

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

D19768
Y/kmg

_____AD3d_____

Submitted - May 23, 2008

FRED T. SANTUCCI, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-07138

DECISION & ORDER

Channah Akerman, respondent, v
Michael Akerman, appellant.

(Index No. 19795/04)

Elinor B. Ribowsky, Richmond Hill, N.Y., for appellant.

Channah Akerman, Brooklyn, N.Y., respondent pro se (no brief filed).

In a matrimonial action in which the parties were divorced by judgment dated September 26, 2005, the defendant appeals from an order of the Supreme Court, Kings County (Sunshine, J.), dated June 29, 2007, which denied that branch of his motion which was to impose a monetary sanction upon the plaintiff and her former attorney, and granted that branch of his motion which was for an award of an attorney's fee only to the extent of directing a hearing on that issue.

ORDERED that the appeal from so much of the order as granted that branch of the defendant's motion which was for an award of an attorney's fee only to the extent of directing a hearing on that issue, is dismissed, without costs or disbursements; and it is further,

ORDERED that the order is affirmed insofar as reviewed, without costs or disbursements.

“An order which directs a judicial hearing to aid in the disposition of a motion is not appealable as of right because it does not decide the motion, and does not affect a substantial right” (*D’Agnese v Spinelli*, 308 AD2d 561; *see Zoref v Glassman*, 44 AD3d 1036; *Kornblum v Kornblum*, 34 AD3d 749; *Matter of James*, 5 AD3d 487). Since leave to appeal was not sought or granted, we

July 29, 2008

Page 1.

AKERMAN v AKERMAN

dismiss the appeal from so much of the order as granted that branch of the defendant's motion which was for an award of an attorney's fee only to the extent of directing a hearing on that issue.

Contrary to the defendant's contention, the Supreme Court providently exercised its discretion in denying that branch of his motion which was to impose a monetary sanction upon the plaintiff and her former attorney. The record supports the court's conclusion that neither the plaintiff nor her former attorney engaged in frivolous conduct within the meaning of 22 NYCRR 130-1.1(c)(2) (*see Arciniega v Arciniega*, 48 AD3d 607; *Tavella v Tavella*, 25 AD3d 523; *Stow v Stow*, 262 AD2d 550).

SANTUCCI, J.P., ANGIOLILLO, ENG and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court