

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)

OPINION

PER CURIAM.

*1125In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Westchester County (Malone, J.), dated March 31, 2011, which denied his objections to so much of an order of the same court (Bowman, S.M.), dated December 16, 2010, as, after a hearing, denied his petition for a downward modification of his child support obligation. Ordered that the order is affirmed, without costs or disbursements. The mother and the father have one child in common, who was four years old at the time of the hearing in this case. The father was obligated to pay the mother a total of \$160 per week in child support, pursuant to an order of the Family Court, Westchester County, dated September 23, 2008. The father also pays approximately \$160 per week in child support for his son from a different relationship, pursuant to an order of the Family Court, Bronx County, dated March 13, 2007. In 2010, the father filed a petition in the Family Court, Westchester County, for a downward modification of his child support obligation as set forth in the order of that court dated September 23, 2008. At the ensuing hearing, the father testified that he has maintained his two jobs working for Pepsi and Gristedes Supermarket, but that his overtime hours had been cut due to the economic downturn. In an order dated December 16, 2010, the Support Magistrate in Westchester County found that the father was not entitled to a downward modification of his support obligation, holding that the father had failed to demonstrate a substantial change in circumstances. The Family Court denied the father's written objections in an order dated March 31, 2011. The father appeals, and we affirm. Contrary to the father's contention that he need only demonstrate a change in circumstances in order to obtain a downward modification in his child support obligation, a party seeking a downward modification of a support order must demonstrate a substantial change in circumstances warranting the modification (see *Matter of Bouie v Joseph*, 91 AD3d 641, 642 [2012]; *Matter of Figueroa v Herring*, 61 AD3d 976, 977 [2009]; *Matter of Solis v Marmolejos*, 50 AD3d 691, 692 [2008]). Here, the Family Court properly found that the father failed to demonstrate such a substantial change in circumstances (see *Matter of Levine-Seidman v Seidman*, 88 AD3d 883, 884 [2011]; *Matter of Harris v Stiles*, 78 AD3d 1053 [2010]; *Matter of Talty v Talty*, 42 AD3d 546, 547 [2007]; cf. *Matter of Morena v Morena*, 267 AD2d 388, 389 [1999]). The Family Court further properly concluded that the father's *1126support obligation to his son from a different relationship could not, under the circumstances, be a basis for a downward modification of his obligation to the instant child. The father's obligation to the son from a different relationship was set by the Family Court, Bronx County, before his obligation to the child in this case was set by the Family Court, Westchester County. Accordingly, the Family Court properly denied the father's objections to so much of the Support Magistrate's order as denied the father's petition for a downward modification of his child support obligation. Rivera, J.E, Hall, Lott and Austin, JJ., concur.

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