

1 **UNITED STATES COURT OF APPEALS**  
2 **FOR THE SECOND CIRCUIT**

3  
4 August Term, 2015

5  
6 (Argued: October 5, 2015

Decided: November 12, 2015)

7  
8 Docket No. 15-863-cv  
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12  
13 Gabriel R. Falco,

14  
15 *Plaintiff-Appellant,*

16  
17 v.

18  
19 Justices of the Matrimonial Parts of the  
20 Supreme Court of Suffolk County,

21  
22 *Defendants-Appellees.\**  
23 \_\_\_\_\_  
24

25 Before:

26  
27 SACK, LOHIER, and CARNEY, *Circuit Judges.*  
28

29 Plaintiff-appellant Gabriel R. Falco appeals from an order of the United  
30 States District Court for the Eastern District of New York (Bianco, L.) granting  
31 defendants' motion to dismiss based on the Younger abstention doctrine.  
32 Courts should abstain from exercising jurisdiction only in three "exceptional  
33 circumstances," including where there are "pending civil proceedings  
34 involving certain orders . . . uniquely in furtherance of the state courts' ability  
35 to perform their judicial functions." Sprint Commc'ns, Inc. v. Jacobs, 134 S.  
36 Ct. 584, 591 (2013). Because exercising jurisdiction in this case would interfere  
37 with a State court's ability to appoint an attorney for Falco's children in his

\_\_\_\_\_  
\* The Clerk of Court is directed to amend the caption of this case as set forth above.

1 ongoing divorce and custody proceedings, we **AFFIRM** the decision of the  
2 District Court.

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4 PATRICIA WEISS, Sag Harbor, NY, *for*  
5 *Plaintiff-Appellant.*

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7 MARK H. SHAWHAN, Assistant Solicitor  
8 General (Barbara D. Underwood,  
9 Solicitor General, Anisha S. Dasgupta,  
10 Deputy Solicitor General, *on the brief*),  
11 *for* Eric T. Schneiderman, Attorney  
12 General of the State of New York, New  
13 York, NY, *for Defendants-Appellees.*

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15 LOHIER, *Circuit Judge:*

16 Gabriel R. Falco appeals from a judgment of the United States District  
17 Court for the Eastern District of New York (Bianco, J.) granting the  
18 defendants' motion to dismiss Falco's complaint based on the abstention  
19 doctrine announced in Younger v. Harris, 401 U.S. 37 (1971). Because  
20 abstention was warranted under Sprint Communications, Inc. v. Jacobs, 134 S.  
21 Ct. 584 (2013), we affirm the decision of the District Court.

## 22 BACKGROUND

23 In 2013 Falco sued his wife for divorce and sought custody of their two  
24 children in New York State Supreme Court, Suffolk County. In these  
25 circumstances, New York law permits a State court to appoint an attorney to  
26 represent the couple's children. See N.Y. Fam. Ct. Act § 249; N.Y. Jud. Law

1 § 35(3). At a preliminary conference, Falco and his wife agreed to the  
2 appointment, but they disagreed about how the attorney would be paid.  
3 Although Falco contended that he could not afford to do so, the State court  
4 ultimately ordered Falco and his wife each to pay half of the attorney's  
5 retainer and fees, subject to reallocation at trial. When Falco failed to comply  
6 with the order, the State court ordered him to show cause why he should not  
7 be held in contempt.

8         During the course of the divorce proceedings, Falco commenced an  
9 action in federal court under 42 U.S.C. § 1983 challenging the constitutionality  
10 of the New York laws that authorize State judges to order parents to pay for  
11 attorneys appointed for their children. See Falco v. Justices of the  
12 Matrimonial Parts of the Sup. Ct. of Suffolk Cnty., No. 14-cv-29, 2015 WL  
13 778354, at \*1-2 (E.D.N.Y. Feb. 24, 2015). The defendants, all justices of the  
14 Matrimonial Parts of the Supreme Court, Suffolk County, moved to dismiss  
15 the complaint on Younger abstention grounds. Citing our decision in Spargo  
16 v. New York State Commission on Judicial Conduct, 351 F.3d 65 (2d Cir.  
17 2003), the District Court granted the motion and dismissed the complaint.

