

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

Duma v. Edgar

58 A.D.3d 1085, 873 N.Y.S.2d 747 (N.Y. App. Div. 2009) · Decided January 29, 2009

SUMMARY

The New York Appellate Division, Third Department, affirmed an order modifying a child-support obligation upward. The court held that Family Court properly precluded the respondent from presenting financial evidence because his failure to provide meaningful financial disclosure was willful and contumacious, while noting that he was still permitted to testify about his studies and employment history.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Lahtinen, J.; Mercure, J.P.; Malone Jr., J.; Kavanagh, J.
JURISDICTION	New York
DECIDED	January 29, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent appealed from a Family Court order granting petitioner’s application to modify a prior child-support order.
STANDARD OF REVIEW	Abuse of discretion; the court reviewed whether the Support Magistrate abused her discretion in precluding respondent from presenting financial proof.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Edgar v. Duma

TOPICS

- child support
- discovery dispute
- sanctions
- family law procedure
- appellate procedure

PRACTICE AREAS

- family law
- child support
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether Family Court and the Support Magistrate abused their discretion by precluding respondent from presenting proof concerning his financial circumstances because of his inadequate and evasive disclosure.

HOLDINGS

1. Preclusion was proper because respondent's failure to provide meaningful financial disclosure, despite warnings and an adjournment, supported an inference that his noncompliance was willful, deliberate, and contumacious; therefore, the Support Magistrate did not abuse her discretion by resolving financial issues in petitioner's favor.

KEY QUOTATIONS

"the offending party's lack of cooperation with disclosure was willful, deliberate, and contumacious" (1086)

FACTUAL BACKGROUND

Respondent had previously consented to a child-support order based on his status as a full-time student and was required to notify petitioner and the local support collection unit when he became employed. When petitioner later sought an upward modification, respondent submitted materially incomplete financial affidavits, omitted income, assets, expenses, liabilities, wage information, and tax information, and gave vague responses to discovery and the Support Magistrate's inquiries. Despite warnings and more than a month to comply, he made no meaningful effort to provide the required disclosure.

PROCEDURAL HISTORY

The parties had consented in 2002 to an order requiring respondent to pay \$25 per month in child support and \$15 per month toward arrears, with an obligation to disclose subsequent employment. Petitioner sought an upward modification in 2007 based on increased needs and respondent's alleged employment. After respondent failed to provide meaningful financial disclosure, Family Court granted petitioner's motion for preclusion concerning financial issues. The Support Magistrate increased support to \$122.62 per week plus \$10 per week toward arrears, and Family Court dismissed respondent's objections. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Maillard v. Maillard, 243 A.D.2d 448, 449 (N.Y. App. Div. 1997)
- Getty v. Zimmerman, 37 A.D.3d 1095, 1096-1097 (N.Y. App. Div. 2007)
- Lotardo v. Lotardo, 31 A.D.3d 504, 505 (N.Y. App. Div. 2006)