

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

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Y/kmg

_____AD3d_____

Argued - December 3, 2007

STEPHEN G. CRANE, J.P.
REINALDO E. RIVERA
ANITA R. FLORIO
RUTH C. BALKIN, JJ.

2007-02530

DECISION & ORDER

Tricia Justin, respondent, v
Andrew Justin, appellant.

(Index No. 203276/05)

Ira E. Garr, P.C., New York, N.Y. (Jane R. Slavin of counsel), for appellant.

Bernard G. Post, LLP, New York, N.Y. (William S. Hochenberg of counsel), for respondent.

In an action for a divorce and ancillary relief, the defendant appeals, by permission, from an order of the Supreme Court, Nassau County (Sher, J.), entered February 16, 2007, which, after a nonjury trial, granted the plaintiff a divorce on the ground of cruel and inhuman treatment.

ORDERED that the order is reversed, on the law, with costs, and the complaint is dismissed.

The plaintiff sought a divorce on the ground of cruel and inhuman treatment. After a nonjury trial, the Supreme Court granted the plaintiff a divorce. We reverse.

To obtain a divorce on the ground of cruel and inhuman treatment, the plaintiff must show conduct of the defendant spouse which “so endangers the physical or mental well being of the plaintiff as [to] render[] it unsafe or improper for the plaintiff to cohabit with the defendant” (Domestic Relations Law § 170[1]; *see Gross v Gross*, 40 AD3d 448; *Cauthers v Cauthers*, 32 AD3d 880). “When the marriage is one of long duration, a high degree of proof of cruel and inhuman treatment is required” (*Cauthers v Cauthers*, 32 AD3d at 880-881; *see Archibald v Archibald*, 15 AD3d 431,432).

January 8, 2008

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The parties were married for approximately 20 years. The plaintiff failed, as a matter of law, to establish facts which would satisfy the high degree of proof of cruel and inhuman treatment required when the marriage is one of long duration (*see Cauthers v Cauthers*, 32 AD3d at 881; *Archibald v Archibald*, 15 AD3d at 432). Accordingly, the Supreme Court improperly granted the plaintiff a divorce.

CRANE, J.P., RIVERA, FLORIO 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