

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

D18035
O/kmg

_____AD3d_____

Submitted - January 11, 2008

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2007-05407

DECISION & ORDER

In the Matter of Mario Arciniega, appellant,
v Norma Arciniega-Luizzi, respondent.

(Docket No. F-286-07)

Mario Arciniega, Ridgewood, N.Y., appellant pro se.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Suffolk County (Simeone, J.), dated May 25, 2007, which denied his objections to an order of the same court (Livrieri, S.M.), dated March 23, 2007, granting, without a hearing, those branches of the mother's motion which were to dismiss his petition for a downward modification of child support and for payment of an attorney's fee to the extent of directing him to pay the sum of \$1,000 to the mother.

ORDERED that the order dated May 25, 2007, is affirmed, without costs or disbursements.

The Family Court properly denied the father's objections to the Support Magistrate's order dismissing his petition for a downward modification of his child support obligation set forth in a stipulation of settlement incorporated but not merged in the parties' judgment of divorce. The father failed to demonstrate an unreasonable and unanticipated change in circumstances since the time of the stipulation to justify a modification (*see Matter of Boden v Boden*, 42 NY2d 210, 213; *Matter of Connolly v Connolly*, 39 AD3d 643, 643; *Barson v Barson*, 32 AD3d 872, 872). Additionally, he failed to prove that the alleged changes in his financial position was not of his own making (*see Matter of Terjesen v Terjesen*, 29 AD3d 705, 705; *Matter of Heyward v Goldman*, 23 AD3d 468, 469).

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Further, the Family Court providently exercised its discretion in directing the father to pay an attorney's fee to the mother in the sum of \$1,000 (*see* Family Ct Act § 438[a]; *Matter of Israel v Israel*, 273 AD2d 385).

MASTRO, J.P., SKELOS, FLORIO and DICKERSON, 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