

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: March 5, 2009

504485

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In the Matter of JULIE ANN  
FERRARO,

Respondent,

v

MEMORANDUM AND ORDER

HERBERT LANG,

Appellant.

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Calendar Date: February 18, 2009

Before: Mercure, J.P., Peters, Lahtinen, Kane and  
Malone Jr., JJ.

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Pope, Schrader & Murphy, L.L.P., Binghamton (Kurt D.  
Schrader of counsel), for appellant.

Butler & Butler, P.C., Vestal (Matthew C. Butler of  
counsel), for respondent.

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Lahtinen, J.

Appeal from an order of the Family Court of Broome County  
(Pines, J.), entered June 22, 2007, which, among other things,  
dismissed respondent's application, in a proceeding pursuant to  
Family Ct Act article 4, for modification of a prior child  
support order.

Petitioner and respondent are the unmarried parents of a  
child born in 2005. Family Court set forth respondent's support  
obligations in August 2006. Subsequently, joint custody was  
ordered with petitioner being awarded primary custody and  
respondent, who resides in Louisiana, being granted visitation at  
a minimum of six times per year to take place either in New York

or Louisiana. Respondent was also held responsible for the transportation expenses related to visitation. Petitioner thereafter commenced a violation proceeding alleging that respondent had failed to pay his full support obligation. Respondent opposed and petitioned for modification of the support order. Following a hearing held on both petitions, the Support Magistrate dismissed respondent's modification petition and found him to be in willful violation of the support order. Family Court subsequently affirmed the findings of the Support Magistrate and respondent now appeals, limiting his appeal to the dismissal of his modification petition.

We affirm. As the party seeking to modify the current support order, respondent bears the burden of demonstrating a sufficient change in circumstances warranting modification (see Matter of Reach v Reach, 307 AD2d 512, 513 [2003]; Matter of Cohen v Hartmann, 285 AD2d 675, 675 [2001]). To that end, respondent contends that the transportation expenses required for visitation included in the custody order constituted such a change in circumstances. While extraordinary expenses related to visitation may serve as a basis for the reduction of a support award (see Family Court Act § 413 [1] [f] [9]; Matter of Susan M. v Louis N., 206 AD2d 612, 614-615 [1994]), the record reflects that, subsequent to the support and custody orders being entered, respondent has only paid the expenses for one visitation. During this same time period, however, his income has increased significantly. In our view, respondent has not demonstrated extraordinary expenses related to visitation and, therefore, we discern no basis to disturb Family Court's determination.

Mercure, J.P., Peters, Kane and Malone Jr., JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Michael J. Novack  
Clerk of the Court