No. 20-7854

IN THE

SUPREME COURT OF THE UNITED STATES



David Olson — PETITIONER

vs.

Stephanie Olson — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of the State of New York, Appellate Division, First Department

PETITION FOR WRIT OF CERTIORARI

David Olson
(Your Name)

4322 SW Roxbury St
(Address)

Seattle, WA 98136
(City, State, Zip Code)

(917) 865-3689
(Phone Number)

## Question(s) Presented:

In *Singer v. Singer*, 180 A.D.2d 725, 726 (2d Dept 1992), the New York Appellate Division, Second Department found that the Trial Court "erred in including in the [money] judgement, those arrears that accumulated after the husband cross-moved for a downward modification [of child support]." Additionally, in *Boritzer v. Boritzer*, 137 A.D.2d 478 (2d Dept 1988), the Second Department found that the issues of downward modification [of child support], and contempt, are "inextricably linked" and should be determined together.

The question presented here is:

Did the New York Appellate Division, First Department err in upholding the Trial Court for adjudging Petitioner in civil contempt and ordering incarceration, for [child support] arrears that accumulated AFTER he filed a motion for downward modification, and while that motion had still not been heard?

This question has divided the First and Second Departments, and has resulted in conflicting rulings, which in one case led to incarceration, and in the other case would not have.

## LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

David Olson, pro se, Petitioner
4322 SW Roxbury St.
Seattle, WA 98136
(917) 865-3689

Stephanie Olson, pro se, Respondent
108 Tenth St.
Garden City, NY 11530
(917) 912-2589

## RELATED CASES

None

## TABLE OF CONTENTS



## INDEX TO APPENDICES

# TABLE OF AUTHORITIES

Page

## Cases



## Statutes

IN THE

SUPREME COURT OF THE UNITED

STATES PETITION FOR WRIT OF

CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits, the Supreme Court of New York, Appellate Division, First Department, appears at Appendix A to the petition and is

[ ] reported at_____; or,

[X] is attached

The opinion of the Supreme Court of New York (Trial Court) appears at Appendix B to the petition and is

[ ] reported at_____; or,

[X] is attached

The decision of the New York Court of Appeals appears at Appendix C to the petition and is

[ ] reported at_____; or,

[X] is attached

The opinion of the Supreme Court of New York, Appellate Division, First Department, appears at Appendix D to the petition and is

[ ] reported at_____; or,

[X] is attached

## JURISDICTION

☒ For cases from **state courts**:

The date on which the highest state court, the New York Court of Appeals, decided my case was May 7, 2020. A copy of that decision appears at Appendix C.
May 7, 2020 + 150 days (per Supreme Court letter dated April 17, 2020) = October 4, 2020, which is a Sunday; the next business day is October 5, 2020. This petition will be mailed on or before that day.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

DISCUSSION ON JURISDICTION:

The New York Court of Appeals dismissed the motion on grounds that the order sought to be appealed from did not finally determine the action. However, in *Gotthilf v. Sills,* 375 U.S. 79 (1963), the Supreme Court granted certiorari to review a judgment of the Supreme Court of New York, Appellate Division, First Department, which the Court of Appeals of New York held could not be appealed to as of right because it did not finally determine the action. I call the Court's attention to several points in supporting a jurisdiction decision:

1) The writ of certiorari in *Gotthilf v. Sills* was subsequently dismissed, as the Court determined that the petitioner at no time appealed to the Appellate Division for permission to appeal to the Court of Appeals per New York CPLR § 5602(b). My case differs, however, since after the Court of Appeals denied to review my case, I did move the Appellate Division for leave to

appeal to the Court of Appeals per CPLR 5514(a) in a timely manner. But, the Appellate Division returned my submission and claimed I had exhausted my avenues for appeal.

