

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

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N/kmb

_____AD3d_____

Submitted - October 17, 2011

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
SHERI S. ROMAN, JJ.

2010-10629

DECISION & ORDER

In the Matter of Alexander Kalarickal, appellant,
v Leena Kalarickal, respondent.

(Docket No. F-15493-09/09A)

Alexander Kalarickal, Yonkers, N.Y., appellant pro se.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Westchester County (Horowitz, J.), entered September 28, 2010, which denied his objections to an order of the same court (Jordan, S.M.), entered May 26, 2010, which, after a hearing, in effect, denied his petition for a downward modification of his child support obligation as set forth in a stipulation of settlement dated March 12, 2009, which was incorporated but not merged into the parties' judgment of divorce.

ORDERED that the order entered September 28, 2010, is affirmed, without costs or disbursements.

The Family Court properly found that the father failed to meet his burden of demonstrating a substantial and unanticipated change in circumstances warranting a downward modification of his child support obligation (*see Matter of Boden v Boden*, 42 NY2d 210, 212-213; *Matter of Peterson v Peterson*, 75 AD3d 512). The father's child support obligation is not necessarily determined by his current financial condition but, rather, by his ability to provide support, as well as his assets and earning powers (*see Basile v Wiggs*, 82 AD3d 921; *Beard v Beard*, 300 AD2d 268, 269; *Matter of Fleischmann v Fleischmann*, 195 AD2d 604). Here, while the father presented evidence of an unanticipated loss of employment, there was also evidence that he is nonetheless possessed of sufficient means to provide support at the level ordered (*see Matter of Talty v Talty*, 42 AD3d 546).

November 9, 2011

Page 1.

MATTER OF KALARICKAL v KALARICKAL

The father's remaining contentions are without merit.

Accordingly, the Family Court properly denied the father's objections to the order which, in effect, denied his petition for a downward modification of his child support obligation.

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

ENTER:


Matthew G. Kiernan
Clerk of the Court