PEOPLE STATE MICHIGAN v. KEVIN DON REYNOLDS

[1] COURT OF APPEALS OF MICHIGAN

[2] Docket No. 103442

[3] 1988.MI.1005 <http://www.versuslaw.com>, 429 N.W.2d 662, 171 Mich. App. 349

[4] September 7, 1988

[5] **PEOPLE OF THE STATE OF MICHIGAN, PLAINTIFF-APPELLANT,**
v.
KEVIN DON REYNOLDS, DEFENDANT-APPELLEE

[6] Frank J. Kelley, Attorney General, Louis J. Caruso, Solicitor General, William D. Frey, Prosecuting Attorney, and Lawrence J. VanWasshenova, Assistant Prosecuting Attorney, for the people.

[7] Daniel S. White, for defendant on appeal.

[8] Holbrook, Jr., P.j., and MacKenzie and N. A. Baguley,* JJ.

[9] The opinion of the court was delivered by: Baguley

[10] The people appeal as of right from an order of the circuit court quashing an information charging defendant with violating MCL 750.350a(1); MSA 28.582(1)(1). We reverse and bind defendant over to stand trial on the charge.

[11] Defendant, Kevin Don Reynolds, and complainant, Pamela Ray, are the natural parents of a son, who was born out of wedlock on April 21, 1986. Although defendant is the father of the child, defendant and complainant were never married and no court

orders were issued concerning custody or visitation rights with him. At the preliminary examination, complainant testified that she thought that both she and defendant had equal custody of the child. Complainant also testified that defendant is married to another woman and has another child.

[12] On October 24, 1986, complainant left the child with her father, Clark Ray, for the day. While Mr. Ray was baby-sitting for the child, defendant picked up the child at Mr. Ray's Monroe, Michigan, home and took the child to Florida. On or about November 21, 1986, complainant went to Florida to retrieve the child from defendant and defendant was arrested.

[13] On December 11, 1986, defendant was bound over to stand trial on the present charge. The court denied defendant's motion to quash the information. The case was then reassigned to another circuit Judge, who reconsidered defendant's motion to quash. In an opinion dated August 31, 1987, the circuit Judge granted defendant's motion to quash, finding that the magistrate abused her discretion in binding defendant over. The court ruled that both the mother and father were equally entitled to possession of the child, as there existed no court order granting either parent custody or visitation rights. Further, the court ruled that the grandfather, the child's babysitter, had no greater rights to the child than the mother who placed the child in his care. The court concluded that, since it is not criminal to exclusively possess one's child in the absence of a court order, it could not be criminal to exclusively possess the child by way of taking the child from a babysitter, here the grandfather.

[14] MCL 750.350a(1); MSA 28.582(1)(1) provides:

[15] An adoptive or natural parent of a child shall not take that child, or retain that child for more than 24 hours, with the intent to detain or conceal the child from any other parent or legal guardian of the child who has custody or visitation rights pursuant to a lawful court order at the time of the taking or retention, or from the person or persons who have adopted the child, or from any other person having lawful charge of the child at the time of the taking or

retention.

[16] The plain language of the statute shows that a natural parent of a child cannot take or retain the child for more than twenty-four hours with the intent to detain or conceal the child from (1) any other parent or legal guardian, or (2) any person or persons who have adopted the child, or (3) any other person having lawful charge of the child at the time of the taking or retention.

[17] In the instant case, the circuit Judge properly analyzed that defendant could not be charged with concealing the child from the mother as she had no custody or visitation rights pursuant to a lawful court order at the time of the taking. However, we believe the Judge incorrectly analyzed whether defendant had taken the child from another person having lawful charge of the child at the time of the taking.

[18] It is not controverted that Mr. Ray had lawful charge of the child at the time defendant picked him up and took him to Florida for approximately four weeks. Under the clear language of the statute defendant's actions fall within this third category. It appears that defendant had the intent to detain the child for more than twenty-four hours from Mr. Ray as well as from complainant. The circuit Judge improperly analyzed the grandfather's rights as derivative of the mother's.

[19] The circuit court's and defendant's reliance on People v Nelson, 322 Mich 262, 269; 33 NW2d 786 (1948), is misplaced. The statute in question at that time was more general and applied to any person who should take or entice away any child under the age of fourteen years with the intent to detain or conceal the child from his parents. See MCL 750.350; MSA 28.582. Nelson, supra at 266. Further, the defendant in Nelson was not the father but an uncle who aided in the taking.

[20] Even if we were to analyze the grandfather's rights as derivative of complainant's, we are not persuaded by the circuit Judge's reasoning. The child is the illegitimate son of complainant and

defendant. MCL 722.2; MSA 25.244(2) provides that, unless otherwise ordered by a court order, the parents of an unemancipated minor are equally entitled to the custody, control, services and earnings of the minor. However, "parents" is defined as the mother if the minor is illegitimate. Thus we disagree with the circuit Judge's statement that both parents were equally entitled to possession of the child.

[21] As defendant removed the child from a person having lawful charge of him at the time of the taking, the circuit Judge clearly abused his discretion in quashing the information. Accordingly, we reverse the order and remand for trial on the charge.

Opinion Footnotes

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[22] * Circuit Judge, sitting on the Court of Appeals by assignment.

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