

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

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Submitted - April 24, 2007

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
PETER B. SKELOS
WILLIAM E. McCARTHY, JJ.

2006-06936

DECISION & ORDER

In the Matter of Abraham Stern, appellant, v
Rebecca Stern, respondent.

(Docket No. F-20809-04)

Snitow Kanfer Holtzer & Millus, LLP, New York, N.Y. (Mark M. Holtzer and
Virginia K. Trunkes of counsel), for appellant.

Steven M. Bernstein, Brooklyn, N.Y., for respondent.

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, Kings County (Pearl, J.), dated June 15, 2006, as granted the mother's objections to an order of the same court (Baur, S.M.), dated March 22, 2006, as amended, which granted his petition for a downward modification of a prior order of child support and directed him to pay child support in the sum of \$1,354.16 per month.

ORDERED that the order dated June 15, 2006, is reversed insofar as appealed from, on the law, without costs or disbursements, the mother's objections are denied, and the Support Magistrate's order, as amended, is reinstated.

The father commenced a proceeding to modify a prior order of child support based on the emancipation of one child who turned 21 and the father's assumption of custody of the parties' two other children. The parties' separation agreement requires the father to pay child support to the mother until each child reaches emancipation and defines an emancipation event, inter alia, as "attaining the age of twenty-one" and "permanent residence of a child away from the residence of the

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Mother.” It is undisputed that one child has reached the age of 21 and two of the children permanently reside with the father. Consequently, the father is not required to pay support for these children. Since there is no triable issue of fact as to the father’s petition, no hearing is required (*see Wyser-Pratte v Wyser-Pratte*, 66 NY2d 715; *cf. Schnoor v Schnoor*, 189 AD2d 809; *Grimaldi v Grimaldi*, 167 AD2d 443), and the Support Magistrate properly granted the father’s petition for a downward modification (*see Rocchio v Rocchio*, 213 AD2d 535, 537; *see also People ex rel. Breitstein v Aaronson*, 285 AD2d 566, 567; *Matter of Goldberg v Benner*, 247 AD2d 385, 386; *Matter of Christodoulou v Christodoulou*, 212 AD2d 607). The amount to be paid by the father to the mother for the support of the remaining child is subject to a final determination upon completion of a hearing to adjudicate the mother’s pending petition for an upward modification due to changed circumstances based on the needs of that child.

SPOLZINO, J.P., FLORIO, SKELOS and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court