

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

DaVolio v. DaVolio

101 A.D.3d 1120, 956 N.Y.S.2d 511 (N.Y. App. Div. 2d Dep't 2012) · Decided December 26, 2012

SUMMARY

The court upheld the denial of the father's request to downwardly modify his child support obligation. It concluded that he failed to credibly establish that his employment ended through no fault of his own or that he diligently sought reemployment consistent with his earning capacity.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Eng, P.J.; Angiolillo, J.; Sgroi, J.; Hinds-Radix, J.
JURISDICTION	New York
DECIDED	December 26, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	The father appealed from a Family Court determination denying his objections to a Support Magistrate's finding that he was not entitled to a downward modification of his child support obligation.
STANDARD OF REVIEW	The Appellate Division deferred to the Support Magistrate's credibility determinations and reviewed whether the father established a substantial and unanticipated change in circumstances warranting modification.
PRECEDENTIAL VALUE	published
PARTIES	Father

TOPICS

- child support
- family law procedure
- divorce
- family law

PRACTICE AREAS

- family law
- child support

QUESTIONS PRESENTED

1. Whether the father's loss of employment constituted a substantial and unanticipated change in circumstances warranting downward modification of the child support obligation.
2. Whether the Family Court properly deferred to the Support Magistrate's credibility determinations and denied the father's objections.

HOLDINGS

1. Such child support provisions should not be disturbed absent a substantial and unanticipated change in circumstances; a parent's loss of employment may qualify only when the termination occurred through no fault of the parent and the parent diligently sought reemployment commensurate with earning capacity.
2. The Family Court properly denied the father's objections because the record supported the Support Magistrate's determination that the father was not credible regarding his employment departure and had not satisfied his burden of proof.

KEY QUOTATIONS

“The child support provisions contained in a stipulation of settlement incorporated but not merged into a judgment of divorce should not be disturbed unless there has been a substantial and unanticipated change in circumstances since the entry of the judgment of divorce” (101 A.D.3d at 1120)

“A parent’s loss of employment may constitute a substantial and unanticipated change in circumstances justifying a downward modification of child support where the termination occurred through no fault of the parent and the parent has diligently sought reemployment commensurate with his or her earning capacity” (101 A.D.3d at 1120)

FACTUAL BACKGROUND

The father's child support obligation arose from a stipulation of settlement incorporated but not merged into a judgment of divorce. He sought a downward modification after leaving his former employment. The Support Magistrate found that he did not testify credibly about the reasons and circumstances of his departure and had not shown that he lost his employment through no fault of his own or that he diligently sought reemployment commensurate with his earning capacity.

PROCEDURAL HISTORY

A stipulation of settlement containing child support provisions had been incorporated but not merged into a judgment of divorce. After the father's loss of employment, he sought a downward modification of child support. The Support Magistrate rejected the request, and the Family Court denied the father's objections. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Bruckstein v Bruckstein, 78 A.D.3d 695, 696 (2010)
- Matter of Riendeau v Riendeau, 95 A.D.3d 891, 892 (2012)
- Matter of Atabay v Cinar, 96 A.D.3d 832, 833 (2012)
- Rooney v Rooney, 99 A.D.3d 785, 785 (2012)
- Matter of Suyunov v Tarashchansky, 98 A.D.3d 744, 745 (2012)
- Matter of Kirchain v Smith, 84 A.D.3d 1237 (2011)

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