

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of McCloskey v. Fleming

2020 NY Slip Op 07577 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2020) · No. 2019-07740 · Decided December 16, 2020

SUMMARY

The New York Supreme Court, Appellate Division, Second Department affirmed an order denying the father's objections to a child-support modification order. The court held that rental income from the father's real property was properly imputed and that the record did not establish that the support obligation reduced his income below the statutory self-support reserve.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	William F. Mastro, J.P.; Sheri S. Roman, J.; Sylvia O. Hinds-Radix, J.; Francesca E. Connolly, J.
JURISDICTION	New York
DECIDED	December 16, 2020
DOCKET	2019-07740
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a Family Court order denying his objections to a Support Magistrate's order that modified his child-support obligation.
STANDARD OF REVIEW	Whether the Support Magistrate providently exercised her discretion and whether the record supported the father's objections to the child-support calculation.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Darren Robert McCloskey v. Christine Fleming

TOPICS

- child support
- family law procedure
- appellate procedure

PRACTICE AREAS

family law

child support

appellate procedure

QUESTIONS PRESENTED

1. Whether the Support Magistrate properly imputed rental income from the father's Yonkers property in calculating child support.
2. Whether the record established that the father's child-support obligation reduced his income below New York's self-support reserve.
3. Whether the Family Court properly denied the father's objections to the modified support order.

HOLDINGS

1. The Support Magistrate providently exercised her discretion by imputing rental income from the father's Yonkers property because the father presented no evidence that the income should be discounted or disregarded based on property-related expenses.
2. The father's challenge to the self-support-reserve calculation failed because the record contained insufficient evidence to substantiate that his child-support obligation reduced his income below the statutory reserve.
3. The Family Court properly denied the father's objections to the Support Magistrate's modified support order.

FACTUAL BACKGROUND

The mother and father are the parents of one child, and the mother had physical custody. The father owned rental property in Yonkers, and the Support Magistrate included rental income from that property in calculating his child-support obligation. The father argued that the rental income should have been discounted or disregarded because of property expenses and that the resulting support obligation reduced his income below New York's self-support reserve.

PROCEDURAL HISTORY

The mother was awarded physical custody of the parties' child and commenced a Family Court Act article 4 proceeding for child support. After an initial support order, the father sought a downward modification; following a hearing at which the mother consented, the Support Magistrate reduced the father's monthly child-support and health-insurance obligations. The Family Court denied the father's objections, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Smith v Evans, 75 AD3d 603, 604

- Matter of Madura v Nass, 304 AD2d 579, 580

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