

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

D55178  
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Submitted - March 8, 2018

REINALDO E. RIVERA, J.P.  
SANDRA L. SGROI  
COLLEEN D. DUFFY  
ANGELA G. IANNACCI, JJ.

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2017-01556

DECISION & ORDER

In the Matter of Tabatha Foster-Fisher, appellant,  
v Tyree Foster-Fisher, respondent.

(Docket No. F-33535-10/15)

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Lance H. Meyer, PLLC, Lake Success, NY, for appellant.

In a proceeding pursuant to Family Court Act article 4, the mother appeals from an order of the Family Court, Kings County (Alan Beckoff, J.), dated January 12, 2017. The order denied the mothers's objections to two orders of the same court (Nicholas J. Palos, S.M.), both dated October 26, 2016, which, after a hearing, respectively, granted the father's petition for a downward modification of his child support obligation and granted the mother's petition for arrears only to the extent of calculating the father's arrears at \$60,001.38.

ORDERED that the order dated January 12, 2017, is affirmed, without costs or disbursements.

The parties, the parents of three children, executed a stipulation of settlement, which was incorporated but not merged into a judgment of divorce and provided that the father would pay a certain amount of child support. The mother subsequently filed an enforcement petition and the father filed a petition for a downward modification of his support obligation. In an order dated October 26, 2016, the Support Magistrate granted the father's petition, reducing his child support obligation. In a separate order, also dated October 26, 2016, the Support Magistrate granted the mother's petition for enforcement only to the extent of calculating arrears at \$60,001.38. The mother filed objections to the Support Magistrate's orders, which were denied. The mother appeals from the order denying her objections.

To establish entitlement to a downward modification of a child support obligation,

April 25, 2018

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a party has the burden of showing that there has been “a substantial change in circumstances” (Family Ct Act § 451[3][a]; *see Matter of Lagani v Li*, 131 AD3d 1246, 1247). Here, the father demonstrated a substantial change of circumstances based on the fact that the mother was no longer incurring child care expenses for the children (*see Matter of Scarduzio v Ryan*, 86 AD3d 573). Thus, the Family Court properly denied the mother’s objections to the Support Magistrate’s order granting the father’s petition for a downward modification of his child support obligation.

In light of our determination, the mother’s contention that the calculation of child support arrears would have been higher had the Support Magistrate properly denied the father’s modification petition has been rendered academic.

RIVERA, J.P., SGROI, DUFFY and IANNACCI, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court