

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12806
C/mv

_____AD3d_____

Submitted - October 16, 2006

HOWARD MILLER, J.P.
GLORIA GOLDSTEIN
PETER B. SKELOS
STEVEN W. FISHER, JJ.

2006-05209

DECISION & ORDER

Judith Raich, respondent,
v Israel Raich, appellant.

(Index No. 204287/02)

Jerry Winter, P.C., Garden City, N.Y., for appellant.

Stanley E. Gelzinis, Huntington, N.Y., for respondent.

In a matrimonial action in which the parties were divorced by judgment entered August 25, 2005, the defendant appeals from an order of the Supreme Court, Nassau County (Balkin, J.), dated May 10, 2006, which, without a hearing, denied his motion, inter alia, for a downward modification of his maintenance obligation.

ORDERED that the order is affirmed, with costs.

Contrary to the defendant's contention, the Supreme Court did not err in denying his motion for, inter alia, a downward modification of his maintenance obligation without first conducting an evidentiary hearing. The defendant failed to establish a factual basis to warrant a hearing on his alleged medical condition and forced retirement (*see Fein v Gilchrist*, 23 AD3d 558; *D'Alesio v D'Alesio*, 300 AD2d 340; *Mandelbaum v Mandelbaum*, 26 AD3d 360; *Trainor v Trainor*, 188 AD2d 461; *Praeger v Praeger*, 162 AD2d 671, 674).

November 28, 2006

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The defendant's remaining contentions are without merit.

MILLER, J.P., GOLDSTEIN, SKELOS and FISHER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court