

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

D35583
C/ct

_____AD3d_____

Submitted - June 12, 2012

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2010-09862

DECISION & ORDER

In the Matter of Jill McCormick, appellant, v
Jeffrey McCormick, respondent.

(Docket No. F-1161-09)

Jill McCormick, Walden, N.Y., appellant pro se.

Jeffrey McCormick, Walden, N.Y., respondent pro se.

Gary E. Eisenberg, New City, N.Y., attorney for the child.

In a child support proceeding pursuant to Family Court Act article 4, the mother appeals from an order of the Family Court, Orange County (Kiedaisch, J.), entered September 1, 2010, which, after a hearing, in effect, denied her objections to an order of the same court (Krahulik, S.M.), entered July 23, 2009, and dismissed her petition to modify a stipulation of the parties contained in an order of the same court (Kiedaisch, J.), dated July 17, 2008, to provide for an upward modification of the father's child support obligation.

ORDERED that the order entered September 1, 2010, is reversed, on the law and the facts, without costs or disbursements, the mother's objections to the order entered July 23, 2009, are sustained, the order entered July 23, 2009, is vacated, and the matter is remitted to the Family Court, Orange County, for a new determination of appropriate child support.

"When a party seeks to modify the child support provision of a prior order or judgment, including an order or judgment incorporating without merging an agreement or stipulation of the parties, he or she must demonstrate a substantial change in circumstances" (*Matter of Malbin*

July 11, 2012

Page 1.

MATTER OF McCORMICK v McCORMICK

v Martz, 88 AD3d 715, 716; *see* Domestic Relations Law § 236[B][9][b][2][i]; *Matter of Brescia v Fitts*, 56 NY2d 132, 140-141). Contrary to the Family Court’s determination, here, the mother established that an increase in the father’s child support obligation was warranted by a change in circumstances (*see Matter of Gravlin v Ruppert*, 98 NY2d 1, 3-6). Specifically, the substantial reduction in the father’s visitation with the child, which significantly reduced the amount of money the father was required to spend on the child, “constituted an unanticipated change in circumstances that created the need for modification of the child support obligations” (*id.* at 6). A “needs of the child” analysis was not necessary in this case the (*id.* at 5). Furthermore, contrary to the Family Court’s conclusion, the child’s derivative Social Security benefits may not serve as a credit against the father’s child support obligation (*see Matter of Bouie v Joseph*, 91 AD3d 641, 642; *Matter of Jones v Smith*, 59 AD3d 546, 547).

Accordingly, we reverse the order entered September 1, 2010, sustain the mother’s objections to the order entered July 23, 2009, vacate that order, and remit the matter to the Family Court, Orange County, for a new determination of appropriate child support.

ANGIOLILLO, J.P., DICKERSON, LEVENTHAL and CHAMBERS, 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