2) Justice Black, Justice Douglas, and The Chief Justice concurred, in the dissenting opinion on *Gotthilf v. Sills*, and made two distinct points:

a) At the time, there was one New York case that involved body execution and the question of how to obtain review in the Court of Appeals – *Chase Watch Corp. v. Heins*, 283 N.Y. 564, 27 N.E. 2d 282. The petitioner in this case took an appeal from an order of the Appellate Division, but the Court of Appeals dismissed it on the grounds that it was a nonfinal order – however, the Court of Appeals gave the petitioner 20 days to go back to the Appellate Division to seek permission to take the appeal, which was done, and the petitioner ultimately prevailed. In my case, New York CPLR 5514(a) indicates that if a motion for permission to appeal is denied, and another method of seeking permission to appeal is available, then the time allowed for such other method shall be computed from the dismissal date. On this point alone, I should have subsequently been allowed to move the Appellate Division for leave to appeal to the Court of Appeals, but I was denied.

b) The bigger point made in the dissent was that in *Chase Watch*, the appealed order determined nothing finally; the petitioner was merely

frustrated momentarily in his collection efforts. In *Gotthilf v. Sills* (and in my case), on the other hand, the petitioner faced incarceration; if he lacks money to pay the judgment, nothing further is available to him by New York law. The petitioner then, might reasonably have concluded that a final order had been entered and that *Chase Watch* did not control, and therefore docketing an appeal directly with the Court of Appeals was justifiable as a matter of federal law. From the *Gotthilf v. Sills* dissenting opinion:

"The decision of the Court of Appeals in this case establishes, of course, as a matter of state law that the order was not final. While that determination is binding on us, it does not preclude us from holding that the decision was sufficiently unexpected so as not to bar, in the interests of justice, the certiorari route here. See NAACP v. Alabama, 357 U.S. 449, 457-458:

> 'Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights.'

"While 28 U.S.C. 1257 requires that judgements brought here for review be "final", we have recognized an exception . . . where the controversy has proceeded to a point where the "losing party [will] . . . be irreparably injured if review [is] . . . unavailing."

My argument for this Court to have jurisdiction is that I have already been incarcerated as a result of this case, and given that all the same conditions of the case are still in place, I stand to be incarcerated again unless and until this court decision can be reviewed. Given the conflicting rulings between the New York Appellate Division First and Second Departments, and the fact that I have been incarcerated, and likely will be again in one Department, whereas I wouldn't be in the other Department for the same set of circumstances – there should be a review of the case as to whether my federal constitutional rights have been violated under the Procedural Due Process clause of the 14th Amendment.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**U. S. Const. amend. XIX, Section 1:**
"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

**New York §CPLR 5514 - Extension of time to take appeal or to move for permission to appeal:**
(a) Alternate method of appeal. If an appeal is taken or a motion for permission to appeal is made and such appeal is dismissed or motion is denied and, except for time limitations in section 5513, some other method of taking an appeal or of seeking permission to appeal is available, the time limited for such other method shall be computed from the dismissal or denial unless the court to which the appeal is sought to be taken orders otherwise.

## Statement of the Case

Background

In the divorce case of Petitioner and Respondent, pendente lite child support was ordered by the Trial Court on 10/25/2016 of $3,625 per month (Appendix AA pA27). On 2/6/2017, based on a change in financial circumstances, Petitioner filed a motion (motion sequence #13) for downward modification (Appendix AA pA37-38). At the time of filing the downward modification, Petitioner was current on child support payments. Subsequent to the filing of the downward modification, Petitioner fell behind in child support payments due to his inability to find employment commensurate with the ordered support payments. Although the downward modification motion was filed in February 2017, by October 2018 that downward modification motion had still not been heard. Respondent filed a motion for contempt due to the arrears, and the Trial Court held a contempt hearing on 10/23/2018, finding against Petitioner and sentencing him to incarceration for 60 days (Appendix B). Petitioner served 60 days in jail, and then appealed the Trial Court's contempt ruling to the Appellate Division, First Department. The Appellate Division heard the appeal, and issued a decision on November 26, 2019, affirming the lower court (Appendix A).

Per New York CPLR 5602(a), Petitioner moved the New York Court of Appeals directly for leave to appeal to the Court of Appeals. On May 7th, 2020, the Court of Appeals dismissed the motion upon grounds that the order sought to be appealed from did not finally determine the action (Appendix C).

