5 waived by failure to demur, but can be attacked by motion or  
6 suggestion at any time during trial or on appeal, or by  
7 application for an extraordinary writ, and even by collateral  
8 attack in most cases[.]" Great W. Casinos v. Morongo Band of  
9 Mission Indians, 74 Cal. App.4th 1407, 1418-19 (Cal. Ct. App.  
10 1999).

11 In short, the bankruptcy court did not err in its legal  
12 conclusion that Emmerson had access to the state superior and  
13 appellate courts to seek redress from inconsistencies in the two  
14 orders.

15 The bankruptcy court was also correct in its conclusion that  
16 there were no statutory grounds for denying the jurisdiction of  
17 the civil court to enter the Civil Court Order. A California  
18 superior court has subject matter jurisdiction over most original  
19 "causes." CAL. CONST. ART VI § 10.<sup>6</sup> The statutory grant of  
20 jurisdiction to the superior court is in Cal. Code Civ. Proc.

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21 <sup>6</sup> **CAL. CONST. ART. VI § 10. Original jurisdiction**

22 The Supreme Court, courts of appeal, superior courts,  
23 and their judges have original jurisdiction in habeas  
24 corpus proceedings. Those courts also have original  
25 jurisdiction in proceedings for extraordinary relief in  
26 the nature of mandamus, certiorari, and prohibition. The  
27 appellate division of the superior court has original  
28 jurisdiction in proceedings for extraordinary relief in  
the nature of mandamus, certiorari, and prohibition  
directed to the superior court in causes subject to its  
appellate jurisdiction.

Superior courts have original jurisdiction in all  
other causes.

1 § 410.10: "A court of this state [defined in the Constitution as  
2 the Supreme Court, the courts of appeals, and the superior court]  
3 may exercise jurisdiction on any basis not inconsistent with the  
4 Constitution of this state or of the United States." It is  
5 important to recognize that this grant of jurisdiction is to the  
6 superior court as a whole:

7 In a multi-department superior court . . . Jurisdiction  
8 is vested by the constitution in the court, not a  
9 particular judge or department . . . Whether sitting  
10 separately or together, the judges hold but one and the  
11 same court. The division into departments is for the  
12 convenient dispatch of business.

13 People v. Stuyvesant Ins. Co., 261 Cal. App. 2d 773, 785 (Cal. Ct.  
14 App. 1968).

15 Two of the cases relied on by Emmerson acknowledge that the  
16 civil court has jurisdiction. Burkle v. Burkle, 144 Cal. App. 4th  
17 387, 395 (Cal. Ct. App. 2007); Askew v. Askew, 22 Cal. App. 4th  
18 942, 956 (Cal. Ct. App. 1994). However, Emmerson alleges those  
19 cases go on to say that, where there is an open family law case,  
20 only the family court has subject matter jurisdiction over all  
21 domestic matters, and the court lacks jurisdiction over a  
22 subsequent civil action in a family law matter.

23 As noted in Stuyvesant Ins. Co., the jurisdictional grant  
24 remains in the court as a whole, and only divests other  
25 departments of jurisdiction to prevent interference with the  
26 exercise of power by the assigned department:

27 [W]here a proceeding has been duly assigned for hearing  
28 and determination to one department of the superior  
court by the presiding judge of said court in conformity  
with the rules thereof, and the proceeding so assigned  
has not been finally disposed of therein or legally  
removed therefrom, it is beyond the jurisdictional  
authority of another department of the same court to

1           interfere with the exercise of the power of the  
2           department to which the proceeding is so assigned.

3   261 Cal. App.2d at 786. We conclude that the cases cited by  
4   Emmerson are consistent with this restricted jurisdiction  
5   principle. Each of the cases holds that a family court has  
6   jurisdiction over the matters before it, and would oust the  
7   jurisdiction of any subsequently filed civil suit over those  
8   specific matters. However, pendency of the family court action  
9   does not oust jurisdiction over matters that were not presented in  
10  the family court or necessary to carry out its work.

11           In Askew v. Askew, the Superior Court Family Court Department  
12  characterized five properties as community property. One spouse  
13  then commenced an action in the Superior Court Civil Court  
14  Department challenging that characterization. The appellate court  
15  ruled that "the civil trial court in effect usurped the power and  
16  obligation of the family law court to determine the character of  
17  the five properties." Askew, 22 Cal. App. 4th at 956.

18           In Burkle v. Burkle, the family court entered an interim  
19  support order. One spouse then pursued a civil proceeding to  
20  enforce that support order. The appellate court ruled that "when  
21  a dissolution proceeding is pending, neither party to that  
22  proceeding has the right to file a separate civil action to  
23  enforce an interim support order issued in the dissolution  
24  proceeding." Burkle, 144 Cal. App. 4th at 395. The other cases  
25  cited by Emmerson either represent that the jurisdiction of the  
26  family court restricts the jurisdiction of subsequent civil  
27  proceedings on a narrow range of matters, or that the civil court  
28  should not consider certain types of family law related cases.



1           In short, as shown by the very cases cited by Emmerson, a  
2 family court's exercise of the jurisdiction of the superior court  
3 does not divest other departments, such as the civil court, of  
4 subject matter jurisdiction except to the extent it is necessary  
5 to carry out the family court's work. Emmerson's argument that  
6 the exercise of jurisdiction by the family court completely  
7 divests the other departments of jurisdiction over family law  
8 matters in general lacks merit. The cited cases are also  
9 consistent with the bankruptcy court's determination that "at  
10 most, the cases articulate prudential considerations to be taken  
11 into account in management of conflicting and multiplicitous  
12 litigation." Memorandum at 5.

13           As to the "fairness" prong of public policy, the bankruptcy  
14 court acknowledged that the two rulings of the superior court were  
15 arguably inconsistent, of which the bankruptcy court was aware at  
16 the time of its original ruling. Nevertheless, it held that "upon  
17 mature reflection on remand, this court remains persuaded that the  
18 interests of fairness, sound public policy, and avoiding injustice  
19 are best served by imposing issue preclusion in this situation."  
20 Memorandum at 3. Again, that Emmerson still has access to the  
21 state superior and appellate courts to seek redress from any  
22 alleged inconsistencies in the two orders weighs heavily in favor  
23 of the fairness of application of issue preclusion in this case.

24           All things considered, we conclude that the bankruptcy court  
25 fulfilled the instructions of the Panel on remand, giving full  
26 consideration to whether applying issue preclusion would be fair  
27 to Emmerson under these facts, whether it would be consistent with  
28 sound public policy, and whether injustice would result if the

1 Civil Court Order were given preclusive effect. The bankruptcy  
2 court applied the correct law to the facts of this case, and its  
3 conclusions were not illogical, implausible, or without support in  
4 inferences that may be drawn from the facts in the record. The  
5 bankruptcy court did not abuse its discretion.

6 **CONCLUSION**

7 We AFFIRM the judgment of the bankruptcy court.  
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