

FILED & ENTERED  
Family Court State of New York  
County of Onondaga

DATE: 9/26/17

At a term of the Family Court of  
the State of New York, held in and  
for the County of Onondaga, at  
Onondaga County Courthouse, 401  
Montgomery St., Syracuse, NY  
13202, on September 26, 2017

**PRESENT:** Hon. Julie A. Cecile, Judge of the Family Court

In the Matter of a **Support** Proceeding

**File #:** 24816

**Docket #:** F-00090-11/17B

**Angela C. Gaspirini,**

Petitioner,

- against -

**Michael J. Rotondo,**

Respondent.

**DECISION AND ORDER ON  
OBJECTION TO ORDERS OF  
SUPPORT MAGISTRATE**

On October 6, 2016, Petitioner-Mother filed a petition seeking increase in Respondent-Father's child support obligation. On March 24, 2017, Respondent-Father filed a motion to dismiss the petition, which was denied on March 29, 2017. On March 30, 2017, Respondent-Father filed a second motion to dismiss the petition, which was denied on March 31, 2017. On April 5, 2017, Respondent-Father filed a third motion to dismiss, which was denied on April 5, 2017.

On April 13, 2017, Respondent-Father filed an objection to the denials of the second and third motions to dismiss. On April 28, 2017, both objections were denied because Family Court Act § 439 explicitly provides that review of a support magistrate's determination by a family court judge is only available upon the support magistrate's final order. (*See also Rosado v Muniz*, 2001 NY Slip Op 40203 [Fam Ct Aug. 24, 2001].) In response to the dismissal of his objections, Respondent-Father filed a notice of appeal on May 22, 2017. Such appeal was dismissed on August 25, 2017.

Meanwhile, the underlying matter concerning the petition to increase Respondent-Father's child support obligation proceeded to trial on May 25, 2017. After trial, the support magistrate granted Petitioner-Mother's petition, and increased Respondent-Father's child support obligation from \$25.00 per month to \$56.00 per week. The order was filed and entered on June 15, 2017, and mailed to the parties

Notice of Entry  
PLEASE TAKE NOTICE that the within  
is a true copy of an order entered in  
the office of the Clerk of the Family  
Court of the State of New York in the  
County of Onondaga

that same day.

On September 14, 2017, Respondent-Father filed an objection to the order increasing his child support obligation. However, pursuant to FCA § 439(e), such objections were required to be filed on or before July 20, 2017. Therefore, these objections must be dismissed as untimely (*Verzhbo v Grubelich*, 147 AD3d 864, 865 [2d Dept 2017]; *Xiao-Lan Ma v Washington*, 112 AD3d 957, 957–58 [2d Dept 2013]; *Minka v Minka*, 219 AD2d 810, 811 [4th Dept 1995].)

In his objection, Respondent-Father asks that the late filing be excused because his appeal regarding the denial of his objection to the denial of his motions to dismiss was not dismissed until August 25, 2017. This Court is aware that in some circumstances appellate courts have directed the family court to consider objections which were not timely filed or were otherwise defective, but in cases where such failures have been excused, the circumstances have generally involved extenuating circumstances not present here (*See e.g. Hobbs v Wansley*, 143 AD3d 1138, 1139 [3d Dept 2016][holding that where proof established that the mother, appearing *pro se*, would have timely submitted her objections but for the inaccurate information provided by the court website, Family Court should have excused her untimely filing]; *Ryan v Ryan*, 110 AD3d 1176, 1179 [3d Dept 2013][Family Court should not have dismissed mother's objections as untimely where she filed one day late; mother was appearing *pro se*, and she could not obtain a sample affidavit of service or the services of a notary due to the closing of the courthouse caused by flooding conditions]; *Onondaga County Com'r of Social Services on Behalf of Chakamda G. v Joe W.C.*, 233 AD2d 908 [4th Dept 1996][Family Court erred in denying respondent's objections as untimely where father attempted to extend his time to file objections by letter dated within the statutory time period]; *see also Riley v Riley*, 84 AD3d 1473, 1474 [3d Dept 2011].)

In any event, were this Court to reach the merits of Respondent-Father's objections, they would be denied. Respondent-Father's specific objection regarding the order of support is that his "net cash

assets are [negative] \$636.98,” that he is in debt by that same amount, and that he does not have the income to pay his own bills.

In her finding, the support magistrate concluded that, “[b]ased upon the testimony of the Respondent regarding his efforts to seek employment, the Court finds those efforts to be minimal at best. Since the Respondent has not made reasonable efforts to seek employment, based upon his prior work history, the Court is imputing income to the Respondent in the sum of \$400.00 per week. The presumed amount of support is therefore \$56.00 per week.”

