

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

D14589
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Submitted - March 2, 2007

FRED T. SANTUCCI, J.P.
GABRIEL M. KRAUSMAN
ROBERT A. LIFSON
MARK C. DILLON, JJ.

2006-02148

DECISION & ORDER

Lisa Freihofner, respondent, v Gregory Freihofner,
appellant.

(Index No. 5173/01)

Fredman & Kosan, LLP, White Plains, N.Y. (Neil A. Fredman and E. Michael Kosan of counsel), for appellant.

Warner Partners, P.C., New York, N.Y. (Kenneth E. Warner and Rita W. Warner of counsel), for respondent.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Westchester County (Donovan, J.), entered January 6, 2006, as, upon reargument, granted that branch of his motion which was for a retroactive downward modification of his child support obligation only to the extent of reducing his monthly child support obligation to the sum of \$1,758.62, and directing that the downward modification was retroactive only to May 31, 2005.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Under the circumstances, the Supreme Court properly considered the parties' oldest child to be "unemancipated" for purposes of the parties' stipulation regarding child support (*see Henry v Henry*, 272 AD2d 520, 521; *O'Neill v O'Neill*, 109 AD2d 829, 829-830). Thus, contrary to the contention of the defendant, who has custody of the parties' other children, the Supreme Court, upon reargument, correctly reduced, rather than eliminated, his child support obligation.

April 3, 2007

Page 1.

FREIHOFNER v FREIHOFNER

The defendant's remaining contentions are without merit.

SANTUCCI, J.P., KRAUSMAN, LIFSON 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