

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

D35505
Y/ct

____AD3d____

Submitted - June 4, 2012

DANIEL D. ANGIOLILLO, J.P.
ARIEL E. BELEN
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2011-06756

DECISION & ORDER

In the Matter of Toni E. Logue, respondent, v
Nikolas O. Abell, appellant.

(Docket No. F-14586-03)

Amy Colvin, Farmingdale, N.Y. (Neal D. Futerfas of counsel), for appellant.

Toni E. Logue, Baldwin, N.Y., respondent pro se.

In a support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Nassau County (Dane, J.), dated June 14, 2011, which denied his objections to an order of the same court (Watson, S.M.), dated March 23, 2011, which, after a hearing, inter alia, found that he willfully violated a prior order of support and directed that a money judgment be entered in favor of the mother.

ORDERED that the order dated June 14, 2011, is affirmed, without costs or disbursements.

The Family Court correctly denied the father's objections to the Support Magistrate's determinations. Evidence of the father's failure to pay child support as ordered constituted prima facie evidence of a willful violation (*see* Family Ct Act § 454[3][a]; *Matter of Cooper v Robertson*, 69 AD3d 714, 714). The burden then shifted to the father to offer competent, credible evidence of his inability to make the required payments (*see Matter of Powers v Powers*, 86 NY2d 63, 69). The father, who the Support Magistrate found lacked credibility in his testimony regarding his search for employment, failed to sustain this burden. Although the father asserted that he was unemployed and had no money to pay child support, he did not present competent, credible evidence that he had

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actively sought employment sufficient to rebut the mother's prima facie showing (*see Matter of Cooper v Robertson*, 69 AD3d at 714; *see also Matter of Richards v Bailey*, 296 AD2d 412, 413; *Matter of Fallon v Fallon*, 286 AD2d 389, 389).

The father's remaining contentions are without merit.

ANGIOLILLO, J.P., BELEN, CHAMBERS and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court