

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

1423

CAF 15-00146

PRESENT: SCUDDER, P.J., SMITH, CENTRA, PERADOTTO, AND CARNI, JJ.

IN THE MATTER OF ISIDRO FIGUEROA, JR.,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ANNETTE FIGUEROA, RESPONDENT-RESPONDENT.

LEGAL ASSISTANCE OF WESTERN NEW YORK, INC., GENEVA (MOLLIE A. DAPOLITO OF COUNSEL), FOR PETITIONER-APPELLANT.

CECILY G. MOLAK, LYONS, FOR RESPONDENT-RESPONDENT.

Appeal from an order of the Family Court, Wayne County (John B. Nesbitt, J.), entered March 25, 2014 in a proceeding pursuant to Family Court Act article 4. The order affirmed the order of the Support Magistrate and denied the objections of petitioner to that order.

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, Wayne County, for a new hearing.

Memorandum: Petitioner father appeals from an order denying his objections to the order of the Support Magistrate, who denied in part his petitions seeking a downward modification of his child support obligation. The Support Magistrate imputed income to the father in determining his child support obligation. "[I]n determining a party's child support obligation, a court need not rely upon the party's own account of his or her finances, but may impute income based upon the party's past income or demonstrated earning potential" (*Belkhir v Amrane-Belkhir*, 118 AD3d 1396, 1397 [internal quotation marks omitted]; see *Matter of Hurd v Hurd*, 303 AD2d 928, 928-929). We agree with the father that, in imputing income to him, the Support Magistrate erred in relying on facts that were not in evidence (see *Matter of Mentor v DeLorme*, 17 AD3d 1012, 1012-1013). We therefore reverse the order and remit the matter to Family Court for a new hearing. In light of our determination, we do not consider the father's remaining contentions.

Entered: December 31, 2015

Frances E. Cafarell
Clerk of the Court