

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

D31961
G/kmb

_____AD3d_____

Submitted - May 20, 2011

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2010-09685

DECISION & ORDER

In the Matter of Michelle Koutrakos, appellant,
v Richard D. Margiano, respondent.

(Docket No. F-11440-08)

James D. Reddy, P.C., Lindenhurst, N.Y., for appellant.

Richard D. Margiano, Long Island City, N.Y., respondent pro se.

In a support proceeding pursuant to Family Court Act article 4, the mother appeals from an order of the Family Court, Nassau County (Bennett, J.), dated August 18, 2010, which denied her objections to an order of the same court (Cahn, S.M.), dated October 16, 2009, which, after a hearing, awarded her basic child support in the sum of only \$1,428 a month and did not award her spousal support.

ORDERED that the order is affirmed, with costs.

Contrary to the mother's contention, the Support Magistrate's determination of basic child support was proper. Since the combined parental income exceeded \$80,000, the court, in its discretion, could apply the applicable percentage, in this case 17% for one child, or the factors set forth in Family Court Act § 413(1)(f), or both, to the parental income in excess of \$80,000 (*see Matter of Cassano v Cassano*, 85 NY2d 649, 653; *Finke v Finke*, 15 AD3d 615, 618). The Support Magistrate properly applied the percentage to \$180,000 of the parties' combined income in determining basic child support and awarding the mother \$1,428 a month in basic child support.

The mother's remaining contentions are without merit.

RIVERA, J.P., SKELOS, HALL and AUSTIN, JJ., concur.

June 28, 2011

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MATTER OF KOUTRAKOS v MARGIANO

2010-09685

DECISION & ORDER ON MOTION

In the Matter of Michelle Koutrakos, appellant,
v Richard D. Margiano, respondent.

(Docket No. F-11440-08)

Motion by the appellant to strike stated portions of the respondent's brief on an appeal from an order of the Family Court, Nassau County, dated August 18, 2010, on the ground that they refer to matter dehors the record. By decision and order on motion of this Court dated May 24, 2011, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, no papers having been filed in opposition or in relation thereto, and upon the submission of the appeal, it is,

ORDERED that the motion is granted to the extent that the material on page one of the respondent's brief, beginning with the words "Upon information and belief" and continuing through the end of that page, is stricken, and that material has not been considered in the determination of the appeal, and the motion is otherwise denied.

RIVERA, J.P., SKELOS, HALL and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court