

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

Montgomery v. Prioleau

94 A.D.3d 1124, 942 N.Y.S.2d 635 (2d Dep't 2012) · Decided April 24, 2012

SUMMARY

The Appellate Division, Second Department, affirmed the denial of the father's petition for a downward modification of his child support obligation. The court held that he failed to demonstrate a substantial change in circumstances and that his separate child support obligation could not, under the circumstances, justify reducing his obligation to the child at issue.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Rivera, J.E.; Hall, J.; Lott, J.; Austin, J.
JURISDICTION	New York
DECIDED	April 24, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from an order of the Family Court, Westchester County, denying his objections to a Support Magistrate's order that denied his petition for a downward modification of his child support obligation.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Father v. Mother

TOPICS

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

PRACTICE AREAS

- family law
- child support
- appellate procedure

QUESTIONS PRESENTED

- Whether a party seeking a downward modification of a child support obligation must demonstrate a substantial change in circumstances.

2. Whether the father's preexisting child support obligation for a child from another relationship supported a downward modification of his obligation for the child involved in this proceeding.

HOLDINGS

1. A party seeking a downward modification of a child support order must demonstrate a substantial change in circumstances warranting the modification.
2. Under the circumstances, the father's support obligation for his son from a different relationship could not serve as a basis for downward modification of his obligation to the child involved in this proceeding.

KEY QUOTATIONS

“a party seeking a downward modification of a support order must demonstrate a substantial change in circumstances warranting the modification” (1125)

FACTUAL BACKGROUND

The father was obligated to pay the mother \$160 per week in child support for their four-year-old child and approximately \$160 per week for a son from a different relationship. He continued working two jobs but testified that his overtime hours had been reduced because of the economic downturn. His obligation to support the other son had been established by a Bronx County Family Court order before the Westchester County order governing the child at issue.

PROCEDURAL HISTORY

The father was ordered to pay \$160 per week in child support for the child involved in this proceeding. After his overtime hours were reduced, he petitioned the Family Court, Westchester County, for a downward modification. Following a hearing, the Support Magistrate denied the petition for failure to demonstrate a substantial change in circumstances, and the Family Court denied the father's objections. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Bouie v. Joseph, 91 A.D.3d 641, 642 (2012)
- Matter of Figueroa v. Herring, 61 A.D.3d 976, 977 (2009)
- Matter of Solis v. Marmolejos, 50 A.D.3d 691, 692 (2008)
- Matter of Levine-Seidman v. Seidman, 88 A.D.3d 883, 884 (2011)
- Matter of Harris v. Stiles, 78 A.D.3d 1053 (2010)
- Matter of Talty v. Talty, 42 A.D.3d 546, 547 (2007)
- Matter of Morena v. Morena, 267 A.D.2d 388, 389 (1999)

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