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August 29, 1989

Hon. L. Foster James
Family Court Judge
Saratoga County Family Court
Saratoga County Municipal Center
Ballston Spa, New York 12020-0600

Re: Matter of Arlene Carella (formerly
Arlene Collins) v. Charles E. Collins,
III
Docket No. 672-F-86

Dear Judge James:

I submit this letter reply to the Petitioner's Memorandum of Law dated August 24, 1989.

The Petitioner totally misapprehends the Decision of the Appellate Division herein, and, therefore, misconceives the nature of the recently completed hearing. In essence, the Petitioner is erroneously attempting to enforce the provisions of Orders that the Appellate Division, Third Department, effectively reversed. These Orders, including those by the Court dated April 22, 1986, and April 15, 1987, and that by the Schenectady County Hearing Examiner dated March 12, 1987, compelled the Respondent to provide his former wife and three (3) children occupancy of a residence known as 189 Wooddale Drive, Ballston Lake, New York, and to make various payments on account of support, imposing a total support obligation approximating \$1500.00 per month at a time when the Respondent's net earnings did not amount to \$1300.00 per month. While the Respondent never appealed from these Orders, he did appeal from the Order of Hon. John A. Simone, Jr., Acting Saratoga County Family Court Judge, dated January 25, 1988, granting the Petitioner's Petition to commit him for 15 weekends in the Saratoga County Jail for failure to comply with his support obligation. In the same Order, Judge Simone denied the Respondent's Cross-Petition for a modification and his defense that he was financially unable to comply with the underlying Support Orders just mentioned.

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The Appellate Division reversed Judge Simone's Order and his denial of the Respondent's Cross-Petition, observing:

By way of answer and cross-petition, respondent asserted the defenses that the hearing examiner was without jurisdiction to entertain the issues and that he was financially unable to comply with the Orders sought to be enforced. (Matter of Carella v. Collins, 144 A.D. 2d 78, 81 (1989). (emphasis added).

Specifically, the Appellate Division agreed with Respondent that he established his inability to comply with the Orders that the Petitioner now again seeks to enforce:

There is merit, however, to respondent's contention that he has shown his financial inability to comply with the terms of the support order and thus should be relieved of the commitment order. Id. at 83. (emphasis added).

In reversing, the Appellate Division remanded the matter to Family Court for a new trial on the issue of the Respondent's support obligations. The decretal provision provides: "matter remitted to the Family Court of Saratoga County for a new trial on the issue of respondent's support obligations."

Therefore, the Orders of the Court dated April 22, 1986, and April 15, 1987, and the Schenectady County Hearing Examiner dated March 12, 1987, are no longer in the case, and cannot be enforced. These Orders are the underpinnings of the Petitioner's argument in her Memorandum of Law. Obviously, her argument cannot succeed.

The Court should determine anew the Respondent's support obligations under the Appellate Division's Order upon the basis of the evidence presented at the hearings in April and August. I again respectfully submit that that evidence warrants a child support Order fixing the Respondent's obligations at \$115.00 per week.

Respectfully submitted,


JEROME K. FROST

JKF/geg

cc: Nicholas D. Morsillo, Esq.
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