INTRODUCTION

For over a century the diversity jurisdiction of federal courts has been limited in cases dealing with domestic relations issues. The “domestic relations exception” began as dicta in the 1859 United States Supreme Court case of Barber v. Barber, which stated that state courts are better situated than federal courts to handle domestic relations issues. However, the boundaries of the domestic relations exception were not clearly defined by the Court. As a result, the range of cases to which the exception applied varied from jurisdiction to jurisdiction.

In 1992, the United States Supreme Court reaffirmed the validity of the domestic relations exception in Ankenbrandt v. Richards. The Court announced that the exception was to be narrowly interpreted to apply only to cases involving divorce, alimony, or child custody issues.

Shortly after the Court decided Ankenbrandt, the United States Court of Appeals for the Eighth Circuit in Lannan v. Maul faced the issue of whether the domestic relations exception applied to a suit for the enforcement of the provisions of a divorce decree. Earlier, the United States District Court for the District of Nebraska held that the case fell within the domestic relations exception, and thus the district court dismissed the case for lack of subject matter jurisdiction. On appeal, the Eighth Circuit applied the Ankenbrandt decision, holding that the domestic relations exception did not preclude the district court from hearing the case.

This Note will explore the origins of the domestic relations exception and its development, as well as the related issue of federal court jurisdiction.

4. See infra notes 92-107 and accompanying text.
6. Id. at 2215.
7. 979 F.2d 627 (8th Cir. 1992).
9. Id. at 629-30.
10. Id. at 631.
abstention in domestic relations cases. This Note will then discuss the current status of both the domestic relations exception and the abstention doctrine. Additionally, this Note will address the effect of the United States Supreme Court's most recent guidelines concerning the domestic relations exception on the Eighth Circuit's decision in *Lannan v. Maul*. Finally, this Note will conclude that the Eighth Circuit erred in its decision in *Lannan*.

**FACTS AND HOLDING**

In 1986, Thomas and Kathleen Brewer were divorced in Platte County, Nebraska. During the time of the marriage, one child, Ashley, was born to the Brewers. The divorce decree required Thomas Brewer to pay five hundred dollars per month in child support until Ashley reached the age of majority. In order to provide for Ashley in the event that he died before she reached the age of majority, Thomas was required to maintain a term life insurance policy naming Ashley as beneficiary. This life insurance policy was to be valued for the total amount of child support payments Ashley would have received up to her nineteenth birthday but for Thomas' death.

Thomas established the life insurance policy naming Ashley as beneficiary pursuant to the divorce decree. Just one year later, Brewer created the Thomas Eugene Brewer Testamentary Trust. The Trust replaced Ashley as the beneficiary of the insurance policy. Thomas then executed a will providing for the Trustee to pay the clerk...
of the Platte County District Court the child support ordered in the divorce decree.  

In 1990, Thomas died, and Thomas Maul was appointed to be the personal representative of the estate. Probate proceedings were initiated in the Platte County Probate Court. On behalf of Ashley, Kathleen Brewer filed a claim seeking the proceeds of the life insurance policy in accordance with the property settlement. Maul not only disallowed her claim, but also revived the divorce action between Thomas and Kathleen Brewer. Maul brought the action in the Platte County District Court in order to obtain a credit against Thomas' child support obligation for social security benefits that had been paid to Ashley. The court found that the social security payments acted as a substitute for child support and allowed modification of the child support order. Kathleen appealed to the Nebraska Supreme Court.

By this time, the insurance companies had made payment to the named beneficiary, the Thomas Eugene Brewer Testamentary Trust. John Lannan, who was appointed as Ashley's conservator, brought a diversity action in the United States District Court for the District of Nebraska against Maul and Wayne Grachek, the appointed trustee of the Testamentary Trust. The diversity action sought the immediate payment of $72,500, pursuant to the divorce decree. Applying the domestic relations exception, the Court dismissed the action for lack of subject matter jurisdiction.

23. *Id.* The Will, dated October 19, 1987, instructed that Thomas Brewer's estate, including the life insurance policies, be placed in the Thomas Eugene Brewer Testamentary Trust, and (1) that the trust pay the child support ordered by the divorce decree; (2) that Ashley be a contingent residual beneficiary, wherein one half of the trust would be distributed to her on her 21st birthday and the remainder would be distributed on her 25th birthday; and (3) in the event Ashley did not survive her 25th birthday, the trust would be paid to the American Cancer Society. Brief for Appellant at 3-4, *Lannan v. Maul*, 979 F.2d 627 (8th Cir. 1992) (No. 91-3249).


25. *Id.*

26. *Id.*

27. *Id.*


29. *Lannan*, 979 F.2d at 629.

30. *Id.*

31. *Id.*; See Brief for Appellant at 2, *Lannan v. Maul*, 979 F.2d 627 (8th Cir. 1992) (No. 91-3249) The Thomas Eugene Brewer Testamentary Trust was the named beneficiary of two term life insurance policies. The first was issued by the Jackson National Life Insurance Company in the amount of $100,000. The second was issued by the Guardian Life Insurance Company of America Policy for an unspecified amount. *Lannan*, 979 F.2d at 629.

