

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

828

CAF 24-01310

PRESENT: LINDLEY, J.P., CURRAN, BANNISTER, OGDEN, AND DELCONTE, JJ.

IN THE MATTER OF THE STEUBEN COUNTY
DEPARTMENT OF SOCIAL SERVICES, ON BEHALF OF
MARISSA M. CURRAN, PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

BRYON J. SCHWARTZ, RESPONDENT-APPELLANT.

CARA A. WALDMAN, FAIRPORT, FOR RESPONDENT-APPELLANT.

Appeal from an order of the Family Court, Steuben County (Chauncey J. Watches, J.), entered July 29, 2024, in a proceeding pursuant to Family Court Act article 4. The order, inter alia, committed respondent to 60 days in jail.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In this proceeding pursuant to Family Court Act article 4, respondent father appeals from an order that, inter alia, directed him to serve 60 days in jail for willfully violating the terms of a child support order. The father contends that Family Court erred in determining that he willfully violated the child support order because he established at the confirmation hearing that he was financially unable to make the payments due to medical conditions. We reject that contention and affirm.

Because a "parent is presumed to have sufficient means to support [their] minor child" (*Matter of Monroe County Child Support Enforcement Unit v Hemminger*, 186 AD3d 1093, 1093 [4th Dept 2020]; see Family Ct Act § 437; *Matter of Powers v Powers*, 86 NY2d 63, 68-69 [1995]), evidence that a parent has failed to pay support as ordered alone establishes that the failure to pay was willful, thus shifting the burden to the parent to offer "some competent, credible evidence of [their] inability to make the required payments" (*Powers*, 86 NY2d at 70; see *Matter of Mandile v Deshotel*, 166 AD3d 1511, 1512 [4th Dept 2018]). Where the nonpaying parent contends that they are unable to comply with the support order due to a physical disability that interferes with employment, the parent must "offer competent medical evidence to substantiate that claim and establish that the alleged physical disability affected [their] ability to work" (*Monroe County Child Support Enforcement Unit*, 186 AD3d at 1093 [internal quotation marks omitted]; see *Matter of Yamonaco v Fey*, 91 AD3d 1322, 1323 [4th Dept 2012], lv denied 19 NY3d 803 [2012]; *Matter of Fogg v Stoll*, 26

AD3d 810, 810-811 [4th Dept 2006])).

Here, as the father correctly concedes, petitioner met its initial burden of establishing that he failed to pay court-ordered child support, thus shifting the burden to him to demonstrate an inability to pay based on medical conditions that prevented him from working. The father failed to meet that burden. At the hearing, the father testified that he could not work due to a shoulder injury, and he submitted two letters from a physician's assistant stating that he was "unable to work at this time." Even assuming, *arguendo*, that the letters constitute competent medical evidence, we conclude that the physician's assistant did not identify the injuries sustained by the father or explain why he could not work. Moreover, the letters were dated August 10, 2023 and September 21, 2023, well after the father's last child support payment in April 2023, and the father failed to pay any support from September 2021 to March 2023. The father offered no medical evidence to support his contention that he was physically unable to work prior to August 2023 (*see Yamonaco*, 91 AD3d at 1323; *Fogg*, 26 AD3d at 810-811). We therefore conclude that the court properly determined that the father willfully violated the child support order.

Entered: November 21, 2025

Ann Dillon Flynn
Clerk of the Court