

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

D16403
Y/kmg

_____AD3d_____

Submitted - September 14, 2007

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
MARK C. DILLON, JJ.

2006-08196

DECISION & ORDER

In the Matter of Lida Kholasechi, respondent,
v Yo-Ab Massih Israelian, appellant.

(Docket No. F-01599/97)

Martin E. Friedlander, New York, N.Y., for appellant.

Elinor B. Ribowsky, Richmond Hill, N.Y., for respondent.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from so much of an order of the Family Court, Kings County (Turbow, J.), dated July 5, 2006, as granted the mother's objection to so much of an order of the same court (Bauer, S.M.), dated January 10, 2006, as, after a hearing, granted the father's petition for a downward modification of his child support obligation with respect to private school tuition.

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

The Family Court properly concluded that the Support Magistrate erred in determining that the father demonstrated a substantial change in circumstances to justify a downward modification of the prior support order (*see Matter of Sannuto v Sannuto*, 21 AD3d 901). The party seeking a modification has the burden of establishing the existence of a change in circumstances warranting it (*see Domestic Relations Law* § 236[B][9][b]; *Matter of Sannuto v Sannuto*, 21 AD3d at 901; *Matter of Prisco v Buxbaum*, 275 AD2d 461). Under the circumstances of this case, the Family Court

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correctly determined that the father failed to meet his burden (*see Matter of Sannuto v Sannuto*, 21 AD3d at 901; *Klapper v Klapper*, 204 AD2d 518).

SCHMIDT, J.P., SANTUCCI, FLORIO 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