

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

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_____AD3d_____

Submitted - January 15, 2008

DAVID S. RITTER, J.P.
FRED T. SANTUCCI
JOSEPH COVELLO
EDWARD D. CARNI, JJ.

2007-03309

DECISION & ORDER

In the Matter of Ellen Piernick, respondent, v
Roy Nazinitsky, appellant.

(Docket No. F-06044/02)

Roy Nazinitsky, Long Beach, N.Y., appellant pro se.

Ellen Piernick, Long Beach, N.Y., respondent pro se.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Nassau County (Singer, J.), dated February 28, 2007, which denied his objections to an order of the same court (Cahn, S.M.), dated December 18, 2006, which, after a hearing, denied his petition for a downward modification of his child support obligation.

ORDERED that the order is affirmed, with costs.

A party seeking downward modification of a support obligation has the burden of showing a change in circumstances and that he used his best efforts to obtain employment commensurate with his qualifications and experience (*see Matter of Navarro v Navarro*, 19 AD3d 499, 500; *Matter of Clarke v Clarke*, 8 AD3d 272; *Beard v Beard*, 300 AD2d 268; *Matter of Yepes v Fichera*, 230 AD2d 803).

The record supports the Support Magistrate's finding that the father failed to establish a change in circumstances that would warrant a downward modification of his child support obligation (*see Matter of Muselevichus v Muselevichus*, 40 AD3d 997; *Matter of Meyer v Meyer*, 205

February 19, 2008

Page 1.

MATTER OF PIERNICK v NAZINITSKY

AD2d 784). In determining a change of circumstances, a court need not rely upon the party's account of his or her finances, but may impute income based upon the party's past income or demonstrated earning potential (see *Matter of Graves v Smith*, 284 AD2d 332; *Zabzhanskaya v Dinhofer*, 274 AD2d 476; *Matter of Diamond v Diamond*, 254 AD2d 288). Finding that the father's tax return gave an incomplete picture of his finances, the Support Magistrate properly imputed income to him. Where issues of credibility are presented, the determinations of a hearing court are accorded great weight on appeal and will not be disturbed if, as here, they are warranted by the record (see *Matter of Wilkins v Wilkins*, _____AD3d_____, 2008 NY Slip Op 00506 [2d Dept 2008]; *Matter of Jackson v Shuler*, 292 AD2d 529, 539; *Matter of Cattell v Cattell*, 254 AD2d 357).

RITTER, J.P., SANTUCCI, COVELLO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court