

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

Decided and Entered: March 9, 2023

534436

In the Matter of SARAH
PROECHEL,

Appellant,

v

MEMORANDUM AND ORDER

RICHARD BENSMAN,

Respondent.

Calendar Date: December 15, 2022

Before: Garry, P.J., Lynch, Aarons, Reynolds Fitzgerald and Ceresia, JJ.

Sarah Proechel, Hillsdale, appellant pro se.

Lynch, J.

Appeal from an order of the Family Court of Columbia County (Richard M. Koweeck, J.), entered April 26, 2021, which, in a proceeding pursuant to Family Ct Act article 4, denied respondent's objections to an order of a Support Magistrate.

Petitioner (hereinafter the mother) and respondent (hereinafter the father) are the divorced parents of two children (born in 2003 and 2007). In August 2018, upon the mother's petition, a Support Magistrate ordered the father – as the noncustodial parent – to pay \$195 per week in child support. Thereafter, the father received, among other things, a cash inheritance of approximately \$106,000, prompting the mother to commence the instant proceeding for an upward modification of his child support obligation.

In December 2020, following a hearing, the Support Magistrate issued an order that, among other things, increased the father's weekly child support obligation to \$238, retroactive to November 27, 2020. The order made both parties responsible, on an equal basis, for the children's education and unreimbursed health-related expenses. By decision and order entered April 26, 2021, Family Court dismissed the father's objections and, in so doing, upheld his modified support obligation as set forth in the Support Magistrate's December 2020 order. The mother appeals from the April 26, 2021 Family Court order.

We reverse. By memorandum and order decided and entered February 2, 2023, this Court dismissed the mother's appeal based on her purported failure to file objections in Family Court. Simultaneously with this decision, this Court is granting the mother's motion for reargument and vacating the February 2, 2023 decision.¹ In its decision, Family Court only addressed objections filed by the father to the December 2020 order. In her motion, the mother provided copies of both her objections to the support order and her rebuttal to the objections filed by the father, time stamped as received by the Family Court Clerk on January 8, 2021 and January 22, 2021, respectively.² It is evident that neither of the mother's submissions was forwarded to and/or considered by Family Court in rendering its decision. Under these circumstances, the order must be reversed and the matter remitted to the Columbia County Family Court for a determination that takes into consideration the submissions of both parties.

Garry, P.J., Aarons, Reynolds Fitzgerald and Ceresia, JJ., concur.

¹ We take note that the record on appeal did not include any objections or rebuttal filed by the mother. As a precaution, prior to initially deciding the appeal, this Court reached out to the clerk of the Columbia County Family Court and was informed that the mother did not file any objections to the Support Magistrate's December 2020 order, or a rebuttal to the objections filed by the father. That information has turned out to be erroneous.

² The Family Court Clerk has confirmed to this Court that the time stamps are valid.

ORDERED that the order is reversed, on the law, without costs, and matter remitted to the Columbia County Family Court for further proceedings not inconsistent with this Court's decision.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court