

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

D32861
H/prt

_____AD3d_____

Submitted - October 14, 2011

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2010-09888
2011-00665
2011-01412
2011-06395

DECISION & ORDER

Patricia Dresch, respondent, v
James F. Dresch, appellant.

(Index No. 14185/97)

James F. Dresch, White Plains, N.Y., appellant pro se.

Dikman & Dikman, Lake Success, N.Y. (Michael Dikman of counsel), for
respondent.

In a matrimonial action in which the parties were divorced by judgment entered September 23, 1997, the defendant appeals (1) from so much of an order of the Supreme Court, Nassau County (Bruno, J.), dated August 20, 2010, as denied, without a hearing, his motion for a downward modification of his child support obligation as provided in a so-ordered stipulation dated April 4, 2001, (2) from an amended order of the same court dated November 24, 2010, which granted the plaintiff's cross motion for an award of arrears pursuant to the so-ordered stipulation, and an award of counsel fees and costs, (3) from so much of an order of the same court dated December 14, 2010, as denied his motion for leave to renew and reargue his motion for a downward modification of his child support obligation, and (4) from a money judgment of the same court entered January 4, 2011, which, upon the amended order dated November 24, 2010, awarded the plaintiff the principal sum of \$152,013, as arrears.

ORDERED that the appeal from so much of the amended order dated November 24, 2010, as granted that branch of the plaintiff's cross motion which was for an award of arrears pursuant to a so-ordered stipulation dated April 4, 2001, is dismissed, as that portion of the order was superseded by the money judgment entered January 4, 2011; and it is further,

ORDERED that the appeal from so much of the order dated December 14, 2010, as

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denied that branch of the defendant's motion which was for leave to reargue his motion for a downward modification on his child support obligation is dismissed, as no appeal lies from an order denying reargument; and it is further,

ORDERED that the order dated August 20, 2010, is affirmed insofar as appealed from; and it is further,

ORDERED that the amended order dated November 24, 2010, is affirmed insofar as reviewed; and it is further,

ORDERED that the order dated December 14, 2010, is affirmed insofar as reviewed; and it is further,

ORDERED that the money judgment entered January 4, 2011, is affirmed; and it is further,

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

The defendant's appeal from so much of the amended order dated November 24, 2010, as granted that branch of the plaintiff's cross motion which was for an award of arrears pursuant to a so-ordered stipulation dated April 4, 2001, must be dismissed because the right of direct appeal therefrom terminated with the entry of the money judgment (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from so much of the amended order dated November 24, 2010, as granted that branch of the plaintiff's cross motion which was for an award of arrears pursuant to a so-ordered stipulation dated April 4, 2001, are brought up for review and have been considered on the appeal from the money judgment (*see CPLR 5501[a][1]*).

Contrary to the defendant's contention, the Supreme Court properly denied, without a hearing, his motion for a downward modification of his child support obligation. The defendant failed to make a prima facie showing of a substantial, unanticipated, and unreasonable change in circumstances (*see Matter of Boden v Boden*, 42 NY2d 210; *Klein v Klein*, 74 AD3d 753).

The Supreme Court also properly denied that branch of the defendant's motion which was for leave to renew his prior motion for a downward modification of his child support obligation. The defendant failed to provide a "reasonable justification" for the failure to present the new facts on the prior motion (CPLR 2221[e]). In any event, the new facts would not have changed the prior determination (*see Matter of Talty v Talty*, 42 AD3d 546, 547).

The appellant's remaining contentions are not properly before this Court or without merit.

DILLON, J.P., DICKERSON, CHAMBERS and MILLER, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court