

COURT OF APPEALS
STATE OF NEW YORK

(Names of parties as set forth in the Appellate Division caption)

Angela C. Conspatini,

Petitioner Respondent**

v.

Michael J. Rando,

Respondent Appellant*

Onondaga

(Indicate name of county)

County Clerk Index No.:

F-00090-1V17B

NOTICE OF MOTION FOR
LEAVE TO APPEAL TO
THE COURT OF APPEALS

[AND FOR (Specify additional
relief, if any) Stay of

Support ordered on
June 15 2017]**

PLEASE TAKE NOTICE that, upon the annexed statement pursuant to Rules 500.21 and 500.22 of the Court of Appeals Rules of Practice, signed on 16 day of November, 2017,

Michael Rando will move this Court, at the Court of Appeals Hall, Albany, New York on

(Your Name)

November 27, 2017, for an order granting leave to appeal to this Court from the order

(Return Date)***

or judgment of the Onondaga, dated June 15, 2017

(Name of Court)

[, and for Stay of Support ordered June 15 2017].

(Specify additional relief, if any)

Answering papers, if any, must be served and filed in the Court of Appeals with proof of service on or before the return date of the motion.

**If you are moving for leave to appeal, you are the appellant in this Court; the opposing party is the respondent.

** Add information within the brackets only if you are seeking relief in addition to leave to appeal.

***Return Date (see Rule 500.21[a], [b]) - Court of Appeals motion returns days are only on Mondays, unless Monday is a legal holiday, in which case the return date shall be on the next available business day. If the motion is served in person, you must give 8 days' notice. If the motion is served by regular mail, you must give 13 days' notice. Set the return date of your motion for the first Monday on or after the notice period. If that Monday is a legal holiday, set the return date of your motion for the next available business day.

There is no oral argument of motions, and no personal appearances are permitted.

Signature:

M R

Print Name:

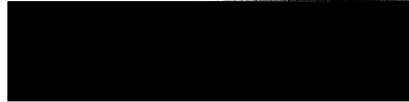
Michael Rotondo

Address:

408 Wetheridge Dr.

Camillus NY 13031

Phone:



To: Clerk of the Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Insert the names and addresses of all other parties:

Angela Gasparini



STATEMENT IN SUPPORT OF MOTION

Service of judgment or order sought to be appealed (Check which items apply, and fill in the blanks, if applicable.)

On November, 2017, my adversary served me with the order or judgment I am seeking leave to appeal from dated November 6, 2017, with notice of entry.

My adversary served me by (check one):

- personal service
- overnight delivery
- regular mail

- OR -

My adversary did not serve me with the order or judgment that I am seeking leave to appeal from with notice of entry.

- OR -

On _____, 20____, I served my adversary with the order or judgment that I am seeking leave to appeal from with notice of entry. I served my adversary by (check one):

- personal service;
- overnight delivery;
- regular mail.

Select Item 1 or Item 2 below:

(1) I did not move for leave to appeal to this Court at the Appellate Division, but came directly here. (If you check this box, go directly to QUESTIONS PRESENTED.)

- OR -

(2)(a) I made a motion for permission to appeal to the Court of Appeals in the Appellate Division upon my adversary by (check one):

- personal service;
- overnight delivery;
- regular mail;

on _____, 20____. (If you filled in subsection 2a, go to subsection 2b.)

(2)(b) The Appellate Division denied my motion for permission to appeal to the Court of Appeals on _____, 20____. My adversary (check one):

- never served me with the order;
- served the Appellate Division order with notice of entry upon me on _____, 20____ by (check one):

- personal service;
- overnight delivery;
- regular mail

QUESTIONS PRESENTED (The legal issues you addressed in the courts below that you desire this Court to review. Please identify where in the record or appendix these issues were raised in the courts below. You may use additional paper if necessary.)

Can a person who is costing more than they are earning be denied motion to proceed as a poor person?

WHY THE COURT OF APPEALS SHOULD GRANT THE MOTION (For example, novel issue of law, issue of statewide importance, conflict in the law on the issue. You may use additional paper if necessary.)

I cannot afford to pay my current support order, this ~~is~~ should not be a crime.

