

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

D23041
C/prt

_____AD3d_____

Submitted - March 30, 2009

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2008-05959

DECISION & ORDER

In the Matter of Gabrielle Illidge, respondent,
v Donald Lewis, appellant.

(Docket No. F-893-04)

Linda C. Braunsberg, Staten Island, N.Y., for appellant.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Richmond County (McElrath, J.), dated May 23, 2008, which denied his objections to an order of the same court (Weir-Reeves, S.M.) dated March 21, 2008, which, after a hearing, dismissed, without prejudice, his application for a downward modification of his child support obligation.

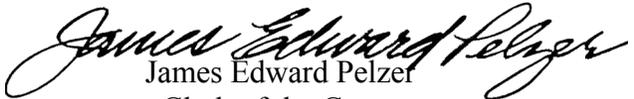
ORDERED that the order is affirmed, without costs or disbursements.

The Family Court properly denied the father's objections to the order dated March 21, 2008, dismissing his petition for downward modification of child support without prejudice. The father failed to present competent proof that he was incapable of working in any capacity (*see generally Matter of Piernick v Nazinitsky*, 48 AD3d 690; *Matter of Marrale v Marrale*, 44 AD3d 773, 775; *Matter of Davis v Davis*, 13 AD3d 623, 624; *Matter of McCarthy v McCarthy*, 2 AD3d 735; *Matter of Bukovinsky v Bukovinsky*, 299 AD2d 786, 787-788).

The father's remaining contentions are without merit.

RIVERA, J.P., COVELLO, DICKERSON and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

May 5, 2009

MATTER OF ILLIDGE v LEWIS