

NEW YORK COURT OF APPEALS

Pereira v. Pereira

Pereira v. Pereira, 35 N.Y.2d 301 (1974) · Decided October 8, 1974

SUMMARY

In **Pereira v. Pereira**, 35 N.Y.2d 301 (1974), the New York Court of Appeals held that polygraph test results are inadmissible in civil contempt proceedings absent a stipulation explicitly providing for their use in court and a showing of competent administration by a qualified examiner. The court also ruled that a civil contempt finding requires a specific, express court order directing the act to be performed, plus proof that the defendant had knowledge of the child's whereabouts and the ability to comply. Reversing the contempt order, the court found the evidence insufficient, as it rested on speculation and equivocal statements rather than proof that the father could produce the missing child.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Witmer; Breitel; Gabrielli; Jones; Wachtler; Rabin; Stevens
JURISDICTION	New York
DECIDED	October 8, 1974
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from an order of the Appellate Division modifying an order of the trial court finding defendant in contempt of court.
PRECEDENTIAL VALUE	Published
PARTIES	Defendant v. Plaintiff

TOPICS

- contempt
- evidence
- family law
- child custody
- civil procedure

PRACTICE AREAS

- Family Law
- Contempt
- Evidence

QUESTIONS PRESENTED

- Whether the trial court erred in admitting polygraph test results and testimony into evidence.

2. Whether the contempt proceeding was procedurally proper given the lack of a specific prior order directing delivery of the child.
3. Whether the evidence was sufficient to support a finding of civil contempt.

HOLDINGS

1. The polygraph evidence was inadmissible because the stipulation did not provide for its use in court and the examiner was not sufficiently qualified; furthermore, the reliability of polygraph tests has not been established to justify their admission in court.
2. The contempt proceeding was premature because no specific order had been entered directing defendant to deliver Alice, and the commitment order was not based on a violation of an express order.
3. The evidence was insufficient to establish that defendant had knowledge of Alice's whereabouts or the ability to produce her; speculation and inference cannot substitute for proof.

KEY QUOTATIONS

“the mandate alleged to be violated should be clearly expressed, and when applied to the act complained of it should appear, with reasonable certainty, that it had been violated” (308)

“Speculation, surmise, deduction cannot supplant the requisite proof, nor serve as a substitute in meeting the obligation imposed by law. Before there can be a default in production or willful disobedience, proof of existence as well as ability to produce must be shown” (309)

“the criterion for interpretation of the test chart has not as yet become sufficiently definite to be generally reliable so as to warrant judicial acceptance; nor can it be said that the examiner's opinion demonstrates reasonable certainty as to the accuracy of the polygraph tests in most instances” (306)

FACTUAL BACKGROUND

Plaintiff and defendant were divorced, with custody of two children awarded to plaintiff. Seven months before the divorce, the daughter Alice disappeared. Plaintiff alleged defendant was involved and sought to hold him in contempt for failing to deliver Alice. The parties stipulated to polygraph examinations, which were administered and results admitted into evidence. The trial court found defendant in contempt, ordering him to deliver Alice or be imprisoned.

PROCEDURAL HISTORY

The trial court found defendant in contempt for failing to deliver his daughter to plaintiff, ordering him to deliver her or be imprisoned. The Appellate Division modified the order by limiting imprisonment to six months and requiring a review within 90 days. Defendant appealed to the Court of Appeals.

DISPOSITION

reversed

CASES CITED

- People v. Leone, 25 N.Y.2d 511 (1969)
- State v. McDavitt, 62 N.J. 36 (1973)
- State v. Ross, 7 Wash. App. 62 (1972)
- Pulakis v. State, 476 P.2d 474 (Alaska 1970)
- Romero v. State, 493 S.W.2d 206 (Tex. Crim. App. 1973)
- Conley v. Commonwealth, 382 S.W.2d 865 (Ky. 1964)
- State v. Trimble, 68 N.M. 406 (1961)
- Stone v. Earp, 331 Mich. 606 (1951)
- LeFevre v. State, 242 Wis. 416 (1943)
- Dolan v. Kelly, 76 Misc.2d 151 (Sup. Ct. 1973)
- Matter of Anonymous v. Anonymous, 75 Misc.2d 823 (Sup. Ct. 1973)
- People v. Dodge, 72 Misc.2d 345 (Sup. Ct. 1972)
- People v. Jacobson, 71 Misc.2d 1040 (Sup. Ct. 1972)
- Ketchum v. Edwards, 153 N.Y. 534 (1897)
- People ex rel. Porter v. Porter, 33 A.D.2d 876 (1970)
- Matter of Carlson v. Podeyn, 12 A.D.2d 810 (1961)
- People v. Shapolsky, 8 A.D.2d 122 (1959)