DATED: 1/16/17

Signature:

M RL

Print Name:

Michael Rotondo

Address:

408 Weatheridge Dr.

Camillus NY 13031

Phone:



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

PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND CARNI, JJ.
APPELLATE DIVISION DOCKET NO. CAF 17-01908

MATTER OF ANGELA C. GASPIRINI, PETITIONER-RESPONDENT,

V

MICHAEL J. ROTONDO, RESPONDENT-APPELLANT.

DOCKET NO. F-00090-11/17B

Respondent-appellant having moved for permission to proceed as a poor person on the appeal taken herein from an order of the Family Court, Onondaga County, entered in the Office of the Clerk of said Court on September 26, 2017,

Now, upon reading and filing the affidavit of Michael Rotondo, sworn to October 11, 2017, and the notice of motion with proof of service thereof, and due deliberation having been had thereon,

It is hereby ORDERED that the motion is denied with leave to renew upon the submission of a new motion that includes, among other things, an affidavit setting forth sufficient facts so that the merit of the contentions can be ascertained (see CPLR 1101 [a]).

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH DEPARTMENT

MATTER OF)	AFFIDAVIT IN SUPPORT OF
ANGELA C. GASPARINI Petitioner,)	MOTION TO APPEAL AS A
)	POOR PERSON
MICHAEL J. ROTONDO Respondent)	
)	
(INSERT TITLE OF ACTION ABOVE))	# <u>F-00090-11/17B</u>
)	(Insert Family Court Docket Number)

STATE OF NEW YORK
COUNTY OF Onondaga ss:

Michael J Rotondo (print name), being duly sworn,
deposes and says:

1. I hereby apply to the Appellate Division, Fourth Department, for permission to
(check one) appeal respond to an appeal
as a poor person

2. My present mailing address is 408 Weatheridge Dr.
Camillus, NY 13031

3. In Family Court, I (check one) was represented by an attorney.
 was not represented by an attorney.

4. If represented, my attorney was (check one)
 assigned to represent me in Family Court.
 retained to represent me in Family Court.


5. I currently support 0 dependants in my present household, not
(insert number)
including myself.

6. The following is a summary of my financial status:

A. PRESENT INCOME (If none, write none. Do not use "ditto" marks. Figures should reflect GROSS monthly income.)

	<u>Appellant/Respondent</u>	<u>Spouse</u>
Employment Income	NONE	Doesn't have Spouse
Place of employment	NONE	Doesn't have Spouse
Length of employment	NONE	Doesn't have Spouse
Unemployment benefits	NONE	Doesn't have Spouse
Disability benefits	NONE	Doesn't have Spouse
Social Security benefits	NONE	Doesn't have Spouse
Pension benefits	NONE	Doesn't have Spouse
Veterans and/or active service benefits	NONE	Doesn't have Spouse
Welfare or SSI benefits	NONE	Doesn't have Spouse
Alimony/maintenance received	NONE	Doesn't have Spouse
Child support received	NONE	Doesn't have Spouse
Rental income received	NONE	Doesn't have Spouse
Other	NONE	Doesn't have Spouse
TOTAL	0	Doesn't have Spouse

B. ASSETS (Must be completed)

Savings, checking, trust accounts	\$717.96	Doesn't have Spouse
Location of same		Doesn't have Spouse
Vehicles owned:	2	Doesn't have Spouse
value	\$3,700	Doesn't have Spouse
amount owing	0	Doesn't have Spouse
Real estate owned:	None	Doesn't have Spouse
description	N/A	Doesn't have Spouse
value	N/A	Doesn't have Spouse
amount owing	N/A	Doesn't have Spouse
Other	None	Doesn't have Spouse
TOTAL	\$4,417.96	Doesn't have Spouse

C. PRESENT OBLIGATIONS: (Figures should reflect monthly payments made. This section must be completed.)

Rent/Mortgage Payment	<u>0</u>	Doesn't have Spouse
Alimony/Maintenance	<u>0</u>	Doesn't have Spouse
Child Support Actually Paid	<u>\$25</u>	Doesn't have Spouse
Medical	<u>0</u>	Doesn't have Spouse
Food	<u>0</u>	Doesn't have Spouse
Transportation	<u>\$150</u>	Doesn't have Spouse
Other (description)		Doesn't have Spouse
Storage fees	<u>\$162</u>	Doesn't have Spouse
Loan payments	<u>\$36</u>	Doesn't have Spouse
Credit card minnimum	<u>\$25</u>	Doesn't have Spouse
TOTAL	<u>\$398</u>	Doesn't have Spouse

