

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

D18234
O/kmg

_____AD3d_____

Submitted - January 25, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
ROBERT A. SPOLZINO
THOMAS A. DICKERSON, JJ.

2007-02322

DECISION & ORDER

In the Matter of Laura C. Pennino, appellant,
v David M. Lipsky, respondent.

(Docket No. F-05733-06)

The Klarer Law Firm, P.C., Melville, N.Y. (Fredrick Klarer of counsel), for appellant.

Martello LaMagna & Olivieri, P.C., Garden City, N.Y. (Daniel R. Olivieri of counsel),
for respondent.

In a child support proceeding pursuant to Family Court Act article 4, the mother appeals from an order of the Family Court, Suffolk County (Luft, J.), dated February 1, 2007, which denied her objections to (1) an order of the same court (Grier, S.M.), dated November 21, 2006, which, after a hearing, inter alia, fixed child support arrears against the father in the sum of only \$1,400, and (2) an order of the same court (Grier, S.M.), also dated November 21, 2006, which, after the same hearing, directed her to pay child support in the amount of \$2,400 per month.

ORDERED that the order dated February 1, 2007, is affirmed, with costs.

Contrary to the mother's contention, the Support Magistrate properly credited the father for child support payments made to the mother on the basis of two checks, in the amounts of \$10,000 and \$11,000, respectively. "Great deference should be given to the determination of the Support Magistrate, who is in the best position to assess the credibility of the witnesses and the evidence proffered" (*Matter of Strella v Ferro*, 42 AD3d 544, 545). As the record supports the determination, the Family Court properly denied the mother's objection on this basis (*see Matter of Strella v Ferro*, 42 AD3d at 545; *Matter of Kahl-Lapine v Lapine*, 35 AD3d 611, 612; *Matter of*

March 4, 2008

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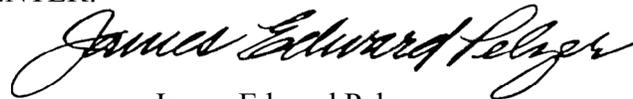
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Mahoney v Goggins, 24 AD3d 668, 669; *Matter of Penninipede v Penninipede*, 6 AD3d 445, 446-447; *Matter of Saren v Palma*, 3 AD3d 572).

The Family Court also properly denied the mother's objections with respect to the Support Magistrate's determination as to her child support obligation. In light of the mother's admission as to her annual expenses, the Support Magistrate properly imputed to her an annual income of \$172,800 (see *Matter of Strella v Ferro*, 42 AD3d at 545; *DeVries v DeVries*, 35 AD3d 794, 795; *Peri v Peri*, 2 AD3d 425, 426; *Gleicher v Gleicher*, 303 AD2d 549, 550). Since the combined parental income exceeded \$80,000, the Support Magistrate, in the exercise of his discretion, could apply either the statutory percentage or the factors set forth in Family Court Act § 413(1)(f), or both, to the parental income in excess of \$80,000 (see Family Ct Act § 413[1][c][3]; *Matter of Cassano v Cassano*, 85 NY2d 649, 655; *Matter of Strella v Ferro*, 42 AD3d at 546). Under the circumstances presented here, the Family Court correctly concluded that the Support Magistrate providently exercised his discretion in computing child support by applying the statutory percentage to the combined parental income over \$80,000 (see *Matter of Strella v Ferro*, 42 AD3d at 546; *Matter of Lachman v LeJemtel*, 19 AD3d 421, 421-422; *Matter of Lava v Damianou*, 10 AD3d 420, 421; *Bains v Bains*, 308 AD2d 557, 559; *Zaremba v Zaremba*, 237 AD2d 351, 352-353) and sufficiently set forth his reasons for doing so (see *Matter of Strella v Ferro*, 42 AD3d at 546).

MASTRO, J.P., RIVERA, SPOLZINO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court