

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

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_____AD3d_____

Submitted - April 26, 2010

JOSEPH COVELLO, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2009-07940

DECISION & ORDER

In the Matter of Maryanne Kennedy, appellant, v
John Ventimiglia, respondent.

(Docket No. F-192-04)

Maryanne Kennedy, Garden City, N.Y., appellant pro se.

In a child support proceeding pursuant to Family Court Act article 4, the mother appeals, as limited by her brief, from so much of an order of the Family Court, Nassau County (Greenberg, J.), dated July 21, 2009, as denied her objection to so much of an order of the same court (Cahn, S.M.), dated March 6, 2009, as, after a hearing, denied her petition, in effect, to modify a prior order of child support dated September 27, 2007, and granted the father's cross petition for a downward modification of his child support obligation.

ORDERED that the order dated July 21, 2009, is affirmed insofar as appealed from, without costs or disbursements.

Contrary to the mother's contention, the Support Magistrate did not improvidently exercise her discretion in declining to impute additional income to the father. A Support Magistrate is afforded considerable discretion in determining whether to impute income to a parent (*see Matter of Genender v Genender*, 51 AD3d 669, 670; *Matter of Bibicoff v Orfanakis*, 48 AD3d 680, 681; *Matter of Thompson v Perez*, 42 AD3d 503, 504; *Matter of Hurd v Hurd*, 303 AD2d 928, 928). "Great deference should be given to the determination of the Support Magistrate, who is in the best position to assess the credibility of the witnesses" (*Matter of Strella v Ferro*, 42 AD3d 544, 545, quoting *Matter of Musarra v Musarra*, 28 AD3d 668, 669; *see Matter of Cordero v Olivera*, 40 AD3d 852, 852-853; *Matter of Mahoney v Goggins*, 24 AD3d 668, 669). Here, the Support

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Magistrate properly declined to impute additional income to the father (*see Matter of Saren v Palma*, 3 AD3d 572, 572). The findings regarding the father's income were based on credibility determinations and are supported by the record. Accordingly, they should not be disturbed (*id.*).

The mother's remaining contentions are either not properly before this Court or without merit.

COVELLO, J.P., DICKERSON, ENG and AUSTIN, 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