(PRINT NAME BELOW SIGNATURE)

Michael Rotondo

Sworn to before me this

_____ day of _____, 20_____

NOTARY PUBLIC/COMMISSIONER OF DEEDS

My commission expires: _____

NOTE: IF YOU ARE REPRESENTED BY COUNSEL, RETURN THE ORIGINAL COMPLETED FORM TO YOUR ATTORNEY. IF YOU ARE NOT REPRESENTED, FILE THE ORIGINAL COMPLETED FORM AND ONE COPY WITH THE APPELLATE DIVISION AT THE ADDRESS LISTED BELOW, WITH AN AFFIDAVIT OF SERVICE INDICATING THAT YOU HAVE PROVIDED COPIES OF THIS DOCUMENT TO ALL NECESSARY PARTIES INCLUDING THE ATTORNEY FOR THE CHILD, IF ANY, AND THE COUNTY ATTORNEY.

**SUPREME COURT, APPELLATE DIVISION, FOURTH DEPARTMENT
50 EAST AVENUE, SUITE 200, ROCHESTER, NEW YORK 14604**

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 -

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

Michael J. Rotondo,

Respondent.

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.

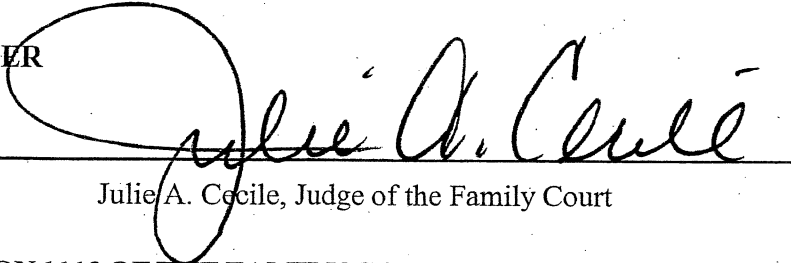
NOW, therefore, for the foregoing reasons, it is hereby

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

Dated:

9/26/17

ENTER

A handwritten signature in cursive script, reading "Julie A. Cecile", 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 ✓

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

DATE: 6/15/17

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 May 25, 2017

PRESENT: Susan Hamlin Nasci, Support Magistrate

In the Matter of a **Support** Proceeding

File #: 24816

Docket #: F-00090-11/17B

Angela C Gasparini, SSN: XXX-XX-4051,

Petitioner,

CSMS #: BS03926P1

- against -

DECISION/ORDER

Michael J Rotondo, SSN: XXX-XX-2736,

Respondent.

NOTICE: YOUR WILLFUL FAILURE TO OBEY THIS ORDER MAY RESULT IN INCARCERATION FOR CRIMINAL, NON-SUPPORT OR CONTEMPT. YOUR FAILURE TO OBEY THIS ORDER MAY RESULT IN SUSPENSION OF YOUR DRIVER'S LICENSE, STATE-ISSUED PROFESSIONAL, TRADE, BUSINESS AND OCCUPATIONAL LICENSES AND RECREATIONAL AND SPORTING LICENSES AND PERMITS; AND IMPOSITION OF REAL OR PERSONAL PROPERTY LIENS.

SPECIFIC WRITTEN OBJECTIONS TO THIS ORDER MAY BE FILED WITH THIS COURT WITHIN 30 DAYS OF THE DATE THE ORDER WAS RECEIVED IN COURT OR BY PERSONAL SERVICE, OR IF THE ORDER WAS RECEIVED BY MAIL, WITHIN 35 DAYS OF THE MAILING OF THE ORDER.

