

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

OPINION

PER CURIAM.

Matter of McCloskey v Fleming (2020 NY Slip Op 07577) Matter of McCloskey v Fleming 2020 NY Slip Op 07577 Decided on December 16, 2020 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 16, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P.

SHERI S. ROMAN SYLVIA O. HINDS-RADIX FRANCESCA E. CONNOLLY, JJ. 2019-07740 (Docket No. F-493-16/18F) [*1]In the Matter of Darren Robert McCloskey, appellant, vChristine Fleming, respondent. Darren R. McCloskey, named herein as Darren Robert McCloskey, Yonkers, NY, appellant pro se. Christine Fleming, Staten Island, NY, respondent pro se. DECISION & ORDER In a proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Westchester County (Rachel Hahn, J.), dated May 7, 2019.

The order denied the father's objections to an order of the same court (Keri A. Fiore, S.M.), dated February 22, 2019, which, inter alia, directed him to pay child support in the sum of \$636 per month and health insurance premiums in the sum of \$87.40 per month. ORDERED that the order dated May 7, 2019, is affirmed, without costs or disbursements.

The mother and the father are the parents of one child. In December 2015, the mother was awarded physical custody of the child and thereafter commenced a proceeding pursuant to Family Court Act article 4 for child support.

After a hearing, the Support Magistrate issued an order dated August 4, 2017, pursuant to which the father was directed to pay, inter alia, child support in the sum of \$1,094 per month and health insurance premiums in the sum of \$137.97 biweekly. Thereafter, the father filed a petition seeking a downward modification of his child support obligation. Following a hearing at which the mother consented to a downward modification, the Support Magistrate modified the order of support by, inter alia, directing the father to pay child support in the sum of \$636 per month and health insurance premiums in the sum of \$87.40 per month.

The father filed objections to the Support Magistrate's order contending, among other things, that his rental income from certain real property he owned in Yonkers should not have been included in the child support calculations, and the child support obligation would place him below the New York self-support reserve.

In an order dated May 7, 2019, the Family Court denied the father's objections. The father appeals from that order. Here, the Support Magistrate providently exercised her discretion in imputing rental income from the father's Yonkers property.

The father failed to present any evidence that his income from the Yonkers property should have been discounted or disregarded in light of the expenses that he incurred in connection with that property (see *Matter of Smith v Evans*, 75 AD3d 603, 604). [*2]Similarly, the record is devoid of evidence sufficient to substantiate the father's contention that his child support obligation reduces his income below the "self-support reserve" (Family Ct Act § 413[1][b][6]; see *Matter of Madura v Nass*, 304 AD2d 579, 580).

Therefore, we agree with the Family Court's determination to deny the father's objections to the Support Magistrate's order. The father's remaining contentions either are without merit or need not be reached in light of our determination. MASTRO, J.P., ROMAN, HINDS-RADIX and CONNOLLY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court