

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

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_____AD3d_____

Submitted - November 22, 2010

PETER B. SKELOS, J.P.
RANDALL T. ENG
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2009-07063

DECISION & ORDER

In the Matter of Jehuda Ish-Shalom, appellant, v
Veronica Wittmann, respondent.

(Docket No. F-12895-06)

Jehuda Ish-Shalom, Croton-on-Hudson, N.Y., appellant pro se.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Westchester County (Klein, J.), entered June 29, 2009, which denied his objections to an order of the same court (Furman, S.M.), dated March 4, 2009, which, after a hearing, dismissed his petition for a downward modification of his child support obligation as set forth in an order of the same court (Mrsich, H.E.), dated March 18, 1998, entered upon his consent, as amended October 28, 2006.

ORDERED that the order entered June 29, 2009, is affirmed, without costs or disbursements.

The Family Court properly denied the father's objections to the Support Magistrate's order denying his petition to modify a prior order of child support, as amended, which was entered upon his consent. The Family Court is authorized to entertain an application to modify such an order on the ground that a substantial change in circumstances requires such modification (*see* Family Ct Act §§ 461[b][ii], 451[2][a]; *Matter of Talty v Talty*, 42 AD3d 546, 547). Where, as here, the application is based on an alleged inability to pay, the change of circumstances is measured by comparing the payor's financial situation at the time of the application for a downward

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modification with his or her financial situation at the time of the original child support order (*see Matter of Talty v Talty*, 42 AD3d at 457; *Matter of Prisco v Buxbaum*, 275 AD2d 461). Here, the father failed to show that there had been a deterioration in his financial situation between the time of issuance of the original child support order, as amended, and the time he sought modification of that order, as amended. Under these circumstances, the Family Court properly dismissed the petition.

SKELOS, J.P., ENG, HALL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court