

RENDERED: February 18, 2005; 10:00 a.m.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2004-CA-001418-ME

MICHAEL P. DIER

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT  
HONORABLE JULIE PAXTON, JUDGE  
ACTION NOS. 97-CI-00034 & 97-CI-00976

LAURA SAMPLES

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: BUCKINGHAM, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This family and its custody problems are no strangers to this Court. This appeal involves the narrow legal issue of the trial court's decision to decline to enforce the orders of this Court by attempting to transfer jurisdiction to Ohio. This Court's decision of December 31, 2003, established the law of the case, and the trial court's refusal to enforce

that decision was error. Hence the judgment must be reversed and the case remanded to the trial court for further proceedings.

The only facts necessary for an understanding of this appeal are that on or about May 11, 2002, Michael P. Dier had legal custody of his daughter, Samantha Dier, when he authorized her to stay with her mother, Laura Samples, in Ohio. At the end of the summer, Laura refused to return Samantha and Michael filed suit in the Floyd Circuit Court. On September 4, 2002, the trial court attempted to amend custody by changing custody from Michael to Laura. Michael appealed to this Court. On December 31, 2003, a panel of this Court (with Judge Buckingham presiding) reversed the Floyd Circuit Court and sent the matter back with directions to give Samantha back to Michael and to lift its order staying enforcement of the prior child support order.<sup>1</sup> That decision became final on February 12, 2004, and is the law of the case. See Commonwealth v. Tamme, 83 S.W.3d 465, 468 (Ky. 2002).

Instead of complying with our directions, the trial court went halfway. By amended order entered March 3, 2004, the court set aside its earlier rulings and ordered Laura to return Samantha to Michael. However, instead of enforcing that order, the trial court, sua sponte, entered an order on May 20, 2004,

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<sup>1</sup> 2002-CA-002317-MR

declining jurisdiction in favor of an Ohio Court, concluding that Samantha had resided in Ohio for more than six months. An amended order declining jurisdiction pursuant to the UCCJA was entered June 17, 2004, transferring all matters in this Court's December 31, 2003, opinion to the Ohio Court.

Michael appealed again to this Court, contending the Floyd Circuit Court erred in transferring jurisdiction to Ohio. We agree. The circuit court found Samantha had been living in Ohio for the last six months and that residency was sufficient to confer jurisdiction on Ohio as her "home state" pursuant to the UCCJA,<sup>2</sup> KRS 403.410. KRS 403.460 did allow the Floyd Circuit Court to defer to the Ohio courts if Samantha was a legal resident of Ohio for the previous six months. However, while Samantha may have been physically present in Ohio with her mother for over six months, she was only there legally (with her father's consent) from May of 2002, to the end of the summer, a period of less than six months. See KRS 403.420(2); Pike v. Aigner, 828 S.W.2d 674, 677 (Ky.App. 1992); and Freeman v. Freeman, 547 S.W.2d 437 (Ky. 1977). Within six months of the move, after the summer ended, Michael, who had legal custody, demanded Samantha's return. When Laura refused, Michael filed suit and within six months of the original transfer, the trial

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<sup>2</sup> Uniform Child Custody Jurisdiction Act, KRS 403.400 to 403.620, as it existed at the time. Effective July 13, 2004, the UCCJA was repealed and replaced with KRS 403.800 to 403.880.

court ruled on the matter, albeit incorrectly. The appeal was timely filed to this Court, which produced the earlier mentioned opinion of December 31, 2003. When the Floyd Circuit Court deferred to Ohio, Samantha had not legally resided (although physically present) in Ohio for six months or more and Ohio did not become the "home state" because the action Michael filed tolled the running of legal residency. Id. Therefore, the Floyd Circuit Court erred in deferring to the Ohio court.

For the foregoing reasons, the judgment of the Floyd Circuit Court is reversed and the matter remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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