

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

D36555
O/kmb

_____AD3d_____

Submitted - October 19, 2012

RUTH C. BALKIN, J.P.
SHERI S. ROMAN
SANDRA L. SGROI
JEFFREY A. COHEN, JJ.

2011-08964

DECISION & ORDER

In the Matter of Donna Michelle Rubin,
respondent, v Brian Fleissig, appellant.

(Docket No. F-22161-04)

Steven P. Forbes, Jamaica, N.Y., for appellant.

Cheryl S. Solomon, Brooklyn, N.Y., for respondent.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an amended order of commitment of the Family Court, Kings County (Katz, J.), dated September 1, 2011, which, upon, in effect, confirming an order of the same court (Fasone, S.M.) dated February 16, 2011, made after a hearing, determining that he willfully violated a prior order of support, committed him to the custody of the New York City Department of Corrections for a term of imprisonment of six months, commencing September 1, 2011.

ORDERED that the appeal from so much of the amended order of commitment as committed the father to the custody of the New York City Department of Corrections for a term of imprisonment of six months is dismissed as academic, without costs or disbursements, as the period of incarceration has expired (*see Matter of Rodriguez v Suarez*, 93 AD3d 730); and it is further,

ORDERED that the amended order of commitment is affirmed insofar as reviewed, without costs or disbursements.

Contrary to the father's contention, the Family Court properly determined that he willfully violated a prior order of support. The mother's testimony and the father's admission that he did not fully comply with the order of support constituted prima facie evidence of a willful violation (*see Matter of Powers v Powers*, 86 NY2d 63, 69-70; *Matter of Calvello v Calvello*, 20

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AD3d 525, 526; *Matter of Powers v Horner*, 12 AD3d 609). The father failed to rebut this prima facie evidence of willfulness by offering competent, credible evidence of his inability to pay (*see Matter of Powers v Powers*, 86 NY2d at 69-70; *Matter of Greene-Tyus v Tyus*, 61 AD3d 758).

BALKIN, J.P., ROMAN, SGROI and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court