

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

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Submitted - January 10, 2012

RUTH C. BALKIN, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2011-02788

DECISION & ORDER

In the Matter of Tracy S. Simmons, appellant, v
Jeff Simmons, respondent.

(Docket No. F-01852-06)

Tracy S. Simmons, Wantagh, N.Y., appellant pro se.

Kevin E. Rockitter, P.C., Woodbury, N.Y., for respondent.

In a child support proceeding pursuant to Family Court Act article 4, the mother appeals from an order of the Family Court, Nassau County (Singer, J.), dated February 2, 2011, which denied her objections to an order of the same court (Kahlon, S.M.), dated October 28, 2010, granting that branch of the father's motion which was to dismiss her petition to modify a prior order of child support of the same court (Kahon, S.M.), dated April 19, 2006, as modified by a decision and order of this Court dated February 19, 2008.

ORDERED that the order dated February 2, 2011, is affirmed, with costs.

The Family Court properly granted that branch of the father's motion which was to dismiss the mother's petition to modify a prior order of child support nunc pro tunc on the ground of newly discovered evidence (*see* Family Court Act § 451[1]). On a prior appeal, this Court, among other things, affirmed an order of the Family Court denying the mother's objections to an order which denied her motion to modify the prior support order (*see Matter of Simmons v Simmons*, 71 AD3d 775). The issues raised on the prior motion were identical to the issues raised in the instant petition. The mother did not allege a change in circumstances as of the date of the prior determination, and she had a full and fair opportunity to litigate the issue. Accordingly, the mother was collaterally estopped from again raising the issue of "newly discovered evidence" before the

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MATTER OF SIMMONS v SIMMONS

Family Court (*see Buechel v Bain*, 97 NY2d 295, 303-304, *cert denied* 535 US 1096; *Matter of Csorba v Renzi*, 77 AD3d 660; *Westchester County Correction Officers Benevolent Assn., Inc. v County of Westchester*, 65 AD3d 1226, 1127).

BALKIN, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court