Obligation Summary

	Angela C Gasparini	Michael J Rotondo	Method
Basic Payment		\$56.00 weekly	SCU

Angela C Gasparini filed a petition in this Court on February 22, 2017 seeking to modify an order, dated April 19, 2012, made by the Onondaga County Family Court which granted support for:

Name

Date of Birth

Social Security Number

Michael J Rotondo appeared before this Court to answer the petition, and the unrepresented parties, if any, were advised by the Court of the right to counsel; and the Petitioner appeared with counsel, and the Respondent appeared pro se for the hearing on May 25, 2017;

NOW, based upon the FINDINGS OF FACT, the Court finds that:

Michael J Rotondo is the non-custodial party, whose pro rata share of the basic child support obligation is \$56.00 weekly for the following child:

<u>Name</u>	<u>Date of Birth</u>
-------------	----------------------

[REDACTED]	[REDACTED]
------------	------------

The parties have been advised of the provisions of Section 413(1) of the Family Court Act and the unrepresented parties, if any, have received a copy of the child support standards chart promulgated by the Commissioner of the N.Y.S. Office of Temporary and Disability Assistance pursuant to Section 111-i of the Social Services Law;

The basic child support obligation stated above presumptively results in the correct amount of child support to be awarded; Michael J Rotondo's pro rata share of the basic child support obligation is neither unjust nor inappropriate;

IT IS HEREBY ORDERED AND ADJUDGED that effective February 22, 2017, Michael J Rotondo is chargeable with the support of [REDACTED] and is possessed of sufficient means and ability to earn such means to provide the payment of the sum of \$56.00 weekly to Angela C Gasparini payable through the Support Collection Unit, such payments to commence on June 23, 2017; and

IT IS FURTHER ORDERED that the Petitioner is not responsible for added sums for cash medical support, health insurance, uncovered health care expenses or day care expenses, as his income falls within the self-support reserve or poverty level after paying child support; and

IT IS FURTHER ORDERED that all payments payable through the Support Collection Unit shall be made by check or money order payable to and mailed to: NYS Child Support Processing Center, PO Box 15363, Albany, NY 12212-5363. The county name and New York Case Identifier number (CSMS #BS03926P1) for the matter must be included with the payment for identification purposes;

IT IS FURTHER ORDERED that the payor, custodial party and any other individual parties immediately notify the Support Collection Unit of any changes in the following information: residential and mailing addresses, social security number, telephone number, driver's license number; and name, address and telephone numbers of the parties' employers;

IT IS ADJUDGED that health insurance availability for each party is as follows: For Angela C Gasparini, health insurance is not offered through an employer or organization. For Michael J Rotondo, health insurance is not offered through an employer or organization.

This court having found that no health insurance coverage is available for the child, but the child may be eligible for health insurance benefits under the New York "Child Health Plus" program or New York State Medical Assistance Program, it is hereby

ORDERED that Angela C Gasparini shall continue the eligible child in the "Child Health

Plus" program (the NYS health insurance program for children) and the New York State Medical Assistance Program or the publicly funded health insurance program in the State where the custodial parent resides;

IT IS ORDERED that the parties shall notify each other in writing of changes in income, employment or address within 3 days; and

IT IS FURTHER ORDERED that this Order shall be enforceable pursuant to Section 5241 or 5242 of the Civil Practice Law and Rules, or in any other manner provided by law.

Dated: June 13, 2017

ENTER



Susan Hamlin Nasci, Support Magistrate

Order mailed/emailed on 6/15/17 by Jason Campanello, Court Assistant

CC: Onondaga County Support Collection Unit
Dana Grillo, Esq.
Michael J Rotondo, Respondent
Angela C Gasparini, Petitioner

Angela C Gasparini

Michael J Rotondo
408 Weatheridge Dr.
Camillus, NY 13031

INFORMATION CONCERNING COST OF LIVING ADJUSTMENTS AND MODIFICATIONS

NOTE: (1) THIS ORDER OF CHILD SUPPORT SHALL BE ADJUSTED BY THE APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER THIS ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED, UPON THE REQUEST OF ANY PARTY TO THE ORDER OR PURSUANT TO PARAGRAPH (2) BELOW. UPON APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT, AN ADJUSTED ORDER SHALL BE SENT TO THE PARTIES WHO, IF THEY OBJECT TO THE COST OF LIVING ADJUSTMENT, SHALL HAVE THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING TO SUBMIT A WRITTEN OBJECTION TO THE COURT INDICATED ON SUCH ADJUSTED ORDER. UPON RECEIPT OF SUCH WRITTEN OBJECTION, THE COURT SHALL SCHEDULE A HEARING AT WHICH THE PARTIES MAY BE PRESENT TO OFFER EVIDENCE WHICH THE COURT WILL CONSIDER IN ADJUSTING THE CHILD SUPPORT ORDER IN ACCORDANCE WITH THE CHILD SUPPORT STANDARDS ACT.

