

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK

Maldonado v. Maldonado

74 A.D.3d 971 (N.Y. App. Div. 2010) · Decided June 8, 2010

SUMMARY

The court affirmed an order finding the father in willful violation of a child support order and incarcerating him for three months, with an opportunity to purge the contempt by paying \$8,000 toward arrears. The court held that the mother’s proof of nonpayment established prima facie willfulness and that the father failed to provide competent, credible evidence of inability to pay.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York
WRITING FOR THE COURT	Fisher, J.P.; Covello, J.; Hall, J.; Sgroi, J.
JURISDICTION	New York
DECIDED	June 8, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a Family Court order confirming that he willfully violated a prior child-support order and directing his incarceration for three months with an opportunity to purge the contempt by paying \$8,000 toward arrears.
STANDARD OF REVIEW	Whether the Family Court properly determined that the father willfully violated the support order based on the evidentiary record.
PRECEDENTIAL VALUE	published
PARTIES	Father v. Mother

TOPICS

- child support
- family law procedure
- appellate procedure
- remedies

PRACTICE AREAS

- family law
- child support
- contempt

QUESTIONS PRESENTED

1. Whether the father's failure to pay child support constituted prima facie evidence of a willful violation of the support order.
2. Whether the father met his burden to establish, with competent and credible evidence, that he was unable to pay the ordered support.
3. Whether the Family Court properly confirmed the willfulness finding and ordered incarceration with a purge condition.

HOLDINGS

1. In a child-support proceeding, proof that the father failed to pay child support as ordered constituted prima facie evidence of a willful violation of the support order.
2. The father failed to meet his burden to come forward with competent, credible evidence demonstrating an inability to pay the ordered support.

KEY QUOTATIONS

“The mother’s proof that the father failed to pay child support as ordered constituted prima facie evidence of the father’s willful violation of the support order” (971)

“The burden then shifted to the father to come forward with competent, credible evidence of his inability to pay, and he failed to meet his burden” (972)

FACTUAL BACKGROUND

The father was subject to a child-support order but failed to make payments required by that order, resulting in arrears. The mother submitted proof of the nonpayment. The father did not provide competent, credible evidence establishing that he was unable to pay. The Family Court therefore found a willful violation and imposed a three-month incarceration term with an \$8,000 purge condition.

PROCEDURAL HISTORY

After a hearing, a Family Court Support Magistrate found that the father willfully violated a prior support order and recommended three months' incarceration. The Family Court confirmed the finding, ordered the incarceration, and provided a purge opportunity. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Powers v Powers, 86 N.Y.2d 63, 69 (1995)
- Matter of Ferrara v Ferrara, 52 A.D.3d 599, 600 (2008)
- Matter of Rube v Tornheim, 67 A.D.3d 916 (2009)
- Matter of Probert v Probert, 67 A.D.3d 806, 807-808 (2009)

- Matter of Fraser v Green, 57 A.D.3d 896 (2008)
- Matter of Corry v Corry, 59 A.D.3d 618, 619 (2009)

OPINION

PER CURIAM.

a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Westchester County (Malone, J.), entered March 10, 2009, which, upon an order of the same court (Hochberg, S.M.), entered October 3, 2008, made after a hearing, finding that he willfully violated a prior order of support and recommending that he be incarcerated for a period of three months, inter alia, confirmed the finding of willfulness and ordered his incarceration for a period of three months with the opportunity to purge the contempt by payment of the sum of \$8,000 toward his arrears.

Ordered that the order is affirmed, without costs or disbursements. The mother's proof that the father failed to pay child support as ordered constituted prima facie evidence of the father's willful violation of the support order (see Family Ct Act § 454 [3] [a]; Matter of Powers v Powers, 86 NY2d 63, 69 [1995]; Matter of Ferrara v Ferrara, 52 AD3d 599, 600 [2008]).

The burden then *972shifted to the father to come forward with competent, credible evidence of his inability to pay, and he failed to meet his burden (see Matter of Rube v Tornheim, 67 AD3d 916 [2009]; Matter of Probert v Probert, 67 AD3d 806, 807-808 [2009]; Matter of Fraser v Green, 57 AD3d 896 [2008]).

Accordingly, the Family Court properly determined that he willfully violated the support order (see Matter of Corry v Corry, 59 AD3d 618, 619 [2009]). The father's remaining contentions are without merit, do not require reversal, or are not properly before this Court. Fisher, J.P., Covello, Hall and Sgroi, JJ., concur.