

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

D18489
O/prt

_____AD3d_____

PETER B. SKELOS, J.P.
MARK C. DILLON
RUTH C. BALKIN
WILLIAM E. McCARTHY, JJ.

2007-10407

DECISION & JUDGMENT

In the Matter of Esther York, petitioner,
v Sidney F. Strauss, etc., respondent.

Esther York, Holliswood, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Anthony J. Tomari of
counsel), for respondent.

Proceeding pursuant to CPLR article 78, in effect, in the nature of prohibition and mandamus, inter alia, to compel the respondent Sidney F. Strauss, a Justice of the Supreme Court, Queens County, (1) to comply with a decision and order of this Court dated May 26, 1998 (*see York v York*, 250 AD2d 838), which determined the petitioner's appeal from an order of the Supreme Court, Queens County, dated March 25, 1997, entered in an action entitled *York v York*, then pending in the Supreme Court, Queens County, under Index No. 10224/93, and remitted the matter to the Supreme Court, Queens County, for a hearing to determine the pendente lite arrears owed to the petitioner by Joseph York, the defendant in that action, and the penalty, if any, warranted by the contempt of Joseph York in violating certain prior orders of the Supreme Court, Queens County, in that action, (2) to comply with a decision and order of this Court dated October 2, 2000 (*see York v York*, 276 AD2d 481), as amended March 2, 2001, which determined the petitioner's appeal from an order of the Supreme Court, Queens County, dated January 25, 1999, entered in an action entitled *York v York*, pending in the Supreme Court, Queens County, under Index No. 11853/98, and remitted the matter to the Supreme Court, Queens County, for a hearing with respect to the petitioner's application for pendente lite relief in that action, and a decision and order on motion of this Court dated January 21, 2003, which granted the petitioner's motion to clarify the decision and order of this Court dated October 2, 2000, as amended March 2, 2001, by providing that the hearing be held "forthwith," and (3) to comply with a decision and order of this Court dated June 17, 2002 (*see York v York*, 295 AD2d 503), which determined the petitioner's appeal from an order of the Supreme Court, Queens County, dated September 12, 2000, entered in the action entitled *York v York*, pending

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in the Supreme Court, Queens County, under Index No. 11853/98, by deleting the provision thereof directing that a hearing on the petitioner's motion for a judgment for pendente lite arrears in that action and for an award of counsel fees be held at the time of trial in that action, and to prohibit the respondent from setting a deadline for the submission of post-trial memoranda in the action entitled *York v York*, pending in the Supreme Court, Queens County, under Index No. 11853/98, until the above-referenced hearings have been held.

ADJUDGED that the petition is granted, on the law, to the extent that the respondent, Sidney F. Strauss, is (1) directed to comply with the decision and order of this Court dated May 26, 1998, the decision and order of this Court dated October 2, 2000, as amended March 2, 2001, the decision and order on motion of this Court dated January 21, 2003, and the decision and order of this Court dated June 17, 2002, by holding a hearing to determine the pendente lite arrears owed to the petitioner by Joseph York, the defendant in the action under Index No. 10224/93, and the penalty, if any, warranted by the contempt of Joseph York in violating the past orders of the Supreme Court, Queens County, in that action, a hearing with respect to the petitioner's application for pendente lite relief in the action under Index No. 11853/98, and a hearing on the petitioner's motion for a judgment for pendente lite arrears in the action under Index No. 11853/98, and for an award of counsel fees in that action as expeditiously as possible, and (2) prohibited from setting a deadline for the submission of post-trial memoranda in the action entitled *York v York*, pending in the Supreme Court, Queens County, under Index No. 11853/98, until the hearings have been held; the petition is otherwise denied, and the proceeding is otherwise dismissed, without costs or disbursements.

The Supreme Court exceeded its authority in setting a deadline for the submission of post-trial memoranda in the action pending under Index No. 11853/98 before holding the hearings directed to be held by the decision and order of this Court dated May 26, 1998, and the decision and order of this Court dated October 2, 2000, as amended March 2, 2001. While it is well settled that courts have an inherent power to control their calendar (*see Travelers Ins. Co. v New York Yankees*, 102 AD2d 851), the decision and order of this Court dated June 17, 2002, deleted the provision of the Supreme Court's order dated September 12, 2000, directing that the hearings be held at the time of the trial, and the decision and order on motion of this Court dated January 21, 2003, directed that the hearings be held "forthwith." Under these circumstances, the petitioner demonstrated a clear legal right to have the hearings held before the Supreme Court set a deadline for the submission of post-trial memoranda (*see Matter of Law Offices of Russell I. Marnell, P.C., v Blydenburgh*, 26 AD3d 495; *Matter of DeCintio v Cohalan*, 18 AD3d 872). Accordingly, the petition must be granted to the extent indicated, and otherwise denied.

The petitioner's remaining contentions are without merit.

SKELOS, J.P., DILLON, BALKIN and McCARTHY, JJ., concur.

ENTER:


James Edward Selzer
Clerk of the Court