

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

**559**

**CAF 16-02375**

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, AND NEMOYER, JJ.

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IN THE MATTER OF GABRIEL A. HUMBERT,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

KRISTA A. HUMBERT, RESPONDENT-RESPONDENT.

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PIETER G. WEINRIEB, WILLIAMSVILLE, FOR PETITIONER-APPELLANT.

PEKAREK LAW GROUP, P.C., WELLSVILLE (EDWARD PEKAREK OF COUNSEL), FOR  
RESPONDENT-RESPONDENT.

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Appeal from an order of the Family Court, Cattaraugus County (Michael L. Nenno, J.), entered March 11, 2016 in a proceeding pursuant to Family Court Act article 4. The order reversed and vacated the order of the Support Magistrate.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the matter is remitted to Family Court, Cattaraugus County, for further proceedings in accordance with the following memorandum: Petitioner father commenced this proceeding seeking to terminate his child support obligation pursuant to a judgment of divorce. After a hearing, the Support Magistrate granted the petition in part by eliminating the child support because it was unjust and/or inappropriate to continue the basic child support obligation; ordered the father to continue providing health insurance coverage for the children; and ordered the father to pay his pro rata share of any unreimbursed health care expenses. Respondent mother filed objections, and the father now appeals from an order in which Family Court "reversed and vacated" the order of the Support Magistrate and reinstated the terms of the judgment of divorce with respect to support.

Family Court Act § 439 (e) provides in relevant part that, after receiving objections and the rebuttal, if any, to the determination of a support magistrate, "the judge . . . shall (i) remand one or more issues of fact to the support magistrate, (ii) make, with or without holding a new hearing, his or her own findings of fact and order, or (iii) deny the objections" (see *Matter of Mandile v Deshotel*, 136 AD3d 1379, 1380 [4th Dept 2016]; *Matter of Kingsley v Kingsley*, 4 AD3d 784, 785 [4th Dept 2004]). Here, the court simply "reversed and vacated" the order of the Support Magistrate without making any findings of fact to support that determination. We therefore reverse the order and remit the matter to Family Court to review the mother's objections

to the Support Magistrate's determination in accordance with Family Court Act § 439 (e).

Entered: April 27, 2018

Mark W. Bennett  
Clerk of the Court