

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

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Submitted - May 19, 2008

WILLIAM F. MASTRO, J.P.  
PETER B. SKELOS  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

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2007-03042

DECISION & ORDER

In the Matter of Cindy A. Ferrara, respondent, v  
Paul C. Ferrara, appellant.

(Docket No. F-01459-06)

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Joseph R. Faraguna, Sag Harbor, N.Y., for appellant.

Cindy A. Ferrara, Cooper City, Florida, respondent pro se.

In a support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Nassau County (Zimmerman, J.), dated March 19, 2007, which denied his objections to two orders of the same court (Kahlon, S. M.), both dated January 24, 2007, which, after a hearing, granted the mother's petition for a money judgment for child support arrears, and denied his petition for a downward modification of his child support obligation, respectively.

ORDERED that the order is affirmed, without costs or disbursements.

The Family Court correctly denied the father's objections to the Support Magistrate's determinations. Proof of the father's failure to pay support constituted "prima facie evidence of a willful violation" (Family Ct Act § 454 [3][a]), and shifted the burden to him to come forward with competent credible evidence of his inability to do so (*see Matter of Powers v Powers*, 86 NY2d 63, 69-70; *Matter of Kainth v Kainth*, 36 AD3d 915). The father offered no acceptable medical proof of inability to pay and therefore failed to rebut the mother's prima facie case (*see Matter of Bronstein-Becher v Becher*, 25 AD3d 796; *Matter of Castillo v Castillo*, 23 AD3d 653).

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Furthermore, the Family Court correctly determined that the father failed to meet his burden of demonstrating an unexpected and unreasonable change in circumstances warranting a downward modification of the prior child support order (*see Matter of Boden v Boden*, 42 NY2d 210, 213; *Matter of Marrale v Marrale*, 44 AD3d 773; *Matter of Prisco v Buxbaum*, 275 AD2d 461; *Brevetti v Brevetti*, 182 AD2d 606).

As to the father's claim of ineffective assistance of counsel, in the context of civil litigation, such a claim will not be entertained where, as here, extraordinary circumstances are absent (*see Matter of Cichosz v Cichosz*, 12 AD3d 598, 599; *Matter of Ketcham v Crawford*, 1 AD3d 359, 361).

The father's remaining contentions are without merit.

MASTRO, J.P., SKELOS, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court