

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

Martin P. Whelan v. Kara E. Whelan

2026 NY Slip Op 01398 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2026) · No. 2020-07901 · Decided March 11, 2026

SUMMARY

The Appellate Division, Second Department reversed an order granting a downward modification of the plaintiff's child support obligation. The court held that the plaintiff failed to establish a substantial change in circumstances and noted that the parties had waived modification based on an involuntary income change of 15% or more.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Barry E. Warhit, J.; Lourdes M. Ventura, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	March 11, 2026
DOCKET	2020-07901
DISPOSITION	reversed
PROCEDURAL POSTURE	In a matrimonial action, the defendant appealed from an order granting the plaintiff's motion for a downward modification of his child support obligation without a hearing.
STANDARD OF REVIEW	The Appellate Division reviewed the child-support-modification determination for whether the plaintiff established a substantial change in circumstances warranting modification and reviewed the order on the law.
PRECEDENTIAL VALUE	Published
PARTIES	Kara E. Whelan v. Martin P. Whelan

TOPICS

child support

family law procedure

appellate procedure

standard of review

PRACTICE AREAS

family law

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appellate procedure

QUESTIONS PRESENTED

1. Whether the plaintiff established a substantial change in circumstances warranting a downward modification of his child support obligation.
2. Whether the parties' agreement waiving modification based on an involuntary income change of 15% or more supported denial of the modification motion.

HOLDINGS

1. The plaintiff failed to establish a substantial change in circumstances warranting a downward modification because, despite his loss of income during the COVID-19 pandemic, his financial resources showed that he remained able to provide support at the stipulated level.
2. The parties' agreement to waive modification of child support based on an involuntary change in income of 15% or more was an additional reason supporting denial of the plaintiff's motion.

KEY QUOTATIONS

“A parent's obligation to provide support is not necessarily determined by his or her current financial condition, rather, it is determined by his or her ability to provide support” ([*2])

FACTUAL BACKGROUND

The parties were married in 2006 and have two children. In December 2015, they entered into a stipulation setting child support at \$6,250 per month and waiving modification based on an involuntary income change of 15% or more under Domestic Relations Law § 236(B)(9)(b) and Family Court Act § 451. After the parties divorced in 2016, the plaintiff sought a reduction in support, citing loss of income during the COVID-19 pandemic, but his statement of net worth showed that he retained sufficient means to provide support at the stipulated level.

PROCEDURAL HISTORY

The parties' 2015 stipulation of settlement was incorporated but not merged into their July 11, 2016 judgment of divorce. The plaintiff later moved to reduce his monthly child support obligation from \$6,250 to \$1,604.17. Supreme Court, Kings County, granted the motion in part and directed him to pay \$3,500 per month; the Appellate Division reversed and denied the motion.

DISPOSITION

reversed

CASES CITED

- Maria v. Ramadan, 219 AD3d 874, 875
- Zeidman v. Zeidman, 202 AD3d 893, 894
- Lueker v. Lueker, 132 AD3d 739, 741
- Muldowney-Walsh v. Desroches, 167 AD3d 1022, 1023
- Schwaber v. Schwaber, 91 AD3d 939, 940
- Matter of Oelsner v. Heppler, 181 AD3d 916, 917-918

OPINION

PER CURIAM.

Whelan v Whelan (2026 NY Slip Op 01398) Whelan v Whelan 2026 NY Slip Op 01398 Decided on March 11, 2026 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 11, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department BETSY BARROS, J.P.

BARRY E. WARHIT LOURDES M. VENTURA DONNA-MARIE E. GOLIA, JJ. 2020-07901 (Index No. 50351/14) [*1]Martin P. Whelan, respondent, v Kara E. Whelan, appellant. Cohen Clair Lans Greifer Thorpe & Rottenstreich LLP, New York, NY (Joseph F. De Simone and Sunita L. Kurra of counsel), for appellant. Schlissel Ostrow Karabatos, PLLC, Garden City, NY (Lisa R. Schoenfeld of counsel), for respondent.

DECISION & ORDER In a matrimonial action in which the parties were divorced by judgment dated July 11, 2016, the defendant appeals from an order of the Supreme Court, Kings County (Theresa M. Ciccotto, J.), dated September 29, 2020.

The order, without a hearing, granted the plaintiff's motion for a downward modification of his child support obligation to the extent of directing him to pay \$3,500 per month in child support to the defendant. ORDERED that the order is reversed, on the law, with costs, and the plaintiff's motion for a downward modification of his child support obligation is denied.

The parties were married on April 21, 2006, and have two children. In December 2015, the parties entered into a stipulation of settlement (hereinafter the stipulation). In the stipulation, as relevant to this appeal, the parties agreed to waive any right to modify the child support obligations set forth in the stipulation pursuant to Domestic Relations Law § 236(B)(9)(b) and Family Court Act § 451 based upon an involuntarily change in a party's income of 15% or more.

The parties were thereafter divorced by a judgment of divorce dated July 11, 2016. The stipulation was incorporated by reference into the judgment of divorce, but not merged. The stipulation and

the judgment of divorce provided, inter alia, that the plaintiff would pay the defendant \$6,250 per month in child support.

In July 2020, the plaintiff moved for a downward modification of his child support obligation, seeking a reduction from \$6,250 per month to \$1,604.17 per month. In an order dated September 29, 2020, the Supreme Court granted the plaintiff's motion to the extent of directing him to pay \$3,500 per month in child support to the defendant.

The defendant appeals. "A court may modify a prior order or judgment awarding maintenance upon a showing of a 'substantial change in circumstances'" (*Maria v Ramadan*, 219 AD3d 874, 875 [alteration omitted], quoting Domestic Relations Law § 236[B][9][b][1]; see *Zeidman v Zeidman*, 202 AD3d 893, 894). "In determining whether the alleged substantial change in circumstances is sufficient to warrant a downward modification, the change is to be measured by comparing the payor's financial circumstances at the time of the downward modification application with that at [*2]the time of the order or judgment" (*Zeidman v Zeidman*, 202 AD3d at 894; see *Lueker v Lueker*, 132 AD3d 739, 741).

While a parent's loss of income may constitute a substantial change in circumstances, "[a] parent's obligation to provide support is not necessarily determined by his or her current financial condition, rather, it is determined by his or her ability to provide support" (*Muldowney-Walsh v Desroches*, 167 AD3d 1022, 1023).

Here, the plaintiff failed to establish a substantial change in circumstances to warrant a downward modification of his child support obligation. The plaintiff's statement of net worth indicated that, despite his loss of income as a result of the COVID-19 pandemic, he had sufficient means to provide child support at the level set forth by the parties in the stipulation (see *Lueker v Lueker*, 132 AD3d at 741; *Schwaber v Schwaber*, 91 AD3d 939, 940; see also *Matter of Oelsner v Heppler*, 181 AD3d 916, 917-918).

Moreover, the parties agreed to waive any modification in child support obligations based upon an involuntary change in a party's income of 15% or more. Accordingly, the Supreme Court should have denied the plaintiff's motion for a downward modification of his child support obligation.

The parties' remaining contentions need not be reached in light of the foregoing. BARROS, J.P., WARHIT, VENTURA and GOLIA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court