

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

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_____AD3d_____

Submitted - March 23, 2009

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2008-01576

DECISION & ORDER

In the Matter of Paul Figueroa, appellant,
v Lynn Herring, respondent.

(Docket No. F-2404-06)

John A. Cirando, Syracuse, N.Y. (Bradley E. Keem and Elizabeth deV. Moeller of
counsel), for appellant.

In a support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Orange County (Woods, J.), entered January 7, 2008, denying his objections to an order of the same court (Krahulik, S.M.), dated October 15, 2007, which, without a hearing, denied his petition for a downward modification of his child support obligation.

ORDERED that the order entered January 7, 2008, is affirmed, without costs or disbursements.

The father sought a downward modification of an initial order of support dated October 19, 2006, in which the Support Magistrate found, after a hearing, that his account of his limited income and undocumented medical problems was incredible, and imputed annual income to him in the sum of \$42,259.36. The Family Court denied the father's objections to the Support Magistrate's denial, without a hearing, of his petition. We affirm.

“Upon an application to modify, set aside or vacate an order of support, no hearing shall be required unless such application shall be supported by affidavit and other evidentiary material sufficient to establish a prima facie case for the relief requested” (Family Ct Act § 451; *see Matter of Suffolk County Dept. of Social Servs. v Spinale*, 57 AD3d 681, 683; *D’Alesio v D’Alesio*, 300

April 28, 2009

Page 1.

MATTER OF FIGUEROA v HERRING

AD2d 340, 341). “The party seeking modification of a support order has the burden of establishing the existence of a substantial change in circumstances warranting the modification” (*Matter of Nieves-Ford v Gordon*, 47 AD3d 936, 936; see *Matter of Marrale v Marrale*, 44 AD3d 773, 775; *Carr v Carr*, 187 AD2d 407, 408).

Having failed to show a substantial change in circumstances since the prior support proceeding, the father was precluded from relitigating the issue in the subsequent proceeding on his petition for a downward modification (see *Matter of Solis v Marmolejos*, 50 AD3d 691, 692; *Matter of Lacombe v Marius*, 4 AD3d 430, 430; *Matter of Kleiger-Brown v Brown*, 306 AD2d 482, 483). Accordingly, the Family Court properly denied the father’s objections to the Support Magistrate’s order, which, without a hearing, denied his petition to modify a prior order of child support.

RIVERA, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court