

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

D18492
W/kmg

_____AD3d_____

Argued - February 11, 2008

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
FRED T. SANTUCCI
JOHN M. LEVENTHAL, JJ.

2007-02934

DECISION & ORDER

Michael W. Torelli, respondent,
v Lina Torelli, appellant.

(Index No. 27243/05)

Walter E. Anderocci, Brooklyn, N.Y., for appellant.

Thomas K. Campagna, Ronkonkoma, N.Y., for respondent.

Marjorie E. Zuckerman, Bay Shore, N.Y., attorney for the children Michael Torelli and Daniel Torelli.

Danielle I. Schwager, P.C., Central Islip, N.Y., attorney for the child Sarah Torelli.

In an action for a divorce and ancillary relief, the defendant appeals from an order of the Supreme Court, Suffolk County (Mackenzie, J.), dated March 8, 2007, which denied her motion to compel the plaintiff to comply with a notice to submit to a physical examination by a physician designated by her and granted the plaintiff's cross motion for a protective order vacating the notice to submit to a physical examination.

ORDERED that the order is affirmed, with costs payable to the respondent.

"CPLR 3121(a) provides that when the mental or physical condition of a party is in controversy, any party may serve notice on another party to submit to a physical or mental examination by a designated physician. It is a generally accepted principle that parties to a contested custody proceeding place their physical and mental conditions in issue" (*Anonymous v Anonymous*, 5 AD3d 516, 517). Although the "broad scope of discovery permitted under the CPLR takes on particular significance in child custody disputes" (*Burgel v Burgel*, 141 AD2d 215, 216), "because

the potential for abuse in matrimonial and custody cases is ‘so great’ (*see Lohmiller v Lohmiller*, 118 AD2d 760; *cf.*, *Wegman v Wegman*, 37 NY2d 940; *Rosenblitt v Rosenblitt*, [107 AD2d 292]), the court’s discretionary power to limit disclosure and grant protective orders is equally broad” (*Garvin v Garvin*, 162 AD2d 497, 499).

In this matter, the court providently exercised its discretion in denying the defendant’s motion to compel a physical examination and granting the plaintiff a protective order, as the defendant failed to establish that a legitimate purpose would be served by requiring the plaintiff to undergo a physical examination (*id.*).

RIVERA, J.P., SKELOS, SANTUCCI and LEVENTHAL, 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