

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

Decided and Entered: July 3, 2019

526423

In the Matter of ADRIANNA R.
O'NEILL,

Petitioner,

v

MEMORANDUM AND ORDER

MATTHEW J. MAZEPA,

Appellant.

Calendar Date: June 5, 2019

Before: Lynch, J.P., Clark, Mulvey, Aarons and Rumsey, JJ.

George J. Hoffman, East Greenbush, for appellant.

Aarons, J.

Appeal from an order of the Family Court of Delaware County (Rosa, J.), entered February 13, 2018, which, in a proceeding pursuant to Family Ct Act article 4, committed respondent to jail for six months for willfully violating a prior order of support.

Pursuant to a March 2017 order, respondent was directed to pay petitioner child support in the amount of \$25 per month. Petitioner filed a violation petition in July 2017 alleging that respondent willfully violated the March 2017 order by failing to make the required child support payments. A hearing was held before a Support Magistrate, after which respondent was found to have willfully violated the March 2017 order. The Support Magistrate also recommended a period of incarceration of six months for respondent, and the matter was referred to Family

Court for confirmation. Following a confirmation hearing, in an order entered February 13, 2018, Family Court directed that respondent be committed to the local jail for a period of six months, subject to a purge payment. The court thereafter issued an order entered February 23, 2018 wherein it confirmed the Support Magistrate's determination and ordered that respondent be committed to the local jail for a period of 60 days, subject to a purge payment. Respondent appeals from the February 13, 2018 order.

The appeal must be dismissed. The notice of appeal, dated February 14, 2018, provides that respondent is appealing solely from the February 13, 2018 order. Given that the February 13, 2018 order was superseded by the February 23, 2018 order, the appeal from the February 13, 2018 order must be dismissed (see Matter of Leah VV. [Theresa WW.], 157 AD3d 1066, 1066 n [2018], lv dismissed 31 NY3d 1037 [2018]; Matter of Skelly v Skelly, 19 AD3d 757, 757 [2005], lv denied 5 NY3d 715 [2005]; Holtzman v Holtzman, 202 AD2d 913, 913 [1994]).

Lynch, J.P., Clark, Mulvey and Rumsey, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court