Commentary: Appellate Court Cases

Eidem v. Eidem, No. 19-1417, 2019 U.S. App. LEXIS 36488 (2d Cir. Dec. 10, 2019)[1]

Other Second Circuit Cases

Saada v. Golan,
930 F.3d 533 (2nd Cir. 2019)

Marks v. Hochhauser,
876 F.3d 416 (2d Cir. 2017)

Tann v. Bennett,
648 F. App'x 146 (2d Cir. 2016)

Ermini v. Vittori,
758 F.3d 153 (2d Cir. 2014)

Hollis v. O'Driscoll,
739 F.3d 108 (2d Cir. 2014)

Souratgar v. Lee,
720 F.3d 96 (2d Cir. 2013)

Guzzo v. Cristofano,
719 F.3d 100 (2d Cir. 2013)

Hofmann v. Sender,
716 F.3d 282 (2d Cir. 2013)

Ozaltin v. Ozaltin,
708 F.3d 355 (2d Cir. 2013)

Mota v. Castillo,
692 F.3d 108 (2d Cir. 2012)

Duran v. Beaumont,
622 F.3d 97 (2d Cir. 2012)

Gitter v. Gitter,
396 F.3d 124 (2d Cir. 2005)

Grieve v. Tamerin,
269 F.3d 149 (2d Cir. 2001)

Blondin v. Dubois (*Blondin II*),
238 F.3d 153 (2d Cir. 2001)

Diorinou v. Mezitis,
237 F.3d 133 (2d Cir. 2001)

Blondin v. Dubois (*Blondin I*),
189 F.3d 240 (2d Cir. 1999)

Grave Risk | Quality of Medical Care in Habitual Residence | Interruption of the Course of Counseling | Credibility

In this case, the Second Circuit rejected a parent's claim that the lower standard of medical treatment available in the children's habitual residence and the complications that would arise from interrupting the children's psychological therapy supported a grave risk defense.

Holdings

By summary order, the Second Circuit affirmed the district court's order to return the children to their habitual residence and its finding that the mother failed to establish a grave risk defense.

Facts

A mother and father in Norway shared custody of their two children after their legal separation. Three years later, the parties agreed that the mother would take their two children, eight and six years old, from their home in Norway to the United States for one year. They agreed that the mother would return to Norway from New York City with the children on August 8, 2017, but the mother and children failed to return on the appointed date. The mother then cut off all communication with the children's father. The father filed a petition for return of the children eleven months later.

The older child had previously undergone surgery in Norway to correct a bowel disorder. The younger child struggled academically from early on. Both children required psychological counseling. The mother sought to establish that the medical care available in Norway was inadequate for the needs of the older child. She also asserted that

1. The case has no precedential effect. Citation to this case is permitted by FRAP 32.1 and Local Rule 32.1.1.

if the children were required to return to Norway, their treatment regimen in New York would be disrupted, potentially causing relapse and regression and making their psychological treatment more difficult.[2]

Discussion

Quality of Medical Care in Habitual Residence. The mother only appealed the district court's denial of her grave risk defense. The district court had found that her argument that the medical care available for the eldest child in Norway was less than optimal did not satisfy the criteria necessary to establish grave risk. Relying on the standard set forth in *Blondin II*,[3] the court noted that a grave risk defense does not apply to "those situations where repatriation might [merely] cause inconvenience or hardship."

Interruption of the Course of Counseling. The Second Circuit also affirmed the district court's rejection of the mother's argument that interrupting the children's course of psychological counseling would be detrimental to their needs. The Second Circuit agreed with the district court's observation that the return of the children to Norway would be less traumatic than the children's initial removal to the United States.

Credibility. In a footnote, the Second Circuit also commented on the district court's rejection of parts of the mother's testimony, based on her own admission that she had committed perjury by providing false testimony.

> "[W]hen a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error."[4]

2. Eidem v. Eidem, 382 F. Supp. 3d 285, 294 (S.D.N.Y. 2019).

3. Eidem v. Eidem, No. 19-1417, 2019 U.S. App. LEXIS 36488, at *6 (2d Cir. Dec. 10, 2019) (quoting Blondin v. Dubois (*Blondin II*), 238 F.3d 153, 162 (2d Cir. 2001)).

4. Eidem v. Eidem, No. 19-1417, 2019 U.S. App. LEXIS 36488, at *4 n.1 (2d Cir. Dec. 10, 2019) (quoting Anderson v. Bessemer City, 470 U.S. 564, 575 (1985)).