

Commentary: Appellate Court Cases

Grau v. Grau, 780 F. App'x 787 (11th Cir. 2019)

Other Eleventh Circuit Cases

Fernandez v. Bailey,
909 F.3d 353 (11th Cir. 2018)

Gomez v. Fuenmayor,
812 F.3d 1005 (11th Cir. 2016)

Seaman v. Peterson,
766 F.3d 1252 (11th Cir. 2014)

Baran v. Beaty,
526 F.3d 1340 (11th Cir. 2008)

Pielage v. McConnell,
516 F.3d 1282 (11th Cir. 2008)

Hanley v. Roy,
485 F.3d 641 (11th Cir. 2007)

Ruiz v. Tenorio,
392 F.3d 1247 (11th Cir. 2004)

Furnes v. Reeves,
362 F.3d 702 (11th Cir. 2004)

Pesin v. Rodriguez,
244 F.3d 1250 (11th Cir. 2001)

Lops v. Lops,
140 F.3d 927 (11th Cir. 1998)

Habitual Residence

Facts

A father and mother, both German citizens, were married in 2012 and had twin sons in 2014. The family moved to Massachusetts in 2015 for the father's temporary work assignment. Except for a three-month trip to Germany in 2015, the family lived together in the United States until the father's work assignment ended in November 2016. The family returned to Germany. In February 2017, the father received another work assignment in Massachusetts, and the family returned to the United States, where they lived until March of 2018, when the assignment ended. The parents then decided that they would move to Florida long-term and applied for E-2 investor visas for a dry-cleaning business. The father then returned to work in Germany to support the family and the new business, planning to join his family in Florida if his German business career did not work out.

In July 2018, the mother and children returned to Germany as required by her U.S. visa. The family lived in Germany for six weeks while waiting for approval of their visa application. Once these were approved, the father signed an open-ended

travel consent form. The mother and children returned to Florida in August of 2018. The children went to school, participated in community activities, and made friends. Two months later, the mother filed for divorce and notified the father of this fact by phone and email. She moved to an undisclosed address. The father timely filed a petition for the children's return to Germany.

The district court found that the United States was the children's habitual residence and had been since 2015. The court of appeals affirmed in a per curiam decision.

Discussion

The court noted that the Eleventh Circuit previously approved a definition of habitual residence in *Pfeiffer v. Bachotet*,¹ based on the seminal U.K. case, *In re Bates*:² “[A] habitual residence is established when ‘the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.’”³ The court then went on to indicate that a change in habitual residence required that, “the parents must share a ‘settled intention’ to leave the old habitual residence behind,” and “an ‘actual change in geography and the passage of a sufficient length of time for the child to have become acclimatized’ must occur.”⁴

1. 913 F.3d 1018 (11th Cir. 2019).

2. [1989] 2 WLUK 293 (Fam.).

3. *Pfeiffer*, 913 F.3d at 1023–24.

4. *Id.* at 1024 (citing *Ruiz v. Tenorio*, 392 F.3d 1247, 1252 (11th Cir. 2004)).