32. *Lannan*, 979 F.2d at 629.

33. *Id.*

34. *Id.* at 628.
The case was appealed to the United States Court of Appeals for the Eighth Circuit. On appeal, Lannan argued that the provision requiring Thomas Brewer to maintain a life insurance policy naming his daughter as beneficiary created a contractual obligation. Thus, Lannan argued that the claim brought in district court was a third party beneficiary claim and not subject to the domestic relations exception.

Maul and Grachek argued that the life insurance provision was security for the payment of child support. They contended that the district court had correctly dismissed the case under the domestic relations exception because child support was directly at issue in the case.

The Eighth Circuit held the case in abeyance pending the outcome of the United States Supreme Court's decision in Ankenbrandt v. Richard. Applying the Ankenbrandt decision, the Eighth Circuit held that a contract case did not fall into the categories of divorce, alimony, or child custody. Therefore, the court held that the domestic relations exception did not limit federal jurisdiction in this case.

The Eighth Circuit also addressed the district court's decision to abstain due to pending state actions involving issues closely related to those in the case at bar. The Eighth Circuit held that while the issue pending in state court of whether social security payments could be credited towards child support obligations did fall under the domestic relations exception, this issue had no substantial relationship to the issues at bar. The court also addressed the situations referred to in Ankenbrandt in which abstention would be appropriate. However, the Eighth Circuit found that Lannan would not qualify under this criteria. The case was reversed and remanded back to the district court for further proceedings.

35. Id.
36. Id. at 630.
37. See id.
38. Id. at 630.
39. Id.
41. Lannan, 979 F.2d at 631.
42. Id.
43. Id.
44. Id.
45. Id. at 632.
46. Id. at 632. Both parties have submitted motions for summary judgment to the district court, but at the time this article was published no ruling had been made. Id.
BACKGROUND

1. The Origins of the Domestic Relations Exception

Neither the United States Constitution nor the United States Code expressly limits federal court jurisdiction in domestic relations matters.\(^{47}\) Federal courts are granted jurisdiction under Article III, section 2 of the United States Constitution for "all Cases, in Law and Equity, arising . . . between Citizens of different states."\(^{48}\)

While the Constitution grants federal jurisdiction, the power to regulate that jurisdiction is given to Congress.\(^{49}\) In Palmore v. United States,\(^{50}\) the United States Supreme Court held that Congress is not required to invest the lower federal courts with all the jurisdiction that Article III allows.\(^{51}\) Instead, Congress can grant jurisdiction - either limited, concurrent, or exclusive - or withhold jurisdiction as it deems necessary.\(^{52}\)

While Congress has the power to limit the jurisdiction of federal courts, the domestic relations exception is not the express product of congressional action.\(^{53}\) On the contrary, Title 28 of the United States Code makes no reference to a limitation on diversity jurisdiction due to the nature of the case.\(^{54}\) Provided that both diversity of citizenship and amount in controversy are met, section 1332 allows federal courts to have original jurisdiction.\(^{55}\)

The domestic relations exception was created by judicial interpretation.\(^{56}\) This exception was articulated first by the United States Supreme Court in Barber v. Barber.\(^{57}\) In Barber, a suit in equity was brought by a woman against her former husband pursuant to diversity jurisdiction.\(^{58}\) A New York state court had previously granted a divorce *a mensa et thoro* and awarded the wife alimony, but the hus-

\(^{48}\) U.S. CONST. art. III, § 2, cl. 1. Art. III, § 2, cl. 1 provides in relevant part: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; . . . to controversies between two or more States; between a State and Citizens of another State; between Citizens of different States.
\(^{49}\) U.S. CONST. art. III, § 1. Art. III, § 1 provides: "The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."
\(^{50}\) 411 U.S. 389 (1973).
\(^{52}\) Cary v. Curtis, 44 U.S. 235, 244, (3 How. 265, 276) (1845).
\(^{53}\) 28 U.S.C § 1332 (1989). Section 1332 grants jurisdiction to federal courts for cases involving diversity of citizenship. Id.
\(^{55}\) Id. § 1332(a).
\(^{56}\) Id.
\(^{57}\) 62 U.S. 226 (21 How. 582) (1859).
band moved to Wisconsin to escape this obligation. Subsequently, the husband filed for divorce in Wisconsin on the grounds of abandonment and failed to disclose the New York decree to the Wisconsin court. When the wife filed suit in the United States District Court for the District of Wisconsin to enforce the New York decree, the husband claimed the federal court lacked jurisdiction. The District Court allowed jurisdiction and found for the wife.

On appeal to the United States Supreme Court, the husband again argued that the federal courts lacked jurisdiction over cases of divorce and alimony. The husband made two arguments to support this claim. First, although the New York decree a mensa et thoro allowed them to live separately, the marriage still existed. Therefore, the husband and wife would have been considered one person and could not have separate domiciles. Second, a federal court in equity has no jurisdiction to enforce an alimony decree.

