

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

Freedman v. Horike

68 A.D.3d 1205 (N.Y. App. Div. 2009) · Decided December 3, 2009

SUMMARY

The New York Appellate Division reviewed proceedings concerning child support arrears, an alleged willful violation of a support order, and the father's request for a downward modification of support. The court affirmed Family Court's determination that the father failed to prove inability to pay or a sufficient change in circumstances warranting modification.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Mercure, J.; Cardona, E.J.; Spain, J.; Malone Jr., J.; Kavanagh, J.
JURISDICTION	New York
DECIDED	December 3, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed from a Family Court order denying his objections to a Support Magistrate's determination that dismissed his support-modification petition and related motions and found him in willful violation of a prior child-support order.
STANDARD OF REVIEW	The Appellate Division accorded due deference to Family Court as the trier of fact and upheld its determination where the record amply supported the findings.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Freedman v. Horike

TOPICS

- child support
- family law procedure
- appellate procedure
- standard of review
- family law

PRACTICE AREAS

- family law
- child support
- appellate procedure

QUESTIONS PRESENTED

1. Whether the father established an inability to comply with the prior child-support order sufficient to defeat a finding of willful violation.
2. Whether the father established a sufficient change in circumstances warranting a downward modification of child support.
3. Whether Family Court's factual findings were supported by the record.

HOLDINGS

1. Because the father undisputedly failed to meet his support obligations, he bore the burden of proving by competent, credible evidence that he was unable to make the required payments. He failed to meet that burden, so the finding of willful violation was affirmed.
2. The father failed to establish a sufficient change in circumstances warranting a downward modification of child support. A child-support obligation turns on the parent's ability to provide support rather than solely on the parent's current financial situation, and the father's longstanding voluntary reduction of income and receipt of public assistance did not constitute a substantial change in circumstances.

KEY QUOTATIONS

“Thus, he bore the burden of demonstrating “his inability to make the required payments” by “competent, credible evidence”” (68 A.D.3d at 1206)

“a child support obligation turns on a parent’s ability to provide support, rather than the parent’s current financial situation” (68 A.D.3d at 1206)

FACTUAL BACKGROUND

The parties were divorced parents of two children, and the father had accumulated approximately \$50,000 in child-support arrears. After agreeing that the arrears would be entered as a judgment, the father sought a downward modification based on unemployment, alleged disability, and public assistance. He failed to provide competent medical proof of disability, presented insufficient proof concerning his income and job-search efforts, and was found not credible; his income reduction and receipt of public assistance were also longstanding and voluntary.

PROCEDURAL HISTORY

The divorced parents had entered into a stipulation providing that approximately \$50,000 in child-support arrears would be entered as a judgment while permitting the father to seek modification of support accruing after June 29, 2007. The father sought downward modification based on terminated employment and alleged disability, while the mother sought a finding that he willfully violated a prior support order. After a hearing, the Support Magistrate dismissed the father's requests and found a willful violation; Family Court denied his objections, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Horike v. Freedman, 37 A.D.3d 978 (2007)
- Matter of Freedman v. Horike, 29 A.D.3d 1093 (2006)
- Matter of Freedman v. Horike, 26 A.D.3d 680 (2006)
- Matter of Powers v. Powers, 86 N.Y.2d 63, 70 (1995)
- Matter of Vickery v. Vickery, 63 A.D.3d 1220, 1221 (2009)
- Matter of Heyn v. Burr, 6 A.D.3d 781, 782-783 (2004)
- Matter of Latimer v. Cartin, 57 A.D.3d 1264, 1265 (2008)
- Matter of Holbert v. Rifanburg, 39 A.D.3d 902, 903 (2007)

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