

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 26, 2006

98990

In the Matter of HOLLI A.
STRAIGHT, as Senior Child
Support Examiner for the
Commissioner of Social
Services of Saratoga County,
on Behalf of KIM DECKER,
Respondent,

MEMORANDUM AND ORDER

v

RONALD SKINNER,
Appellant.

(And Another Related Proceeding.)

Calendar Date: September 15, 2006

Before: Cardona, P.J., Mercure, Crew III, Peters and Spain, JJ.

Marcel J. Lajoy, Albany, for appellant.

Mark M. Rider, County Attorney, Ballston Spa (Richard A.
Kupferman of counsel), for respondent.

Mercure, J.

Appeal from an order of the Family Court of Saratoga County
(Abramson, J.), entered July 25, 2005, which, inter alia, granted
petitioner's application, in two proceedings pursuant to Family
Ct Act article 4, to find respondent in willful violation of a
prior order of support.

Petitioner commenced a proceeding on behalf of Kim Decker,
alleging that respondent had violated a support order by, among

other things, failing to make required child support payments. Following a hearing, a Support Magistrate found that respondent had willfully violated the support order. Family Court denied respondent's subsequent objections, confirming the finding of willfulness and sentencing respondent to 60 days in jail. Respondent appeals and we now affirm.¹

We reject respondent's argument that Family Court erred in determining that he willfully violated the prior support order. Respondent concedes that petitioner presented prima facie evidence of a willful violation by demonstrating that he was not in compliance with his obligations and, therefore, he bore the burden of establishing "his inability to make the required payments" by "competent, credible evidence" (Matter of Powers v Powers, 86 NY2d 63, 70 [1995]; see Matter of Columbia County Support Collection Unit v Demers, 29 AD3d 1092, 1093 [2006], lv denied 7 NY3d 708 [2006]). Although respondent's family physician, Richard Pitkin, testified that respondent was disabled from doing physical or manual work due to an arthritic condition, Pitkin conceded that his opinion was based solely on respondent's subjective complaints, rather than any objective testing. Moreover, petitioner presented conflicting testimony – supported by photographs at the hearing – from other witnesses showing that respondent had engaged in splitting firewood, building a retaining wall, raking leaves and shoveling snow. According deference to Family Court's credibility assessments, we conclude that the court properly determined that respondent failed to meet his burden of going forward and that petitioner sustained her burden of proving a willful violation (see Matter of Columbia County Support Collection Unit v Demers, supra at 1093; Matter of Freedman v Horike, 26 AD3d 680, 681-682 [2006]).


Respondent's remaining argument has been considered and found to be lacking in merit (see Matter of Powers v Powers, supra at 68-69).

¹ Respondent's petition seeking downward modification of the support order was dismissed and he has not appealed in that regard.

Cardona, P.J., Crew III, Peters and Spain, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is fluid and cursive, with a large, stylized initial "M" and "N".

Michael J. Novack
Clerk of the Court