

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

D15074  
Y/gts

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Submitted - April 2, 2007

DAVID S. RITTER, J.P.  
FRED T. SANTUCCI  
RUTH C. BALKIN  
WILLIAM E. McCARTHY, JJ.

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2006-07503

DECISION & ORDER

In the Matter of Maria Sicurella,  
respondent, v Erwin Embro, appellant.

(Docket No. F-16371/04)

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Thomas Weiss, P.C., Mineola, N.Y. (Kafi Harris of counsel), for appellant.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals, as limited by his brief, from so much of an order of the Family Court, Suffolk County (Simeone, J.), dated July 6, 2006, as denied his objection to so much of an order of the same court (Raimondi, S.M.), dated May 8, 2006, as, after a hearing, granted the mother's motion for a discontinuance of her claim for child care expenses without prejudice.

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

The "determination of a motion for discontinuance rests within the sound discretion of the court, and is ordinarily granted absent prejudice to a substantial right of the defendant" (*Conte v Getty Petroleum Corp.*, 202 AD2d 621, 622; *Valladares v Valladares*, 80 AD2d 244, *affd* 55 NY2d 388). The Family Court did not improvidently exercise its discretion in granting the discontinuance because there was no prejudice to a substantial right of the father. Nor is there merit to the father's argument that the Support Magistrate ordered the discontinuance sua sponte; the record demonstrates that the mother moved to withdraw her claim for child care expenses.

The father's remaining contentions are without merit.

RITTER, J.P., SANTUCCI, BALKIN and McCARTHY, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

May 8, 2007

MATTER OF SICURELLA v EMBRO