

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

D30078
C/prt

_____AD3d_____

Submitted - January 28, 2011

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
ROBERT J. MILLER, JJ.

2010-06286

DECISION & ORDER

In the Matter of Allan Nisita, appellant, v
Maureen Nisita, respondent.

(Docket No. F-8433-09)

Grobe and Wenz, L.P., Stony Brook, N.Y. (Marilyn J. Wenz of counsel), for
appellant.

Maureen Nisita, Farmingdale, N.Y., respondent pro se.

In a support proceeding pursuant to Family Court Act article 4, the husband appeals from an order of the Family Court, Suffolk County (Hoffman, J.), dated May 27, 2010, which denied his objections to an order of the same court (Fields, S.M.), dated October 23, 2009, which, after a hearing, directed the wife to pay him the sum of only \$40 per week in spousal support.

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

Pursuant to Family Court Act § 412, “[a] married person is chargeable with the support of his or her spouse and, if possessed of sufficient means or able to earn such means, may be required to pay for his or her support a fair and reasonable sum, as the court may determine, having due regard to the circumstances of the respective parties.” This requires “a delicate balancing of each party's needs and means” (*Matter of Shreffler v Shreffler*, 283 AD2d 679, 680; *see Matter of Mastrogiacomo v Mastrogiacomo*, 149 AD2d 708, 709). Thus, the determination of a wife’s maintenance obligation rests on the particular circumstances of the case, involving a balancing of factors such as her financial means, her need to have money on which to live after payments are made, the duration of the marriage, and the husband’s ability to support himself (*see Matter of Christian*

v Christian, 5 AD3d 765). Under the circumstances presented here, we find no basis to disturb the Support Magistrate's determination with respect to spousal support.

The husband's contention regarding the issue of counsel fees is not properly before us.

MASTRO, J.P., BALKIN, LEVENTHAL and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court