

STATE OF NEW YORK  
COURT OF APPEALS

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ARLENE M. CARELLA

Petitioner-Respondent

- against -

NOTICE OF MOTION

CHARLES E. COLLINS, III,

Respondent-Appellant

\*\*\*\*\*

SIRS:

TAKE NOTICE that upon the annexed affidavit of Charles E. Collins, III sworn to on the 17th day of June, 1994 and upon all prior documentation in this appeal proceeding herein, the Respondent-Appellant Charles E. Collins, III will move this Court on Tuesday, July 5, 1994 at 10:00 A.M. at a term to be held at the New York State Court of Appeals, Eagle Street, Albany, New York for an Order that counsel be appointed for me during this appeal (Appellate Court Docket No. 70638) pursuant to Family Court Act § 1120 and that I be granted permission to appeal to the Court of Appeals as I face imprisonment and I am being forced to produce documentation that may tend to incriminate me in violation of my 5th Amendment right against self-incrimination and that I am being denied my right to know the nature and cause of the charges which could lead to me being denied access to my children.

Dated: June 17, 1994

Charles E. Collins, III  
108 Brunswick Road  
Troy, New York 12180  
(518) 274-1418

TO: Nicholas D. Morsillo (Z 029 072 028)  
723 State Street  
Schenectady, New York 12307

Solicitor General (Z 029 072 030)  
Department of Law  
Albany, New York 12224

STATE OF NEW YORK  
COURT OF APPEALS

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ARLENE M. CARELLA

Petitioner-Respondent

- against -

AFFIDAVIT

CHARLES E. COLLINS, III,

Respondent-Appellant

\*\*\*\*\*

STATE OF NEW YORK            )  
COUNTY OF RENSSELAER    ) SS.:

CHARLES E. COLLINS, III, being duly sworn, deposes and says:

1. That I am the Respondent-Appellant in the above captioned matter and make this Affidavit in support of my Notice of Motion dated June 17, 1994 which requests that this Court grant permission to appeal the Appellate Court's Order, Case No. 70638, dated May 16, 1994 (attached), and that I be assigned counsel pursuant to Family Court Act § 1120.

2. I hereby certify that I had assigned counsel pursuant to Family Court Act § 262 at the time of Judge Austin Order that is the subject of this appeal and continue to have assigned counsel in the Family Court. (documents attached)

3. That I face imprisonment in a closed court proceeding over my objection in violation of my 5th Amendment right to a public trial as stated In Re Rosahn, 671 F.2d 690 and in violation of my right to a public trial under the Uniform Rules for the New York State Trial Courts, Part 205, Family Court § 205.4.

4. That I have argued that I am being denied my constitutional right against self-

incrimination as I am being required to produce documentation and to testify about matters which may tend to incrimination me and may lead to my imprisonment.

5. That I am being denied my right to examine Douglas Mills, my children's previous law guardian to find out the nature and cause of the accusations that have lead to me being denied access to my children before we go to court.

6. The Court of Appeals has jurisdiction pursuant to CPLR § 5601 (d).

Sirlin Plumbing Co. v. Maple Hill Homes, Inc., 20 N.Y.2d 401, (1967) held that:

[1] The motion to dismiss the appeal should be denied. The determination of the Appellate Division, insofar as it dismissed the defendant's counter claim, "impliedly severed it from the action, which is still pending undetermined, and to that extent is final." \* \* \*

[2] It is the same theory of implied severance that a determination dismissing one of several causes of action in a complaint is to that extent held final, although the other causes of action have yet not yet been determined. \* \* \*

7. Maliades v. Maliades, 1962, 17, A.D.2d 994, 234 N.Y.S.2d 274 at 275:

[1,2] Following the established practice under the Civil Practice Act, it is our opinion that an order of disposition is one which affects a substantial right of the person aggrieved; such an order is appealable as of right. The order here is such an order. The motion for leave to appeal is therefore denied as unnecessary.

8. Judge Austin's Order is a denial of my constitutional rights which must be considered as "substantial rights". The denial of my 5th Amendment right against self-incrimination as I face imprisonment pursuant to Family Court Act § 454 and my right to know the nature and cause of the charges that have lead to a denial of my right to see my children by the children's law guardian.

