

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

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_____AD3d_____

Submitted - November 26, 2012

PETER B. SKELOS, J.P.
RUTH C. BALKIN
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2011-11000

DECISION & ORDER

In the Matter of Lien Thi Ngo, appellant,
v Thang Duc Quach, respondent.

(Docket No. F-13454-10)

Lien Thi Ngo, Brooklyn, N.Y., appellant pro se.

In a child support proceeding pursuant to Family Court Act article 4, the mother appeals from an order of the Family Court, Kings County (Toussaint, J.), dated November 21, 2011, which denied her objections to an order of the same court (Baur, S.M.), dated July 18, 2011, which, upon findings of fact of the same court (Baur, S.M.), dated July 12, 2011, dismissed her petition for an upward modification of the father's child support obligation.

ORDERED that the order dated November 21, 2011, is affirmed, without costs or disbursements.

A party seeking modification of a support order has the burden of establishing the existence of a substantial change in circumstances warranting the modification (*see Matter of Bouie v Joseph*, 91 AD3d 641; *Matter of Nieves-Ford v Gordon*, 47 AD3d 936). Here, the Support Magistrate properly found that the mother failed to meet her burden of establishing a substantial change in circumstances. Notably, the mother's allegations that the father was living a more lavish lifestyle than he disclosed in his financial disclosure affidavit is based on evidence which predates the July 20, 2009, judgment of divorce. Accordingly, the Family Court properly denied the objections to the order dismissing the petition for an upward modification of child support.

SKELOS, J.P., BALKIN, CHAMBERS and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

December 19, 2012

MATTER OF LIEN THI NGO v THANG DUC QUACH