(2) A RECIPIENT OF FAMILY ASSISTANCE SHALL HAVE THE CHILD SUPPORT ORDER REVIEWED AND ADJUSTED AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH

ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED WITHOUT FURTHER APPLICATION OF ANY PARTY. ALL PARTIES WILL RECEIVE NOTICE OF ADJUSTMENT FINDINGS.

(3) WHERE ANY PARTY FAILS TO PROVIDE, AND UPDATE UPON ANY CHANGE, THE SUPPORT COLLECTION UNIT WITH A CURRENT ADDRESS TO WHICH AN ADJUSTED ORDER CAN BE SENT, AS REQUIRED BY SECTION 443 OF THE FAMILY COURT ACT, THE SUPPORT OBLIGATION AMOUNT CONTAINED THEREIN SHALL BECOME DUE AND OWING ON THE DATE THE FIRST PAYMENT IS DUE UNDER THE TERMS OF THE ORDER OF SUPPORT WHICH WAS REVIEWED AND ADJUSTED OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THE ORDER REGARDLESS OF WHETHER OR NOT THE PARTY HAS RECEIVED A COPY OF THE ADJUSTED ORDER.

NOTE: EACH PARTY HAS A RIGHT TO SEEK A MODIFICATION OF THE CHILD SUPPORT ORDER UPON A SHOWING OF: (I) A SUBSTANTIAL CHANGE IN CIRCUMSTANCES; OR (II) THAT THREE YEARS HAVE PASSED SINCE THE ORDER WAS ENTERED, LAST MODIFIED OR ADJUSTED; OR (III) THERE HAS BEEN A CHANGE IN EITHER PARTY'S GROSS INCOME BY FIFTEEN PERCENT OR MORE SINCE THE ORDER WAS ENTERED, LAST MODIFIED, OR ADJUSTED; HOWEVER, IF THE PARTIES HAVE SPECIFICALLY OPTED OUT OF SUBPARAGRAPH (II) OR (III) OF THIS PARAGRAPH IN A VALIDLY EXECUTED AGREEMENT OR STIPULATION, THEN THAT BASIS TO SEEK MODIFICATION DOES NOT APPLY.

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA**

In the Matter of a **Support** Proceeding

File #: 24816

Docket #: F-00090-11/17B

Angela C Gasparini,

Petitioner,

CSMS #: BS03926P1

- against -

FINDINGS OF FACT

Michael J Rotondo,

Respondent.

Susan Hamlin Nasci, being the Support Magistrate before whom the issues of support in the above-entitled proceeding were assigned for determination, makes the following findings of fact:

The Petitioner filed a petition on February 22, 2017 seeking to modify an order dated April 19, 2012 which provided for the support of the following child:

<u>Name</u>	<u>Date of Birth</u>
[REDACTED]	

The Petitioner appeared with counsel and the Respondent appeared pro se and a hearing was held on May 25, 2017. Based upon the testimony and evidence presented the Court makes the following findings.

The prior order was entered on May 12, 2011, requiring the Respondent to pay support to the Petitioner in the sum of \$25.00 per month. The Petitioner requests an increase in support based upon the income of the Respondent or the ability to the Respondent to earn income. The prior order was entered when the Respondent was not working.

The Petitioner is self employed and her income is set forth in Appendix A, she has not day care expenses and the child is covered through Child Health Plus for medical insurance.

The Respondent testified that: he is not employed; he resides with his parents; he does not pay rent; his parents pay his cell phone expense; the Respondent pays his car insurance expense of \$460.00 every 6 months; and he pays \$162.00 per month for the storage fee for 1989 Camero, and other various items, which he has been paying for more than five years.

The Respondent testified that he is not employed at this time, and he was last employed in March 2017 as a part time ski instructor earning \$9.70 per hour for 15 hours per week. The Respondent testified about his work history and his efforts to seek employment. The Respondent did not bring a job search log to the Court as required by the Court.

