

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

866

CAF 10-00216

PRESENT: SMITH, J.P., LINDLEY, SCONIERS, PINE, AND GORSKI, JJ.

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IN THE MATTER OF ELIZABETH COOPER,  
PETITIONER-APPELLANT-RESPONDENT,

V

MEMORANDUM AND ORDER

RICHARD L. COOPER,  
RESPONDENT-RESPONDENT-APPELLANT.

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LAW OFFICES OF PALMER, MURPHY & TRIPI, BUFFALO (DEANNE M. TRIPI OF  
COUNSEL), FOR PETITIONER-APPELLANT-RESPONDENT.

DAVID J. PAJAK, ALDEN, FOR RESPONDENT-RESPONDENT-APPELLANT.

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Appeal and cross appeal from an order of the Family Court, Erie  
County (Rosalie Bailey, J.), entered April 15, 2009 in a proceeding  
pursuant to Family Court Act article 4. The order, inter alia,  
dismissed the petition.

It is hereby ORDERED that said cross appeal is unanimously  
dismissed and the order is otherwise affirmed without costs.

Memorandum: In this support proceeding pursuant to Family Court  
Act article 4, petitioner mother appeals and respondent father cross-  
appeals from an order that granted the objections of the father and  
dismissed without prejudice the mother's petition for an award of  
child support. Initially, we agree with the mother that Family Court  
had jurisdiction over this support proceeding where, as here, the  
parties entered into a separation agreement that was not merged into  
the judgment of divorce (see § 461 [a]). Contrary to the further  
contention of the mother, however, the court properly dismissed her  
petition.

The court may modify a separation agreement with respect to child  
support only "upon a showing that the agreement was not fair and  
equitable when entered into, or that an unanticipated and unreasonable  
change in circumstances has occurred[,] resulting in a concomitant  
need" for increased support (*Merle v Merle*, 67 NY2d 359, 362; see  
*generally Matter of Boden v Boden*, 42 NY2d 210, 213). Contrary to the  
contention of the mother, she failed to establish or indeed, even to  
allege, that the agreement was unfair or that there was the requisite  
change in circumstances.

We conclude, however, that the cross appeal by the father must be  
dismissed because he is not an "aggrieved party" and thus lacks

standing to appeal (CPLR 5511). The court granted the father's objections and dismissed the petition, and the father thus received all the relief he requested. The fact that the order contains language or reasoning that the father deems adverse to his interests does not provide him with "a basis for standing to take an appeal" (*Pennsylvania Gen. Ins. Co. v Austin Powder Co.*, 68 NY2d 465, 472-473; see *Pramco III, LLC v Partners Trust Bank*, 52 AD3d 1224, 1225; *Sirius Am. Ins. Co. v Vigo Constr. Corp.*, 48 AD3d 450, 451-452).

Entered: June 11, 2010

Patricia L. Morgan  
Clerk of the Court