

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Mohen v. Mohen

2026 NY Slip Op 01195 · No. 2023-07046 · Decided March 4, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the defendant's motion for maintenance arrears and civil contempt sanctions based on alleged violations of a so-ordered matrimonial stipulation. The court held that the evidence did not establish by clear and convincing evidence that the plaintiff failed to make the required maintenance payments or that any payment-by-check violation caused prejudice.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; William G. Ford, J.; Lourdes M. Ventura, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	March 4, 2026
DOCKET	2023-07046
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from an order of the Supreme Court, Nassau County, entered after a hearing, denying her requests for maintenance arrears and civil contempt based on alleged violations of a so-ordered maintenance stipulation.
STANDARD OF REVIEW	The Appellate Division reviewed the Supreme Court's determination on civil contempt for abuse of discretion, stating that a motion to punish for civil contempt is addressed to the sound discretion of the motion court.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Anna Mohen v. Joseph Mohen

TOPICS

spousal support

family law procedure

remedies

appellate procedure

standard of review

PRACTICE AREAS

family law

spousal support

civil contempt

appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court properly denied the defendant's motion for maintenance arrears and civil contempt where the evidence did not establish by clear and convincing evidence that the plaintiff failed to make the required maintenance payments.
2. Whether alleged payment by check rather than direct deposit warranted civil-contempt relief absent a showing of prejudice.
3. Whether the defendant's contention concerning attorney's fees was properly before the Appellate Division.

HOLDINGS

1. The defendant failed to establish by clear and convincing evidence that the plaintiff violated the maintenance provisions of the so-ordered stipulation by failing to make the required payments; therefore, the denial of maintenance arrears and civil contempt was proper.
2. Even assuming that the plaintiff made some maintenance payments by check rather than by the direct-deposit method specified in the stipulation, contempt was not warranted because the defendant failed to demonstrate prejudice resulting from the alleged violation.
3. The defendant's remaining contention concerning attorney's fees was not properly before the Appellate Division.

KEY QUOTATIONS

“To prevail on a motion to hold a party in civil contempt, the movant must establish by clear and convincing evidence (1) that a lawful order of the court was in effect, clearly expressing an unequivocal mandate, (2) the appearance, with reasonable certainty, that the order was disobeyed, (3) that the party to be held in contempt had knowledge of the court's order, and (4) prejudice to the right of a party to the litigation” (at 2)

“Prejudice is shown where the party's actions were calculated to or actually did defeat, impair, impede, or prejudice the rights or remedies of a party” (at 2)

FACTUAL BACKGROUND

The parties' 2008 so-ordered stipulation required Joseph Mohen to pay Anna Mohen \$2,800 per month in spousal maintenance for five years or until her death or remarriage. Anna Mohen remarried in April 2009 and later alleged that Joseph Mohen had failed to make required maintenance payments. After a hearing on her 2021 motion, the evidence did not establish by clear and convincing evidence that the required payments had not been made, and any payments made by check rather than direct deposit were not shown to have prejudiced her.

PROCEDURAL HISTORY

The parties were divorced by judgment dated October 16, 2007. A so-ordered stipulation dated August 15, 2008, required the plaintiff to pay the defendant \$2,800 per month in spousal maintenance for five years or until her death or remarriage. After the defendant remarried in April 2009, she moved in October 2021 for maintenance arrears, civil contempt, and attorney's fees. Following a hearing, the Supreme Court denied the arrears and contempt branches and held the attorney's-fee branch in abeyance; the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Mohen v. Mohen, 53 AD3d 471, 472
- Matter of DeSiena v. DeSiena, 167 AD3d 1006, 1007
- Matter of Rubackin v. Rubackin, 62 AD3d 11, 15
- Matter of Mendoza-Pautrat v. Razdan, 160 AD3d 963, 964
- Varnit v. Varnit, 233 AD3d 917, 923
- Shemtov v. Shemtov, 153 AD3d 1295, 1295-1296
- El-Dehdan v. El-Dehdan, 26 NY3d 19, 29
- Tedesco v. Elio, 211 AD3d 1074, 1076
- Ruffino v. Serio, 206 AD3d 776, 777-778
- Eschemuller v. Eschemuller, 167 AD3d 983, 986
- Katz v. Katz, 68 AD2d 536, 542-543

OPINION

PER CURIAM.

