

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

D22526
Y/prt

_____AD3d_____

Submitted - February 24, 2009

REINALDO E. RIVERA, J.P.
DAVID S. RITTER
JOSEPH COVELLO
DANIEL D. ANGIOLILLO, JJ.

2008-09793

DECISION & ORDER

In the Matter of Gary L. Liano, appellant,
v Darlene M. Bell, respondent.

(Docket No. F-544-08)

Sheila Callahan O'Donnell, Cornwall, N.Y., for appellant.

McAdam & Fallon, Walden, N.Y. (John J. Fallon of counsel), for respondent.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals, as limited by his brief, from so much of an order of the Family Court, Orange County (Bivona, J.), entered October 8, 2008, as denied his objections to so much of an order of the same court (Krahulik, S.M.), entered June 9, 2008, as, after a hearing, dismissed his petition for a downward modification of his child support obligation.

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

Although a petition for downward modification of child support may be granted when a party loses his or her job due to an injury, it may be denied when the moving party has the ability to provide support through some other type of employment (*see Matter of Davis v Davis*, 13 AD3d 623, 624; *Matter of McCarthy v McCarthy*, 2 AD3d 735). Here, although there was sufficient evidence to establish that the father was currently physically unable to return to his work as a police officer, there was no medical evidence that he was also unable to perform other work. Also, the father failed to present a clear picture of his current financial situation, as he did not present any proof of income from his disability pension, as there had not yet been a final determination of

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benefits (*see Matter of Moran v Moran*, 56 AD3d 675, 676). Accordingly, the father was not entitled to a downward modification of child support at this juncture.

RIVERA, J.P., RITTER, COVELLO and ANGIOLILLO, 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