

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D15294
G/cb

_____AD3d_____

Submitted - April 10, 2007

ROBERT A. SPOLZINO, J.P.
STEVEN W. FISHER
JOSEPH COVELLO
WILLIAM E. McCARTHY, JJ.

2006-08743
2007-04749

DECISION & ORDER

In the Matter of Kathy Barker, respondent,
v Gregory Padgett, appellant.

(Docket No. F-18122-04/05C)

Linda Braunsberg, Staten Island, N.Y., for appellant.

Mirkin & Gordon, P.C., Great Neck, N.Y. (Harris E. Levinson of counsel), for
respondent (no brief filed).

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from (1) an order of the Family Court, Kings County (Hepner, J.), dated August 16, 2006, which confirmed the findings of fact of the same court (Shamahs, S.M.), dated June 19, 2006, made after a hearing, finding that he willfully violated an order of support dated February 16, 2005, and (2) an order of commitment of the same court (Hepner, J.), also dated August 16, 2006, which, inter alia, committed him to the weekend custody of the Commissioner of Corrections for a term of imprisonment of six months, commencing August 18, 2006.

ORDERED that the appeal from the order of commitment dated August 16, 2006, which committed the father to a term of imprisonment of six months is dismissed as academic, without costs or disbursements, as the period of incarceration has expired; and it is further,

ORDERED that the order dated August 16, 2006, is affirmed, without costs or disbursements.

May 29, 2007

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MATTER OF BARKER v PADGETT

The Family Court properly determined that the father willfully failed to make payments pursuant to a valid child support order despite his ability to pay (*see Matter of Powers v Powers*, 86 NY2d 63, 68; *Matter of Vasconcellos v Vasconcellos*, 37 AD3d 613).

SPOLZINO, J.P., FISHER, COVELLO and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court