The Respondent testified that: he was employed at Best Buy from 2012 to 2015, and he was terminated from this job; he received unemployment benefits after his employment at Best Buy; he attended college for a very brief period of time; he has applied for some jobs in IT/computer jobs; he is trying to start his own business doing metal working and welding, or selling internet services

to businesses; he has not applied for retail jobs or fast food jobs; he considered applying at Staples but does not think it is a good environment; and he has not found suitable full time employment.

The Court finds that there has been a sufficient change in circumstances since the entry of the prior order, in that the Respondent is able to work. Based 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. The Court finds this amount to be just and appropriate and that the Respondent is able to pay said sum, which shall be retroactive to the filing of the petition on February 22, 2017. The payments shall be made through the Support Collection Unit.

The basic child support obligation for support of the following child is \$135.00 weekly:

Name	Date of Birth
[REDACTED]	

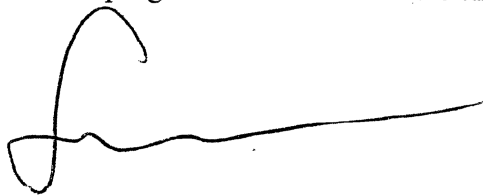
Angela C Gasparini is the custodial party, whose pro rata share of the basic child support obligation is \$79.00 weekly. Michael J Rotondo is the non-custodial party, whose pro rata share of the basic child support obligation is \$56.00 weekly.

Michael J Rotondo is not responsible for added sums for cash medical support, health insurance, uncovered health care expenses or day care expenses, as his income falls within the self support reserve or poverty level after paying the above amount toward child support.

Health insurance availability for each party is as follows: For Angela C Gasparini, health insurance is not offered through an employer or organization. For Michael J Rotondo, health insurance is not offered through an employer or organization.

The custodial party, Angela C Gasparini, shall continue the child, [REDACTED] in the New York State "Child Health Plus Program" and the New York State Medical Assistance Program or the publicly funded health insurance program in the State where the custodial parent resides.

Dated: June 13, 2017



Susan Hamlin Nasci, Support Magistrate

CC: Onondaga County Support Collection Unit
Dana Grillo, Esq.
Michael J Rotondo, Respondent
Angela C Gasparini, Petitioner

Appendix A
**Itemization of Income and Deductions of Custodial
and Non-Custodial Parents**
[FCA 413(1)(b), 413(1) (c), 413(1)(f), 416]

File: 24816
Docket: F-00090-11/17B
Petitioner: Angela C Gasparini
Respondent: Michael J Rotondo

Dated: 6/13/2017
CSMS: BS03926P1

Michael J Rotondo:

Income:

Salary (1) \$20,800.00 annually
Total: \$20,800.00 annually

Deductions:

Medicare (1) \$301.60 annually
Social Security (1) \$1,289.60 annually
Total: \$1,591.20 annually

AGI: \$19,208.80 annually

Calculated Pro Rata Share:

Number of Children in Custody of Angela C Gasparini: 1

Calculations for Child in Custody of Angela C Gasparini (1)

The child support percentage for 1 child is 17%.

	<u>Annual Adjusted Gross Income</u>	<u>Pro Rata %</u>	<u>Annual Pro Rata Share</u>	<u>Basic Support Payment</u>
Angela C Gasparini	[REDACTED]	[REDACTED]	[REDACTED]	
Michael J Rotondo	\$19,208.80	[REDACTED]	[REDACTED]	\$62.22 weekly
Total	[REDACTED]	[REDACTED]	[REDACTED]	

The presumptively correct basic child support payment is limited to \$56.30 weekly because the full percentage amount brings Michael J Rotondo's income below the self-support reserve.

Basic Child Support Obligation:

	<u>Combined</u>	<u>Angela C Gasparini</u>	<u>Michael J Rotondo</u>
Basic Support Payment	\$141.41 weekly	[REDACTED]	\$62.22 weekly
Total Additional Expenses	\$0.00 weekly	[REDACTED]	\$0.00 weekly
Total Child Support Payment	\$141.41 weekly	[REDACTED]	\$62.22 weekly

The court has determined that the support payable by Michael J Rotondo to Angela C Gasparini shall be \$56.00 weekly.