

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

D18387
X/kmg

_____AD3d_____

Submitted - February 11, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2007-01451

DECISION & ORDER

Lawrence S. Schek, appellant,
v Vinni M. Schek, respondent.

(Index No. 868/05)

Martin J. Rosen, P.C., White Plains, N.Y., for appellant.

Most & Kusnetz, LLC, White Plains, N.Y. (Marcia E. Kusnetz of counsel), for
respondent.

In an action for a divorce and ancillary relief, the plaintiff husband appeals from a money judgment of the Supreme Court, Dutchess County (Sproat, J.), dated January 24, 2007, which, upon a decision of the same court dated January 5, 2007, awarded the defendant wife an attorney's fee in the sum of \$60,000.

ORDERED that the money judgment is affirmed, with costs.

The award of a reasonable attorney's fee is a matter within the sound discretion of the trial court (*see* Domestic Relations Law § 237[a]; *DeCabrera v Cabrera-Rosete*, 70 NY2d 879). An award of an attorney's fee should be based upon, inter alia, the relative financial circumstances of the parties, the relative merits of their positions, and the tactics of a party in unnecessarily prolonging the litigation (*see* Domestic Relations Law § 237[a]; *DeCabrera v Cabrera-Rosete*, 70 NY2d at 881; *Levy v Levy*, 4 AD3d 398, 398-399; *Krutyansky v Krutyansky*, 289 AD2d 299, 300; *Morrissey v Morrissey*, 259 AD2d 472, 473). The fact that the defendant wife has assets is not, by itself, a basis to deny a motion for an attorney's fee, as she "need not establish indigency as a prerequisite to an award of counsel fees" (*Lenczycki v Lenczycki*, 152 AD2d 621, 624-625).

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In view of the disparity between the incomes and resources of the parties (*see Levy v Levy*, 4 AD3d 398), and the difficulties encountered in obtaining paper discovery from the plaintiff (*cf. Griggs v Griggs*, 44 AD3d 710, 714), the court providently exercised its discretion in awarding the defendant an attorney's fee in the sum of \$60,000.

SPOLZINO, J.P., FLORIO, ANGIOLILLO and DICKERSON, 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