

To be argued by:  
Charles E. Collins, III  
Time Requested: 20 Minutes

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# UNITED STATES COURT OF APPEALS

Second Circuit

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CHARLES E. COLLINS, III,  
Plaintiff - Appellant

- against -

2CCA No. 94-9042  
USDC: 1:94-CV-884 TJM

NICHOLAS D. MORSILLO  
JOHN AUSTIN  
LEO M. CASEY  
ARLENE M. CARELLA  
SARATOGA COUNTY SUPPORT COLLECTION UNIT  
UNIFIED COURT SYSTEM OF NEW YORK ,  
Defendants - Respondents

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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**REPLY BRIEF 2 ON BEHALF OF APPELLANT**  
**In Reply to Brief filed late by Nicholas D. Morsillo**

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Plaintiff - Appellant Pro se  
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PRELIMINARY STATEMENT

The Appellant, Charles E. Collins, III, submits this Reply Brief 2 in answer to the Brief filed by Nicholas D. Morsillo on behalf of himself and Arlene M. Carella dated February 9, 1995. Mr Morsillo's Brief was to be filed on or before January 13, 1995 pursuant to this Court's Civil Appeals Scheduling Order dated October 27, 1994. As of February 17, 1995 Mr Collins has not received any brief on behalf of Leo Casey or the Saratoga County Support Collection Unit.

ISSUE PRESENTED

Whether the court below properly dismissed plaintiff's civil rights complaint pursuant to the Rooker-Feldman doctrine, the Younger abstention doctrine and the issue of Mootness.

ARGUMENT

Mr Morsillo on page 6 of his Brief states:

Judge Austin has handed down a decision and order dated December 29, 1994, following the trial. Collins has filed a Notice of Appeal dated January 3, 1995 from that decision and order to the New York Supreme Court, Appellate Division, Third Department. That appeal is now pending.

Judge Austin in his decision found Mr Collins in willful violation of the Family Court Order. Judge Austin among the penalties he imposed upon Mr Collins issued a judgment in the amount of \$35,859.00 against Mr Collins in favor of Ms Carella and ordered that Mr Collins pay Mr Morsillo's attorney fees pursuant to Family Court Act § 454. Mr Morsillo, on January 23, 1995, filed a sworn affidavit with the Family Court for attorney fees in the

amount of \$13,974.71. It should be noted that Judge Austin, Mr Morsillo and Ms Carella are all parties to this proceeding. Is Judge Austin rewarding his fellow co-conspirators?

The State on page 6 of its brief states:

Prior to the July trial, the attorney appointed to represent plaintiff from the Saratoga County Public Defenders Office sought and was granted permission to be relieved from service as plaintiff's counsel on account of plaintiff's inappropriate behavior (163-167).

In the attorneys sworn affidavit (App Ap p 166) to be relieved as Mr Collins' attorney, the attorney states:

Further I believe that I understand Mr Collins rights better than he does - and I believe that pursuing a theory of conspiracy involving former presiding Family Court Judge and other (pursuing a "public trial") is not only counterproductive - it is wrong and harmful to Mr Collins. Clearly, Mr Collins disagrees.

Obviously, the attorney was right. Mr Collins demanded his constitutional rights and Judge Austin has punished him for doing so. Mr Collins is being punished for demanding his constitutional rights by those who are suppose to protect his rights. A litigant has no rights in the Family Court.

Mr Collins continues to face an illegal imprisonment; the illegal taking of his property; and other illegal actions are being taken against him by a judge who knows he has no authority to take an action against Mr Collins. Mr Collins also continues to be deliberately deprived of a relationship with his children based upon the illegal actions of Judge Austin, Mr Morsillo and Ms Carella.

Mr Morsillo on pages 9 and 10 of his Brief states:

Likewise, sections 435 and 454 do not permit the court to impose penalties upon a violator of a support order of

incarceration "in excess of six months . . . or \$5,000.00 fine or both" without a jury trial (App Br p 21). Instead, that section directs the Family Court, in response to a person's willful failure to comply a support order, to compel the violator to pay attorney's fees; it also permits the court, in appropriate instances to jail the violator for up to six months.

