

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

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_____AD3d_____

Submitted - September 21, 2007

REINALDO E. RIVERA, J.P.
GABRIEL M. KRAUSMAN
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2006-07541

DECISION & ORDER

Dana Mitchell Jaffe, respondent, v Kenneth
Jaffe, appellant.

(Index No. 30176/02)

Steven C. Bernstein, Brooklyn, N.Y. (David Laniado of counsel), for appellant.

Harris D. Kantor, Lake Success, N.Y., for respondent.

In a matrimonial action in which the parties were divorced by judgment entered January 8, 2001, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (McNulty, J.), dated June 26, 2006, as denied, without a hearing, that branch of his motion which was to hold the plaintiff in contempt based upon her alleged interference with his visitation with the parties' children.

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

The Supreme Court properly denied, without a hearing, that branch of the defendant's motion which was to hold the plaintiff in contempt based upon her alleged interference with his visitation with the parties' children. A hearing is not mandated "in every instance where contempt is sought; it need only be conducted if a factual dispute exists which cannot be resolved on the papers alone" (*Bowie v Bowie*, 182 AD2d 1049, 1050; see *Matter of Ginther v Ginther*, 13 AD3d 1128; *Matter of Benny v Benny*, 199 AD2d 384). Here, the defendant's conclusory, baseless, and self-serving allegations were insufficient to raise an issue of fact necessitating a hearing, and nothing in the record would support a finding that the plaintiff failed to comply with the visitation provisions of

the separation agreement and its modification, both of which were incorporated by reference into the judgment of divorce (*see Bowie v Bowie*, 182 AD2d 1049; *cf. Mulder v Mulder*, 191 AD2d 541).

RIVERA, J.P., KRAUSMAN, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court