

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

D13643
C/cb

_____AD3d_____

Submitted - December 14, 2006

A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
FRED T. SANTUCCI
MARK C. DILLON, JJ.

2005-11445
2005-11447

DECISION & ORDER

In the Matter of Benjamin Brooks, appellant, v
Natasha Pierre, respondent.

(Docket No. F-10605/05)

Benjamin Brooks, Freeport, N.Y., appellant pro se.

In a proceeding pursuant to Family Court Act article 4, inter alia, in effect, for downward modification of an order of child support, the father appeals, as limited by his brief, from (1) so much of an order of the Family Court, Suffolk County (Grier, S.M.), dated July 26, 2005, as, in effect, denied that branch of his petition which was to vacate an order of support of the same court (Lynaugh, H. E.) dated July 7, 1995, and (2) so much of an order of the same court (Simeone, J.), dated November 21, 2005, as denied his objection to that part of the order dated July 26, 2005, which, in effect, denied that branch of his petition which was to vacate the order of support dated July 7, 1995.

ORDERED that the appeal from the order dated July 26, 2005, is dismissed, without costs or disbursements, as that order was superseded by the order dated November 21, 2005; and it is further,

ORDERED that the order dated November 21, 2005, is affirmed insofar as appealed from, without costs or disbursements.

The Family Court correctly determined that the father's contention that the original child support order dated July 7, 1995, was not set pursuant to the Child Support Standards Act (*see*

March 13, 2007

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Domestic Relations Law § 240[1-b]), was not properly raised in his petition, brought in 2005, inter alia, in effect, for a downward modification of child support (*see* Family Ct Act § 451; *Matter of Dox v Tynon*, 90 NY2d 166). Pursuant to Family Court Act § 451, although the Family Court may modify, set aside, or vacate any order issued in the course of a support proceeding pursuant to Family Court Act article 4, “the modification, set aside, or vacatur shall not reduce or annul child support arrears accrued prior to the making of an application pursuant to this section.” Additionally, we note that no appeal was ever taken by the father from the original order fixing child support.

PRUDENTI, P.J., MASTRO, SANTUCCI and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court