Petitioner then went back to the Appellate Division to seek permission to take the appeal to the Court of Appeals per New York CPLR 5514(a). On June 9th, 2020 the Appellate Division denied review of the motion claiming that Petitioner had exhausted all avenues of appeal in this matter (Appendix D). Petitioner is now filing a petition for writ of certiorari with this Court to review the Appellate Division's ruling.

Appellate Division conflict

The question this Court is being asked to review, which has generated conflicting rulings from the different Appellate Division Departments, and which gives rise to potential federal constitutional rights violations is – can the Petitioner be held in contempt of court for nonpayment of arrears that accrued after he filed a downward modification motion while that motion is still pending? This question was preserved in Petitioner's "Appellant's Brief" submitted to the Appellate Division on 7/23/2019. The Appellate Division's response and decision was: "There is no statutory requirement that a motion for a downward

modification be decided before a previously filed motion for contempt can be decided." (Appendix A)

First of all, the Appellate Division seems to be answering the question of whether or not there is a requirement to decide a downward modification motion before a *previously* filed motion for contempt. Except that the contempt motion wasn't filed until a year and a half *after* the downward modification was filed. Petitioner filed his downward modification motion in Feb 2017 (Appendix AA pA37-44); Respondent didn't file her contempt motion until September 2018 (Appendix AA pA8-10)

Secondly, the Appellate Division First Department has indicated that there is no statutory requirement that a downward modification motion be decided before a contempt motion. The Second Department, however, has been clear on this topic. In *Boritzer v. Boritzer*, 137 A.D.2d 478 (2d Dep't 1988):

"since he asserted as a defense that he was financially unable to comply with the pendente lite orders, he was entitled to a hearing (see, Domestic Relations Law § 246). Therefore, the Supreme Court erred in not holding a hearing before it adjudged him to be in contempt." And also, "Since this issue [downward modification] is inextricably involved with the issue of contempt, both issues should be determined after a full evidentiary hearing."

It seems clear that the issues of downward modification and contempt are inextricably linked, and the Second Department has been clear that both issues should be determined after a full evidentiary hearing.

Here is the dilemma – the Trial Court did hold a contempt hearing in Petitioner's case, which lasted half of one afternoon court session and entailed a cursory review of finances. Contrast that with the ongoing financial trial, including the downward modification motion. Petitioner's case has been ongoing since 2013, and the financial aspects of the divorce are intricate and significant. The Trial Court signed an order of reference on 4/6/2017 (Appendix AA pA45) assigning a Special Referee to begin a financial trial to determine child support, arrears, motion sequence #13 (downward modification), and other financial aspects of the case. The trial in front of the Special Referee began on 6/27/2017, and spanned eleven full days of testimony, and generated thousands of pages of transcripts. To be clear, none of the was in front of the Trial Court Judge, it was only in front of the Special Referee. On 10/23/2018 there was a contempt hearing in front of the Trial Court Judge, and Petitioner was found in contempt, even though the financial trial wasn't yet completed, and motion sequence #13 was still pending. We know for sure that motion sequence #13 was still pending because on 1/10/2019 (after Petitioner had served his jail sentence and was released) the Trial Court wrote another referral order to the Special Referee, again directing the

financial trial to continue, including motion sequence #13 regarding recalculation of child support (Appendix AA, pA46). The financial trial, including the downward modification motion continues to this day.

Although the Trial Court DID hold a contempt hearing on 10/23/2018, the full evidentiary hearing on the downward modification of child support was NOT held, and still has not been held. The transcript from this trial clearly shows that the Court was reminded of the fact that there was still a pending downward modification during the contempt hearing.

Are these two issues – contempt and downward modification, two distinct issues? *Boritzer v. Boritzer* makes it clear that they are.

In its decision on the contempt trial, the Trial Court said the Petitioner "is bound by the terms contained in the pendente lite support order." Petitioner agrees that the Court has authority to award temporary support via a pendente lite order, and that he is otherwise bound to that. Petitioner argues, however, that if the pendente lite award puts too much financial strain on him, then he has the right to move the court for a downward modification, and for that motion to be heard. It's preposterous that it will soon be FOUR years since the downward modification motion was filed and yet it still has not been heard. Case law rulings are clear, that downward modification motions need to be heard prior to a finding of contempt for arrears. What is the alternative? Petitioner continues to not have his downward

modification considered, and is burdened with a support payment he can't afford, so he gets held in contempt over and over and over for many more years until the court eventually hears the downward modification motion?

