

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

D24995
G/prt

_____AD3d_____

Submitted - October 20, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
HOWARD MILLER
L. PRISCILLA HALL, JJ.

2009-03071

DECISION & ORDER

In the Matter of Amy Rube, respondent,
v Yehuda Tornheim, appellant.

(Docket No. F-6352-99)

Ernest H. Hammer, New York, N.Y., for appellant.

Amy Rube, Brooklyn, N.Y., respondent pro se.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Kings County (Sacco, J.), dated February 17, 2009, which denied his objections to five orders of the same court (Fasone, S.M.), four dated March 20, 2008, and one dated June 20, 2008, which, after a hearing, inter alia, determined that he willfully violated a prior order of support, awarded the mother a money judgment for child support arrears in the principal sum of \$35,464, and directed the entry of a judgment against him in the principal sum of \$35,464.

ORDERED that the order is affirmed, without costs or disbursements.

Great deference should be given to the determination of the Support Magistrate, who is in the best position to assess the credibility of the witnesses (*see Matter of Fragola v Alfaro*, 45 AD3d 684, 685). Contrary to the father's contention, the Family Court properly determined that he willfully violated a prior order of support. Proof that the father failed to pay child support as ordered constituted prima facie evidence of the father's willful violation of the order of support and shifted the burden to him to come forward with competent, credible evidence of his inability to pay (*see*

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Matter of Powers v Powers, 86 NY2d 63, 69-70; *Matter of Brennan v Burger*, 63 AD3d 922, 923; *Matter of Greene-Tyus v Tyus*, 61 AD3d 758). The father failed to rebut the prima facie evidence of willfulness because he presented no evidence that he was unable to pay child support (*see Matter of Musarra v Musarra*, 28 AD3d at 669).

The father's remaining contentions are without merit.

RIVERA, J.P., FLORIO, MILLER and HALL, 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