

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

Decided and Entered: May 10, 2012

513262

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In the Matter of NISHA THOMAS,  
Respondent,

v

MEMORANDUM AND ORDER

HUDSON KENNETH SYLVESTER,  
Appellant.

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Calendar Date: April 18, 2012

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

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Sandra M. Colatosti, Albany, for appellant.

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Lahtinen, J.

Appeal from an order of the Family Court of Albany County (Duggan, J.), entered August 3, 2011, 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.

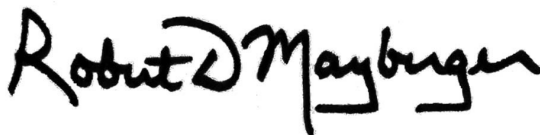
Petitioner (hereinafter the mother) and respondent (hereinafter the father) are the parents of one child (born in 2005). Pursuant to an order entered on consent in April 2009, the father was required to pay \$125 for child support, \$7.84 for health insurance and \$25 for arrears per week. In March 2010, the mother commenced this proceeding alleging that the father was in willful violation of his obligation to make support payments and was in arrears nearly \$4,000. Following a hearing, the Support Magistrate found that the father was in willful violation of the order of support, and Family Court confirmed and found that the father had willfully failed to pay \$7,638.61 in support payments. The father appeals.

We affirm. The father's acknowledgment that he was in arrears on the ordered child support constituted prima facie evidence that he willfully violated the order, and the burden then shifted to him to demonstrate his inability to pay (see Family Ct Act § 454 [3] [a]; Matter of Clark v Clark, 88 AD3d 1095, 1096-1097 [2011], lv denied 18 NY3d 803 [2012]; Matter of Lerman v Haines, 85 AD3d 1248, 1250 [2011]). Here, the father presented no evidence, other than unsupported testimony, that he lacked the resources to pay or had made efforts to find and maintain full-time employment and, therefore, the record supports the finding of willful violation (see Matter of Santana v Gonzalez, 90 AD3d 1198, 1200 [2011]; Matter of Scott v Scott, 50 AD3d 1193, 1194 [2008]).

Peters, P.J., Mercure, Rose and Egan Jr., 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, flowing style with a large, stylized 'R' and 'M'.

Robert D. Mayberger  
Clerk of the Court