

STATE OF NEW YORK

FAMILY COURT

COUNTY OF SARATOGA

In the Matter of a Proceeding for Support
Under Article 4 of the Family Court Act

ARLENE COLLINS CARELLA,
Petitioner,

- against -

CHARLES E. COLLINS III,
Respondent.

FINDINGS

OF

FACT

Docket No. F-60-85

The matters of support in the above entitled proceeding having been transferred to the Schenectady County Family Court Hearing Examiner for determination, now upon hearing both parties through their attorneys and evidence having been presented at a hearing held September 14, 1987, I make the following Findings.

VIOLATION PETITION (May 22, 1987)

Under the decision and Order of the Hon. L. Foster James dated April 15, 1987, this Court's prior finding of a willful violation was confirmed and respondent was sentenced to fifteen weekends in jail. That sentence was suspended on condition that there be full compliance with the order of the Court which specifically required respondent to pay the monthly mortgage and utilities on the home at 189 Wooddale Drive occupied by petitioner and the couple's three children and to provide \$66.00 per week support and \$14.00 per week on arrears through the Saratoga County Support Collection Unit. That order further continued certain provisions of a prior order of the Schenectady County Hearing Examiner including a requirement that respondent pay \$800.00 toward past due medical bills for the children within 30 days of the order of March 12, 1987 and to arrange for payments of 71% of the cost of orthodonture for the child Aimee.

Judge James' order of April 15, 1987 further ordered respondent to pay past due electric and gas service bills which total \$807.03. That bill was to have been paid within 30 days of his order.

This Court finds after hearing that respondent has failed to make all of the payments recited above as previously directed, I recommend that the previously suspended sentence be imposed.

MODIFICATION PETITION (June 9, 1987)

This petition failed to allege a change of circumstances except to repeat and allege that respondent has failed to pay his previously ordered payments. It was therefore, dismissed by the Court prior to hearing.

SUPPLEMENTAL PETITION (August 18, 1987)

The Hearing Examiner heard so much of this petition as related to the allegation that respondent "willfully quit his job with King Services Incorporated in order to force a modification of his order of support". Respondent testified that he was informed in a meeting with Ricky Sloat Secretary of the family held corporation, that the company wanted to cut back on expenses because their payroll and overhead were too high. Respondent admitted that he acquiesced in being laid off and he made no attempts to have his termination reconsidered by either the president of the company, Edwin King, nor did he ask his step-father, Everett King, to intercede for him.

It does not appear that respondent has actively sought employment other than to contact two employment agencies, one of which he testified canvassed him. He admitted that he wanted to await the outcome of his Court appearance before ever seeking an interview with the canvassing agency.

While I cannot find from the evidence that respondent voluntarily quit his employment, I am convinced that he exhibits little if any initiative for anything other than litigation in this Court. He would be better served by applying himself to the pursuit of employment rather than by seeking to avoid or to reduce his present obligations.

Since the Hearing Examiner is without jurisdiction to entertain petitions dealing with exclusive possession of the home, (Family Court Act § 439-(c)) I must return that portion of this petition to Judge James. This petition also seeks an order of commitment under the April 15, 1987 decision and Order of Judge James, I recommend commitment as indicated above.

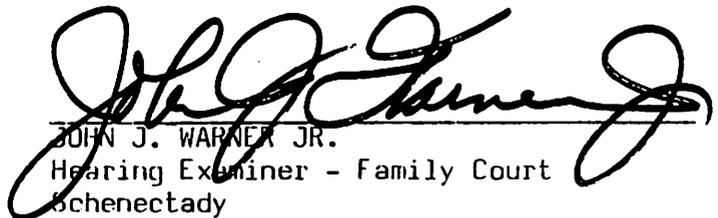
MODIFICATION PETITION (August 19, 1987)

Insofar as this Court was able to determine the issues presented by this ridiculously long petition, I find that Arlene Collins Carella has not remarried and that respondent is not entitled to a reduction in his order due to the nature of his termination from the family owned and operated business and the fact that he has not vigorously sought new employment since his lay off in July 1987. The other "issues" appear to be in the nature of an appeal from the prior decisions and orders of this Court and are not within the scope of my statutory authority to hear and determine. That portion of the instant petition that seeks to appeal the prior determinations, is therefore dismissed.

Respondent (Charles) indicated through his attorney that he filed an amended petition with the Court a few days prior to the hearing date which was substantially similar to this petition but the amended petition was not in the file. I respectfully request that that petition not be transferred to this Court but rather be disposed of upon the hearing of the remaining issues of the instant petitions by Judge James.

DATED: September 17, 1987

SIGNED: September 21, 1987


JOHN J. WARNER JR.
Hearing Examiner - Family Court
Schenectady