

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

D17366  
O/nl

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 23, 2007

ROBERT A. SPOLZINO, J.P.  
GABRIEL M. KRAUSMAN  
EDWARD D. CARNI  
THOMAS A. DICKERSON, JJ.

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2007-00661

DECISION & ORDER

Donna Gallagher, respondent, v William Dalton,  
appellant.

(Index No. 29344/03)

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Philip L. Kamaras, Brooklyn, N.Y., for appellant.

Marino & Bernstein, P.C., Oyster Bay, N.Y. (Anthony DeCarolis of counsel), for  
respondent.

In a matrimonial action in which the parties were divorced by judgment entered May 11, 2006, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County (Golia, J.), dated August 23, 2006, as, after a hearing, denied those branches of his motion which were to modify the visitation provisions set forth in a separation agreement dated December 8, 2003, which was incorporated into but not merged with the judgment of divorce, and to enjoin the plaintiff from, inter alia, taking the parties' child to visit her brother.

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

The defendant failed to demonstrate that, since the parties entered into the separation agreement, there was a change of circumstances warranting a modification of that agreement's visitation provisions (*see Messinger v Messinger*, 16 AD3d 562, 563; *Giurco v Giurco*, 281 AD2d 458, 459). Accordingly, the court correctly denied that branch of the defendant's motion which was to modify those provisions.

December 18, 2007

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The defendant's remaining contentions are without merit.

SPOLZINO, J.P., KRAUSMAN, CARNI and DICKERSON, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court