

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1198

CAF 08-01243

PRESENT: HURLBUTT, J.P., MARTOCHE, CENTRA, GREEN, AND GORSKI, JJ.

IN THE MATTER OF KELLY A. TODD,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

WAYNE L. JOHNSON, RESPONDENT-APPELLANT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (ELIZABETH deV. MOELLER OF
COUNSEL), FOR RESPONDENT-APPELLANT.

Appeal from an order of the Family Court, Oswego County (James M. Metcalf, J.), entered May 7, 2008 in a proceeding pursuant to Family Court Act article 4. The order found respondent in willful violation of a prior order of child support and committed respondent to a term of incarceration.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Respondent father appeals from an order finding him in willful violation of a prior child support order and committing him to an intermittent term of incarceration of six months in jail. Contrary to the father's contention, Family Court properly confirmed the Support Magistrate's finding of a willful violation (see Family Ct Act § 439 [a]; *Matter of Paige v Paige*, 50 AD3d 1542). Petitioner mother presented prima facie evidence of a willful violation of the support order by establishing that the father failed to pay support as ordered (see *Matter of Powers v Powers*, 86 NY2d 63, 69; *Paige*, 50 AD3d at 1542), and the father then failed to meet his burden of establishing his inability to pay (see *Powers*, 86 NY2d at 69-70; *Matter of Valerie Q. v Arturo H.*, 48 AD3d 1049; *Matter of Livingston County Child Support Collection Unit v Grimmelt*, 306 AD2d 930). Indeed, he presented no evidence that he made any efforts to obtain employment (see *Matter of Christine L.M. v Wlodek K.*, 45 AD3d 1452; *Matter of Moore v Blank*, 8 AD3d 1090, 1091, lv denied 3 NY3d 606; *Matter of Leslie v Rodriguez*, 303 AD2d 1016, 1017). We reject the further contentions of the father that the court was biased against him (see *Matter of Amy L.W. v Brendan K.H.*, 37 AD3d 1060, 1061; see also *Matter of Angie M.P.*, 291 AD2d 932, 933, lv denied 98 NY2d 602), and that the sentence is excessive. We have considered the father's remaining contentions and conclude that they are without merit.

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court