

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

D18531
O/kmg

_____AD3d_____

Submitted - February 15, 2008

HOWARD MILLER, J.P.
JOSEPH COVELLO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-02900

DECISION & ORDER

Ravi Thakur, appellant, v
Sarita K. Thakur, respondent.

(Index No. 28275/04)

Feldman and Feldman, Uniondale, N.Y. (Steven A. Feldman and Azra Feldman of counsel), for appellant.

Elliot S. Schlissel, Lynbrook, N.Y., for respondent.

In a matrimonial action in which the parties were divorced by judgment entered June 30, 2005, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County (Corrado, J.H.O.), dated February 7, 2007, as, after a hearing, granted that branch of the defendant's motion which was to vacate the judgment of divorce.

ORDERED that the order is affirmed insofar as appeal from, with costs; and it is further,

ORDERED that the defendant shall file her answer within 30 days after service upon her of a copy of this decision and order.

By order to show cause dated March 28, 2006, the defendant sought, inter alia, to vacate the judgment of divorce on the ground of fraud, misrepresentation, or other misconduct by the plaintiff (*see* CPLR 5015[a][3]). Specifically, the defendant alleged that the plaintiff knowingly misled her into signing an affidavit which averred that the plaintiff was the legal custodian of the parties' child so that the plaintiff would be awarded custody of the child when the divorce was

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finalized. A defendant seeking to vacate a judgment of divorce has the burden of establishing, by admissible evidence, the existence of fraud, misrepresentation, or other misconduct on the plaintiff's part sufficient to entitle him or her to vacatur (*see* CPLR 5015[a][3]; *Mohrmann v Lynch-Mohrmann*, 24 AD3d 735; *Badgett v Badgett*, 2 AD3d 379; *Bergen v Bergen*, 299 AD2d 308; *Cofresi v Cofresi*, 198 AD2d 321). Following an evidentiary hearing, the Supreme Court determined that the plaintiff fraudulently procured the judgment of divorce. We find no basis to disturb that determination. Accordingly, the Supreme Court properly granted that branch of the defendant's motion which was to vacate the judgment of divorce.

MILLER, J.P., COVELLO, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court