The Court held that “[w]e disclaim altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony.” The Court recognized the husband's first argument, that normally a wife's domicile is the domicile of her husband because of her legal duty “to follow and dwell with the husband wherever he goes.” However, once the husband has committed an act that would entitle the wife to a dissolution, she no longer has the legal obligation to “follow and dwell” with him. Thus, she is free to establish her own domicile.

In addressing the second argument, the Court held that a court in equity never has jurisdiction over alimony. The Court held that when a court of competent jurisdiction has ordered payment of alimony but is unable to enforce the decree, a court of equity can interfere to “prevent the decree from being defeated by fraud.” The Court limited this grant of jurisdiction to cases in which the alimony had

59. The Court defined a mensa et thoro as a kind of divorce which is a separation of the parties by law, rather than a divorce. Id. at 226-27.
60. Barber, 62 U.S. at 228.
61. Id. at 227-28.
62. Id. at 228.
63. Id. The case was on appeal to the United States Supreme Court from the District Court for the District of Wisconsin. Id.
64. See infra notes 66-68 and accompanying text.
66. Id.
67. See id. at 228.
68. Id. at 227.
69. Id. at 230.
70. Id.
71. Id.
72. Id. at 229.
73. Id.
already been decreed and no appeal was pending. The Court concluded that because the wife was not asking the Court for an original grant of alimony, the federal courts had jurisdiction.

The domestic relations exception was expanded in a number of cases following Barber. One such case, In re Burrus, involved an order that held against the petitioner in contempt of court for refusing to restore a child to her father pursuant to a district court order. The United States Supreme Court refused to recognize federal jurisdiction over child custody cases and stated that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States."

2. The Scope of the Domestic Relations Exception

Although the Court had announced a domestic relations exception to diversity jurisdiction, the Court did little in subsequent cases to establish clear guidelines in applying this exception. Without such guidelines, the lower federal courts were required to decide on a case by case basis whether jurisdiction should be denied when a domestic relations issue was involved. Some lower federal courts began to question the validity of the rationales behind the exception. First, the rules of the English Courts were not as likely to be relied upon by the modern federal courts. Also, the argument that a woman could not have a domicile apart from her husband lost its credibility as women became more independent of their husbands. Subsequently, modern courts began to rely more on public policy reasons for applying the exception.
In *Crouch v. Crouch*[^66], the United States Court of Appeals for the Fifth Circuit articulated several public policy reasons why federal courts should not hear domestic relations cases.[^87] These reasons included the following: 1) the special interest of state courts in domestic relations matters; 2) the greater competence of state courts in dealing with such cases; 3) the possibility that state and federal decrees would be incompatible in cases requiring continued supervision; and 4) the congestion of federal court dockets.[^88]

In *Lloyd v. Loeffler*[^89], the United States Court of Appeals for the Seventh Circuit expounded on the view that federal courts are not competent to handle domestic relations cases.[^90] The court stated that “[Federal courts] are not local institutions . . . and there is too little commonality between family law adjudication and the normal responsibilities of the federal judges to give them the experience they would need to be able to resolve domestic disputes with skill and sensitivity.”[^91]

Additionally, because of the unclear guidelines regarding the exception, lower federal courts were unsure of how to deal with subjects related to the traditional domestic relations cases.[^92] As a result, exclusions based on the domestic relations exception were not uniform from jurisdiction to jurisdiction.[^93] Some jurisdictions have interpreted the domestic relations exception very narrowly.[^94] These courts typically grant jurisdiction in all cases except those involving the traditional domestic relations issues — divorce, alimony, and child custody.[^95]

In *Crouch*, a suit for breach of a voluntary separation agreement was brought by a wife against her ex-husband.[^96] The Fifth Circuit

[^86]: 566 F.2d 486 (5th Cir. 1978).
[^87]: Crouch v. Crouch, 566 F.2d 486, 487 (5th Cir. 1978).
[^88]: Id.
[^89]: 694 F.2d 489 (7th Cir. 1982).
[^90]: Lloyd, 694 F.2d at 492.
[^91]: Id. at 492. See Cherry v. Cherry, 438 F. Supp. 88, 90 (D. Md. 1977). The court stated that “[b]ecause state courts traditionally have adjudicated domestic relations cases, they have developed a proficiency and expertise in the area that is almost completely absent in the federal courts.” Id.
[^92]: Armstrong v. Armstrong, 508 F.2d 348, 350 (1st Cir. 1974).
[^94]: See Cole v. Cole, 633 F.2d 1083, 1088 (4th Cir. 1980) (stating that the court must consider the exact nature of the asserted right to determine if the exception is applicable).
[^95]: Id. See Spindell, 283 F. Supp. at 812 (stating that a federal court is not deprived of jurisdiction simply because parties are husband and wife or because the controversy is a marital dispute).
[^96]: Crouch, 566 F.2d at 487.
acknowledged that federal courts traditionally have refused to grant jurisdiction in a variety of domestic relations cases.\textsuperscript{97} However, the court held that the case merely involved a contract to pay money, and thus the domestic relations exception was not applicable.\textsuperscript{98}

