FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHRISTINE L. BAILEY, *Plaintiff-Appellant*, v. DEREK MACFARLAND, in his capacity as successor-in-interest to Michael MacFarland; THE PUBLIC GROUP, LLC, *Defendants-Appellees.*	No. 19-17143 D.C. No. 2:15-cv-01725-TLN-DB OPINION

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Argued and Submitted April 15, 2021
San Francisco, California

Filed July 28, 2021

Before: William A. Fletcher, Johnnie B. Rawlinson, and Bridget S. Bade, Circuit Judges.

Opinion by Judge W. Fletcher

SUMMARY*

Diversity Jurisdiction/Domestic Relations Exception

The panel affirmed the district court's dismissal, for lack of subject matter jurisdiction, of plaintiff's diversity suit against the Public Group and Derek MacFarland, in his capacity as successor-in-interest to Michael MacFarland, plaintiff's late husband.

Plaintiff divorced Michael MacFarland in family court. This case concerns a dispute over assets allegedly owned by the couple during their marriage. Plaintiff specifically alleged collusion between Michael MacFarland and the Public Group, founded by MacFarland's son, Derek, to prevent plaintiff from being compensated for the couple's investment in the company.

The panel held that because plaintiff was seeking modification of her divorce decree, the domestic relations exception to diversity jurisdiction applied. The panel determined that plaintiff wanted the federal court to determine whether certain assets were acquired and held by MacFarland during the marriage and then decide what share of them should have been apportioned to plaintiff upon the parties' separation. Plaintiff's requested remedy thus put this case at the core of the domestic relations exception. The eight claims plaintiff raised against the Public Group also fell within the exception. Plaintiff's allegations against the Public Group turned on MacFarland's purported role as a major

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

owner and agent of Public Group. A plaintiff may not evade the domestic relations exception simply by filing her diversity case against a corporate entity associated with her ex-spouse.

COUNSEL

Carole M. Pope (argued), Law Office of Carole M. Pope, Reno, Nevada, for Plaintiff-Appellant.

Thomas S. Knox (argued) and David P.E. Burkett, Knox Lemmon & Anapolsky LLP, Gold River, California, for Defendants-Appellees.

OPINION

W. FLETCHER, Circuit Judge:

Christine L. Bailey appeals the dismissal of her diversity suit against Derek MacFarland, the son of her former husband, and the Public Group, a Utah-based LLC, for lack of subject matter jurisdiction. The district court held that her claims fall within the domestic relations exception to federal diversity jurisdiction. We affirm.

I. Factual and Procedural Background

Christine Bailey and Michael MacFarland ("MacFarland") were married in Hawaii in 1994. They divorced in 2012 in the family court of the Third Circuit of Hawaii. This case concerns a dispute over assets allegedly owned by the couple during their marriage. The narrative

recounted below is largely based on allegations in Bailey's complaint which, for present purposes, we assume to be true.

The Public Group is a Utah Limited Liability Company founded by MacFarland's son, Derek MacFarland. According to the complaint, in 2004, Bailey and MacFarland loaned $100,000 to the Public Group. Bailey and MacFarland also invested approximately $3 million in the company at about the same time. As of 2005, the couple jointly held a 24% ownership interest in the company. As of 2008, they held a 10% ownership interest. Shortly before the divorce, MacFarland told Bailey that the Public Group was "doing well" and had a then-current value of over $20 million.

In late 2011, Bailey and MacFarland signed an Agreement in Contemplation of Divorce. Bailey had "confirmation" that their marital property included an interest in the Public Group, so she insisted on a clause in the Agreement dividing that interest. In Paragraph 10 of the Agreement, the couple agreed to "split equally any income or distributions made to either of the parties associated with their prior business dealings including from the Public Group, and the two subsidiaries: Public Surplus and Public Purchase and their predecessors or successors as they may occur." However, according to the complaint, MacFarland stated that he viewed Paragraph 10 as "meaningless," based on his contention that he had no ownership interest in the Public Group.

The couple's divorce decree incorporated the Agreement in Contemplation of Divorce. Inter alia, the Agreement provided: "The Family Court shall have continuing

jurisdiction over the parties and their property to enforce and implement the provisions of this Agreement."

In 2013, after the divorce decree had been entered, the Public Group's general counsel wrote a letter to Bailey's counsel stating that MacFarland had held an ownership interest in the company in 2008 and in "intermittent prior years," but not in 2009 or subsequent years. In early 2015, MacFarland filed a declaration in family court stating that he had no ownership in the Public Group and no right to distributions from the company. He stated that he had loaned $100,000 to Derek MacFarland but that this sum had been fully repaid by 2009. He also claimed that he had never had "any actual ownership interest in The Public Group in exchange for loaning Derek the money or any other reason" and had "no percentage interest in The Public Group's profit, loss or capital."

