

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

D15091
Y/gts

_____AD3d_____

Argued - January 3, 2006

A. GAIL PRUDENTI, P.J.
ROBERT W. SCHMIDT
ANITA R. FLORIO
ROBERT A. LIFSON, JJ.

2005-00508

DECISION & ORDER ON MOTION

Kenneth Bank, appellant, v Marney White,
respondent.

(Index No. 201971/03)

Motion by appellant for leave to reargue an appeal from an order of the Supreme Court, Nassau County, dated December 21, 2004, which was determined by decision and order of this court dated June 13, 2006.

Upon the papers filed in support of the motion, and the papers filed in relation thereto, it is

ORDERED that the motion is granted, and the decision and order of this court dated June 13, 2006 (*Bank v White*, 30 AD3d 453), is recalled and vacated and the following decision and order is substituted therefor:

Potruch & Daab, L.L.C., Garden City, N.Y. (Michael C. Daab of counsel), for appellant.

Marney White, Oceanside, N.Y., respondent pro se.

In an action for a divorce and ancillary relief, the plaintiff appeals from so much of an order of the Supreme Court, Nassau County (Falanga, J.), dated December 21, 2004, as denied his cross motion for visitation with the defendant's children.

ORDERED that the order is affirmed insofar as appealed from, with costs.

May 15, 2007

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BANK v WHITE

When the plaintiff, Kenneth Bank, and the defendant, Marney White, *married in 1997*, White had a daughter *and a son*, both from a prior marriage. The parties lived together with the subject children until their separation in June 2003. During the marriage, the plaintiff played a role in the daily upbringing of the subject children and served as a “father figure” in their lives. When the parties separated, the plaintiff moved to California and the defendant remained in New York with the subject children.

By order to show cause dated October 6, 2004, the defendant requested pendente lite maintenance. The plaintiff cross-moved for visitation with the subject children. The Supreme Court, Nassau County, denied the cross motion for lack of standing.

The Supreme Court correctly denied the plaintiff’s cross motion since he lacked standing to seek visitation with his wife’s children (*see Matter of Allison D. v Virginia M.*, 77 NY2d 651; *Matter of Ronald FF. v Cindy GG.*, 70 NY2d 141). Moreover, the Supreme Court correctly determined that application of the doctrine of equitable estoppel was not warranted in this case. Although equitable estoppel has been applied by this court to visitation disputes under compelling circumstances (*cf. Jean Maby H. v Joseph H.*, 246 AD2d 282), we decline to apply it under the facts of this case (*see Matter of Multari v Sorrell*, 287 AD2d 764, 766-767; *Anonymous v Anonymous*, 20 AD3d 333).

PRUDENTI, P.J., SCHMIDT, FLORIO and LIFSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court