

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

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Submitted - November 9, 2023

ANGELA G. IANNACCI, J.P.  
WILLIAM G. FORD  
HELEN VOUTSINAS  
LOURDES M. VENTURA, JJ.

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2022-09698

DECISION & ORDER

In the Matter of Joseph Bonanno, appellant,  
v Laura Bonanno, respondent.

(Docket No. F-15816-13/21D)

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Joseph Bonanno, West Babylon, NY, appellant pro se.

Laura Bonanno, South Setauket, NY, respondent pro se.

In a proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Suffolk County (Paul M. Hensley, J.), dated August 8, 2022. The order denied the father's objections to (1) so much of an order of the same court (John E. Raimondi, S.M.) dated June 13, 2022, as, after a hearing, and upon findings of fact, also dated June 13, 2022, dismissed the father's petition for a downward modification of his child support obligation and (2) an order of the same court (John E. Raimondi, S.M.), also dated June 13, 2022, as, after a hearing, and upon the findings of fact, directed the entry of a money judgment in favor of the mother and against the father in the sum of \$9,160 for counsel fees.

ORDERED that the order dated August 8, 2022, is affirmed, with costs.

The parties, who were married in 1991, have one child together. They were divorced by judgment entered May 13, 2013. The judgment of divorce, which incorporated but did not merge the terms of a stipulation of settlement dated December 29, 2012, awarded the mother residential custody of the child and directed the father to pay child support in the amount of \$1,400 per month. The stipulation of settlement imputed annual income of \$105,000 to the father.

In April 2021, the father filed a petition for a downward modification of his child support obligation, contending that his income had decreased. A Support Magistrate thereafter

December 20, 2023

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conducted a hearing on the father's petition. Before the hearing concluded, the mother moved, *inter alia*, for an award of counsel fees. After the hearing, in an order dated June 13, 2022, upon findings of fact issued on the same date, the Support Magistrate, among other things, dismissed the father's petition. In a separate order issued on that date, upon the findings of fact, the Support Magistrate directed the entry of a money judgment in favor of the mother and against the father in the sum of \$9,160 for counsel fees. The father filed objections to the Support Magistrate's orders. By order dated August 8, 2022, the Family Court denied the father's objections. The father appeals.

Among other grounds, “[t]he court may modify an order of child support . . . upon a showing of a substantial change in circumstances’ or where ‘there has been a change in either party’s gross income by fifteen percent or more since the order was entered, last modified, or adjusted’” (*Matter of Evans v White*, 173 AD3d 864, 865, quoting Family Ct Act § 451[3][a], [b][ii]). “A substantial change in circumstances may be measured by comparing the parties’ financial situation at the time of the application for modification with that existing at the time the order sought to be modified was issued” (*Matter of Giraldo v Fernandez*, 199 AD3d 796, 799 [internal quotation marks omitted]). “In determining whether there has been a change in circumstances warranting modification of a parent’s child support obligation, the court must consider several factors, including the increased needs of the children, the increased cost of living insofar as it results in greater expenses for the children, a loss of income or assets by a parent or a substantial improvement in the financial condition of a parent, and the current and prior lifestyles of the children” (*Matter of Alsamhoury v Samhoury*, 220 AD3d 699, 700 [internal quotation marks omitted]). Whether based upon an alleged change in circumstances or a purported decrease in income of at least 15%, the parent seeking a downward modification of a child support obligation must submit competent proof that the decrease in income occurred through no fault of the parent and the parent has diligently sought re-employment commensurate with his or her earning capacity (*see Matter of Gharachorloo v Regeer*, 173 AD3d 1025, 1026; *Matter of Evans v White*, 173 AD3d at 865). “[T]he proper amount of support to be paid . . . is determined not by the parent’s current economic situation, but by the parent’s assets and earning capacity” (*Matter of Gharachorloo v Regeer*, 173 AD3d at 1026-1027 [internal quotation marks omitted]). “On appeal, deference should be given to the credibility determinations of the Support Magistrate, who was in the best position to evaluate the credibility of the witnesses” (*id.* at 1027).

Here, the father’s income in the years following the execution of the parties’ stipulation of settlement was substantially higher than the income imputed to him in the stipulation. In 2019, the father opted to leave his job as a financial advisor at a bank to start his own business, asserting that he left his position because of an allegedly unfavorable change to his compensation structure. “While a parent is entitled to attempt to improve his vocation, his children should not be expected to subsidize his decision” (*Matter of Bustamante v Donawa*, 119 AD3d 559, 560 [internal quotation marks omitted]). Even assuming that the father’s earnings at the bank would have decreased due to the change to his compensation structure, and that his business suffered a loss in income beginning in 2020 due to the COVID-19 pandemic, the father failed to demonstrate that he made diligent efforts to secure employment to replace his lost income (*see Matter of Durand v Pierre-Louis*, 205 AD3d 806, 807). Moreover, the Support Magistrate, in determining that the father failed to establish a substantial change in circumstances or the requisite decrease in income, properly considered the substantial assets that the father failed to declare on his financial disclosure affidavit,

as well as his expenditures on items such as a \$50,000 boat in the months preceding the filing of his petition (*see Matter of Gharachorloo v Regeer*, 173 AD3d at 1026-1027). Contrary to the father's contention, the Support Magistrate's consideration of his purchase of the boat was not rendered improper because he allegedly used funds unrelated to his employment to effectuate the purchase.

"A court may allow counsel fees at any stage of a proceeding under Family Court Act article 4" (*Matter of Sanchez v Reyes*, 174 AD3d 907, 908, citing Family Ct Act § 438). "In determining an appropriate award of counsel fees, the court must consider factors such as the parties' ability to pay, the merits of the parties' positions, the nature and extent of the services rendered, the complexity of the issues involved, and the reasonableness of counsel's performance and the fees under the circumstances. Ultimately, the award should be based upon the totality of the circumstances, including the equities and circumstances of each particular case" (*Matter of Roberts v Roberts*, 176 AD3d 1226, 1228 [citation and internal quotation marks omitted]).


Under the totality of circumstances, the Support Magistrate providently exercised his discretion in awarding the mother \$9,160 for counsel fees (*see id.* at 1228; *cf. Matter of Sanchez v Reyes*, 174 AD3d at 908).

The father's remaining contentions are without merit.

Accordingly, the Family Court properly denied the father's objections to the Support Magistrate's orders.

IANNACCI, J.P., FORD, VOUTSINAS and VENTURA, JJ., concur.

ENTER:

  
Darrell M. Joseph  
Acting Clerk of the Court