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

D32834
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_____AD3d_____ Submitted - October 13, 2011

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
JEFFREY A. COHEN, JJ.

2010-11097 DECISION & ORDER
2011-01047

In the Matter of H. M. (Anonymous), respondent,
v E. T. (Anonymous), appellant.

(Docket No. U-110-07)

Nixon Peabody LLP, New York, N.Y. (David A. Tennant, Barbara Lukeman, and Erik A. Goergen of counsel), for appellant.

Proskauer Rose LLP, New York, N.Y. (Peter J.W. Sherwin, Julie A. McCane, and Jill S. Streja of counsel), for respondent.

In a proceeding pursuant to Family Court Act article 5-B, inter alia, to establish an order of support, E.T. appeals (1) from an order of the Family Court, Rockland County (Warren, J.), entered October 1, 2010, which dismissed her objections to an order of support of the same court (Kaufman, S.M.), entered March 18, 2009, and (2), as limited by her brief, from so much an order of the same court (Warren, J.), entered December 16, 2010, as, upon, in effect, renewal and reargument, adhered to the original determination dismissing those objections.

ORDERED that the appeal from the order entered October 1, 2010, is dismissed, as that order was superseded by the order entered December 16, 2010, made, in effect, upon renewal and reargument; and it is further,

ORDERED that the order entered December 16, 2010, is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the petitioner.

Although we agree with the appellant that, under the unique circumstances of this case, the Family Court should not have dismissed her objections to the order of support entered March 18, 2009, on the ground that she failed to file them in a timely fashion (*see* Family Ct Act § 439[e]; *see generally Matter of Ogborn v Hilts*, 262 AD2d 857, 858; *Matter of Onondaga County Commr. of Social Servs.* [*ex rel. Chakamda G.*] *v Joe W.C.*, 233 AD2d 908, 908; *Matter of Corcoran v Stuart*, 215 AD2d 340, 341), we conclude that the objections were properly dismissed on alternative grounds. Specifically, as the appellant acknowledges on appeal, the Family Court properly determined, in the alternative, that her objections challenging the amount of child support were subject to dismissal on the ground that she consented to that amount (*see generally Matter of Renee XX. v John ZZ.*, 51 AD3d 1090, 1092; *Matter of Gittens v Chin-On*, 19 AD3d 596, 596). Further, as the appellant concedes on appeal, the Family Court properly determined, in the alternative, that her objections to the order of support challenging the Family Court's subject matter jurisdiction were barred by the law of the case doctrine, since the Court of Appeals held previously that the Family Court possessed subject matter jurisdiction to hear the instant petition (*see Matter of H.M. v E.T.*, 14 NY3d 521, 524; *see generally People v Slaughter*, 214 AD2d 593, 594). Moreover, insofar as the appellant maintains, on appeal, that one of her objections can be construed as arguing that, as a matter of law, she cannot be equitably estopped from denying her responsibility to support the subject child under the circumstances, such an objection also would be barred by the doctrine of the law of the case. This Court held previously that, as a matter of law, the appellant could be equitably estopped from denying her responsibility to support the subject child under the circumstances (*see Matter of H.M. v E.T.*, 76 AD3d 528, 531; *see generally Matter of Destinee Rose R.-Mc.* [*Francine R.*], 78 AD3d 1061, 1061; *Foley v Roche*, 86 AD2d 887, 887).

Accordingly, upon, in effect, renewal and reargument, the Family Court properly adhered to its original determination dismissing the appellant's objections to the order of support.

ANGIOLILLO, J.P., FLORIO, LEVENTHAL and COHEN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court