

# DRL § 240: Failure to Obey Child Support Order Not Punishable by Contempt

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alimony. Section 236 was applied in *Brownstein v. Brownstein*<sup>147</sup> to allow alimony even though separation was denied because the husband and wife were living apart by mutual consent. Accordingly, section 236 has had a liberalizing influence on the Family Court. In *Steinberg v. Steinberg*,<sup>148</sup> the Court of Appeals stated that the change in public policy as enunciated in section 236 was projected also into the Family Court. It was held that Section 236 of the Domestic Relations Law similarly authorized the Family Court to award support on a "means" basis under Section 412 of the Family Court Act even though the parties were voluntarily living apart.

*Steinberg*, it is submitted, is the precursor of changing law in the Family Court that will be indirectly effected by the liberal provisions of the Domestic Relations Law.

*DRL § 240: Failure to obey child support order not punishable by contempt.*

Under Section 240 of the Domestic Relations Law a court may, in a habeas corpus proceeding brought to obtain custody or visitation rights, order a parent to provide for the support of his child.<sup>149</sup> However, in *Feit v. Feit*,<sup>150</sup> the supreme court dismissed a wife's petition to punish her husband for contempt for failing to make child support payments ordered in such a proceeding.

Section 245 of the Domestic Relations Law makes child support orders issued in matrimonial actions enforceable by contempt. Although it felt that it was merely a legislative oversight that a similar provision was not made for such orders issued in habeas corpus proceedings, the court was reluctant to hold the husband in contempt.<sup>151</sup>

Until section 245 could be amended, it was suggested that CPLR 7006 be used to enforce orders arising out of habeas corpus proceedings.<sup>152</sup> However, it appears that CPLR 7006 can be used only to compel production of the "corpus" and not compliance

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<sup>147</sup> 25 App. Div. 2d 205, 268 N.Y.S.2d 115 (1st Dep't 1966).

<sup>148</sup> 18 N.Y.2d 492, 223 N.E.2d 558, 277 N.Y.S.2d 129 (1966).

<sup>149</sup> It should be noted that before the enactment of Domestic Relations Law §§ 237(b), 240, no award of support was available for a child in a habeas corpus proceeding. See 7B MCKINNEY'S CPLR 203, commentary 361-64 (1964).

<sup>150</sup> 52 Misc. 2d 829, 276 N.Y.S.2d 668 (Sup. Ct. Bronx County 1967).

<sup>151</sup> *Id.* at 829-30, 276 N.Y.S.2d at 669.

<sup>152</sup> *Ibid.*

with orders issued after such production.<sup>153</sup> Thus, this decision, by denying enforcement under section 245, effectively frustrates the provision of section 240 permitting child support orders in habeas corpus proceedings.

#### NEW YORK CITY CIVIL COURT ACT

*CCA §201: No jurisdiction to award money judgment for fraudulent conveyance.*

While the Civil Court of the City of New York is given jurisdiction over actions for the recovery of money where the amount sought to be recovered does not exceed \$10,000,<sup>154</sup> it has no general equity jurisdiction.<sup>155</sup> This limit upon jurisdiction is closely adhered to by the court.<sup>156</sup>

A recent example of the stringency of the jurisdictional limitation is *Circulation Associates, Inc. v. Mother's Manual, Inc.*<sup>157</sup> There, plaintiff alleged that a transfer to the defendant by the judgment debtor of its customer lists and contracts was fraudulent under Article 10 of the Debtor and Creditor Law, since it was made while the judgment debtor was insolvent. Plaintiff sought a money judgment in lieu of a decree setting aside the conveyance.

<sup>153</sup> CPLR 7006(a) provides that the "person upon whom the writ . . . is served . . . shall make a return to [the court which issued the writ] . . . and, if required by [the court] . . . produce the body of the person detained. . . ." This language suggests that only initial compliance with the writ, *i.e.*, production, is contemplated. This conclusion is supported by referring to cases under the predecessor of the present section, CPA § 1248. *See, e.g., In re Sedgwick*, 211 App. Div. 60, 206 N.Y.S. 850 (1st Dep't 1924); *Application of Hebo*, 95 N.Y.S.2d 545 (Sup. Ct. N.Y. County 1950); *People ex rel. Kniffin v. Knight*, 184 Misc. 545, 56 N.Y.S.2d 108 (Sup. Ct. N.Y. County 1945).

<sup>154</sup> CCA §202 provides that "the court shall have jurisdiction of actions and proceedings for the recovery of money, actions and proceedings for the recovery of chattels and actions and proceedings for the foreclosure of liens on personal property where the amount sought to be recovered or the value of the property does not exceed \$10,000." *See generally* WACHTELL, *NEW YORK PRACTICE UNDER THE CPLR 8-10* (2d ed. 1966).

<sup>155</sup> N.Y. CONST. art. VI, § 15(b); CCA §§ 202-05; *Petrides v. Park Hill Restaurant*, 265 App. Div. 509, 39 N.Y.S.2d 645 (1st Dep't 1943); *Kwoczka v. Dry Dock Sav. Bank*, 52 Misc. 2d 67, 275 N.Y.S.2d 156 (N.Y.C. Civ. Ct. 1966).

<sup>156</sup> *See, e.g., Kwoczka v. Dry Dock Sav. Bank*, 52 Misc. 2d 67, 275 N.Y.S.2d 156 (N.Y.C. Civ. Ct. 1966), where the court was requested to return a sum of money to plaintiff's account from a Totten Trust created by her late husband. The court stated that it could not return the money because to do so it would have to cancel the trust, an essentially equitable action.

<sup>157</sup> 53 Misc. 2d 225, 278 N.Y.S.2d 137 (N.Y.C. Civ. Ct. 1967).