

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

D25529
Y/prt

_____AD3d_____

Submitted - November 2, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2008-09915

DECISION & ORDER

In the Matter of Marisol Gonzalez, respondent,
v David Ovalles-Taveras, appellant.

(Docket No. F-1161-06)

Thomas T. Keating, White Plains, N.Y. (Joseph M. Angiolillo of counsel), for
appellant.

In a child support proceeding pursuant to Family Court Act articles 4 and 5-B, David Ovalles-Taveras appeals from an order of disposition of the Family Court, Orange County (Currier-Woods, J.), dated August 20, 2008, which, after a hearing, granted the petition to find him in willful violation of an order of support of the same court dated July 9, 2008, and imposed a period of probation of one year.

ORDERED that the order of disposition is reversed, on the law, without costs or disbursements, and the petitioner's motion is denied.

The petitioner mother alleged that the appellant father failed to pay child support as directed by an order dated October 16, 2006, and that the father was in arrears. The petitioner subsequently sought to hold the father in contempt for violating the support order dated October 16, 2006. However, the order of disposition determined that the appellant knowingly, consciously, and voluntarily disregarded his obligation under an order dated July 9, 2008. Inasmuch as the order of disposition does not address the order dated October 16, 2006, which the petitioner alleged was violated, the order of disposition was incorrectly entered. In any event, the record indicates that at the time of the hearing in July 2008, the mother admitted that there were no support arrears extant. Therefore, under the unusual circumstances of this case, we decline to remit the matter to the Family

December 22, 2009

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Court to resettle the order appealed from.

In light of our determination, we need not reach the appellant's remaining contentions, including the constitutional issues raised for the first time on appeal (*see Matter of Jacob*, 86 NY2d 651, 681; *Melahn v Hearn*, 60 NY2d 944, 945; *Matter of Dowsett v Dowsett*, 172 AD2d 610, 611).

FISHER, J.P., COVELLO, SANTUCCI and BALKIN, 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