

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

D21626
G/kmg

_____AD3d_____

Submitted - December 8, 2008

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2008-04258

DECISION & ORDER

In the Matter of Genevieve Fraser, respondent,
v Selvin Solomon Green, appellant.

(Docket No. EU-03070-04)

Levinson, Reineke & Ornstein, P.C., Central Valley, N.Y. (Justin E. Kimple of
counsel), for appellant.

In a child support proceeding pursuant to Family Court Act articles 4 and 5-B, the father appeals from an order of commitment of the Family Court, Orange County (Klein, J.), entered April 18, 2008, which, after a hearing, found that he willfully violated a prior order of support of the same court dated August 30, 2004, and committed him to the Orange County Jail for a term of imprisonment of six months unless he paid child support arrears in the sum of \$62,316.22, plus any and all additional arrears accruing subsequent to the date of the order.

ORDERED that the appeal from so much of the order entered April 18, 2008, as committed the father to the Orange County Jail for a term of imprisonment of six months unless he paid child support arrears in the sum of \$62,316.22, plus any and all additional arrears that accrued subsequent to the date of the order, is dismissed as academic, without costs or disbursements, as the period of incarceration has expired (*see Matter of Greene v Holmes*, 31 AD3d 760); and it is further,

ORDERED that the order entered dated April 18, 2008, is affirmed insofar as reviewed, without costs or disbursements.

The mother's proof that the father failed to pay child support as ordered constituted

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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; *Matter of Smith v Smith*, 55 AD3d 743; *Matter of Ferrara v Ferrara*, 52 AD3d 599, 600). The father failed to rebut this prima facie evidence of willfulness by offering competent, credible evidence of his inability to pay (see *Matter of Accettulli v Accettulli*, 38 AD3d 766, 767; *Matter of Vasconcellos v Vasconcellos*, 37 AD3d 613, 613; *Matter of Teller v Tubbs*, 34 AD3d 593, 594; cf. *Matter of Kainth v Kainth*, 36 AD3d 915, 916). Accordingly, the Family Court properly determined that he willfully violated the support order (see *Matter of Saintime v Saint Surin*, 40 AD3d 1103, 1103; *Matter of Bronstein-Becher v Becher*, 25 AD3d 796, 796; *Matter of Watson v Watson*, 21 AD3d 497, 498).

RIVERA, J.P., ANGIOLILLO, DICKERSON and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court