Likewise, the United States Court of Appeals for the Fourth Circuit held that the domestic relations exception applies only to cases that involve the issues of divorce, alimony, or child custody.\textsuperscript{99} In \textit{Cole v. Cole}\textsuperscript{100}, the court stated that “[a] district court] must consider the exact nature of the rights asserted or of the breaches alleged.”\textsuperscript{101} The court subsequently refused to apply the domestic relations exception to a case that did not involve “true domestic relations claims.”\textsuperscript{102}

Before \textit{Ankenbrandt}, other jurisdictions had given the domestic relations exception a very broad interpretation.\textsuperscript{103} In these jurisdictions, the courts refused to hear not only cases involving divorce, alimony, and child custody, but also refused to hear cases dealing with related issues.\textsuperscript{104} For example, in \textit{Solomon v. Solomon},\textsuperscript{105} a diversity suit based in contract for nonsupport, the United States Court of Appeals for the Third Circuit held that the case should be dismissed for lack of jurisdiction under the domestic relations exception.\textsuperscript{106} The court interpreted the United States Supreme Court’s decisions in \textit{Barber}, \textit{Burrus}, and others and held that “federal courts do not have jurisdiction in domestic relations suits except where necessary to the effectuation of prior state court judgments involving the same matters.”\textsuperscript{107}

In 1992, the United States Supreme Court articulated the limits of the domestic relations exception and commented on when a federal court should abstain from hearing a domestic relations case.\textsuperscript{108} In \textit{Ankenbrandt}, the Court determined whether a federal court had jurisdiction over a case that involved alleged torts committed by a divorced father against his children.\textsuperscript{109} The petitioner brought suit against her ex-husband and his female companion for the alleged sexual and phys-
ical abuse of the children. The United States District Court for the Eastern District of Louisiana dismissed the suit for lack of subject matter jurisdiction under the domestic relations exception. The United States Court of Appeals for the Fifth Circuit affirmed. The United States Supreme Court granted certiorari to address the issue whether a domestic relations exception exists, and if so, whether such an exception would enable a district court to refuse to exercise jurisdiction in a tort action.

The Court found that the exception is valid. The exception is based on Congress' acceptance of the original interpretation of the diversity statute as held by the Court in Barber. The Court noted that in 1948, nearly one hundred years after the Court had articulated the exception, Congress amended the diversity statute. While Congress was fully aware of the exception applied by the Court in Barber, Congress did nothing to express a different intent. The Court in Ankenbrandt stated that "we presume, absent any indication that Congress intended to alter this exception, that Congress 'adopt[ed] that interpretation' when it reenacted the diversity statute." The Court also found that public policy supported a narrow application of the domestic relations exception. Public policy considerations support the application of the exception only to cases which deal with divorce, alimony or child custody.

110. Id.
111. Id. at 2209.
112. Id.
114. Ankenbrandt, 112 S. Ct. at 2215.
115. Id.
116. Id.
117. Id.
118. Id.
119. Id. at 2215 n.6 (stating examples of "better reasoned" interpretations of the domestic relations exception). See, e.g. McIntyre v. McIntyre, 771 F.2d 1316 (9th Cir. 1985) (holding that a federal court must decline jurisdiction when the primary issue in the case involves the status of parent and child or husband and wife, or if the federal action was commenced to enforce a state court status decree); Bennett v. Bennett, 682 F.2d 1039 (D.C. Cir. 1982) (holding that although a federal court is competent to hear a domestic case that essentially lies in tort or contract, the domestic relations exception would be seriously compromised if the court, in determining relief, must inquire into the best interest of minor children); Lloyd v. Loeffler, 694 F.2d 489 (7th Cir. 1982); Cole v. Cole, 633 F.2d 1083 (4th Cir. 1980) (holding that a district court cannot automatically dismiss a case simply because it involves a family relationship. Rather, the court must look at the exact nature of the claim and only apply the exception to divorce, alimony, child support and custody cases).
3. **The Application of the Abstention Doctrine to Domestic Relations Cases**

In some cases, federal courts have found it unnecessary to determine whether they lack jurisdiction under the domestic relations exception.\(^{120}\) Instead, these courts have considered the question of whether jurisdiction *should* be exercised.\(^{121}\) The decision to abstain is usually rationalized by applying the abstention doctrines articulated by the United States Supreme Court in *Younger v. Harris*\(^ {122}\) and *Burford v. Sun Oil, Co.*\(^ {123}\)

The Court in *Younger* held that federal courts should abstain when asked to intervene by injunction or declaratory judgment in a pending state criminal proceeding.\(^ {124}\) In *Younger*, the appellee had been indicted under the California Criminal Syndicalism Act.\(^ {125}\) He claimed that the Act was unconstitutional and brought an action in the United States District Court for the Central District of California to enjoin the district attorney from prosecuting him.\(^ {126}\) The court found that the Act violated the First and Fourteenth Amendments and granted the injunction.\(^ {127}\) The district attorney appealed, arguing that the issuance of the injunction violated longstanding judicial policy, as well as section 2283.\(^ {128}\) The United States Supreme Court stated that Congress had manifested the intent that state courts should be permitted to hear state cases without interference by federal courts.\(^ {129}\) The Court held that absent a showing of a great and immediate irreparable injury, a federal court should not interfere with state criminal prosecutions.\(^ {130}\) The holding in *Younger* since has been applied in civil cases as well.\(^ {131}\)