On August 13, 2015, Bailey filed a diversity suit in the Eastern District of California, naming MacFarland and the Public Group as defendants. At the time of filing, Bailey was a citizen of Hawaii. MacFarland was a citizen of California. The Public Group was a citizen of Utah because all its members were citizens of Utah.

In her Second Amended Complaint, Bailey alleged collusion between MacFarland and the Public Group to prevent Bailey from being compensated for the couple's $3 million investment in the company. She alleged a breach of contract claim and a claim for breach of the covenant of good faith and fair dealing against MacFarland. She also alleged eight claims against the Public Group: fraud, constructive fraud, breach of fiduciary duty, conspiracy, fraudulent transfer of assets without consideration, attorney's

fees, accounting, and unjust enrichment. The Public Group moved to dismiss, arguing that the district court lacked subject matter jurisdiction under the domestic relations exception to diversity jurisdiction.

On September 24, 2019, the district court dismissed Bailey's complaint without leave to amend, citing the domestic relations exception. The court held that Bailey's allegations of fraud and conspiracy were "inextricably intertwined with the parties' divorce proceeding" and that she sought "enforcement of and possibly alteration of her divorce decree." In the alternative, the court held that, even if it had jurisdiction over the matter, it should abstain because the state court was in a better position to adjudicate the dispute. Bailey timely appealed to this court.

On a limited remand to address the fact that MacFarland had died in August 2018, the district court substituted his son Derek MacFarland as his successor-in-interest.

II. Discussion

We review de novo a district court's dismissal of a complaint for lack of subject matter jurisdiction. *K2 Am. Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024, 1027 (9th Cir. 2011).

In the mid-nineteenth century, the Supreme Court announced an exception to diversity jurisdiction for cases implicating domestic relations. *See Barber v. Barber*, 62 U.S. 582, 591–97 (1858). For over a century, the rationale and precise scope of the exception were unclear.

In *Ankenbrandt v. Richards*, 504 U.S. 689 (1992), the Supreme Court reaffirmed the exception based on long-standing Congressional acquiescence. Carol Ankenbrandt had brought a tort action against her former husband, a citizen of another state, alleging that he and his new partner had sexually and physically abused his and Carol's children. *Id.* at 691. The district court had dismissed the case, citing the domestic relations exception, and the court of appeals had affirmed. The Court reversed, holding that the exception divests the federal court of diversity jurisdiction only in "cases involving the issuance of a divorce, alimony, or child custody decree." *Id.* at 704. It explained that cases involving these decrees "not infrequently involve[] retention of jurisdiction by the court and deployment of social workers to monitor compliance." *Id.* at 703–04. The Court wrote, "state courts are more eminently suited to work of this type than are federal courts, which lack the close association with state and local government organizations dedicated to handling issues that arise out of conflicts over divorce, alimony, and child custody decrees." *Id.* at 704. Because Ankenbrandt did not seek issuance of a decree, the exception did not apply, and the federal courts had diversity jurisdiction. *Id.*

A decade later, the Supreme Court emphasized that the exception "covers only 'a narrow range of domestic relations issues.'" *Marshall v. Marshall*, 547 U.S. 293, 307 (2006) (quoting *Ankenbrandt*, 504 U.S. at 701). Rather than applying broadly to cases implicating "the subject of domestic relations," the exception applies only to cases implicating "particular status-related functions that fall within state power and competence." 13E Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3609.1 (3d ed. & Supp. 2020). The exception preserves jurisdiction for cases within the competency of federal courts while, at the

same time, preventing a party from making an end-run around a state-court status determination. *See, e.g.*, *McLaughlin v. Cotner*, 193 F.3d 410, 414 (6th Cir. 1999).

We have held that the domestic relations exception does not apply in federal question cases. *See Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 947 (9th Cir. 2008). But we have not otherwise had occasion to discuss the exception's proper scope after *Ankenbrandt*. We do so today.

Under *Ankenbrandt*, we ask whether the plaintiff seeks an issuance or modification of a divorce, alimony, or child-custody decree. While *Ankenbrandt* discussed the "issuance" of a decree, we agree with the lower courts that have unanimously concluded that the Court's reasoning—and its emphasis on state court retention of jurisdiction—necessarily means the exception also applies to the modification of an existing decree. *See*, *e.g.*, *Matusow v. Trans-County Title Agency, LLC*, 545 F.3d 241, 246 (3d Cir. 2008) ("[M]odification of a divorce decree is analogous to the issuance of a divorce decree.").

A plaintiff may not evade the exception through artful pleading. We "look to the reality of what is going on" to ensure that the plaintiff is not "cloak[ing]" a prayer for relief on the decree "in the trappings of another type of claim." *Irish v. Irish*, 842 F.3d 736, 742 (1st Cir. 2016) (quotations and citations omitted). A suit concerning modification of a decree cannot be "disguise[d]" as a mere "claim for damages based on a breach of contract." *McLaughlin*, 193 F.3d at 413.

