

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

D24865
G/hu

_____AD3d_____

Submitted - October 15, 2009

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2009-02464

DECISION & ORDER

In the Matter of Penny A. Lowe, appellant, v
Mark Lowe, respondent.

(Docket No. F-03489-08)

Richard J. Nunez, LaGrange, N.Y., for appellant.

Ostertag O’Leary Barrett & Faulkner, Poughkeepsie, N.Y. (Maura A. Barrett of
counsel), for respondent.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Dutchess County (Sammarco, J.), dated December 11, 2008, which denied his objections to an order of the same court (Kaufman, S.M.), dated September 16, 2008, granting, after a hearing, the mother’s petition to terminate her child support obligation, set forth in the parties’ judgment of divorce dated January 23, 2006, on the ground that the parties’ child was emancipated.

ORDERED that the order is affirmed, with costs.

Although a parent of a minor child has a continuing obligation to support the child until the age of 21 (*see* Family Ct Act § 413), emancipation of the child suspends the parent's support obligation (*see Matter of Roe v Doe*, 29 NY2d 188, 192-193; *Matter of Cellamare v Lakeman*, 36 AD3d 906; *Matter of Fortunato v Fortunato*, 242 AD2d 720, 721; *Matter of Alice C. v Bernard G.C.*, 193 AD2d 97, 105). In this regard, children are deemed emancipated if they attain economic independence through employment or entry into military service or marriage and, further, may be deemed constructively emancipated if, without cause, they withdraw from parental supervision and

November 4, 2009

MATTER OF LOWE v LOWE

Page 1.

control (see *Matter of Roe v Doe*, 29 NY2d at 193-194; *Matter of Holscher v Holscher*, 4 AD3d 629; *Matter of Bogin v Goodrich*, 265 AD2d 779, 781; *Matter of Alice C. v Bernard G.C.*, 193 AD3d at 105).

Here, it was established at the hearing that the child, who was 20 years old, was working full-time since June of 2008, earning a base salary of \$640 per week plus substantial overtime. The child also would be eligible for health insurance through his employer in September 2008. The child was living at home with his father, who supported him and paid his expenses because he thought he was required to by the parties' stipulation of settlement, which was incorporated but not merged into the judgment of divorce. The record supports the Support Magistrate's determination that the child earned an amount sufficient to be self-supporting and, therefore, achieved economic independence through employment (see *Matter of Calabro v Calabro*, 297 AD2d 808, 809; *Matter of Fortunato v Fortunato*, 242 AD2d at 721; *Benson v Benson*, 79 AD2d 694, 695).

Accordingly, the child has become emancipated, thus relieving the mother of her obligation to support him, and the Family Court properly denied the father's objections to the Support Magistrate's order.

MASTRO, J.P., BALKIN, ENG and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court