

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

Matter of McGoldrick v. Gebaide

2020 NY Slip Op 06528 (App. Div. 2020) · No. 2019-07752 · Decided November 12, 2020

SUMMARY

The Appellate Division, Second Department, affirmed an order increasing the father's child support obligation to \$235.39 per week and requiring him to pay 68.5% of the child's unreimbursed health care expenses. The court held that the father's failure to provide required financial disclosure justified preclusion and that support could therefore be calculated based on the child's needs under the Family Court Act.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Leonard B. Austin, J.P.; John M. Leventhal, J.; Sheri S. Roman, J.; Betsy Barros, J.
JURISDICTION	New York
DECIDED	November 12, 2020
DOCKET	2019-07752
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a Family Court order that granted the mother's objections to the Support Magistrate's child-support determination, granted the mother's petition to modify support, and increased the father's support obligation.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Neil H. Gebaide v. Susan I. McGoldrick

TOPICS

child support family law procedure appellate procedure standard of review

PRACTICE AREAS

family law child support appellate procedure

QUESTIONS PRESENTED

1. Whether the father's failure to provide the required financial disclosure justified preclusion of evidence concerning his financial ability to pay support.
2. Whether the Family Court could calculate child support using a needs-based analysis when the record lacked sufficient evidence of parental income.
3. Whether the resulting award of \$235.39 per week in child support and 68.5% of unreimbursed health-care expenses was warranted.

HOLDINGS

1. A respondent in a child-support proceeding who fails, without good cause, to provide the compulsory financial disclosure required by Family Court Act § 424-a may be precluded from offering evidence of the respondent's financial ability to pay support; the father's preclusion order was proper.
2. When there is insufficient evidence in the record to determine parental income, the Family Court is authorized and directed to award child support based on the needs of the child.

KEY QUOTATIONS

*“the court on its own motion or on application shall grant the relief demanded in the petition or shall order that, for purposes of the support proceeding, the respondent shall be precluded from offering evidence as to respondent's financial ability to pay support” (*1)*

FACTUAL BACKGROUND

The mother sought increased child support because of increased expenses for the child. The father failed to comply with the statutory requirement to provide financial disclosure concerning his ability to pay support. Because the record lacked sufficient evidence of parental income, the Family Court calculated support using the child's needs and ordered the father to pay \$235.39 per week and 68.5% of unreimbursed health-care expenses.

PROCEDURAL HISTORY

The mother commenced a Family Court Act article 4 proceeding seeking an increase in child support based on increased expenses for the child. After a hearing, the Support Magistrate ordered the father to pay \$68 per week and imposed preclusion for failure to provide required financial disclosure. The Family Court sustained the mother's objection to the support amount, used a needs-based analysis, and ordered the father to pay \$235.39 per week plus 68.5% of the child's unreimbursed health-care expenses. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Suffolk County Dept. of Social Servs. v. Block, 152 A.D.3d 529, 530
- Matter of Speranza v. Speranza, 113 A.D.3d 622, 623

- Villafana v. Walker, 157 A.D.3d 802
- Matter of Feng Lucy Luo v. Yang, 89 A.D.3d 946, 946-947

OPINION

PER CURIAM.

Matter of McGoldrick v Gebaide (2020 NY Slip Op 06528) Matter of McGoldrick v Gebaide 2020 NY Slip Op 06528 Decided on November 12, 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 November 12, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department LEONARD B. AUSTIN, J.P.

JOHN M. LEVENTHAL SHERI S. ROMAN BETSY BARROS, JJ. 2019-07752 (Docket No. F-7920-14/18D) [*1]In the Matter of Susan I. McGoldrick, respondent, vNeil H. Gebaide, appellant. Neil Gebaide, named herein as Neil H. Gebaide, Forest Hills, NY, appellant pro se. DECISION & ORDER In a proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Suffolk County (Paul M. Hensley, J.), dated May 27, 2019.

The order, insofar as appealed from, granted the mother's objections to so much of an order of the same court (Kathryn L. Coward, S.M.), dated March 20, 2019, as, in effect, denied the mother's petition to modify a prior order of support by increasing the father's support obligation, denied the father's objections to stated portions of the order dated March 20, 2019, granted the mother's petition to modify the prior order of support, and directed the father to pay \$235.39 per week in child support and 68.5% of the subject child's unreimbursed health care expenses.

ORDERED that the order dated May 27, 2019 is affirmed insofar as appealed from, with costs. The mother commenced this child support proceeding seeking, inter alia, an increase in the father's support obligation based upon increased expenses for the subject child.

After a hearing, in an order dated March 20, 2019, the Support Magistrate, among other things, directed the father to pay \$68 per week in child support, which did not represent an increase in his support obligation.

The mother and the father each filed objections to the Support Magistrate's order. In an order dated May 27, 2019, the Family Court, inter alia, granted the mother's objection to the amount of child support awarded by the Support Magistrate, finding that it should have been calculated using a needs-based analysis and was inadequate.

The court directed the father to pay \$235.39 per week in child support and 68.5% of the subject child's unreimbursed health care expenses. The father appeals. Family Court Act § 424-a(a)

provides, in relevant part, that "[a] sworn statement of net worth shall be filed with the clerk of the court on a date to be fixed by the court, no later than ten days after the return date of the petition."

Where a respondent in a child support proceeding fails, without good cause, to comply with the compulsory financial disclosure mandated by Family Court Act § 424-a, "the court on its own motion or on application shall grant the relief demanded in the petition or shall order that, for purposes of the support proceeding, the respondent shall be precluded from offering evidence as to respondent's financial ability to pay support" (Family Ct Act § 424-a[b]; see *Matter of Suffolk County Dept. of Social Servs. v Block*, 152 AD3d 529, 530; *Matter of Speranza v Speranza*, 113 AD3d 622, 623).

Here, we agree with the Support Magistrate's determination that the father had failed to comply with the statutory requirement to provide financial disclosure, and to impose an order of preclusion (see *Villafana v Walker*, 157 AD3d 802; *Matter of Suffolk County Dept. of Social Servs. v Block*, 152 AD3d at 530; *Matter of Speranza v Speranza*, 113 AD3d at 623; *Matter of Feng Lucy Luo v Yang*, 89 AD3d 946, 946).

Furthermore, where, as here, there is insufficient evidence in the record to determine parental income, the Family Court is authorized and directed to award child support based upon the needs of the child (see Family Ct Act § 413[1][k]; *Villafana v Walker*, 157 AD3d 802; *Matter of Suffolk County Dept. of Social Servs. v Block*, 152 AD3d at 530; *Matter of Feng Lucy Luo v Yang*, 89 AD3d at 946-947).

In this case, we agree with the court's determination that the needs of the subject child warranted a child support award of \$235.39 per week. The father's remaining contentions are without merit. AUSTIN, J.P., LEVENTHAL, ROMAN and BARROS, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court