For example, in *Chevalier v. Estate of Barnhart*, 803 F.3d 789, 798 (6th Cir. 2015), the Sixth Circuit held that the domestic relations exception did not apply because the

plaintiff was asking for "repayment for past-due loans and a legal interest" in a property, rather than the issuance or alteration of a divorce decree. Indeed, in *Chevalier*, no divorce decree had even issued. Further, in *Matusow*, 545 F.3d at 245–46, the Third Circuit held that the exception did not apply to a quiet title claim brought against a third party, with respect to property subject to a divorce decree, because the plaintiff sought neither to alter, nor to contest the validity of, her divorce decree.

Particularly instructive is *Irish*, in which the First Circuit held that the exception applied. Dawn Irish sued her former husband, Craig, alleging that, in an early draft of her divorce decree, she was to receive 20% of his interest in a company. 842 F.3d at 738. Craig had persuaded Dawn that his interest in the company was 120 equity shares, so she agreed to provide in the decree that she would receive 24 shares—20% of his shares. *Id.* When the company was acquired two years after the divorce, Craig received a $21.6 million pay-out in addition to his equity share, which Dawn alleged was part of a "pre-divorce 'side deal'" he had reached with his company. *Id.* at 738–39. The First Circuit reasoned that Dawn was essentially asking the federal court to modify the decree:

> Dawn does not seek to compel a payment actually due under her agreement. And she claims she does not seek rescission, even though the basis of her charge is also a defect at contract formation. Disjointedly, she alleges she was induced to enter a deal for which she would not have bargained, but styles her requested remedy as the benefit of what she bargained for. Yet, since the agreement is silent as to the proper division of

> the assets at issue, rather than effectuate the parties' manifest intent, the federal court is asked to decide upon an equitable distribution of marital property in the first instance.
>
> . . . Specifically, though her complaint is drafted to sound in contract law . . . , Dawn's suit calls upon the federal court to determine whether certain assets were acquired and held by Craig during the marriage and then to decide what share of them should have been apportioned to Dawn upon the parties' separation.

Id. at 743.

For similar reasons, the domestic relations exception applies in this case. Under her divorce decree, Bailey claims half of the equity that she contends the couple owned in the Public Group. Bailey insists in her brief that "[s]he is not requesting . . . that her Contract with Mr. MacFarland be altered." That may be true, but Bailey is seeking a modification of the divorce decree under which, as it now stands, she receives nothing from the couple's investment in the Public Group. She claims that MacFarland made their investment in the Public Group "disappear" and thereby fraudulently concealed assets that belonged to both of them. She wants the federal court to "determine whether certain assets were acquired and held by [MacFarland] during the marriage and then decide what share of them should have been apportioned to [Bailey] upon the parties' separation." *Irish*, 842 F.3d at 743. Bailey's requested remedy thus puts this case at the core of the domestic relations exception.

The eight claims Bailey raises against the Public Group also fall within the exception. Bailey's allegations against the Public Group turn on MacFarland's purported role as a "major owner and agent of Public Group." A plaintiff may not evade the domestic relations exception simply by filing her diversity case against a corporate entity associated with her ex-spouse.

Because Bailey seeks modification of her divorce decree, the domestic relations exception applies. State court is the appropriate forum for interpreting the decree to determine whether MacFarland is in breach. State court is also the appropriate forum for determining whether the decree should be modified on the ground that, at the time of the divorce, MacFarland fraudulently misrepresented the couple's ownership stake in the Public Group.

Heeding the Supreme Court's admonition in *Ankenbrandt* and *Marshall* that the domestic relations exception is narrow, we decline to adopt the broad version of the exception embraced by some of our sister circuits. In *Friedlander v. Friedlander*, 149 F.3d 739, 740 (7th Cir. 1998), the Seventh Circuit held that the exception divests jurisdiction not only from cases implicating "distinctive forms of relief" such as the decrees in *Ankenbrandt*, but also from a "penumbra" of cases implicating "ancillary proceedings . . . that state law would require be litigated as a tail to the original domestic relations proceeding." In *Wallace v. Wallace*, 736 F.3d 764, 767 (8th Cir. 2013), the Eighth Circuit held, even more expansively, that the domestic relations exception divested jurisdiction over a state-law identity theft claim between ex-spouses because the claim would require considering the same underlying conduct that had been considered by the divorce court. Because the judgment might order one ex-

spouse to pay assets to the other on the basis of the same conduct, the Eighth Circuit held that the case was "inextricably intertwined" with the state proceeding. *Id.* (quoting *Kahn v. Kahn*, 21 F.3d 859, 861–62 (8th Cir. 1994)).

Conclusion

The domestic relations exception squarely forecloses diversity jurisdiction over Bailey's claims against MacFarland and the Public Group. The district court correctly dismissed all claims.

AFFIRMED.