Commentary: Appellate Court Cases

Ahmed v. Ahmed, 867 F.3d 682 (6th Cir. 2017)

Other Sixth Circuit Cases

Pliego v. Hayes,
843 F.3d 226 (6th Cir. 2016)

Jenkins v. Jenkins,
569 F.3d 549 (6th Cir. 2009)

Simcox v. Simcox,
511 F.3d 594 (6th Cir. 2007)

Robert v. Tesson,
507 F.3d 981 (6th Cir. 2007)

Taveras v. Taveraz,
477 F.3d 767 (6th Cir. 2007)

March v. Levine,
249 F.3d 462 (6th Cir. 2001)

Sinclair v. Sinclair,
121 F.3d 709 (6th Cir. 1997)

Friedrich v. Friedrich (*Friedrich II*),
78 F.3d 1060 (6th Cir. 1996)

***In re* Prevot**,
59 F.3d 556 (6th Cir. 1995)

Friedrich v. Friedrich (*Friedrich I*),
983 F.2d 1396 (6th Cir. 1993)

Habitual Residence | Especially Young Children | Infants

The Sixth Circuit expanded the habitual residence standard to allow consideration of shared parental intent in cases involving especially young children who lack sufficient capacity to acclimate to any residence.

Facts

Father and mother married in 2009. Father lived in London, and mother lived in Michigan where she was completing her studies in optometry. Mother briefly moved to London in 2011 but returned to the United States five months later to take additional studies needed to practice optometry in the United Kingdom. Twenty-one months later, mother returned to the United Kingdom with the intention of remaining there permanently. Six months later, in February 2014, mother became pregnant and was prescribed bed rest. After an argument in May of 2014, mother returned to Knoxville, Tennessee, a previous home. Mother maintained that she did not intend to return to the United Kingdom, and father indicated that he expected her to return. Mother delivered twins in November 2014. Father had come to Knoxville and moved into an apartment with mother and the children. Father returned to London when his visa expired in January 2015. Father again visited the United States in April 2015. In May, the entire family traveled to the United Kingdom, where they lived in the home of father's parents.

Mother said that her trip to the United Kingdom with the children in 2015 was for a summer visit to see if the marriage was going to work out. She testified that she left her valuables and optometry equipment in the United States. She did not sell her car or cancel her U.S. auto insurance, maintained medical insurance for herself and the children, renewed her license to practice optometry in Tennessee, and paid her professional privilege tax before she left for London. However, she also took the U.K. exam required for the practice of optometry, registered the children with the National Health Service, and arranged for a medical checkup for them in London.

In July 2015, mother and the children traveled to Bangladesh for a wedding. Mother then flew back to the United States with the children, returning to Knoxville. Father petitioned for the children's return in March 2016. The district court denied father's petition for return. The Sixth Circuit affirmed.

Discussion

The Sixth Circuit's approach to determining a child's habitual residence focuses upon the past experiences of the child, not the intentions of the parents.[1] This case did not modify this acclimatization standard. The court reasoned that application of the shared parental intent standard to this case did not deviate from its prior precedents, but rather addressed a gap in the habitual residence analysis. The Sixth Circuit had no prior opportunity to address what standard to apply when the habitual residence question applied to especially young children.

The circuit court found that the acclimatization standard was difficult, if not impossible, to apply to cases involving especially young children. Acclimatization requires consideration of facts concerning the child's connections to the country, including such areas as academics, sports, social contacts, and other meaningful connections. As a result, the court found that "virtually all children who lack cognizance of their surroundings are *unable* to acclimate, making the standard generally unworkable." The court held that looking to shared parental intent was consistent with all past Sixth Circuit rulings, which held that habitual residence involves consideration of both acclimatization and shared parental intent.[2]

The court also noted that application of the shared parental intent rule in such roles is not a bright-line rule, but rather an issue of fact to be determined by the lower courts.[3]

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1. Friedrich v. Friedrich (*Friedrich I*), 983 F.2d 1396, 1401 (6th Cir. 1993); Robert v. Tesson, 507 F.3d 981, 992 (6th Cir. 2007). A majority of other circuits have followed the general approach of the Ninth Circuit's opinion in *Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001). When using the *Mozes* approach to decide whether a habitual residence has been acquired, the first inquiry is whether the parents demonstrate a shared intention to abandon the former habitual residence, and the second question is whether there has been a change in geography for an "appreciable period of time" that is "sufficient for acclimatization."

2. The court noted that "all but the Fourth and Eighth Circuits prioritize shared parental intent in cases concerning especially young children" (citing Mauvais v. Herisse, 772 F.3d 6, 11 (1st Cir. 2014); Guzzo v. Cristofano, 719 F.3d 100, 110 (2d Cir. 2013); Karkkainen v. Kovalchuk, 445 F.3d 280, 296 (3d Cir. 2006); Larbie v. Larbie, 690 F.3d 295, 310 (5th Cir. 2012); Redmond v. Redmond, 724 F.3d 729, 746 (7th Cir. 2013)); *see* Holder v. Holder, 392 F.3d 1009, 1020 (9th Cir. 2004); Kanth v. Kanth, No. 99-4246, 2000 WL 1644099, at *1–2 (10th Cir. Nov. 2, 2000); Chafin v. Chafin, 742 F.3d 934, 938–39 (11th Cir. 2013); Ahmed v. Ahmed, 867 F.3d 682, 689–90 (6th Cir. 2017).

3. The district court decided this case using the acclimatization standard but also made detailed findings regarding the issue of shared parental intent, finding that a settled intent did not exist during the children's lives and during much of mother's pregnancy.