Pursuant to FCA 439(e), objections to a support magistrate’s order must be pled with specificity. In this case, Respondent-Father asserts no specific error with regard to this determination; therefore, the objections must also be denied on this basis. (*Farruggia v Farruggia*, 125 AD3d 1490, 1491 [4th Dept 2015]; *White v Knapp*, 66 AD3d 1358, 1359 [4th Dept 2009].)

To the extent that Respondent-Father’s objection can be read as challenging the support magistrate’s finding that his efforts to seek employment were not diligent enough to avoid imputation of income, the support magistrate has broad discretion in imputing income to a parent. (*Squitieri v Squitieri*, 90 AD3d 500, 500 [1st Dept 2011].) Family Court’s review under Family Ct. Act § 439(e) is tantamount to appellate review (*Renee XX. v. John ZZ.*, 51 AD3d 1090, 1092 [3d Dept 2008].) The “greatest deference” should be given to the determination of the Support Magistrate, who “is in the best position to assess the credibility of the witnesses and the evidence proffered” (*Matter of Denoto v. Denoto*, 96 AD3d 1646 [4th Dept 2012].) The Court notes that an assessment of a parent’s job search efforts depends on the credibility of the parent’s testimony regarding the diligence of his or her job search efforts; therefore, the determination of the trier of facts should be accorded great weight (*Musumeci v Musumeci*, 295 AD2d 516, 516 [2d Dept 2002].) Further, unless there is a lack of record support, the Support Magistrate’s decision should not be disturbed (*see Rossiter v. Rossiter*, 56 AD3d 1011, 1011 [3d Dept 2008].)

In this case, the record documents that Respondent-Father is twenty-nine years old, and lives with his parents. He testified that he most recently worked as a ski instructor, from January, 2017 to March, 2017. Prior to January, 2017, he last worked as a sales associate at Best Buy from 2012 to 2015, and that such employment ended because he was fired.

Notably, on March 29, 2017, the support magistrate directed Respondent-Father to document his efforts to seek employment in job search log, provided him with a form to do so, and directed him to bring the log with him on the trial date. Respondent-Father failed to do so, testifying that it had “slipped his mind.” Respondent-Father was also referred to the Parent Support Program, to assist with his efforts to find a job. Respondent-Father chose not to work with the program, because he believed doing so would not “help” his case.

The only further evidence Respondent-Father offered regarding his job search efforts was his testimony that he had a resume, and that he had applied for two jobs in the past year. He had only applied for two positions because he did not want to accept a position he did not think he could work at for at least three years, and for that reason he had ruled out working in retail or the fast food industry. Plainly, the foregoing is ample support for the support magistrate’s determination that Respondent-Father’s efforts to find employment so he can support his child are woefully inadequate.

Finally, Respondent-Father’s claim that he simply cannot afford to pay child support for his son is completely undermined by his testimony that, for the past five years, he has paid \$1,944.00 per year for a storage unit in which to store his 1989 Camaro and other belongings, such as his sporting equipment and gaming equipment. When questioned why he did not sell such belongings, he claimed that they had no value except sentimental, and he had no legitimate answer for the obvious question of why it made sense to spend more than \$9,000.00 over the last five years to store valueless belongings, at the same time asserting that he could not afford to pay support for his son.

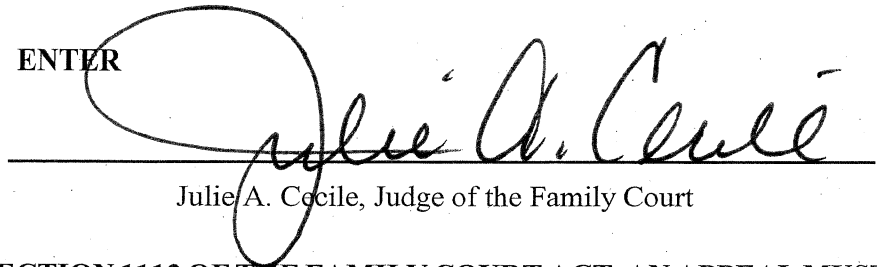
NOW, therefore, for the foregoing reasons, it is hereby

ORDERED, that Respondent-Father's objections are denied and dismissed.

Dated:

9/26/17

ENTER

A handwritten signature in black ink, appearing to read "Julie A. Cecile", is written over a horizontal line.

Julie A. Cecile, Judge of the Family Court

**NOTICE: PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THIS ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE MAILING OF THE ORDER BY THE CLERK OF THE COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR LAW GUARDIAN UPON THE APPELLANT, WHICH EVER IS EARLIEST.**

CC: Dana Grillo, Esq., Attorney for Angela C. Gaspirini  
Michael J. Rotondo ✓