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120.  *Armstrong*, 508 F.2d at 350.
121.  *Id.*
128.  *Younger*, 401 U.S. at 40.  28 U.S.C. § 2283 (1988) provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."
129.  *Younger*, 401 U.S. at 43.
130.  *Id.* at 46.
In *Burford*, the United States Supreme Court held that even though a federal court has jurisdiction over a particular proceeding, it should exercise its discretionary power and with "proper regard for the rightful independence of state governments in carrying out their domestic policy," may decline to hear the case.\(^{132}\) The issue involved an oil drilling decree issued by the Texas Railroad Commission.\(^{133}\) The Court found that the conservation of natural resources and the economic impact of the oil industry on Texas were both of great concern to the State.\(^{134}\) Because of this great state interest, Texas had vested "broad discretion" in the Railroad Commission to administer a production control law and had established\(^{135}\) a system of review in the state courts for Railroad Commission decisions.\(^{136}\)

The United States Supreme Court found that the Texas statutes created a well-organized system of review and regulation in the state courts.\(^{137}\) The Court also found that federal courts had little to offer, and would only cause delay and possibly misunderstanding of local law.\(^{138}\) Due to the intimate relationship between the issue and the state interest, the court held that the issue in *Burford* was one that belonged in the state judicial system.\(^{139}\) Thus, in order to avoid conflicts, which could be dangerous to the success of state policies, the court held that abstention was appropriate.\(^{140}\)

4. **The Domestic Relations Exception and the Abstention Doctrine As Applied in Ankenbrandt**

In *Ankenbrandt*, the United States Supreme Court addressed the domestic relations exception.\(^{141}\) The Court first announced that the exception was valid and that it was to be interpreted narrowly to apply only to traditional domestic relations cases.\(^{142}\) The Court then addressed whether this exception should be applied to the case at bar.\(^{143}\) The Court noted that the case was a tort action.\(^{144}\) Because the claim

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\(^{133}\) *Burford*, 319 U.S. at 317-18 (quoting Pennsylvania v. Williams, 294 U.S. 176, 185 (1935)).

\(^{134}\) Id. at 316-17.

\(^{135}\) Id. at 320.

\(^{136}\) Id. (referring to TEx. STAT. Art. 6008 §§ 1, 22 (Vernon 1936)).

\(^{137}\) Id. at 325.

\(^{138}\) Id. at 327.

\(^{139}\) Id.

\(^{139}\) Id. at 332.

\(^{140}\) Id. at 334.

\(^{141}\) Ankenbrandt, 112 S. Ct. at 2209.

\(^{142}\) Id. at 2215.

\(^{143}\) Id.

\(^{144}\) Id.
was not in any way dependant on a divorce, alimony, or child custody decree, the court held that the exception did not exclude federal courts from hearing the case.146

The Court next addressed the abstention doctrine and examined two instances in which abstention would be appropriate.146 First, the Court held that under the decision in Younger, abstention is appropriate when a state proceeding is pending.147 The Court found that Younger did not apply to the case at bar because there was no pending state action.148

Second, the Court held that abstention might be appropriate under Burford.149 In Burford, the Court found that the issues involved were so intimately tied with problems of state policy that the federal courts should abstain in order that the state courts could have the opportunity to hear the case first.150 In Ankenbrandt, the Court held that Burford may apply to a domestic relations case that presents “difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar.”151 The Court concluded that the Burford abstention was inappropriate in Ankenbrandt because the status of the domestic relationship had been determined previously, and it had no bearing on the alleged torts.152

ANALYSIS

1. Application of the Domestic Relations Exception

Prior to the United States Supreme Court’s decision in Ankenbrandt v. Richards,153 the lower federal courts had little guidance in applying the domestic relations exception.154 All federal courts agreed that the exception would exclude federal jurisdiction in cases dealing with divorce, alimony, or child custody.155 However, the courts were divided on whether the exception should apply to cases involving closely related issues.156 In Overman v. United States,157 the United States Court of Appeals for the Eighth Circuit recognized

145. Id.
146. Id. at 2215-16.
147. Id. at 2216.
148. Id.
149. Id.
152. Id.
154. See supra notes 80-81 and accompanying text.
155. See supra notes 92-107 and accompanying text.
156. See supra notes 92-107 and accompanying text.
the strong state interest in domestic relations matters. The Eighth Circuit further recognized that such cases should be left to the exclusive jurisdiction of the state courts.

In failing to apply the domestic relations exception in *Lannan v. Maul*, the Eighth Circuit abandoned its previous position that domestic relations cases should be left to the exclusive jurisdiction of the state courts. Although the court was bound by the *Ankenbrandt* decision concerning the use of the domestic relations exception, it was not necessary for the court to vacate its previous decisions. The Eighth Circuit should have upheld the district court’s decision to dismiss *Lannan* under the domestic relations exception. Alternatively, the court should have abstained from hearing the case altogether.

