

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

D33449
W/prt

_____AD3d_____

Submitted - December 8, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2010-09529

DECISION & ORDER

In the Matter of Yehuda Tornheim, appellant,
v Amy Rube, respondent.

(Docket No. F-6352-99)

Yehuda Tornheim, Wesley Hills, N.Y., appellant pro se.

Amy Rube, Brooklyn, N.Y., respondent pro se.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Kings County (Graham, J.), dated August 5, 2010, which denied his objections to an order of the same court (Fasone, S.M.), dated December 2, 2009, which granted the mother's motion to dismiss his petition to suspend his child support obligation and for an award of an attorney's fee, and denied his objections to an order of disposition of the same court (Fasone, S.M.), dated December 18, 2009, which, upon the order dated December 2, 2009, dismissed the petition.

ORDERED that the order dated August 5, 2010, is affirmed, with costs.

The Family Court properly denied the father's objections to the Support Magistrate's dismissal of his petition, in which he sought to suspend his child support obligation on the ground that the mother interfered with his visitation. In the first instance, Support Magistrates are not empowered to hear visitation issues (*see* Family Ct Act § 439[a]; *Matter of Mitchell v Remy*, 24 AD3d 558). Moreover, the father's contentions with respect to the mother's alleged interference with his visitation had been raised and determined by a Judicial Hearing Officer after a hearing held on October 28, 2009. Accordingly, under the circumstances, dismissal of the petition was warranted,

December 27, 2011

Page 1.

MATTER OF TORNHEIM v RUBE

rather than transfer to a Family Court Judge.

Family Court Act § 438 authorizes an award of an attorney's fee in support proceedings (*see Matter of Sarfaty v Recine*, 57 AD3d 552; *Matter of Israel v Israel*, 273 AD2d 385). In light of the circumstances of this case, the award of an attorney's fee was a proper exercise of the Support Magistrate's discretion (*see Matter of Sarfaty v Recine*, 57 AD3d at 552; *Matter of Israel v Israel*, 273 AD2d at 385), based on the legal services provided in connection with this support proceeding (*see Matter of Olesh v Auerbach*, 227 AD2d 406, 407; *Matter of Lazaar v Lazaar*, 248 AD2d 618). Contrary to the father's contention, "[t]here is no impediment to reimbursement to a wife of counsel fees advanced by her which the court later finds the husband should have paid" (*Silver v Silver*, 63 AD2d 1017, 1017; *see Ross v Ross*, 90 AD2d 541).

The father's remaining contentions are without merit.

DILLON, J.P., BALKIN, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court