For argument's sake, let's say Petitioner was able to pay the current arrears adjudged against him to avoid contempt? Then sometime later, the downward modification is heard and granted, and it's determined that there were no arrears. Would the money that was paid to Respondent have to be refunded back to Petitioner? And what if Respondent weren't able to refund that amount? Such a scenario would be judicially unwieldy, and thus courts have attempted to avoid these types of situations. See *Singer v. Singer*, 180 A.D.2d 725, 726 (2d Dep't 1992), finding that the trial court "erred in including in the judgment, those arrears that accumulated after the husband cross-moved for a downward modification."

Rest assured, Petitioner would like to have his downward modification hearing done. It's not his fault that the courts have not been able to hear this motion over the past four years. Yet it's a travesty that he has been incarcerated as a result of being assigned a support amount that is now beyond his means, and although he moved the courts to try and avail himself of the proper legal tools to remedy his situation – the court hasn't heard his case for nearly four years. If on one hand the

court won't hear his downward modification motion, then on the other hand they shouldn't hear the contempt motion against him.

The Second Department has addressed the issue of a timely financial trial in *Colley v. Colley*, 200 A.D.2d 839, 839. Simply stated, "the most appropriate remedy for any claimed inequity in a temporary award is a speedy trial."

## Reasons for Granting the Petition

There is a conflict in the law on these issues, between case law from the Second Department, and how the First Department has ruled. The Second Department has ruled that issues of downward modification and contempt are inextricably linked, and both need to be determined together (*see Boritzer v. Boritzer*). The First Department, however, has allowed a contempt rulings to be made even while a downward modification is pending and has not been heard.

Also, the Second Department found that a trial court should not include in a judgement for arrears, any amount that accrued after a party moved for a downward modification, until the conclusion of the hearing on the downward modification (*see Singer v. Singer*). Yet, the First Department has allowed arrears to be included in a judgement even after the party moved for downward modification, while that motion has not been heard.

The First Department clearly recognizes that contempt and downward modification are two separate and distinct issues (Appendix A – "there is no statutory requirement that a motion for a downward modification be decided before a previously filed motion for contempt can be decided.")

The Second Department, in *Boritzer v. Boritzer*, ruled that once respondent asserted as a defense that he needed a downward modification, then he was entitled to a hearing on it, pursuant to DRL 246; and the Trial Court erred in not giving him that financial trial before judging him in contempt.

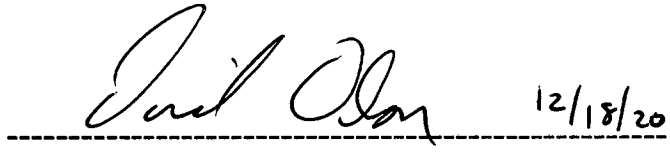
This Court should give guidance so that the Appellate Division First and Second Departments can make consistent rulings. This is not just an issue for Petitioner, this is an issue for anyone with a child support case asking for a modification, and having contempt be a possibility. It is, or at least should be, untenable that in one instance, in the First Department, Petitioner could go to jail, while given the same circumstances in the Second Department, Petitioner would have his downward mod heard.

The goal of my petition is to have this Court reverse the Appellate Division and give guidance that the issues of downward modifications and contempt are inextricably linked and that contempt can't be judged until a hearing any pending downward modification.

## Conclusion

The petition for a writ of certiorari should be granted for these reasons.

Respectfully submitted,



12/18/20

David Olson
4322 SW Roxbury St
Seattle, WA 98136
(917) 865-3689

# APPENDIX

Mazzarelli, J.P., Kapnick, Gesmer, Moulton, JJ.

10442 Stephanie Olson,
Plaintiff-Respondent,

-against-

David Olson,
Defendant-Appellant.

Index 350024/13

---

David Olson, appellant pro se.

Stephanie Scherr Olson, respondent pro se.

---

Order, Supreme Court, New York County (Tandra L. Dawson, J.), entered November 1, 2018, which, after a hearing, held defendant in contempt for failure to comply with a pendente lite child support order and committed him to the New York City Department of Correction for 60 days or until he pays child support arrears in the amount of $81,575, unanimously affirmed, without costs.

