

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

D31413
Y/prt

_____AD3d_____

Submitted - May 6, 2011

WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2010-05115

DECISION & ORDER

In the Matter of Tracey L. Kirchain, appellant, v
Kenneth M. Smith, respondent.

(Docket No. F-1-94)

Tracey L. Kirchain, St. Johns, Florida, appellant pro se.

Kenneth M. Smith, White Plains, N.Y., respondent pro se.

In a child support proceeding pursuant to Family Court Act article 4, the mother appeals from an order of the Family Court, Westchester County (Klein, J.), entered April 16, 2010, which denied her objections to an order of the same court (Cabanillas-Thompson, S.M.), dated January 5, 2010, which, after a hearing, fixed the father's arrears for unreimbursed medical expenses in the sum of only \$1,129.63.

ORDERED that the order entered April 16, 2010, is affirmed, with costs.

In reviewing a determination of the Family Court, deference should be given to the credibility determinations of the Support Magistrate, who was in the best position to evaluate the credibility of the witnesses (*see Matter of Kahl-Lapine v Lapine*, 35 AD3d 611, 612; *Matter of Musarra v Musarra*, 28 AD3d 668, 669; *Matter of Mahoney v Goggins*, 24 AD3d 668, 669; *Matter of Penninipede v Penninipede*, 6 AD3d 445, 447). The record supports the Support Magistrate's finding that the father was responsible for the sum of \$1,129.63 in unreimbursed medical expenses for the parties' child (*see Matter of Kahl-Lapine v Lapine*, 35 AD3d at 612; *Matter of Penninipede v Penninipede*, 6 AD3d at 447).

May 24, 2011

Page 1.

MATTER OF KIRCHAIN v SMITH

The mother met her initial burden of presenting prima facie evidence of the father's nonpayment of his pro rata share of certain unreimbursed medical expenses (*see Matter of Powers v Powers*, 86 NY2d 63, 69; *Matter of Paccione v Paccione*, 57 AD3d 900, 902-903). However, the father offered evidence sufficient to rebut her showing. The father's sworn testimony and documentary evidence established that he had paid the mother for a portion of the medical expenses for which she sought reimbursement. The record does not support the mother's contention that the Support Magistrate made a mathematical error. Accordingly, the Family Court properly denied the mother's objections to the Support Magistrate's order (*see Matter of Mahoney v Goggins*, 24 AD3d at 669).

MASTRO, J.P., LEVENTHAL, AUSTIN and COHEN, 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