

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

St. Lawrence County Support Collection Unit v. Laneuville

101 A.D.3d 1199 (N.Y. App. Div. 2012) · Decided December 6, 2012

SUMMARY

The court affirmed a finding that the respondent willfully violated a prior child support order. The petitioner’s investigator established noncompliance, shifting the burden to the respondent to provide competent, credible evidence of an inability to pay. The respondent’s medical evidence, including testimony based primarily on subjective complaints without objective testing, was insufficient to meet that burden.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	McCarthy, J.; Peters, P.J.; Spain, J.; Kavanagh, J.; Egan Jr., J.
JURISDICTION	New York
DECIDED	December 6, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order finding respondent in willful violation of a prior child-support order.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	St. Lawrence County Support Collection Unit v. Laneuville

TOPICS

- child support
- burden of proof
- evidence
- family law procedure
- remedies

PRACTICE AREAS

- family law
- child support
- evidence
- remedies

QUESTIONS PRESENTED

- Whether respondent established a legally sufficient inability to make the required child-support payments.

2. Whether the evidence supported a finding that respondent's violation of the support order was willful.

HOLDINGS

1. After petitioner established respondent's noncompliance with the prior support order, respondent failed to provide competent, credible evidence demonstrating that he was unable to make the required payments.
2. The finding that respondent willfully violated the prior support order was warranted.

KEY QUOTATIONS

"Accordingly, we find that respondent failed to meet his burden of demonstrating an inability to make his required support payments and, therefore, the finding of a willful violation was warranted" (1200)

FACTUAL BACKGROUND

Respondent failed to comply with a prior child-support order and testified that he had neither worked nor sought employment since 2006 because of medical issues. He presented 2011 medical records and testimony from his treating physician, but the physician acknowledged that her opinion rested on respondent's subjective complaints and lacked objective testing. The submitted medical records did not establish that respondent was unable to work.

PROCEDURAL HISTORY

A child support investigator testified that respondent had not complied with a prior support order. Respondent attempted to establish that medical problems rendered him unable to work and therefore unable to make the required payments. The appellate court affirmed the order finding a willful violation.

DISPOSITION

affirmed

CASES CITED

- Matter of Powers v Powers, 86 N.Y.2d 63, 70 (1995)
- Matter of Christiani v Rhody, 90 A.D.3d 1090, 1091-1092 (2011), leave denied, 18 N.Y.3d 809 (2012)
- Matter of Straight v Skinner, 33 A.D.3d 1175, 1176 (2006)
- Matter of Columbia County Support Collection Unit v Demers, 29 A.D.3d 1092, 1093 (2006), leave denied, 7 N.Y.3d 708 (2006)

OPINION

MCCARTHY, J.

McCarthy, J. *1200We affirm. The uncontroverted testimony of a child support investigator employed by petitioner established that respondent had not complied with the prior support order,

shifting the burden to respondent to offer “competent, credible evidence of his inability to make the required payments” (Matter of Powers v Powers, 86 NY2d 63, 70 [1995]; see Matter of Christiani v Rhody, 90 AD3d 1090, 1091-1092 [2011], lv denied 18 NY3d 809 [2012]).

To that end, respondent testified that he has not been employed nor sought employment since 2006 due to medical issues that prohibit him from working. In support, he presented various medical records from 2011 and the testimony of his treating physician.

Although the physician testified that respondent is unable to work due to neck discomfort and an inability to perform repetitive motions without fatiguing, she admitted that her opinion was based on respondent’s subjective complaints, with no evidence of objective testing (see Matter of Straight v Skinner, 33 AD3d 1175, 1176 [2006]). Further, there is no indication in the medical records submitted by respondent that he is unable to work.

Accordingly, we find that respondent failed to meet his burden of demonstrating an inability to make his required support payments and, therefore, the finding of a willful violation was warranted (see *id.*; Matter of Columbia County Support Collection Unit v Demers, 29 AD3d 1092, 1093 [2006], lv denied 7 NY3d 708 [2006]). Peters, P.J., Spain, Kavanagh and Egan Jr., JJ., concur.

Ordered that the order is affirmed, without costs.