

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

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_____AD3d_____

Submitted - February 17, 2011

JOSEPH COVELLO, J.P.
ARIEL E. BELEN
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-07641
2010-07642
2010-07643

DECISION & ORDER

In the Matter of Del M. Scotti, appellant,
v Andrea M. Scotti, respondent.

(Docket No. F-3964-04)

Richard M. Gold, Bohemia, N.Y., for appellant.

Lewis A. Silverman, Central Islip, 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, Suffolk County (Joseph-Cherry, S.M.), dated May 26, 2010, which, after a hearing, in effect, denied his petition for a downward modification of his child support obligation, (2) an order of the same court (Joseph-Cherry, S.M.), dated June 11, 2010, which “reinstated” an order of child support of the same court (Rodriguez, S.M.), dated September 22, 2008, retroactive to June 9, 2009, and (3) an order of the same court (Hoffman, J.), dated July 16, 2010, which denied his objections to the orders dated May 26, 2010, and June 11, 2010.

ORDERED that the appeals from the orders dated May 26, 2010, and June 11, 2010, are dismissed, without costs or disbursements, as those orders were superseded by the order dated July 16, 2010; and it is further,

ORDERED that the order dated July 16, 2010, is affirmed, without costs or disbursements.

A parent seeking downward modification of a child support obligation has the burden

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of establishing a substantial and unanticipated change in circumstances (*see Matter of Mera v Rodriguez*, 74 AD3d 974, 974). In order to meet that burden, a party seeking a downward modification based on a loss of employment must submit evidence demonstrating that he or she has diligently sought to obtain employment commensurate with that party's earning capacity (*see Matter of Mera v Rodriguez*, 74 AD3d at 974; *Matter of Muselevichus v Muselevichus*, 40 AD3d 997, 998; *Matter of Yepes v Fichera*, 230 AD2d 803, 804; *Matter of Meyer v Meyer*, 205 AD2d 784; *see also Matter of Davis v Davis*, 197 AD2d 622, 623).

Here, the unsubstantiated conclusory allegations of the father that he diligently sought employment commensurate with his qualifications and experience were insufficient to meet his burden (*see Matter of Peterson v Peterson*, 75 AD3d 512, 513; *Matter of Gedacht v Agulnek*, 67 AD3d 1013; *Matter of Yepes v Fichera*, 230 AD2d at 804). Therefore, the Support Magistrate properly denied the father's petition for a downward modification of his child support obligation (*see Matter of Gedacht v Agulnek*, 67 AD3d 1013; *Matter of Field v Field*, 67 AD3d 1012; *Matter of Muselevichus v Muselevichus*, 40 AD3d at 999; *Matter of Yepes v Fichera*, 230 AD2d at 804), and the Family Court properly denied the father's objections to the order denying his petition.

Moreover, although the Family Court temporarily reduced the father's child support payments during the pendency of his petition, it properly reinstated the father's child support obligation pursuant to a prior order of child support, retroactive to the date the father filed his petition for a downward modification of his child support obligation, in light of the fact that the father failed to establish his entitlement to a downward modification (*see Family Ct Act § 451*).

COVELLO, J.P., BELEN, HALL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court