

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

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Submitted - September 6, 2012

MARK C. DILLON, J.P.  
THOMAS A. DICKERSON  
LEONARD B. AUSTIN  
ROBERT J. MILLER, JJ.

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2011-08317

DECISION & ORDER

Kathleen A. Rooney, appellant, v Robert R. Rooney,  
respondent.

(Index No. 9578/01)

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Weisman Law Group, P.C., Cedarhurst, N. Y. (Rachel J. Weisman and Bari M. Lewis  
of counsel), for appellant.

In a matrimonial action in which the parties were divorced by judgment entered September 9, 2009, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Queens County (Raffaele, J.), dated August 25, 2011, as granted, without a hearing, that branch of the defendant's motion which was for a downward modification of his child support obligation.

ORDERED that order is reversed insofar as appealed from, on the law, with costs, and that branch of the defendant's motion which was for a downward modification of his child support obligation is denied.

Domestic Relations Law § 236(B)(9)(b) provides that upon the application of a party in a matrimonial action, the court may modify any prior order or judgment as to child support upon a showing of a substantial change in circumstances (*see Matter of Rodriguez v Mendoza-Gonzalez*, 96 AD3d 766; *LiGreci v LiGreci*, 87 AD3d 722, 724; *D'Alesio v D'Alesio*, 300 AD2d 340, 341). The party seeking the modification has the burden of establishing such a change in circumstances (*see Matter of Rodriguez v Mendoza-Gonzalez*, 96 AD3d at 766; *D'Alesio v D'Alesio*, 300 AD2d at 341; *Klapper v Klapper*, 204 AD2d 518, 519).

Financial hardship may constitute a substantial change in circumstances (*see*

Domestic Relations Law § 236[B][9][b]; *LiGreci v LiGreci*, 87 AD3d at 724; *Matter of Perrego v Perrego*, 63 AD3d 1072, 1073). In determining if there is a substantial change in circumstances to justify a downward modification, the change is measured by comparing the payor's financial circumstances at the time of the motion for downward modification and at either the time of the divorce, or the time when the order sought to be modified was made (*see Matter of Rodriguez v Mendoza-Gonzalez*, 96 AD3d at 766; *LiGreci v LiGreci*, 87 AD3d at 724; *Klapper v Klapper*, 204 AD2d at 519).

Here, the defendant did not satisfy his prima facie burden of establishing a substantial change in circumstances, as he failed to offer any evidence demonstrating his financial status either at the time of the divorce or at the time his motion was made (*see LiGreci v LiGreci*, 87 AD3d at 724; *Comstock v Comstock*, 1 AD3d 308, 309; *Klapper v Klapper*, 204 AD2d at 519; *see also D'Alesio v D'Alesio*, 300 AD2d at 341; *cf. Guinan v Hall*, 265 AD2d 556). Accordingly, the Supreme Court should have denied that branch of his motion which was for a downward modification of his child support obligation.

In light of the foregoing, we need not reach the plaintiff's remaining contention.

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

ENTER:

  
Aprilanne Agostino  
Clerk of the Court