

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

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_____AD3d_____

Submitted - June 12, 2012

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

2011-08064

DECISION & ORDER

In the Matter of Mary DiFede, respondent,
v Todd V. DiFede, appellant.

(Docket No. F-1613-01)

Cartier, Bernstein, Auerbach & Dazzo, P.C., Patchogue, N.Y. (George Edward Dazzo of counsel), for appellant.

Mary DiFede, Commack, 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, Suffolk County (Hoffman, J.), dated June 30, 2011, which denied his objections to an order of the same court (Fields, S.M.), dated May 9, 2011, which, after a hearing, inter alia, granted his petition for downward modification of his child support obligation only to the extent of reducing his obligation to the sum of \$865 biweekly.

ORDERED that the order dated June 30, 2011, is affirmed, with costs.

The issues raised by the father on this appeal are not reviewable. The Family Court properly denied the father's objections on the ground that he failed to file proof of service of a copy of the objections on the mother. Family Court Act § 439(e) provides, in pertinent part, that "[a] party filing objections shall serve a copy of such objections upon the opposing party," and that "[p]roof of service upon the opposing party shall be filed with the court at the time of filing of objections and any rebuttal." By failing to file proof of service of a copy of his objections on the mother, the father failed to fulfill a condition precedent to filing timely written objections to the Support Magistrate's order and, thus, failed to "exhaust the Family Court procedure for review of [his] objection" (*Matter of Semenova v Semenov*, 85 AD3d 1036, 1037, quoting *Matter of Davidson v Wilner*, 214 AD2d 563). Consequently, the father waived his right to appellate review of the merits of his

objections (*see Matter of Semenova v Semenov*, 85 AD3d at 1037; *Matter of Lusardi v Giovinazzi*, 81 AD3d 958; *Matter of Hidary v Hidary*, 79 AD3d 880).

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

ENTER:


Aprilanne Agostino
Clerk of the Court