

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

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Submitted - January 8, 2008

ROBERT A. LIFSON, J.P.
DAVID S. RITTER
DANIEL D. ANGIOLILLO
EDWARD D. CARNI, JJ.

2007-01458

DECISION & ORDER

In the Matter of Jose L. Rivera, appellant, v
Dagnes Echavarria, respondent.

(Docket No. V-13848-01)

Smith Carroad Levy & Finkel, Commack, N.Y. (Alan L. Finkel of counsel), for
appellant.

In a proceeding pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Kings County (Grosvenor, J.), dated December 14, 2006, which, after a hearing, denied the petition and dismissed the proceeding.

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

At a hearing held on October 27, 2006, to address the father's petition alleging that the mother failed to produce the child for visitation in August 2005, the father sought to cancel his child support payments retroactive to August 2005. Pursuant to Domestic Relations Law § 241, "interference with or withholding of visitation rights is not a ground for termination of child support or cancellation of arrears of child support" (*Brancoveanu v Brancoveanu*, 156 AD2d 410, 411; *see Ledgin v Ledgin*, 36 AD3d 669, 670; *Doyle v Doyle*, 198 AD2d 256, 257; *Gagliardo v Gagliardo*, 151 AD2d 718, 720).

In addition, the father was not entitled to the prospective suspension of child support payments, as he failed to establish that the mother deliberately frustrated or actively interfered with his visitation rights (*see Ledgin v Ledgin*, 36 AD3d 669, 670; *Smith v Graves*, 305 AD2d 419; *Beal v Beal*, 244 AD2d 550, 551; *Hiross v Hiross*, 224 AD2d 662, 663; *Hecht v Hecht*, 222 AD2d 589, 589; *see also* Laws of Puerto Rico Ann., tit. 3, § 143b).

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The father's contention that the child was ineligible to enroll in kindergarten since he had not yet reached his fifth birthday by the date school was scheduled to commence on August 3, 2005, is not properly before this Court as the father raises it for the first time on appeal (*see Madura v Nass*, 304 AD2d 579).

LIFSON, J.P., RITTER, ANGIOLILLO and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court