Although the United States Supreme Court directed that the domestic relations exception should apply only in divorce, alimony, and child custody cases, these categories should not be viewed as exclusive. Instead, the Eighth Circuit Court should have examined the United States Supreme Court’s basis for these particular categories. By doing so, the Eighth Circuit could have reconciled its position on domestic relations cases with the *Ankenbrandt* decision.

In *Ankenbrandt*, the United States Supreme Court stated that the domestic relations exception limited federal court jurisdiction in divorce, alimony, and child support cases. The Court gave two reasons for this conclusion. First, the Court held that the exception should be considered valid because of its lengthy existence, during which Congress had done nothing to express dissatisfaction with the exception. Second, the Court stated that the application of a domestic relations exception in the areas of divorce, alimony, and child custody is supported by sound public policy considerations.

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157. *Overman*, 563 F.2d at 1292. The court noted that “there is, and ought to be, a continuing federal policy to avoid handling domestic relations cases in federal court in the absence of an important concern of constitutional dimension.” Id.

158. 979 F.2d 627 (8th Cir. 1992).

159. See supra note 161 and accompanying text.

160. See infra notes 168-70 and accompanying text.

161. See infra notes 194-242 and accompanying text.

162. See infra notes 243-58 and accompanying text.


164. See infra notes 194-242 and accompanying text.

165. See infra notes 194-242 and accompanying text.

166. *Ankenbrandt*, 112 S. Ct. at 2215.

167. See infra notes 175-74 and accompanying text.


169. Id. at 2215.
The Court suggested that as a matter of public policy and judicial economy, certain cases should be excluded from federal jurisdiction. First, the Court stated that federal courts lack the connection with the state and local organizations that customarily handle the conflicts arising out of the traditional domestic relations issues. Second, the Court recognized that state judiciaries have developed an expertise in dealing with the problems that arise from granting divorce, alimony, and child custody decrees. Third, the Court noted that the issuance of domestic relations decrees often requires continued jurisdiction by the court to monitor compliance. Because these public policy reasons support adjudication of domestic relations cases by state courts, the Court held that federal courts are excluded from hearing cases that involve traditional domestic relations issues.

The Eighth Circuit should have found that these public policy considerations would also support application of the exception in Lannan. The court could support such a finding by showing that the underlying facts in Lannan conform to facts present in traditional domestic relations cases.

The State of Nebraska requires the parents of minor children to provide for the support of such children. Thomas Brewer proposed to fulfill this obligation by paying to Kathleen the sum of five hundred dollars per month for the care and support of his daughter Ashley until her nineteenth birthday. To assure that this support was paid, even in the event of his death, Thomas also agreed to maintain a life insurance policy for the amount of child support remaining. The issue in Lannan was whether this life insurance provision established an entirely separate obligation or whether it was merely security for the child support obligation. To determine the status of the life insurance policy, the court should have examined the nature of the insurance provision.

Four reasons support the view that the life insurance provision was directly related to the child support obligation. First, each child support payment that Thomas made reduced the amount of life

170. See supra note 119 and accompanying text.
171. Ankenbrandt, 112 S. Ct. at 2215.
172. Id.
173. Id.
174. Id.
175. See infra note 182 and accompanying text.
176. See infra notes 183-93 and accompanying text.
179. Id.
180. Id. at 630.
182. See infra notes 189-93 and accompanying text.
insurance he was obligated to maintain. Therefore, the life insurance provision was a constantly changing obligation. Second, at anytime either party could request a court modification of the child support payments that would change the amount of the life insurance obligation. Third, if Thomas were to survive past Ashley's nineteenth birthday, both the child support obligation and the life insurance obligation would terminate. Fourth, the plain language of the settlement agreement makes it clear that the life insurance provision was intended to act as security for the child support obligation.

In Ankenbrandt, the United States Supreme Court cited four cases as the "better reasoned views" of the domestic relations exception. Comparing these cases to Lannan, it is clear that Lannan should fall under the domestic relations exception. For example, one element of a traditional domestic relations case is the presence of a duty or obligation arising from a familial relationship. In Ankenbrandt, the Court referred to Cole v. Cole as an example of a "better reasoned" interpretation of the domestic relations exception. In Cole, the United States Court of Appeals for the Fourth Circuit held that the domestic relations exception does not necessarily apply to all cases in which the parties are related. Rather, Cole distinguished between cases in which the issues depended on a family relationship and those in which the issues did not. Under Cole, application of the domestic relations exception is justified in a case involving duties or obligations existing because of a family relationship. When a case involves issues that essentially arise out of family duties and obligations, it is a true domestic relations case.

