

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

D29383
O/kmb

_____AD3d_____

Submitted - November 18, 2010

A. GAIL PRUDENTI, P.J.
MARK C. DILLON
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2009-10704
2010-11309

DECISION & ORDER

In the Matter of Jack M. Hidary, appellant,
v Linda Hidary, respondent.

(Docket No. F-9254/01)

Jack M. Hidary, Brooklyn, N.Y., appellant pro se.

Linda Hidary, Brooklyn, N.Y., respondent pro se.

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 (Fasone, S.M.), dated February 23, 2009, which, after a hearing, denied his petition for a downward modification of his child support obligation, and awarded the mother an attorney's fee in the principal sum of \$14,440, and (2) an order of the same court (Freeman, J.), dated October 9, 2009, which denied his objections to the order dated February 23, 2009.

ORDERED that the appeal from the order dated February 23, 2009, is dismissed, as that order was superseded by the order dated October 9, 2009; and it is further,

ORDERED that the order dated October 9, 2009, is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the respondent.

The father's proof of service of his objections to the order dated February 23, 2009, was deficient (*see* Family Ct Act § 439[e]; CPLR 306). Thus, the father failed to satisfy a condition

December 14, 2010

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precedent to filing timely written objections to the Support Magistrate's order, and the Family Court properly denied his objections on that ground (*see Matter of Chukwuogo v Chukwuogo*, 46 AD3d 558, 558-559). Consequently, the father waived his right to appellate review of the merits of his objections (*see Matter of Simpson v Gelin*, 48 AD3d 693; *Matter of Star v Frazer*, 232 AD2d 570, 571).

PRUDENTI, P.J., DILLON, BALKIN and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court