



## **MATTER FAWN MISHOOK v. JAMES MISHOOK**

432 N.Y.S.2d 265 (1980) | Cited 1 times | New York Supreme Court | September 25, 1980

Appeal from an order of the Family Court of Saratoga County, entered April 27, 1979, which increased the amount of a prior child support order of that court from \$25 per week to \$30 per week. The appellant husband contends on this appeal that the testimony of the petitioner wife at the hearing in support of the application was a nullity since it was unsworn and, therefore, legally insufficient to support the court's determination. The failure of the appellant to object to the unsworn testimony, however, waives any argument that the testimony was not properly admitted (Matter of Brown v Ristich, 36 N.Y.2d 183, 189; 2A Weinstein-Korn-Miller, NY Civ Prac, par 2309.05) and fails to preserve the issue for argument on this appeal (CPLR 5501, subd [a], par 3). The evidence revealed that the appellant husband's salary had increased from the date of the original order on March 22, 1976 and that the needs of the child of the parties had likewise increased for clothing and lunches as a result of his enrollment in school. The increase in the child's needs and the appellant's means demonstrated the change of circumstances necessary for the upward modification of the court's prior order (see Matter of Fensterheim v Fensterheim, 55 A.D.2d 516; Commissioner of Welfare v Belgrave, 16 A.D.2d 771), and provided an adequate basis therefor (cf. Matter of Fisher v Dukelow, 56 A.D.2d 739). Under the cited authorities, the appellant's further contention that a substantial change of circumstances must be shown before an upward modification can be allowed lacks merit. Accordingly, the order appealed from should be affirmed. Order affirmed, without costs.

