

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

Decided and Entered: May 5, 2011

510506

In the Matter of JILL K. RILEY,
Respondent,

v

MEMORANDUM AND ORDER

PETER F. RILEY,
Appellant.

Calendar Date: March 25, 2011

Before: Mercure, J.P., Lahtinen, Malone Jr., Kavanagh and
Garry, JJ.

Dorner & Kosich, Greenville (Jon Kosich of counsel), for
appellant.

Jill K. Riley, Hunter, respondent pro se.

Lahtinen, J.

Appeals (1) from an order of the Family Court of Greene
County (Pulver Jr., J.), entered January 20, 2010, which, in a
proceeding pursuant to Family Ct Act article 4, dismissed
respondent's objections to the order of a Support Magistrate, and
(2) from an order of said court, entered May 17, 2010, which,
upon reargument, adhered to the prior order.

Petitioner commenced this proceeding alleging that
respondent willfully violated a support order by, among other
things, refusing to pay college costs of the parties' child and
failing to pay previously awarded counsel fees (see Matter of
Riley v Riley, 29 AD3d 1146 [2006]). Following a hearing, a
Support Magistrate determined that respondent had willfully
violated the support order and directed that he pay in excess of

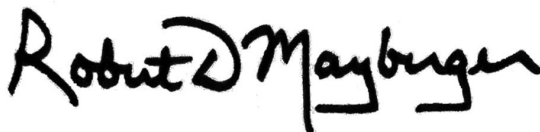
\$40,000 for various amounts that he owed. Respondent filed objections and served a copy of the objections upon petitioner's counsel, but failed to file proof of service with the court as required by Family Ct Act § 439 (e). After petitioner served her rebuttal, Family Court issued an order dismissing respondent's objections because he failed to file proof of service of his objections upon petitioner with the court. Upon respondent's motion, Family Court granted reargument but, after reconsideration, adhered to its prior determination. Respondent appeals.

We affirm. Failure to timely file such proof of service constitutes an adequate ground to dismiss a party's objections (see Family Ct Act § 439 [e]; Matter of Bucek v Rogers, 301 AD2d 973, 975 [2003]; see also Matter of Burger v Brennan, 77 AD3d 828 [2010]). While this Court has acknowledged Family Court's discretion to overlook a party's failure to timely file proof of service of the objections on the opposing party and reach the merits in some circumstances (see Matter of Stephen W. v Christina X., 80 AD3d 1083, 1084 [2011]; Rossiter v Rossiter, 56 AD3d 1011, 1011, n 1 [2008]; see also Matter of Latimer v Cartin, 57 AD3d 1264, 1265 [2008]; Matter of Ogborn v Hilts, 262 AD2d 857, 858 [1999]), we have never held that it is an abuse of discretion for a court to require adherence to the statutory requirements of Family Ct Act § 439 (e) or to dismiss objections upon a party's failure to adhere to that statute. Our review of the record reveals no extraordinary or prejudicial circumstances which would persuade us otherwise.

Mercure, J.P., Malone Jr., Kavanagh and Garry, JJ., concur.

ORDERED that the orders are affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court