



*The Supreme Court of the United States
Decides Turner v. Rogers*

Background

In the case of *Turner v. Rogers*, the U.S. Supreme Court issued its ruling dated June 20, 2011. The question presented was whether “an indigent defendant has a constitutional right to appointed counsel at a civil contempt proceeding that results in his incarceration.” The Court determined that there is no automatic right to counsel in such a case.

In 2003, a South Carolina family court ordered Michael Turner, a noncustodial parent, to pay child support. Over time, he made sporadic, but insufficient payment. He was summoned to court many times over the years to account for the delinquency, and in January 2008, he was summoned to explain or remedy his state of arrears at that time. Turner appeared without a lawyer and said that he was unable to pay the amount owed. The family court judge found him to be in “contempt of court” based on his failure to pay and ordered incarceration for a period of 12 months or until the amount was paid in full. The South Carolina Supreme Court had affirmed the lower court ruling and held that the U.S. Constitution does not require appointment of a lawyer in civil contempt cases, regardless of the risk of incarceration for the defendant.

The Decision

The majority opinion expressed the following three considerations in the Court’s final determination that there was no automatic right to counsel in this situation:

1. The defendant’s ability to pay “which is often closely related to his indigence, and relatively straightforward.”
2. The status of the plaintiff as custodial parent appearing without counsel.
3. The possibility that substitute procedural safeguards can significantly reduce the risk of an erroneous deprivation of liberty.

With regard to safeguards, the Court specifically cited the following procedures:

- Notice to defendant that his ability to pay is a critical issue.
- The use of a form to elicit relevant financial information from the defendant.
- An opportunity at the hearing for the defendant to respond to statements and questions about his financial status.
- An express finding by the court that the defendant has an ability to pay.



1. The defendant’s ability to pay is often closely related to his indigence, and relatively straightforward.

Here the majority opinion was that ability to pay is in many circumstances related to poverty or indigence. And that, in most of those cases, it is not difficult to determine whether the noncustodial parent is indigent and possibly unable to pay child support as ordered. According to the Court:

...the critical question likely at issue in these cases concerns, as we have said, the defendant’s ability to pay. That question is often closely related to the question of the defendant’s indigence. But when the right procedures are in place, indigence can be a question that in many—but not all cases is sufficiently straightforward to warrant determination *prior* to providing a defendant with counsel, even in a criminal case. (Emphasis included in *Turner v. Rogers*.)

2. Sometimes the plaintiff is not the government, but the custodial parent, and she does not have counsel.

One of the respondents in *Turner v. Rogers* suggested that a requirement for states to provide counsel for indigent defendants in cases where the petitioner is an unrepresented custodial parent is unfair. The Court agreed, and determined that such a requirement could create “an asymmetry of representation that would ‘alter significantly the nature of the proceeding...’” Moreover, it was the opinion of the Court that:

...perhaps more important for present purposes, doing so could make the proceedings *less* fair overall, increasing the risk of a decision that would erroneously deprive a family of the support it is entitled to receive. (Emphasis included in *Turner v. Rogers*.)

3. Substitute procedural safeguards... if employed together, can significantly reduce the risk of an erroneous deprivation of liberty.

The Court determined that procedural safeguards—that is, safeguards inserted into the child support contempt hearing process—are absolutely necessary to respond to the important liberty interest of the defendant. And, based on information provided by the Brief for United States as *Amicus Curia* in this case, the Court suggested what those safeguards might look like:

The state must provide procedural safeguards equivalent to the adequate notice of the importance of the ability to pay, a fair opportunity to present, and to dispute relevant information, and express court findings as to the supporting parent’s ability to comply with the support order.

According to the opinion, incarcerating Turner violated his due process rights because he received neither counsel nor the benefit of alternative procedures like those the Court describes.



Uncertain Impact on Policy

A U.S. Supreme Court opinion is a narrow ruling on a specific question. In this particular case, the question concerned a right to appointed counsel in a civil contempt proceeding where the liberty of the defendant was at risk. The Court has ruled that there is no automatic right to counsel in a case with facts such as those presented in *Turner*.

At this point, it is difficult to determine how this ruling will affect child support policy, or to know how or whether various aspects of the process may change. However, it should be noted that the opinion excludes contempt proceedings where the child support debt is owed to the government. The Court makes clear that:

This decision does not address civil proceedings where the underlying support payment is owed to the state, e.g. for reimbursement of welfare funds paid to the custodial parent, or the question of what due process requires in an unusually complex case where a defendant “can fairly be represented only by a trained advocate.”

and,

We do not address civil contempt proceedings where the underlying child support payment is owed to the state, for example, for reimbursement of welfare funds paid to the parent with custody... Those proceedings more closely resemble debt collection proceedings. The government is likely to have counsel or some other competent representative. Cf. *Johnson v. Zerbst*, 304 U.S. 458, 462-463 (1938) “[T]he average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, *wherein the prosecution is presented by experienced and learned counsel.*” (Emphasis added by the Court in *Turner v. Rogers*.)

This clear statement gives rise to new questions about procedural safeguards (or representation by counsel) in cases where the total amount of the debt is owed to the state, or in those where some portion is owed to the state and the balance to the custodial parent.

All quotes are taken from:

Supreme Court of the United States

Turner v. Rogers et al.

Certiorari to the Supreme Court of South Carolina

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