

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

D25359
O/kmg

_____AD3d_____

Submitted - November 17, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
HOWARD MILLER
SHERI S. ROMAN, JJ.

2009-03111

DECISION & ORDER

In the Matter of Timothy P. Smith, appellant,
v Christina Todd-Smith, respondent.

(Docket No. F-01486-07)

Joseph Charles Smith, Tillson, 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, Dutchess County (Sammarco, J.), dated February 17, 2009, which denied his objections to an order of the same court (Winslow, S.M.) dated August 5, 2008, which, after a hearing, denied his petition for a downward modification of his child support obligation.

ORDERED that the order dated February 17, 2009, is affirmed, without costs or disbursements.

Contrary to the father's contention, the Family Court properly denied his objections. The father failed to establish a ground for downward modification of his child support obligation, as set forth in a stipulation of settlement that was incorporated but not merged in the parties' judgment of divorce. The father failed to demonstrate an unanticipated and substantial change in circumstances since the time of the stipulation to justify a downward modification (*see Matter of Perrego v Perrego*, 63 AD3d 1072; *Matter of Westenberger v Westenberger*, 23 AD3d 571; *Matter of Brunetti v*

December 15, 2009

Page 1.

MATTER OF SMITH v TODD-SMITH

Brunetti, 22 AD3d 577; *Matter of Yourman v Yourman*, 216 AD2d 308), or that his change in circumstances was not of his own making (see *Matter of Connolly v Connolly*, 39 AD3d 643; *Baffi v Baffi*, 24 AD3d 578).

RIVERA, J.P., DILLON, MILLER and ROMAN, 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