

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CAF 14-02043

PRESENT: PERADOTTO, J.P., LINDLEY, DEJOSEPH, CURRAN, AND SCUDDER, JJ.

IN THE MATTER OF RUSSELL D. BROOKINS,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

CATHERINE MARY MCCANN, RESPONDENT-APPELLANT.

MARY R. HUMPHREY, NEW HARTFORD, FOR RESPONDENT-APPELLANT.

Appeal from an order of the Family Court, Oneida County (Joan E. Shkane, J.), entered September 29, 2014 in a proceeding pursuant to Family Court Act article 4. The order revoked a suspended sentence and committed respondent to jail for a period of six months for her willful failure to obey a child support order.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Respondent appeals from an order revoking a suspended sentence and committing her to jail for a period of six months for her willful failure to obey a child support order. In a prior order, Family Court confirmed the Support Magistrate's determination that the violation of the child support order was willful and imposed a sentence of six months, which it suspended on the condition that respondent pay \$75 per month, commencing on a certain date. It is undisputed that respondent failed to make the first monthly payment, but instead made two payments on the date on which the second payment was due. Respondent's contention that the court erred in revoking the suspended sentence and committing her to jail is moot inasmuch as she has served her sentence (*see Matter of Davis v Williams*, 133 AD3d 1354, 1355; *Matter of Ontario County Support Collection Unit v Falconer*, 132 AD3d 1354, 1355). Respondent's remaining contentions are not properly before us because she failed to appeal from the order confirming the determination that her violation of the child support order was willful (*see Davis*, 133 AD3d at 1355).

Entered: March 25, 2016

Frances E. Cafarell
Clerk of the Court