In its October 25, 2016 pendente lite order, the court imputed income to defendant and found that he was capable of paying $3,625 per month as child support. In the order now on appeal, the court correctly determined that defendant's admitted failure to pay temporary child support constituted a knowing violation of a lawful court order, and that his conduct was calculated to, or actually did, defeat, impair, impede, or prejudice plaintiff's rights or remedies (Judiciary Law §



Appendix A
p1

753[A][3]).

Defendant raises three issues on appeal, all of which we reject. First, contrary to defendant's contention, the court held a full evidentiary hearing on plaintiff's contempt motion. Furthermore, there is no statutory requirement that a motion for a downward modification be decided before a previously filed motion for contempt can be decided.

Second, defendant argues that DRL § 245 requires a showing that less drastic remedies would be ineffective before imposing incarceration as punishment for contempt. However, that statute was amended in 2016 and no longer requires such a showing (DRL § 245; *see also Cassarino v Cassarino*, 149 AD3d 689, 691 [2d Dept 2017]).

Third, defendant argues that the court erred in holding him in contempt because the Judiciary Law only permits a court to punish a party for civil contempt for non-payment of a sum the court has ordered him to pay "in a case where by law execution can not be awarded for the collection of such sum . . . " (Jud L § 753[A][3]). Here, however, plaintiff cannot avail herself of any other enforcement mechanisms for three reasons. First, enforcement of a money judgment might result in defendant's child support arrears being paid from marital assets, thus decreasing their availability for distribution. Second, even if the motion



Appendix A
p. 2

court accepted defendant's claim that he earned $17 per hour working part time at a Home Depot, income execution would be insufficient to collect the sum of child support awarded. Finally, plaintiff states in her brief, and defendant does not deny, that the motion court ruled on March 19, 2018 that income execution was unavailable.

Accordingly, the motion court properly issued, as punishment for defendant's contempt, an order of commitment directing that defendant remain in the custody of the New York City Department of Corrections for the lesser of 60 days or until he pays support arrears of $81,575 (Jud L §§ 753[A][1]; 774).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: NOVEMBER 26, 2019

DEPUTY CLERK



Appendix A
p. 3

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

----------x

STEPHANIE OLSON,

Index No. 350024/13

Plaintiff-Respondent,

***NOTICE OF ENTRY***

-against-

DAVID OLSON,

Defendant-Appellant.

----------x

PLEASE TAKE NOTICE that the attached is a true copy of a Decision and Order, dated November 26, 2019, that was issued by the Supreme Court of the State of New York, Appellate Division, First Department in an Appeal brought by Defendant-Appellant in the above referenced matter. This Decision and Order was entered by the Deputy Clerk of the Supreme Court, Appellate Division, First Department on November 26, 2019.

A copy of this Notice of Entry has also been sent to Defendant-Appellant by mail.

Dated: November 27, 2019

Yours, etc.

Stephanie Olson

Stephanie Olson
108 10th Street
Garden City, NY 11530

To:
David Olson, Pro Se
4322 SW Roxbury Street
Seattle WA 98136
David.erik.olson@gmail.com

~~Attachment 38~~ Appendix A p. 4

EA 10/31/18 E

Decision re: Contempt

# SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: DAWSON Justice

PART IDV

OLSON, STEPHANIE

-v-

DAVID OLSON

INDEX NO. 350024/13

MOTION DATE

MOTION SEQ. NO. 22

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

| | PAPERS NUMBERED |
|---|---|
| Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... | |
| Answering Affidavits — Exhibits | |
| Replying Affidavits | |

FILED
NOV 01 2018
NEW YORK COUNTY
COUNTY CLERK

**Cross-Motion:** ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

Motion for contempt granted. Decision reserved as to remaining issues - See attached decision and order.

Dated: 10-23-18

HON. SANDRA DAWSON J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

Appendix B
p1

Printed: 5/30/20

Decision Re: Contempt

**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF NEW YORK: PART IDV**

---x

STEPHANIE OLSON,

Plaintiff

-against-

DAVID OLSON,

Defendant.



