

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

Decided and Entered: December 20, 2012

513902

In the Matter of CHERYL L.
BOYLE,

Respondent,

v

MEMORANDUM AND ORDER

THOMAS M. BOYLE,

Appellant.

Calendar Date: November 16, 2012

Before: Mercure, J.P., Spain, Malone Jr., Stein and
McCarthy, JJ.

Clifford Gordon, Monticello, for appellant.

Mercure, J.P.

Appeal from an order of the Family Court of Sullivan County (Meddaugh, J.), entered November 22, 2011, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 4, to, among other things, hold respondent in willful violation of a prior order of support.

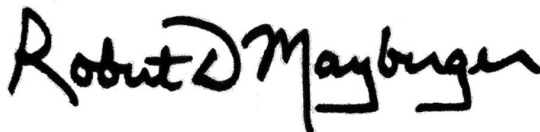
The parties are the married parents of two children (born in 1998 and 2003). Petitioner (hereinafter the mother) commenced this proceeding alleging that respondent (hereinafter the father) violated a 2007 order directing him to pay \$210 per week in child support. Following a hearing, a Support Magistrate determined that the father had willfully violated the support order, recommended a six-month term of incarceration, and referred the matter to Family Court, which confirmed and committed the father to incarceration for a period of six months. Upon the father's appeal, we now affirm.

The father's admitted failure to pay support since 2007, leading to a significant arrearage, established a "direct case of willful violation, shifting to [the father] the burden . . . [of] offer[ing] some competent, credible evidence of his inability to make the required payments" (Matter of Powers v Powers, 86 NY2d 63, 69-70 [1995]; accord Matter of Scott v Scott, 50 AD3d 1193, 1194 [2008]). Although the father testified that he has been unable to work due to injuries sustained in a 2007 car accident, he did not present medical proof of any restrictions on his employment, and he conceded that his claim for disability benefits had been denied three times (see Matter of Lewis v Cross, 72 AD3d 1228, 1230 [2010]; Matter of Chamberlain v Chamberlain, 69 AD3d 1249, 1250-1251 [2010]; Matter of Vickery v Vickery, 63 AD3d 1220, 1221 [2009]). Nor did the father demonstrate that he had made a good faith effort to find employment; rather, he testified that he had applied for "three or four" jobs in the past "four or five years" (see Matter of Scott v Scott, 50 AD3d at 1194; Matter of Mitchell v Rockhill, 45 AD3d 1140, 1141 [2007]). According deference to the Support Magistrate's credibility determinations, clear and convincing evidence supports the finding of willful violation.

Spain, Malone Jr., Stein and McCarthy, JJ., concur.

ORDERED that the order is affirmed, 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