Commentary: Appellate Court Cases

Smith v. Smith, 976 F.3d 558 (5th Cir. 2020)

Other Fifth Circuit Cases

Soto v. Contreras,
880 F.3d 706 (5th Cir. 2018)

Madrigal v. Tellez,
848 F.3d 669 (5th Cir. 2017)

Delgado v. Osuna,
837 F.3d 571 (5th Cir. 2016)

Hernandez v. Pena,
820 F.3d 782 (5th Cir. 2016)

Rodriguez v. Yanez,
817 F.3d 466 (5th Cir. 2016)

Berezowsky v. Ojeda (*Berezowsky II*),
652 F. App'x 249 (5th Cir. 2016)

Berezowsky v. Ojeda (*Berezowsky I*),
765 F.3d 456 (5th Cir. 2014)

Sanchez v. R.G.L.,
761 F.3d 495 (5th Cir. 2014)

Salazar v. Maimon,
750 F.3d 514 (5th Cir. 2014)

Larbie v. Larbie,
690 F.3d 295 (5th Cir. 2012)

Sealed Appellant v. Sealed Appellee,
394 F.3d 338 (5th Cir. 2004)

England v. England,
234 F.3d 268 (5th Cir. 2000)

Habitual Residence | Parental Intent | Precedent

In a pre-*Monasky*[1] case, the district court denied a father's petition for the return of his children to Argentina and found that the children's habitual residence was the United States. Since the district court determined and considered all of the relevant facts, its decision satisfied *Monasky*'s totality-of-circumstances test for determining habitual residence.

Holding

In determining habitual residence, the district court considered all of the relevant facts. The Fifth Circuit reexamined the district court's findings of fact using *Monasky*'s totality-of-circumstances test and affirmed the district court's ruling.

Facts

A father petitioned for the return of his four children to Argentina, alleging that Argentina was their habitual residence. The district court followed then-binding circuit precedent[2] that looked initially to whether the parents had a shared intent to abandon their previous habitual residence or to establish a new one.

The family moved to Argentina in June 2017. Eleven months later, while still in Argentina, the mother and father jointly filed for divorce. The district court found that the parents and children were born in the United States and were U.S. citizens. The father qualified for Argentinian citizenship but did not apply for it. The father's at-will employment contract allowed for "home leave" to San Francisco, and it provided a twenty-four-month housing allowance. The mother owned property in Texas that she had inherited, the children were enrolled in an "American style" school in Argentina, the parties had no property or family in Argentina, and the mother only had a three-month tourist visa to remain there. The parties' Argentinian divorce decree provided the mother with primary custody of

1. Monasky v. Taglieri, 140 S. Ct. 719 (2020).
2. Larbie v. Larbie, 690 F.3d 295, 310–11 (5th Cir. 2012).

the children, and the father had custody rights when he was not traveling. The decree also allowed the children to travel to their "country of origin" and required notice from one parent to the other if the children were going to travel beyond a radius of 100 miles. The decree did not require either party or the children to live exclusively in Argentina. The district court found that the children's habitual residence was in the United States, and it denied the father's petition to return the children to Argentina. The father appealed. During the appeals process, the Supreme Court decided *Monasky*.

Discussion

The father argued that the district court erred because it relied on parental intent and not the totality of the circumstances, as established by *Monasky*. The father also argued that the terms of the Argentinian divorce decree established the children's habitual residence, because its shared custody provisions could only be exercised in Argentina. The Fifth Circuit disagreed with both arguments and affirmed the denial of the father's petition.

After discussing *Monasky*'s holding, the Fifth Circuit observed that the factual circumstances in this case were similar to those in *Monasky*: the district court in *Monasky* also followed the shared parental intent standard, but the decision was affirmed because the court had determined all of the relevant facts. The Fifth Circuit noted that (1) all of the children were U.S. citizens and never traveled outside the United States before their trip to Argentina; (2) the mother owned property in Texas; (3) the mother testified that the move to Argentina was intended to be for two years; (4) the couple planned to use the money earned by the father in Argentina to purchase a house in the United States; and (5) the parties always spoke of the move to Argentina as temporary. The court also found that the Argentinian divorce decree's provisions were unworkable in both Argentina and the United States, rejecting the father's argument that the decree supported his position that Argentina was the children's habitual residence. The court also noted the district court's finding that the two oldest children had sufficient age and maturity to express an objection to return and both objected to returning to Argentina.

The Fifth Circuit found that the district court determined and considered all relevant facts when making its ruling and affirmed the denial of the father's petition.