

Commentary: Appellate Court Cases

Farr v. Kendrick, 824 F. App'x 480 (9th Cir. 2020)

Other Ninth Circuit Cases

***In re A.L.C.*,**

607 F. App'x 658 (9th Cir. 2015)

***E.R.S.C. v. Carlwig (in re A.L.C.)*,**

607 F. App'x 658 (9th Cir. 2015)

***Margain v. Ruiz-Bours*,**

592 F. App'x 619 (9th Cir. 2015)

***Murphy v. Sloan*,**

764 F.3d 1144 (9th Cir. 2014)

***Valenzuela v. Michel*,**

736 F.3d 1173 (9th Cir. 2013)

***Cuellar v. Joyce (Cuellar II)*,**

603 F.3d 1142 (9th Cir. 2010)

***Cuellar v. Joyce (Cuellar I)*,**

596 F.3d 505 (9th Cir. 2010)

***Asvesta v. Petroutsas*,**

580 F.3d 1000 (9th Cir. 2009)

***In re B. Del C.S.B.*,**

559 F.3d 999 (9th Cir. 2009)

***Papakosmas v. Papakosmas*,**

483 F.3d 617 (9th Cir. 2007)

***Von Kennel Gaudin v. Remis (Gaudin III)*,**

415 F.3d 1028 (9th Cir. 2005)

***Holder v. Holder (Holder II)*,**

392 F.3d 1009 (9th Cir. 2004)

***Von Kennel Gaudin v. Remis (Gaudin II)*,**

379 F.3d 631 (9th Cir. 2004)

***Holder v. Holder (Holder I)*,**

305 F.3d 854 (9th Cir. 2002)

***Von Kennel Gaudin v. Remis (Gaudin I)*,**

282 F.3d 1178 (9th Cir. 2002)

***Gonzalez-Caballero v. Mena*,**

251 F.3d 789 (9th Cir. 2001)

Habitual Residence | Precedent

The Ninth Circuit affirmed a district court's decision, based on pre-*Monasky*¹ precedent, to deny a father's petition for the return of his children to Mexico, despite the fact that the district court had relied on *Mozes v. Mozes*'s² use of parental intent criteria to determine habitual residence.

Holding

The district court had carefully considered the totality of circumstances, as delineated by the Supreme Court, to arrive at its findings. The Ninth Circuit affirmed the ruling, finding that the United States was the children's habitual residence and affirming the district court's denial of the father's petition.

Facts

In a three-day trial, the district court, relying on *Mozes*, reviewed the evidence and focused on whether there was shared parental intent to abandon the family's previous habitual residence in the United States. These are the facts supporting the district court's finding on habitual residence: (1) the mother considered the move to Mexico temporary, lasting only three to five years; (2) the mother repeatedly requested to return to the United States; (3) in an email exchange, the parties referred to their residence in Houston, Texas, as their permanent residence; (4) the father described a "plan of action" for return to the United States; (5) the parents and children had U.S. citizenship; (6) the father's job in Mexico was temporary; (7) the visas for the mother and children had expired; (8) they had extended family in the United States; and (8)

1. *Monasky v. Taglieri*, 140 S. Ct. 719 (2020).

2. 239 F.3d 1067 (9th Cir. 2001).

Other Ninth Circuit Cases (*cont'd.*)

Mozes v. Mozes,
239 F.3d 1067 (9th Cir. 2001)

Shalit v. Coppe,
182 F.3d 1124 (9th Cir. 1999)

the family kept a bank account and auto insurance in the United States. The children also did not speak Spanish or attend school in Mexico.

Discussion

The Ninth Circuit relied on the district court's thorough and careful review of the evidence, affirming its conclusion that under the totality of circumstances, the children's habitual residence was the United States. The Ninth Circuit also held that it was not necessary to remand the case to the district court to consider the evidence under the newly announced Supreme Court standard. The lower court had already considered all of the evidence, and there was nothing to convince the Ninth Circuit that the district court would view the facts differently on remand. Given the Convention's exhortation to expedite proceedings, affirming without remand would best serve these objectives.