

**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

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.