

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

D25828  
C/kmg

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Submitted - December 22, 2009

FRED T. SANTUCCI, J.P.  
THOMAS A. DICKERSON  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

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2009-02504

DECISION & ORDER

In the Matter of Jill Alexander, appellant,  
v David Strathairn, respondent.

(Docket No. F-03802-05)

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Orrick, Herrington & Sutcliffe LLP, New York, N.Y. (Rene A. Kathawala of counsel), for appellant.

Van DeWater & Van DeWater, LLP, Poughkeepsie, N.Y. (Kyle W. Barnett of counsel), for respondent.

In a child support proceeding pursuant to Family Court Act article 4, the mother appeals from an order of the Family Court, Dutchess County (Forman, J.), dated February 2, 2009, which, in effect, denied her objections to an order of the same court (Winslow, S.M.) dated September 25, 2008, which, after a hearing, dismissed her petition to vacate an order of child support of the Family Court, Ulster County (Beisel S.M.), dated October 18, 2004, entered on consent, and to determine support de novo, or to upwardly modify the father's child support obligation, and denied her application for an attorney's fee.

ORDERED that the order dated February 2, 2009, is affirmed, with costs.

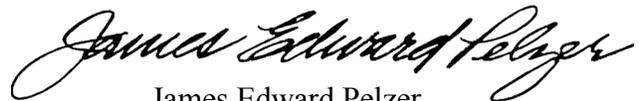
We agree with the Family Court that the October 18, 2004, order entered on consent setting the father's child support obligation adequately complied with Family Court Act § 413(1)(h) (*see Ricca v Ricca*, 57 AD3d 868, 869; *Blaikie v Mortner*, 274 AD2d 95, 100, 101). Moreover, since the mother failed to show either an unanticipated, substantial change in circumstances since the entry of the consent order, or that the child's reasonable needs were not being met with the current

level of support, an upward modification was properly denied (*see Friedman v Friedman*, 65 AD3d 1081; *Matter of Imperato v Imperato*, 54 AD3d 375, 377). “While an increase in the noncustodial parent's income is a factor which may be considered in deciding whether to grant an upward modification of child support, this factor alone is not determinative” (*Matter of DiGiorgi v Buda*, 26 AD3d 434, 435; *see Matter of Love v Love*, 303 AD2d 756, 756).

Finally, the denial of the mother’s application for an attorney’s fee was a provident exercise of discretion under the circumstances of the case (*see DeCabrera v Cabrera-Rosete*, 70 NY2d 879; *Morrissey v Morrissey*, 259 AD2d 472, 473).

SANTUCCI, J.P., DICKERSON, ENG and CHAMBERS, 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