

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

D16743
Y/cb

_____AD3d_____

Argued - October 1, 2007

HOWARD MILLER, J.P.
GLORIA GOLDSTEIN
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2005-05373

DECISION & ORDER

Nina Fox, appellant, v Norris Fox, respondent.
(Action No. 1)

(Index No. 2565/05)

Norris Fox, respondent, v Nina Fox, appellant.
(Action No. 2)

(Index No. 19651/02)

Bruce A. Young, South Salem, N.Y. (Annette G. Hasapidis of counsel), for appellant.

Aaronson Rappaport Feinstein & Deutsch, LLP, New York, N.Y. (Steven C. Mandell of counsel), for respondent in Action No. 1.

Tyre & DeThomas, Rye, N.Y. (Frances DeThomas of counsel), for respondent in Action No. 2.

In an action, inter alia, to recover damages for medical malpractice and abuse of process (Action No. 1), and an action for a divorce and ancillary relief (Action No. 2), Nina Fox appeals from order of the Supreme Court, Westchester County (Tolbert, J.), entered May 13, 2005, which denied her motion pursuant to CPLR 602 to consolidate the two actions.

ORDERED that the appeal is dismissed as academic, with costs to the respondent.

As the trial in the divorce action (Action No. 2) has been completed and a judgment of divorce has been entered, the appeal from the instant order denying a motion to consolidate the divorce action with the action, inter alia, to recover damages for medical malpractice and abuse of process has been rendered academic (*see Penafiel v Poretz*, 12 AD3d 431, 432; *Dillon v Hershon*, 260 AD2d 425, 426; *Colonial Commercial Corp v Breskel Assoc.*, 238 AD2d 539, 539-540).

MILLER, J.P., GOLDSTEIN, SKELOS and BALKIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court