

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

Decided and Entered: June 9, 2011

509987

In the Matter of KATHLEEN M.
CLARK,

Respondent,

v

MEMORANDUM AND ORDER

MICHAEL J. CLARK,

Appellant.

Calendar Date: April 27, 2011

Before: Spain, J.P., Lahtinen, Kavanagh, McCarthy and Garry, JJ.

Marcel J. Lajoy, Albany, for appellant.

McCarthy, J.

Appeals (1) from an order of the Family Court of Schenectady County (Ellis, S.M.), dated May 11, 2010, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 4, to hold respondent in willful violation of a prior order of support, and (2) from an order of said court (Powers, J.), entered June 16, 2010, which ordered respondent to undergo a psychiatric evaluation.

A Support Magistrate granted petitioner's application to find respondent in willful violation of a prior order of support, recommended that he be incarcerated and referred the matter to Family Court for confirmation (see Family Ct Act § 439 [a]; see also Family Ct Act § 454 [3]). When he appeared in court upon that referral, respondent raised his voice, persisted in attempting to make the court review a prior order and refused to stop speaking when directed to do so by the court, a court officer and his own attorney. The court ordered that respondent

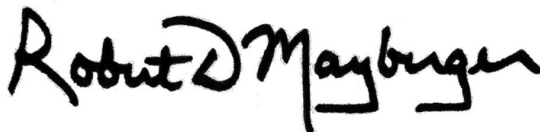
submit to a psychiatric evaluation and adjourned the proceeding. Respondent appeals from the Support Magistrate's order and Family Court's order requiring an evaluation.

A Support Magistrate's order finding a willful violation and recommending incarceration is not a final order and "shall have no force and effect until confirmed by a judge of the court" (Family Ct Act § 439 [a]). Hence, such an order is not appealable as of right (see Family Ct Act § 1112 [a]; Matter of Huard v Lugo, 81 AD3d 1265, 1266 [2011], lv denied 16 NY3d 710 [2011]; Matter of Dakin v Dakin, 75 AD3d 639, 640 [2010], lv dismissed 15 NY3d 905 [2010]; see also Anderson v Harris, 68 AD3d 472, 474 [2009]). Family Court's order that respondent submit to a psychiatric evaluation is similarly not a final order of disposition from which an appeal would lie as of right, and respondent has not sought leave to appeal (see Family Ct Act § 1112 [a]; Matter of Chang v Conway, 302 AD2d 459 [2003]; Matter of Francis M. v Anne M., 279 AD2d 279, 280 [2001]; Dillard v Dillard, 48 AD2d 666 [1975]; Firestone v Firestone, 44 AD2d 671, 672 [1974]). Accordingly, the appeals from both orders must be dismissed.

Spain, J.P., Lahtinen, Kavanagh and Garry, JJ., concur.

ORDERED that the appeals are dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court