184. Id.
185. Id. at 29. The district court had jurisdiction to modify the child support obligation upon a showing by either party of changed circumstances. Id.
186. See Brief for Appellees at 29, Lannan v. Maul, 979 F.2d 627 (8th Cir. 1992) (No. 91-3249).
187. Id. at 28. The Brief for Appellees provided that "when paragraph 2 of the incorporated settlement agreement is read in its entirety, it is clear beyond doubt that the life insurance served only as security for the support obligation." Id.
188. Ankenbrandt, 112 S. Ct. at 2215 n.6.
189. See infra notes 196-240 and accompanying text.
190. See Cole, 633 F.2d at 1088-89.
191. 633 F.2d 1083 (4th Cir. 1980).
192. Ankenbrandt, 112 S. Ct. at 2215 n.6.
194. Id.
195. Id. at 1089.
196. Id. at 1088.
siderations articulated in Ankenbrandt support adjudication of such cases by state courts.\textsuperscript{197} Ankenbrandt did not arise out of a family relationship.\textsuperscript{198} The Court held that the claim of alleged sexual and physical assault could have arisen between two strangers.\textsuperscript{199} The lack of an issue arising from a familial relationship contributed to the fact that the public policy considerations outlined by the Court did not support applying the domestic relations exception to Ankenbrandt.\textsuperscript{200}

The underlying issue in Lannan, however, did involve an obligation that arose solely because of the family relationship.\textsuperscript{201} Thomas' obligation to provide support for his daughter was the result of the parent-child relationship.\textsuperscript{202} In the absence of this relationship, Thomas would have had no obligation to support the child.\textsuperscript{203} If no obligation existed, then it would have been unnecessary to include a provision governing his fulfillment of this obligation in the divorce decree.\textsuperscript{204} Although the provision made Ashley a third party beneficiary, the underlying obligation arose from the parent-child relationship.\textsuperscript{205} Thomas was legally obligated to provide support regardless of the contract with Kathleen.\textsuperscript{206} Whether this obligation was adequately fulfilled was the underlying issue in this case.\textsuperscript{207}

A second element of a traditional domestic relations case is that it presents a question of status.\textsuperscript{208} McIntyre v. McIntyre\textsuperscript{209} was another "well reasoned" interpretation of the domestic relations exception cited by the Court in Ankenbrandt.\textsuperscript{210} In McIntyre, the United States Court of Appeals for the Ninth Circuit stated that the domestic relations exception should apply to a case that presents a status question.\textsuperscript{211} According to the Court in McIntyre, examples of "status" questions are the granting of a divorce, the determination of custody, and the fixing of support payments.\textsuperscript{212} The exception is also applied

\textsuperscript{197} Ankenbrandt, 112 S. Ct. at 2215.
\textsuperscript{198} Id.
\textsuperscript{199} Id. at 2215 n.7.
\textsuperscript{200} See supra notes 197-203 and accompanying text.
\textsuperscript{201} See infra notes 208-09 and accompanying text.
\textsuperscript{203} Id.
\textsuperscript{204} See id.
\textsuperscript{205} Id.
\textsuperscript{206} Id.
\textsuperscript{207} See supra notes 32-34 and accompanying text.
\textsuperscript{208} McIntyre v. McIntyre, 771 F.2d 1316, 1317 (9th Cir. 1985).
\textsuperscript{209} 771 F.2d 1316 (9th Cir. 1985).
\textsuperscript{210} Ankenbrandt, 112 S. Ct. 2215 n.6.
\textsuperscript{211} McIntyre, 771 F.2d at 1317.
\textsuperscript{212} Id. at 1317. See Ankenbrandt, 112 S. Ct. at 2221-22 (Blackmun, J., concurring). Domestic relations cases can be classified into four categories: (1) suits involving the declaration of status; (2) suits involving the declaration of obligations arising from
when the federal action is brought to enforce a state court's status decree.\textsuperscript{213} The court held it was error to apply the exception when the plaintiff was merely seeking damages for tortious interference with the parent-child relationship, and no status question was at issue.\textsuperscript{214}

Once again, this element was not present in \textit{Ankenbrandt}.\textsuperscript{215} The petitioner in \textit{Ankenbrandt} was seeking damages for sexual and physical abuse of her children.\textsuperscript{216} The case involved no "status" question.\textsuperscript{217} Rather, it was a tort claim that was "easily cognizable in a federal court."\textsuperscript{218} \textit{Lannan}, on the other hand, presented a "status" question.\textsuperscript{219} The issue required the court to make a determination of whether the insurance provision was intertwined with Thomas Brewer's obligation to provide child support.\textsuperscript{220}

A third consideration when deciding whether a case is one to which the domestic relations exception should apply, is in regards to the relief requested.\textsuperscript{221} In \textit{Bennett v. Bennett},\textsuperscript{222} the United States Court of Appeals for the District of Columbia Circuit held that diversity jurisdiction in a domestic relations case extends to federal courts when there is a claim for monetary damages, but not when there is a claim for injunctive relief.\textsuperscript{223} According to the District of Columbia Circuit, a domestic relations case, whose essence is in torts or contracts, should be heard by the federal courts provided the court is not required to exceed its competence.\textsuperscript{224} The court found no bar to federal jurisdiction with respect to monetary damages.\textsuperscript{225} However, a decision that requires the court to inquire into the best interest of the child is within the "peculiar province, experience and competence of the state courts."\textsuperscript{226} Because such an inquiry is necessary for granting a claim for injunctive relief, a federal court does not have jurisdiction.\textsuperscript{227}
The petitioner in *Ankenbrandt* was seeking monetary damages on behalf of her children.\(^{228}\) Awarding such damages would simply require the court to examine the traditional elements of tort.\(^{229}\) The relief requested in *Lannan*, however, required more than that.\(^{230}\) The ultimate payment of the trust fund monies to Ashley Brewer was not in dispute.\(^{231}\) The only dispute was whether the funds should be paid immediately, in a lump sum, to Ashley’s conservator, or whether the money should be held in trust for her benefit.\(^{232}\) The resolution of this matter would require the court to make an inquiry into the nature of the insurance obligation found in the divorce decree and into the best interest of the child.\(^{233}\) Under *Bennett*, such an inquiry is better left to the state.\(^{234}\)