**Index No. 350024/13**
**DECISION AND ORDER**
**Motion Seq #022**

---x

DAWSON, J:

Before the court is the plaintiff/wife's application for a contempt finding against the defendant/husband for failure to comply with this court's pendente lite support order wherein he was ordered to $3625/month for the support of three children of the marriage, plus 50% of the health and dental insurance premiums and unreimbursed expenses. The pendente lite order was issued on October 25, 2016.[1] The support figures were calculated by imputing $182,670 annual income to the husband, and $185,324 annual income to the wife. The husband's income was based on the income he had earned when he was employed in 2013 at Citibank.

According to the wife's motion papers, the husband has failed to pay $88,825 in basic child support since March 2016. He has unilaterally modified his child support obligation from $3625/month to $100/month. According to the wife, he has only paid $250 towards any medical and dental care expenses, and he has paid nothing for child care expenses.[2] The wife has been solely supporting the children since 2016. The wife testified that the husband owes the wife $69,513 in unreimbursed medical, dental, prescribed medication, and medical and dental insurance premiums since March 2016.

This is the third contempt motion based on the husband's failure to pay child support. A prior contempt application was resolved by the husband accessing marital funds to pay the wife some of the arrears owed. The defendant continues to flout the pendente lite order. He has engaged in self-help, by unilaterally reducing his child support obligations to a nominal amount, claiming that his source of possible income from employment is a part-time minimum wage at Home Depot. This is despite the facts that he has an MBA degree and has a solid work history

---

[1] The court heard oral argument on the pendente lite motion on May 12, 2016, at which time the court issued an interim order, pending a determination on the motion, of $3625/month.

[2] Although the husband was ordered to pay 50% of the child care expenses in the body of the pendente lite decision and order, it was not specifically ordered in the decretal paragraph, therefore the court cannot adjudge the defendant in contempt for failure to pay such expenses.



A12a

Appendix B
p 2

earning upwards of $150,000 annually. The husband testified that he is employed at Home Depot working part-time. He testified that he works part-time because he feels that he will not be able to find a better job if he is employed full-time. The husband testified that he spends all his free time searching for a higher paying job with no success. He claims that he pays $100/month for rent, he pays for groceries, gas, and car insurance. He also pays to travel from Washington State to New York, pays for airfare, lodging, meals. He admitted that he only pays $100/month for his children's support.

Defendant's opposition disregards the allegations made in support of the plaintiff's motion to have him adjudicated in contempt of court. Defendant has failed to address meaningfully his admitted, knowing and willful default in complying with the pendente lite support order. He makes the preposterous argument that he cannot be held in contempt because the issue of support is reserved for a financial trial. If that were the law, no interim support orders would ever be enforceable.

Defendant has not been relieved of his interim child support obligations. Nor has the pendente support order directing such payments been modified. Therefore, the defendant is bound by the terms contained in the pendente lite support order.

The defendant has almost no housing expenses or costs as he resides with his paramour. Therefore, he has funds available to him to pay for child support for his three children. The defendant has failed to provide any legal explanation for his willful refusal to comply with the pendente support order. Indeed, the defendant admits his failure to comply. He has only offered self-serving conclusory statements that he cannot afford to pay his support order and he cannot find employment other than a minimum wage part-time job at Home Depot.

It is well-settled that failure to pay support as ordered, shall constitute prima facie evidence of a willful violation. Powers v Powers, 86 NY2d 63, 69 (1995); Matter of McMinn v Taylor, 118 AD3d 887 (2d Dept. 2014); Matter of Logue v Abell, 97 AD3d 582 (2d Dept. 2012). Upon demonstration of a failure to pay court-ordered support, "the burden of going forward shift[s] to respondent to rebut petitioner's prima facie evidence of a willful violation." Powers v Powers, supra at 69.

