

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

Matter of Paderno v. Shvetsova

2015 NY Slip Op 02485 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2015) · No. 2013-10691 · Decided March 25, 2015

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the father's objection to a child-support obligation of \$25 per month. The court held that the statutory minimum applied because the father's income was below the poverty guidelines and the circumstances did not warrant departing from that minimum, despite the mother's substantially higher income.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Randall T. Eng, P.J.; Mark C. Dillon, J.; Cheryl E. Chambers, J.; Betsy Barros, J.
JURISDICTION	New York
DECIDED	March 25, 2015
DOCKET	2013-10691
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a Family Court order denying his objection to a Support Magistrate's child-support determination.
STANDARD OF REVIEW	Whether the Family Court providently exercised its discretion in declining to depart from the statutory minimum child-support obligation.
PRECEDENTIAL VALUE	published opinion
PARTIES	Konstantin Paderno v. Julia Shvetsova

TOPICS

- child support
- statutory interpretation
- family law procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a noncustodial parent with no income and receiving public assistance should be required to pay the statutory minimum child-support obligation of \$25 per month when the obligation would otherwise reduce income below the poverty guidelines.
2. Whether the Family Court abused its discretion by declining to find that the \$25 monthly obligation was unjust or inappropriate based on the disparity in the parents' incomes.

HOLDINGS

1. When the annual basic child-support obligation would reduce the noncustodial parent's income below the poverty-income-guidelines amount, the basic child-support obligation is \$25 per month unless the court finds, based on the statutory factors, that the obligation would be unjust or inappropriate.
2. Family Court providently exercised its discretion by refusing to eliminate the \$25 monthly child-support obligation.

KEY QUOTATIONS

"Where, as here, 'the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount . . . the basic child support obligation shall be twenty-five dollars per month,' (Family Ct Act § 413[1][d]), unless the court finds that such basic child support obligation 'is unjust or inappropriate, which finding shall be based upon considerations of [the factors set forth in Family Ct Act § 413(1)(f)]' (Family Ct Act § 413[1][f])." (126 A.D.3d at 982)

FACTUAL BACKGROUND

The parties had one child who lived with the mother. The father was unemployed, living rent-free with his mother, receiving public assistance, and had no income; the mother was employed and earned \$134,806.77 annually. On the mother's consent, the Support Magistrate reduced the father's child-support obligation to the statutory minimum of \$25 per month.

PROCEDURAL HISTORY

The father petitioned for a downward modification of his child-support obligation after his unemployment benefits expired. The Support Magistrate reduced the obligation to \$25 per month, with the mother's consent. Family Court denied the father's objection seeking elimination of the obligation, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Aregano v. Aregano, 289 A.D.2d 1081
- Matter of Monroe County Dept. of Human Servs. v. Michael C., 12 Misc. 3d 1166(A) (Fam. Ct., Monroe County)

OPINION

PER CURIAM.

Matter of Paderno v Shvetsova (2015 NY Slip Op 02485) Matter of Paderno v Shvetsova 2015 NY Slip Op 02485 Decided on March 25, 2015 Appellate Division, Second 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 March 25, 2015 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department RANDALL T. ENG, P.J. MARK C. DILLON CHERYL E. CHAMBERS BETSY BARROS, JJ. 2013-10691 (Docket No. F-30024-04) [*1]In the Matter of Konstantin Paderno, appellant, vJulia Shvetsova, respondent.

Konstantin Paderno, Brooklyn, N.Y., appellant pro se. DECISION & ORDER Appeal from an order of the Family Court, Kings County (Ann Elizabeth O'Shea, J.), dated September 4, 2013. The order denied the father's objection to so much of an order of the same court (Israella Mayeri, S.M.), dated April 18, 2013, as granted his petition for a downward modification of his child support obligation only to the extent of reducing his obligation to the sum of \$25 per month.

ORDERED that the order dated September 4, 2013, is affirmed, without costs or disbursements. The mother and the father have one child, who lives with the mother. In April 2012, the father petitioned for a downward modification of his child support obligation on the ground that his unemployment benefits had run out. At a hearing, the father testified that he was unemployed, living with his mother, and receiving public assistance.

The Support Magistrate found that the father had no income, while the mother, who was gainfully employed, had an annual income of \$134,806.77. In an order dated April 18, 2013, the Support Magistrate, among other things, directed the father, on the mother's consent, to pay child support in the sum of \$25 per month.

The father filed an objection to so much of the order as granted his petition for a downward modification of his child support obligation only to the extent of reducing his obligation to \$25 per month. He argued that he should not be required to pay even \$25 per month since the mother earned a substantial income, while his only resources came from public assistance.

The Family Court denied the objection. The father appeals. Where, as here, "the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount... the basic child support obligation shall be twenty-five dollars per month," (Family Ct Act § 413[1[d]]), unless the court finds that such basic child support

obligation "is unjust or inappropriate, which finding shall be based upon considerations of [the factors set forth in Family Ct Act § 413(1)(f)]" (Family Ct Act § 413[1][f]).

Under the circumstances of this case, where the father was residing rent-free with a relative who was covering his living expenses, the Family Court providently exercised its discretion in not departing from the statutory \$25 per month minimum amount of child support, notwithstanding the disparity in the parents' incomes (cf. *Aregano v Aregano*, 289 AD2d 1081; *Matter of Monroe County Dept. of Human Servs. v Michael C.*, 12 Misc 3d 1166[A], *1 [Fam Ct, [*2]Monroe County]).

Accordingly, the Family Court properly denied the father's objection. ENG, P.J., DILLON, CHAMBERS and BARROS, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court