The Court noted that precedent and public policy considerations support application of an exception to diversity jurisdiction in traditional domestic relations cases.\(^{235}\) If the Eighth Circuit had focused on the purpose of the life insurance policy rather than the policy itself, then the court would have determined that this case was a true domestic relations case that belongs in the exclusive jurisdiction of the state courts.\(^{236}\)

**2. Application of the Abstention Doctrine**

Alternatively, the Eighth Circuit should have declined jurisdiction altogether based on the abstention doctrine.\(^{237}\) The court acknowledged the United States Supreme Court’s holding in *Ankenbrandt* that federal courts may invoke the abstention doctrine in a case that is related to a domestic relations issue even though the case does not involve a divorce, alimony, or child custody decree.\(^{238}\) However, the Eighth Circuit erred in holding that abstention was not proper in *Lannan* based on the court’s misinterpretation of the abstention doctrine as articulated in *Ankenbrandt*.\(^{239}\)

In *Ankenbrandt*, the United States Supreme Court reviewed the abstention doctrine articulated in *Burford v. Sun Oil Co.*\(^{240}\)

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228. *Ankenbrandt*, 112 S. Ct. at 2208.
229. Id. at 2215.
230. See infra notes 237-39 and accompanying text.
231. See supra notes 20-23 and accompanying text.
232. See supra notes 31-33 and accompanying text.
233. See supra notes 34-39 and accompanying text. See *Bennett*, 682 F.2d at 1042-43.
234. See *Bennett*, 682 F.2d at 1042-43.
236. See supra notes 194-240 and accompanying text.
237. See infra notes 244-58 and accompanying text.
238. *Lannan*, 979 F.2d at 632; *Ankenbrandt*, 112 S. Ct. at 2216.
239. *Lannan*, 979 F.2d at 631. See infra notes 246-58 and accompanying text.
ford, the Court held that when a case involves questions of important state law, it is in the public interest for federal courts to abstain. For the same reasons the Court held abstention appropriate in Burford, abstention should have been supported in Lannan. The State of Nebraska is greatly concerned with the welfare of minor children residing in Nebraska. To protect these children, Nebraska has adopted statutes governing the care and support to be rendered to children by their parents. The child support that Thomas Brewer was required to pay may have been a provision of the divorce decree, but it was state law that required his fulfillment of this obligation.

The Eighth Circuit erred in reversing the district court’s decision to abstain. The court refused to apply the Burford abstention principles and stated that the Supreme Court had concluded, in Ankenbrandt, that abstention is inappropriate when the status of the domestic relationship had already been decided by the state courts.

The Eighth Circuit’s holding wrongly implies that abstention is always inappropriate unless the status of the domestic relationship is still in question. The Court in Ankenbrandt merely suggested a case in which the federal courts would be called upon to define the domestic relationship as one example of a situation in which abstention is appropriate. The Court also added that it had no difficulty finding abstention inappropriate when the domestic relationship has “no bearing on the underlying [issue] alleged.” The domestic relationship in Ankenbrandt had no bearing on the alleged torts, and thus abstention was not appropriate. In Lannan, however, the domestic relationship was intimately tied to the issue in question. Thus, the Eighth Circuit should have allowed abstention under Burford.

CONCLUSION

Since 1859 lower federal courts have recognized an exception to federal diversity jurisdiction. As applied by the United States Court

241. See supra notes 134-42 and accompanying text.
243. Id.
245. See infra notes 253-58 and accompanying text.
246. Lannan, 979 F.2d at 632.
247. See infra notes 254-58 and accompanying text.
248. Ankenbrandt, 112 S. Ct. at 2216.
249. Id.
250. Id.
251. See supra notes 38-39 and accompanying text.
252. See supra notes 254-57 and accompanying text.
of Appeals for the Eighth Circuit, the exception kept domestic relations cases in the exclusive hands of the state courts. After the United States Supreme Court announced that the exception should be interpreted narrowly and applied only in divorce, alimony, and child custody cases, the Eighth Circuit was forced to abandon its position. When the Eighth Circuit decided *Lannan v. Maul*, it found that the exception could not apply in a contract case. The Eighth Circuit in *Lannan* should have recognized that the case was so intertwined with domestic relations issues that the domestic relations exception applied. In the alternative, because the issues involved are of great state concern and are better left to the state courts, the Eighth Circuit should have abstained. *Lannan* presented a situation in which abstention would have been appropriate according to the United States Supreme Court decision in *Ankenbrandt*.

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