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

D26726
G/prt

_____AD3d_____ Submitted - March 4, 2010

MARK C. DILLON, J.P.
RUTH C. BALKIN
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2009-06429 DECISION & ORDER
2009-06430

In the Matter of Lisa Barrio, respondent,
v Richard Montanez, appellant.

(Docket No. F-3033-08)

Snitow Kanfer Holtzer & Millus, LLP, New York, N.Y. (Mark M. Holtzer and Alison M. Trainor of counsel), for appellant.

Robert Wanker, Brooklyn, N.Y., for respondent.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from (1) an order of the Family Court, Kings County (Danoff, J.), dated May 15, 2009, and (2) an amended order of the same court dated June 4, 2009, which denied his objections to so much of an order of the same court (Milsap, S.M.), dated January 8, 2009, as, without a hearing, granted the mother's petition for an award of child support arrears.

ORDERED that the appeal from the order is dismissed, without costs or disbursements, as that order was superseded by the amended order; and it is further,

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

The father failed to proffer, before the Support Magistrate, any evidence of conduct on the part of the mother that could constitute "a voluntary and intentional relinquishment of a known and otherwise enforceable right" to increased child support payments pursuant to the parties' stipulation of settlement and judgment of divorce (*Matter of O'Connor v Curcio,* 281 AD2d 100, 104

[internal quotation marks omitted]; *see Dox v Tynon,* 90 NY2d 166; *Matter of Gleason v Gleason,* 247 AD2d 384, 385). Thus, the father was not entitled to a hearing with respect to his claim that the mother waived her right to child support payments (*see Eldridge v Eldridge,* 228 AD2d 473; *Matter of Mattera v Mattera,* 214 AD2d 544, 545).

DILLON, J.P., BALKIN, DICKERSON and LOTT, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court