

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

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_____AD3d_____

Submitted - April 2, 2007

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

2006-07731

DECISION & ORDER

In the Matter of Daniel Cordero, appellant,
v Olinda Olivera, respondent.

(Docket No. U-4121-05)

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Gerald R. Podlesak of counsel), for appellant.

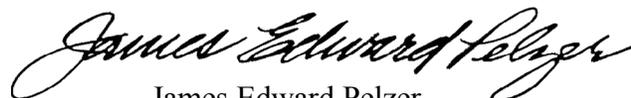
In a child support proceeding pursuant to Family Court Act article 5-B, the father appeals from an order of the Family Court, Nassau County (Zimmerman, J.), dated July 6, 2006, which denied his objections to an order of the same court (Bannon, S.M.), dated December 20, 2005, which, after a hearing, directed the mother to pay child support in the sum of only \$25 per month.

ORDERED that the order is affirmed, without costs or disbursements.

Contrary to the father's contention, the Support Magistrate did not err in failing to impute additional income to the mother, whose documented earnings fell below the poverty level. The determination of a Family Court Support Magistrate, who is in the best position to hear and evaluate the credibility of the witnesses, is entitled to deference (*see Matter of Accettulli v Accettulli*, _____AD3d_____ [2d Dept. March 20, 2007]; *Matter of Kahl-Lapine v Lapine*, 35 AD3d 611; *Matter of Penninipede v Penninipede*, 6 AD3d 445). Here, the Support Magistrate's findings that the mother earns wages that place her below the poverty level, and that she is not intentionally underemployed, were based upon an assessment of her credibility, and are supported by the record. Accordingly, the objections were properly denied (*see Matter of Saren v Palma*, 3 AD3d 572).

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

ENTER:



James Edward Pelzer
Clerk of the Court

May 15, 2007

MATTER OF CORDERO v OLIVERA