18         This appeal followed.



1 interest.” Id. Without completely casting aside the Middlesex conditions, the  
2 Court clarified that district courts should abstain from exercising jurisdiction  
3 only in three “exceptional circumstances” involving (1) “ongoing state  
4 criminal prosecutions,” (2) “certain civil enforcement proceedings,” and (3)  
5 “civil proceedings involving certain orders uniquely in furtherance of the  
6 state courts’ ability to perform their judicial functions.” Id. at 591 (quotation  
7 marks omitted) (alteration omitted). The Court explained that “these three  
8 ‘exceptional’ categories . . . define Younger’s scope.” Id.

9         Although the Middlesex/Spargo conditions are not dispositive, it  
10 remains unclear how much weight we should afford these “additional  
11 factors” after Sprint. But we need not address that issue in this case. It is  
12 enough to say that the District Court erred by treating them as dispositive  
13 (rather than additional) factors and ignoring the straightforward categorical  
14 approach required by Sprint.

15         On de novo review, however, we independently conclude that Falco’s  
16 case presents circumstances that qualify as “exceptional” under Sprint and  
17 that Younger abstention was therefore warranted. Falco’s federal lawsuit  
18 implicates the way that New York courts manage their own divorce and

1 custody proceedings—a subject in which “the states have an especially strong  
2 interest.” Phillips, Nizer, Benjamin, Krim & Ballon v. Rosenstiel, 490 F.2d 509,  
3 516 (2d Cir. 1973) (Friendly, J.). In particular, Falco challenges the State  
4 court’s order that he pay half the fees of the attorney appointed to represent  
5 his children in the divorce proceeding. Although there is some disagreement  
6 among New York courts about whether the fees for such court-appointed  
7 counsel should be borne by the public or by the parents, compare Redder v.  
8 Redder, 792 N.Y.S.2d 201, 204-05 (3d Dep’t 2005) (suggesting that the State  
9 should pay for a court-appointed attorney for the child in a custody  
10 proceeding), with Plovnick v. Klinger, 781 N.Y.S.2d 360, 363-66 (2d Dep’t  
11 2004) (holding that courts may require one or both parents to pay for a court-  
12 appointed attorney for their children), there is no discernible disagreement  
13 that orders relating to the selection and compensation of court-appointed  
14 counsel for children are integral to the State court’s ability to perform its  
15 judicial function in divorce and custody proceedings. The circumstances of  
16 this case therefore clearly fall within Sprint’s third category: pending State  
17 civil proceedings involving orders “uniquely in furtherance of the state

1 courts' ability to perform their judicial functions."<sup>1</sup> Sprint, 134 S. Ct. at 591  
2 (quotation marks omitted); see also Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 14  
3 (1987) (cautioning that the district court should "stay its hand" where there  
4 are pending State proceedings involving the enforcement of orders and  
5 judgments out of "respect for the ability of state courts to resolve federal  
6 questions presented in state-court litigation").

7 Accordingly, we conclude that, despite its error in applying the Spargo  
8 factors, the District Court correctly abstained from exercising federal  
9 jurisdiction under Sprint.

## 10 CONCLUSION

11 We have considered Falco's remaining arguments, including that he  
12 had no avenue in the New York State courts to further appeal or otherwise  
13 challenge the attorney appointment order, and conclude that they are without  
14 merit. For the foregoing reasons, we AFFIRM the judgment of the District  
15 Court.

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<sup>1</sup> Middlesex and Spargo, by contrast, arose from pending, "quasi-criminal" State ethics investigations of attorney misconduct and judicial misconduct, respectively. They therefore involved the second exceptional circumstance identified in Sprint, namely, "civil enforcement proceedings." Sprint, 134 S. Ct. at 591.