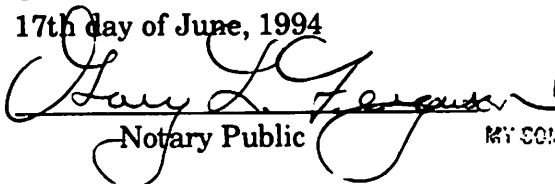
9. That I have the right to appeal to the Court of Appeals pursuant to CPLR § 5601 (d) as this is based upon a non-final order of the Appellate Division and is an appeal of

a final judgment entered in the court of original instance.

WHEREFORE, Charles E. Collins, III, the respondent-appellant, respectfully requests this Court appoint counsel to help in any further papers I may have to file with this Court and that the Court hear my appeal concerning my constitutional right against self-incrimination and my right to know the nature and cause of the allegations that have deprived me of my right to see my children.

  
Charles E. Collins, III

Sworn to before me this  
17th day of June, 1994


  
Notary Public

GARY L. FERGUSON  
4730397  
NOTARY PUBLIC STATE OF NEW YORK  
RESIDING IN SAGHAROGA COUNTY  
MY COMMISSION EXPIRES 1/31/96

**CERTIFICATION AND AFFIRMATION OF SERVICE**

I, Charles E. Collins, III certify and affirm that on the 17th day of June, 1994, I mailed the original Notice of Motion dated June 17, 1994 with Affidavit dated June 17, 1994 and true copies thereof to Donald M. Sheraw - Clerk, New York State Court of Appeals, Eagle Street, Albany, New York 12207 and to all counsel listed below.

Duly Affirmed: Troy, New York  
June 17, 1994

  
Charles E. Collins, III  
108 Brunswick Road  
Troy, New York 12180  
(518) 274-1418

TO: Nicholas D. Morsillo (Z 029 072 028)  
723 State Street  
Schenectady, New York 12307

Solicitor General (Z 029 072 030)  
Department of Law  
Albany New York 12224

FAMILY COURT - STATE OF NEW YORK  
COUNTY OF WARREN

MUNICIPAL CENTER  
LAKE GEORGE, N.Y. 12845

J. AUSTIN  
JUDGE

Telephone  
(518) 761-6500  
(518) 761-6501

October 5, 1990

Nicholas D. Morsillo, Esq.  
723 State Street  
Schenectady, New York 12307

Re: Carella vs. Collins  
Docket No. F-60-85

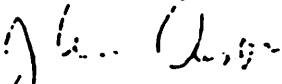
Dear Mr. Morsillo:

In response to your letter dated October 2, 1990 regarding the above-entitled matter, the Court has made a preliminary determination that Mr. Collins is entitled to assigned counsel.

At the present time, the Court is seeking to make such an assignment, and this has resulted in the delay to which you allude.

The Court will attempt to make the assignment expeditiously so that this matter can proceed.

Very truly yours,

  
JOHN AUSTIN  
Family Court Judge

JA:pb

Copy to: Mr. Charles Collins  
Douglas Mills, Esq.



OFFICE OF THE PUBLIC DEFENDER  
OF  
SARATOGA COUNTY  
40 South Street  
Ballston Spa, N.Y. 12020

PLEASE REPLY TO:

John H. Ciulla, Jr.  
Public Defender  
(518) 885-1314

Sandra L. Hunt  
Coordinator, Alternative  
Sentencing Program  
(518) 885-4049

October 25, 1993

Charles E. Collins, III  
108 Brunswick Road  
Troy NY 12180

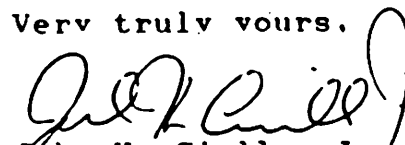
Dear Mr. Collins:

Pursuant to your matter pending in Saratoga County Family Court, I have been kept informed by Mark Major, Assistant Public Defender, of the progress of the case.

Based on these conversations, I have concluded that you are now willing to continue accepting the services of the Saratoga County Public Defender's Office. I would like you to confirm this to me in writing and to Mark Harris, your former attorney. By copy of this letter to Mr. Harris, I am requesting that he make a motion to be relieved from the Court's prior Order.

If you have any questions, please contact my office.

Very truly yours,

  
John H. Ciulla, Jr.  
Public Defender

JHC:ak  
cc: Mark Harris, Esq.  
Mark Major, Esq.  
The Hon. John Austin