

# The Drone Slayer and private property

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**E**arlier this year, a federal court in Kentucky dismissed a lawsuit brought by a drone pilot against the “Drone Slayer.” The case was dismissed on jurisdictional grounds, leaving open questions of interplay between aerial trespass and the scope of federal authority.

In 2015, the slayer, a Kentucky man, shot down a drone that he thought was flying over his property and was being used to spy on his teenage daughter. The drone pilot sued the slayer in federal court, seeking declaratory relief and damages on a trespass to chattels theory based on Kentucky state law.

The plaintiff argued that the case belonged in federal court because he was asking for a finding that “an



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A man flies a drone in Cape Cod, Massachusetts, Aug. 25, 2016.

unmanned aircraft is an ‘aircraft’ under federal law,” and that an unmanned aircraft flying in Class G airspace is “operating in the ‘navigable airspace’ within the exclusive jurisdiction of the United States.” If adopted, this argument would effectively allow the plaintiff to

sidestep the family’s reasonable expectation of privacy argument. To plaintiff’s dismay, the federal court ultimately punted on the question, instead finding that it did not have jurisdiction.

In doing so, the court pointed to *Grable & Sons Metal Prod., Inc.*

*v. Darue Eng’g & Mfg.*, 545 U.S. 308 (2005), addressing state-law claims that implicate significant federal issues. Under *Grable*, federal question jurisdiction exists in these types of cases where “a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” *Gunn v. Minton*, 133 S. Ct. 1059, 1065 (2013) (citing *Grable*, 545 U.S. at 314). In the court’s opinion, the plaintiff’s complaint did not meet any of these requirements.

Among other issues, the plaintiff’s complaint did not “necessarily raise” a federal issue. Rather, it merely “anticipate[d] a defense of privilege that [the plaintiff] may raise in response to [the defendant’s] trespass of chattels claim.” In other words, the complaint an-

ticipated the argument that, “if the unmanned aircraft was flying on [the slayer’s] property, his actions may have been privileged, but if it was flying in federal airspace, they would not.” In the court’s opinion, “where ... the action was ‘brought into the federal courts merely because an anticipated defense derived from federal law,’ there is no jurisdiction.

As the current laws stand, there is a great deal of uncertainty over drone operations. Consequently, many states and municipalities are grappling with new developments in this area and may soon be considering legislation that would protect property owners who damage or confiscate drones flying over their property. While the decision, unfortunately, sheds little light on how legislation in this area should be shaped, the current White House administration apparently

intends to scale back government regulations, which could be a positive for companies looking to put drones to work. The case, which involved a significant, albeit, ultimately, unanswered question — whether a drone flying over private homes and residential areas flies lawfully in the navigable airspace or is actually trespassing — confirms that the question on its own is apparently not enough to confer federal question jurisdiction. It remains to be seen whether the courts will side with the drone operators or would-be slayers.

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