Mohen v Mohen (2026 NY Slip Op 01195) Mohen v Mohen 2026 NY Slip Op 01195 Decided on March 4, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on March 4, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

WILLIAM G. FORD LOURDES M. VENTURA DONNA-MARIE E. GOLIA, JJ. 2023-07046 (Index No. 202313/04) [*1]Joseph Mohen, respondent, v Anna Mohen, appellant. Jason M. Barbara & Associates, P.C., New Hyde Park, NY, for appellant. Agoglia, Holland & Agoglia, P.C., Jericho, NY (E. Kevin Agoglia of counsel), for respondent. DECISION & ORDER In a matrimonial action in which the parties were divorced by judgment dated October 16, 2007, the

defendant appeals from an order of the Supreme Court, Nassau County (Joseph R. Conway, J.), entered April 25, 2023.

The order, after a hearing, denied those branches of the defendant's motion which were to hold the plaintiff in civil contempt for allegedly violating the provisions of a so-ordered stipulation dated August 15, 2008, pertaining to maintenance and for an award of maintenance arrears. ORDERED that the order is affirmed, with costs.

The parties were divorced by a judgment dated October 16, 2007 (see *Mohen v Mohen*, 53 AD3d 471, 472). Thereafter, the parties executed a so-ordered stipulation dated August 15, 2008, which provided, inter alia, that the plaintiff was to pay the defendant \$2,800 per month in spousal maintenance for a period of five years or until the defendant's death or remarriage.

The defendant remarried in April 2009. In October 2021, the defendant moved, among other things, for an award of maintenance arrears, to hold the plaintiff in civil contempt based on his alleged failure to pay maintenance, and for an award of attorney's fees.

In an order entered April 25, 2023, the Supreme Court, after a hearing, denied those branches of the defendant's motion which were for an award of maintenance arrears and to hold the plaintiff in civil contempt, and, in effect, held in abeyance that branch of the motion which was for an award of attorney's fees.

The defendant appeals. The Supreme Court providently exercised its discretion in denying those branches of the defendant's motion which were for an award of maintenance arrears and to hold the plaintiff in civil contempt for failing to pay maintenance. "'The failure to obey a lawful order of a court is a species of contempt'" (*Matter of DeSiena v DeSiena*, 167 AD3d 1006, 1007, quoting *Matter of Rubackin v Rubackin*, 62 AD3d 11, 15).

"A motion to punish a party for civil contempt is addressed to the sound discretion of the motion court" (*Matter of Mendoza-Pautrat v Razdan*, 160 AD3d 963, 964; see *Varnit v Varnit*, 233 AD3d 917, 923). "To prevail on a motion to hold a party in civil contempt, the movant must establish by clear and convincing evidence (1) that a lawful order of the court was in effect, clearly expressing an unequivocal mandate, (2) the appearance, with reasonable certainty, that the order was disobeyed, (3) that the party to be held in contempt had knowledge of [*2]the court's order, and (4) prejudice to the right of a party to the litigation" (*Shemtov v Shemtov*, 153 AD3d 1295, 1295-1296; see Judiciary Law § 753[A][3]; *El-Dehdan v El-Dehdan*, 26 NY3d 19, 29). "'Prejudice is shown where the party's actions were calculated to or actually did defeat, impair, impede, or prejudice the rights or remedies of a party'" (*Tedesco v Elio*, 211 AD3d 1074, 1076 [internal quotation marks omitted], quoting *Matter of Mendoza-Pautrat v Razdan*, 160 AD3d at 964).

Here, the evidence adduced at the hearing failed to establish by clear and convincing evidence that the plaintiff did not make the required maintenance payments during the time period at issue (see

Ruffino v Serio, 206 AD3d 776, 777-778). Contrary to the defendant's contention, the plaintiff did not admit to defaulting in making maintenance payments (cf. Eschemuller v Eschemuller, 167 AD3d 983, 986).

To the extent that the plaintiff made maintenance payments by check rather than by direct deposit as required by the so-ordered stipulation, the defendant failed to demonstrate prejudice resulting from the alleged violation (see Varnit v Varnit, 233 AD3d at 923).

The defendant's remaining contention regarding attorney's fees is not properly before the Court (see Katz v Katz, 68 AD2d 536, 542-543). BARROS, J.P., FORD, VENTURA and GOLIA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court