

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

D32114
C/prt

_____AD3d_____

Submitted - June 23, 2011

PETER B. SKELOS, J.P.
ARIEL E. BELEN
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-10687

DECISION & ORDER

In the Matter of Christine Scarduzio, respondent,
v Kevin Ryan, appellant.

(Docket No. F-551-02)

Martin & Colin, P.C., White Plains, N.Y. (Nicole Zippilli of counsel), for appellant.

Christine Scarduzio, Cortlandt Manor, N.Y., respondent pro se.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals, as limited by his brief, from so much of an order of the Family Court, Westchester County (Klein, J.), entered September 23, 2010, as denied his objections to so much of an order of the same court (Krahulik, S.M.), dated May 25, 2010, as, after a hearing, denied his petition for a downward modification of his child support obligation.

ORDERED that the order entered September 23, 2010, is modified, on the law, by deleting the provision thereof denying the father's objection to so much of the order dated May 25, 2010, as denied so much of his petition as sought a downward modification of the sum he was obligated to pay as 50% of the child care expenses commencing January 7, 2010, and substituting therefor a provision granting his objection to that portion of the order dated May 25, 2010; as so modified, the order entered September 23, 2010, is affirmed insofar as appealed from, without costs or disbursements, and the matter is remitted to the Family Court, Westchester County, for further proceedings consistent herewith.

The party seeking modification of a support order has the burden of establishing the existence of a substantial change in circumstances warranting the modification (*see Matter of Marrale*

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v Marrale, 44 AD3d 773; *Carr v Carr*, 187 AD2d 407, 408). A change in the expenses for the child may constitute such a change in circumstances (see *Matter of Ryan v Levine*, 80 AD3d 767; *McMahon v McMahon*, 19 AD3d 464; *Matter of Elia v Elia*, 299 AD2d 358). Pursuant to Family Court Act § 413(1)(c)(4), “where the custodial parent is working . . . and incurs child care expenses as a result thereof, the court shall determine reasonable child care expenses and such child care expenses, where incurred, shall be prorated [and] [e]ach parent’s pro rata share of the child care expenses shall be separately stated and added” to the parent’s basic child support obligation.

Here, it is undisputed that the child care expenses had decreased significantly since the order of support had been issued, due to the child attending school full time. Accordingly, the father should only be required to pay his share of the child care expenses actually incurred by the mother commencing January 7, 2010, the date that the father filed his petition for a downward modification of his child support obligation (see *Shanon v Patterson*, 294 AD2d 485; *McBride v McBride*, 238 AD2d 320).

We reject the father’s argument that the costs of the after-school program and summer camp in which the child is enrolled do not qualify as child care expenses. The father has offered no evidence to refute the mother’s contention that these programs provide care for the child while she is at work. Accordingly, those programs qualify as child care expenses consistent with the purpose of Family Court Act § 413(1)(c)(4).

The father’s remaining contentions are without merit.

We remit the matter to the Family Court, Westchester County, for a hearing to determine the amount of child care expenses actually incurred by the mother commencing January 7, 2010, and for the recalculation of arrears.

SKELOS, J.P., BELEN, HALL and ROMAN, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court