

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

Decided and Entered: May 30, 2013

515864

In the Matter of CHEMUNG
COUNTY SUPPORT COLLECTION
UNIT, on Behalf of DAVID
R. PERRY,

Appellant,

OPINION AND ORDER

v

LUANA RAE GREENFIELD,
Respondent.

Calendar Date: April 23, 2013

Before: Peters, P.J., Rose, McCarthy and Egan Jr., JJ.

Donald Thomson, Chemung County Department of Social
Services, Elmira (David A. Kagle of counsel), for appellant.

Samuel Castellino, Elmira, for respondent.

Peters, P.J.

Appeal from that part of an order of the Family Court of
Chemung County (Hayden, J.), entered June 14, 2012, which, in a
proceeding pursuant to Family Ct Act article 4, partially denied
petitioner's objections to the order of a Support Magistrate.

A 2006 order of Family Court required respondent to pay
child support for her three children (born in 1985, 1987 and
1990) in the amount of \$114 weekly. After respondent accrued
over \$30,000 in arrearages on her support obligation, petitioner
obtained over \$5,000 in income tax refunds due to her and
disbursed them to the children's father (see 42 USC § 664; Social
Services Law §§ 111-b [15]; 111-h; Tax Law § 171-i).

Respondent's current husband then claimed that the refunds stemmed from joint tax returns and that some or all of the monies were his, obliging petitioner to repay them to the taxing authorities out of its own funds (see 42 USC § 664 [a] [3]; Tax Law §§ 171-c [3] [e]; 651 [b] [6]). Petitioner subsequently commenced this proceeding on behalf of the father and, alleging that respondent had willfully violated the support order, sought the entry of a money judgment against her for the amount of the tax refunds. Family Court determined that it lacked jurisdiction to issue such a judgment, and petitioner appeals.

While "Family Court is a court of limited jurisdiction, constrained to exercise only those powers granted to it by the State Constitution or by statute" (Matter of H.M. v E.T., 14 NY3d 521, 526 [2010]), it is empowered "to determine applications to modify or enforce judgments and orders of support" (Matter of Suffolk County Dept. of Social Servs. v Spinale, 57 AD3d 681, 683 [2008]; see NY Const, art VI, § 13; Family Ct Act §§ 115 [a] [ii]; 454 [1]). In that regard, petitioner is authorized to commence violation proceedings "on behalf of persons" who receive child support pursuant to a court order (Family Ct Act § 453 [a]).¹ Petitioner's role in enforcing child support orders is not limited to disbursing monies to the support recipient; it is also tasked with collecting those funds from the obligor and ensuring that they are properly accounted for (see Social Services Law § 111-h [1], [11]; Matter of Dutchess County Support Collection Unit v Kasekas, 21 AD3d 960, 961 [2005]). Indeed, historically, a support collection unit was authorized to file a violation petition without reference to the support recipient. The "on behalf of" language was only added to Family Ct Act § 453 in order to clarify that the unit could prosecute as well as

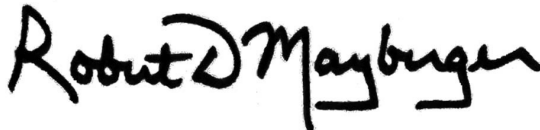
¹ The children subject to the order at issue here were 21 years old or older when the petition was filed and, as such, respondent's obligation to make further child support payments had ceased. She continued to owe child support arrearages, however, and Family Court retained continuing jurisdiction to enforce the support order until it was "completely satisfied" (Family Ct Act § 451 [1]; see Matter of Layne G.G. v Kevin P.D., 8 Misc 3d 857, 859 [2005]).

originate "a violation proceeding on behalf of non-public assistance individuals in receipt of child support services" (Assembly Mem in Support, 2009 McKinney's Sess Laws of NY at 1711; see L 2009, ch 343, § 4). Petitioner thus acted well within its statutory authority in commencing this proceeding to enforce a child support order that respondent had "fail[ed] to obey," and Family Court likewise had subject matter jurisdiction to consider it (Family Ct Act § 454 [1]; see Family Ct Act § 460 [1]; Social Services Law §§ 111-c [4]; 111-g [1]).

Rose, McCarthy and Egan Jr., JJ., concur.

ORDERED that the order is modified, on the law, without costs, by reversing so much thereof as denied petitioner's objection with regard to its claim for arrearages directly owed to it; matter remitted to the Family Court of Chemung County for further proceedings not inconsistent with this Court's decision; and, as so modified, affirmed.

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