

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

D28963  
H/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - October 14, 2010

REINALDO E. RIVERA, J.P.  
JOSEPH COVELLO  
FRED T. SANTUCCI  
SANDRA L. SGROI, JJ.

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2009-04325

DECISION & ORDER

In the Matter of Orange County Department of Social Services, on behalf of Doris Zieran, respondent, v Mark Marvin, appellant.

(Docket No. F-2186-00)

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Mark Marvin, Walden, N.Y., appellant pro se.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Orange County (Kiedaisch, J.), dated April 17, 2009, which found that he willfully violated a prior order of support, and directed him to pay child support arrears in the sum of \$22,807.44.

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

The Family Court did not err in finding that the father had willfully violated a prior order of support. Proof of the father's failure to pay child support constituted "prima facie evidence of a willful violation" (Family Ct Act § 454[3][a]), and shifted the burden to him to come forward with competent credible evidence of his inability to do so (*see Matter of Powers v Powers*, 86 NY2d 63, 69-70; *Yeager v Yeager*, 38 AD3d 534). In opposition, the father failed to offer competent proof of his inability to pay despite his gainful employment.

November 9, 2010

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The father's remaining contentions are without merit.

RIVERA, J.P., COVELLO, SANTUCCI and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan  
Clerk of the Court