

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

Matter of Latava P. v. Charles W.

2019 NY Slip Op 05624 (App. Div. 2019) · No. 9852 · Decided July 11, 2019

SUMMARY

The Appellate Division, First Department, affirmed an order denying the respondent father's objections to a child support order. The court held that Family Court and the Support Magistrate had jurisdiction over paternity and support issues, properly denied another adjournment, and rejected the respondent's remaining arguments concerning DNA testing and custodial-parent status.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Friedman, J.P.; Richter, J.; Tom, J.; Oing, J.; Moulton, J.
JURISDICTION	New York
DECIDED	July 11, 2019
DOCKET	9852
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent father appealed from a Family Court order denying his objections to a Support Magistrate's order that determined paternity and imposed child-support obligations.
STANDARD OF REVIEW	The denial of an adjournment request was reviewed for abuse of discretion; the Family Court's jurisdictional determination and support order were reviewed for legal error and record support.
PRECEDENTIAL VALUE	Published Appellate Division decision; precedential within the First Department subject to applicable New York precedent rules.
PARTIES	Charles W. v. Latava P.

TOPICS

- child support
- paternity
- subject matter jurisdiction
- family law procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Family Court and the Support Magistrate had jurisdiction to adjudicate paternity and child support despite the parties' involvement in other legal proceedings.
2. Whether the Family Court providently exercised its discretion in denying respondent another adjournment.
3. Whether respondent was entitled to challenge the DNA-test order or receive child support as a custodial parent.
4. Whether the Support Magistrate properly issued an order of filiation and a final child-support order.

HOLDINGS

1. Family Court has exclusive original jurisdiction to adjudicate paternity and child-support proceedings, and the Support Magistrate properly heard and determined those matters between the unmarried parties.
2. The Family Court providently exercised its discretion in denying respondent's request for another adjournment.
3. Respondent could not prevail on his challenge to the order directing him to submit to DNA testing because he failed to exercise his right to challenge that order.
4. Respondent was not entitled to receive child support from petitioner because the record did not show that he had been a custodial parent since the commencement of the paternity action.

KEY QUOTATIONS

*“As Family Court is vested by the State Constitution and the Family Court Act with exclusive original jurisdiction to adjudicate proceedings for paternity and support of a spouse or a child” (*1)*

*“The fact that the parties appeared to be embroiled in various legal actions, including a Housing Court case, petitions for custody, and a family offense petition, did not deprive the support magistrate of jurisdiction to hear and determine paternity and ultimately the child support matter” (*1)*

FACTUAL BACKGROUND

The parties were unmarried and involved in a paternity and child-support proceeding. The Support Magistrate issued an order of filiation and a final child-support order requiring respondent to pay child support, child-care expenses, unreimbursed medical expenses, and retroactive support. Respondent had previously received two adjournments because of counsel's unavailability, and the child was not receiving support.

PROCEDURAL HISTORY

The Family Court, Bronx County, denied respondent father's objections to a Support Magistrate's order directing him to pay child support, child-care expenses, and a portion of unreimbursed medical expenses, and setting retroactive child support. The Appellate Division, First Department, unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Alexis T. v. Vanessa C.-L., 101 A.D.3d 436, 437 (1st Dep't 2012)
- Creem v. Creem, 121 A.D.2d 676 (2d Dep't 1986)

OPINION

PER CURIAM.

Matter of Latava P. v Charles W. (2019 NY Slip Op 05624) Matter of Latava P. v Charles W. 2019 NY Slip Op 05624 Decided on July 11, 2019 Appellate Division, First 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 July 11, 2019 Friedman, J.P., Richter, Tom, Oing, Moulton, JJ. 9852 [*1]In re Latava P., Petitioner-Respondent, vCharles W., Respondent-Appellant.

Charles A. Williams, Jr., appellant pro se. Order, Family Court, Bronx County (Peter J. Passidomo, J.), entered on or about January 23, 2018, which denied respondent father's objections to an order of support, same court (Anthony Lopez, Support Magistrate), entered on or about November 17, 2017, which, inter alia, directed him to pay child support, child care expenses, and a portion of the child's unreimbursed medical expenses, and set retroactive child support, unanimously affirmed, without costs.

As Family Court is vested by the State Constitution and the Family Court Act with exclusive original jurisdiction to adjudicate proceedings for paternity and support of a spouse or a child (see NY Const, art VI, § 13[b]; Family Court Act §§ 115[a][ii]; 411; 511), the Support Magistrate properly heard and determined all matters in the proceeding between these unmarried parties, including issuing an order of filiation and a final child support order.

The fact that the parties appeared to be embroiled in various legal actions, including a Housing Court case, petitions for custody, and a family offense petition, did not deprive the support magistrate of jurisdiction to hear and determine paternity and ultimately the child support matter (see Family Court Act §§ 439[a], [b]; 532[a]). Contrary to respondent's arguments, the court providently exercised its discretion in denying his request for an adjournment (see Matter of Alexis T. v Vanessa C.-L., 101 AD3d 436, 437 [1st Dept 2012]).

Two earlier requests for adjournment had been granted because of the unavailability of respondent's counsel. The court properly concluded that another continuance would have been prejudicial to the child, who was not receiving support.

Moreover, respondent failed to exercise his right to challenge the court's order directing him to submit to a DNA test. Contrary to his contention, there is nothing in the record that suggests that respondent has been a custodial parent at any time since the commencement of the paternity action and is therefore entitled to receive child support from petitioner mother (see *Creem v Creem*, 121 AD2d 676 [2d Dept 1986]).

We have considered respondent's remaining contentions and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: JULY 11, 2019 CLERK