

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

D31953
G/ct

_____AD3d_____

Submitted - June 14, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2010-10636

DECISION & ORDER

In the Matter of Frank H. Girgenti, appellant, v Cathy
A. Gress, respondent.

(Docket No. F-01585-94/10G)

Shawn R. Kassman, Central Islip, N.Y., for appellant.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Suffolk County (Hoffmann, J.), dated September 20, 2010, which denied his objections to an order of the same court (Joseph-Cherry, S.M.), dated May 24, 2010, which dismissed his petition to enforce a stipulation of settlement concerning child support arrears.

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

The issues raised by the father on this appeal are not reviewable, since he failed to file proof of service of a copy of the objections on the mother. Family Court Act § 439(e) provides, in pertinent part, that “[a] party filing objections shall serve a copy of such objections upon the opposing party,” and that “[p]roof of service upon the opposing party shall be filed with the court at the time of filing of objections and any rebuttal.” By failing to file proof of service of a copy of his objections on the mother, the father failed to fulfill a condition precedent to filing timely written objections to the Support Magistrate’s order (*see Matter of Burger v Brennan*, 77 AD3d 828, 828; *Matter of Chukwuogo v Chukwuogo*, 46 AD3d 558, 558-559; *see Matter of Rinaldi v Rinaldi*, 239 AD2d 506, 506-507). Consequently, the Family Court lacked jurisdiction to consider the merits of the objections (*cf. Matter of Perez v Villamil*, 19 AD3d 501, 502), and the father waived his right to appellate

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review (*Matter of Hidary v Hidary*, 79 AD3d 880, 881; see *Matter of Rinaldi v Rinaldi*, 239 AD2d at 507; *Matter of Star v Frazer*, 232 AD2d 570, 571).

RIVERA, J.P., FLORIO, AUSTIN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court