Decided and Entered: October 21, 2021   532136
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In the Matter of STANTON E.
    WEAVER JR.,
                        Appellant,

            v   MEMORANDUM AND ORDER

MARY E. WEAVER,
                        Respondent.
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Calendar Date: September 14, 2021

Before: Garry, P.J., Aarons, Pritzker, Reynolds Fitzgerald and
         Colangelo, JJ.

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        Stanton E. Weaver Jr., Canajoharie, appellant pro se.

        Becker, Glynn, Muffly, Chassin & Hosinski, LLP, New York
City (William H. Newman of counsel) and Pro Bono Appeals
Program, Buffalo (Jonathan S. Reiner of counsel), for
respondent.

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Reynolds Fitzgerald, J.

        Appeal from an order of the Family Court of Fulton County
(McAuliffe, J.), entered July 6, 2020, which, in a proceeding
pursuant to Family Ct Act article 4, among other things, denied
petitioner's objections to an order of a Support Magistrate.

        Petitioner (hereinafter the father) and respondent
(hereinafter the mother) are the divorced parents of one child
(born in 2003). A December 2018 judgment of divorce
incorporated, without merger, the provisions of their oral

opting out agreement. The agreement set forth the father's
maintenance and child support obligations, as well as a
provision that the father's employment would cease in December
2018 and that, thereafter, the parties expected that the father
would receive either a disability pension or long-term
disability benefits, either of which would necessitate a
modification of the father's child support and maintenance
obligations.

The father commenced this proceeding seeking to reduce his
maintenance and child support obligations on the ground that he
earns substantially less in disability benefits than when he was
employed. He further asserts that, as a result of his disabled
status, the child now receives Social Security disability
payments that, in his view, should defray his child support
payments.[1] Following a hearing, the Support Magistrate
determined that the father demonstrated a significant change in
his earning ability and, thus, reduced his child support and
maintenance payments and granted the father a credit for
overpayment of maintenance and child support. However, the
Support Magistrate did not deviate from the Child Support
Standards Act as requested by the father based on the child's
receipt of Social Security disability payments and credited
arrears as of the date of the petition – July 22, 2019. The
Support Magistrate additionally awarded the sum of $4,159.56 as
a credit for overpayment of child support from July 22, 2019

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[1] Preliminarily, the mother asserts that Family Court
lacked jurisdiction to entertain the father's request for
enforcement or modification of the terms of the agreement. The
record reveals that Supreme Court did not retain exclusive
jurisdiction and, in fact, granted Family Court concurrent
jurisdiction (see Family Ct Act § 461 [b] [ii]; [c]).
Furthermore, Supreme Court expressly referred the issues of
arrears and modification of the maintenance and child support
obligations to Family Court in an October 2019 order (see Family
Ct Act § 464 [a]). Accordingly, Family Court was authorized to
modify the judgment of divorce as it pertains to maintenance and
child support (see Matter of Malone v Malone, 84 AD3d 1674, 1674
[2011]; Matter of Barrett v Barrett, 281 AD2d 799, 801 [2001];
Matter of Allen v Allen, 145 AD2d 868, 869 [1988]).

until May 31, 2020, allowing the credit to be used to satisfy
any outstanding child support arrears at the time of the ruling,
but disallowed recoupment of the father's overpayment of child
support from future and continuing child support payments. The
father and the mother filed specific written objections to the
Support Magistrate's order. Family Court denied the objections,
and the father appeals.

    The father argues that Family Court erred in dismissing
his objections with regard to the proper date of modification of
his child support and maintenance payments, failing to allow him
to recoup amounts that he claims as overpayments in child
support, disallowing him a credit on future child support
payments as a result of past overpayments, and failing to
deviate from the Child Support Standards Act due to the child
receiving Social Security disability payments. As we find no
merit in the father's arguments, we affirm.

    The father's central argument, as relevant to this appeal,
focuses on the Support Magistrate's use and Family Court's
subsequent adherence to July 22, 2019 as the operative date to
modify his support obligations. The father argues that the
Support Magistrate misinterpreted a term of the divorce
stipulation, and said misinterpretation led to the incorrect
determination of July 22, 2019 as the operative date and
subsequent miscalculation of amounts due. We find the father's
argument to be precluded by res judicata.

    "The doctrine of res judicata gives binding effect to the
judgment of a court of competent jurisdiction and prevents the
parties to an action, and those in privity with them, from
subsequently relitigating any questions that were necessarily
decided therein" (Matter of Mead v Swift, 186 AD3d 1840, 1841
[2020] [internal quotation marks and citation omitted]). Here,
the Support Magistrate properly found that the operative date
for retroactivity was July 22, 2019, the date that the father
filed the present modification petition, based on Supreme
Court's October 2019 order on the merits as to the very issue.
Supreme Court determined that, "[s]ince no petition or
application was made in Supreme Court or in Family Court until

[the father] filed his petition in Family Court on July 22,
2019, that marks the date as of which [the father] is entitled
to a modification of his support obligations . . . unless the
parties agree to a different date." The Support Magistrate
correctly found that the parties did not enter into any
stipulated agreement to set a retroactive date for relief prior
to July 22, 2019. The father had a full and fair opportunity to
challenge Supreme Court's determination and cannot now attack
its validity for the first time on appeal (see Severing v
Severing, 117 AD3d 1129, 1130 [2014]; Majid v Commissioner of
Social Servs., 24 AD3d 251, 251 [2005], lv denied 7 NY3d 703
[2006]).

        We further find no error in the Support Magistrate's
denial of the father's application for a downward deviation from
the Child Support Standards Act based on the child's receipt of
Social Security disability payments. Where, as here, a child is
not receiving the benefit of a parent's full-time earnings and
higher salary level because of illness/disability, the federal
government provides a derivative disability award to the child
(see Matter of Graby v Graby, 87 NY2d 605, 611 [1996]).
However, a child's disability benefit is "intended to supplement
existing resources, not to displace or reduce a parent's
obligation to support his or her child[]" (Matter of McDonald v
McDonald, 112 AD3d 1105, 1107 [2013] [internal quotation marks
and citation omitted]).

        The father finally contends that Family Court abused its
discretion in prohibiting any refund or credit for overpayments
from the child's current or future support obligations. There
is a strong public policy against recoupment of child support
overpayments, absent any statutory authority or certain
circumstances, which are not present here. We discern no abuse
of discretion in Family Court's determination to restrict
recoupment to existing arrears and prohibiting the reduction of
current or future child support (see Johnson v Chapin, 12 NY3d
461, 466 [2009]; Johnson v Johnson, 172 AD3d 1654, 1657 [2019];
Matter of Apjohn v Lubinski, 114 AD3d 1061, 1065 [2014], lv
denied 23 NY3d 902 [2014]). The father's remaining contentions
have been rendered academic. Accordingly, we find no abuse of

discretion in Family Court's denial of the father's objections (see Matter of Reaves v Jones, 110 AD3d 1276, 1277 [2013]; Matter of Nemcek v Connors, 92 AD3d 1117, 1118 [2012]).

Garry, P.J., Aarons, Pritzker and Colangelo, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

Robert D. Mayberger
Clerk of the Court