United States v. Craner, 652 F.2d 23 (1980) held that a litigant facing six months in jail or a \$500.00 fine or both, plus payment of costs, was a "serious" one for which the Federal Constitution guaranteed trial by jury.

By Mr Morsillo's own admission Mr Collins faced imprisonment for a period of up to six months plus is compelled to pay attorney fees. The payment of attorney fees is part of the punishment or penalty that is imposed pursuant to Family Court Act § 454. The law is clear that a litigant who faces potential fine in excess of \$5,000.00 is entitled to a jury trial. What difference does it make if the penalty is called a "fine" or "court costs" or "attorney fees" or whatever the legislature may want to call it. The intent is the same -- to punish the contemnor.

Mr Collins having to pay attorney fees in amount in excess of \$13,000.00 as a punishment or penalty is certainly more severe than having to pay a fine of \$5,000.00. The attorney fees are of the penalty for contempt and therefore, Mr Collins is entitled to a jury trial and compensation for the deliberate violation of his constitutional rights pursuant to Title 42 U.S.C. § 1983.

It should also be noted neither Mr Morsillo or the State in its brief has denied the potential penalty that could be imposed upon Mr Collins pursuant to Family Court Act § 454 as documented in Mr Collins brief (App Br p 20-21) or in his Reply Brief (App R

B p 21).

United States V. Pina, 844 F.2d 1 at 11:

The right to a jury trial on contempt charges, formerly not recognized, was established by the Supreme Court in Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968). The Court found that denying a jury trial to an individual accused of contempt and subjected to severe punishment was not justified by the need to preserve the efficiency, dignity, or effectiveness of the judicial process. *Id.* at 208, 88 S.Ct. at 1445. It was, instead, an unacceptable interpretation of the Constitution and an unconstitutional assumption of power by the courts. *Id.* at 198 S.Ct. at 1480. The Court reasoned that there is no substantial difference between serious contempt and other serious crimes for which an option of a jury trial is required; on the contrary, "in contempt cases an even more compelling argument can be made for providing a right to a jury trial as a protection against the arbitrary exercise of official power". *Id.* at 202, 88 S.Ct. 1482. The Court believed that it would be unwise to allow the judiciary "untrammelled power" to punish contempt and indicated a jury would be an effective safeguard against that power's abuse. *Id.* at 207, 88 S.Ct. 1485. It reaffirmed serious punishment may be imparted for serious contempt, but explicitly refused to make an exception, even for courtroom misbehavior, to the rule that serious punishment cannot be imposed unless the defendant is given the option of a jury trial. *Id.* at 209, 88 S.Ct. 1486.

Mr Collins filed for a stay of Judge Austin's Order based upon the fact that 1) he was denied a jury trial, 2) Judge Austin lacked subject matter jurisdiction, 3) was deprived of and not informed of his right to counsel for the visitation and custody portions of the trial as required by Family Court Act § 262, 4) he was deprived of competent counsel for the support portion of the proceeding where he was found in contempt of court by Judge Austin who is a defendant in this proceeding and 5) Mr Collins continues to face an illegal imprisonment by Judge Austin and further sanctions by him in violation of the law.

The Motion for a stay of Judge Austin's Decision and Order

dated December 29, 1994 was denied. The Appellate Court is refusing to assign counsel for Mr Collins for his appeal as required by Family Court Act § 1120. Mr Collins had incompetent assigned counsel for the Family Court proceeding for only the support issues pursuant to County Law § 722 (App Ap p 164). The Appellate Court is continuing to violate Mr Collins' right to due process and equal protection of the law as documented in his brief (App Br p. 33).

Mr Morsillo in his Brief has not provided any documentation nor did the State in its brief provide any documentation that Judge Austin had the authority to enforce or modify Mr Collins' divorce decree or the authority to enforce or modify Mr Collins' separation agreement or amended agreement pursuant to the New York State Constitution.

#### CONCLUSION

The Order of the District Court should be reversed and the case remanded back to the District Court for trial.

Dated: February 17, 1995

Respectfully submitted



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