Defendant admits that he failed to comply with the pendente lite child support obligation, and he has failed to provide this court with any legal rationale therefore. He has only offered self-serving statements as a defense. Here, it is undisputed that the defendant is aware of the pendente lite order. It is undisputed that he does not pay the court-ordered support amount. It is undisputed that the defendant feeds and clothes himself, and flies cross-country for court appearances and his parenting time. Even if his paramour, or friends are financing his lifestyle as he has claimed, such income would be imputed to him. He has paid for two privately retained counsel in this proceeding, he has appealed this court's decision, and paid for transcripts in



Appendix B
p 3

connection therewith. However, he has decided that $100/month is all he is required to pay to support his three minor children from his marriage. The defendant's conduct is the epitome of "willful failure."

The defendant's conduct was calculated to and actually did defeat, impair and prejudice the rights and remedies of the plaintiff Wife. Therefore, the court finds that the defendant has willfully violated the court's pendente lite order, dated October 25, 2016.

The Wife's motion for contempt is granted. The Husband did not provide a sufficient defense for his failure to pay support pursuant to this court's order. According to the court's calculation, the base child support obligation for entirety of the pendente lite order is $108,750. Crediting the defendant with the amount he paid over the course of the order, $27,175, the court finds that arrears for the basic child support obligation are $81,575 as of October 23, 2018.

The court does not have sufficient documentation to adjudge the husband in contempt for his pro rata share of the add-on medical and dental expenses and health insurance premiums. Therefore, the amount of arrears due for medical and dental insurance and unreimbursed expenses for the children is reserved.

Accordingly, it is hereby

**ORDERED,** that the defendant Husband, David Olson, is in contempt of court for failure to comply with the court's order dated October 25, 2016 which directed him to pay child support to the Wife. The court finds that the defendant's conduct was calculated to and actually did defeat, impair and prejudice the rights and remedies of the plaintiff Wife; and it is further

**ORDERED AND ADJUDGED,** that arrears are set as follows: Arrears for the basic child support obligation are set at $81,575 as of October 23, 2018; and it is further

**ORDERED and ADJUDGED,** that David Olson be and hereby is committed to NYC Department of Corrections for a term of 60 days from the beginning of said confinement unless sooner discharged according to law or until he pays the purge amount of $81,575 which is the amount of the arrears for basic child support owed from March 30, 2016 to October 23, 2018.

Dated: New York, New York
October 23, 2018

FILED
NOV 01 2018
NEW YORK COUNTY
COUNTY CLERK

ENTER:

Tandra L Dawson, AJSC

HON. TANDRA DAWSON



A-144

Appendix B
p4

Decision: Re: Contempt

**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF NEW YORK: IDV PART**

----------X

STEPHANIE OLSON,

Plaintiff,

-against-

DAVID OLSON,

Defendant.

----------X

Index No.350106/13
**ORDER OF CIVIL COMMITMENT**
Motion Sequence No. 022

**TANDRA DAWSON, AJSC:**

**TO: THE NEW YORK CITY DEPARTMENT OF CORRECITONS**

**WHEREAS, BY ORDER OF THIS COURT DATED 10/23/18, DEFENDANT, DAVID OLSON, WAS HELD AND ADJUDGED IN CONTEMPT OF THIS COURT FOR HIS FAILURE TO COMPLY WITH:** this court's order, dated October 25, 2015 (See, oral record of the proceedings held on 10/23/18). The husband owes support arrears of $81,575 for basic child support. He also has not paid for medical support add-ons for the children.

**WHEREAS, the court finds that the rights of the wife have been impeded, impaired, prejudiced and defeated by the husband's actions; and**

**WHEREAS, this court's order, dated 10/23/18, sentenced the plaintiff to a period of incarceration of 60 days for his contempt of the order.**

**NOW, THEREFORE, upon all the prior papers and proceedings held herein, it is**

**ORDERED,** that the defendant, David Olson, be and hereby is declared guilty of contempt of court; and it is further

**ORDERED**, that you are hereby commanded forthwith to keep him committed in the custody of the New York City Department of Corrections for a period of sixty (60) days, or until he pays $81,575 to the plaintiff, Stephanie Olson, via certified bank check or money order.

This constitutes the order of the court.

Dated: New York, New York
October 23, 2018

FILED
NOV 01 2018
NEW YORK COUNTY
COUNTY CLERK

ENTER:

Tandra L Dawson, AJSC

1

HON. TANDRA DAWSON

A458

Appendix B
p 5

Printed: 5/30/20