

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

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Submitted - May 27, 2008

WILLIAM F. MASTRO, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
JOHN M. LEVENTHAL, JJ.

2007-02813

DECISION & ORDER

Johnas Cukier, respondent, v Ava Cukier, appellant.

(Index No. 0224/06)

Stern & Rindner, Goshen, N.Y. (Lynn A. Tabbott of counsel), for appellant.

Arnold D. Cribari, White Plains, N.Y., for respondent.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by her brief, from so much of a judgment of the Supreme Court, Orange County (Horowitz, J.), entered February 13, 2007, as, after a nonjury trial, awarded her maintenance for a duration of only five years.

ORDERED that the judgment is modified, on the facts and in the exercise of discretion, by increasing the duration of the maintenance award from 5 years to 10 years; as so modified, the judgment is affirmed insofar as appealed from, with costs to the defendant.

Although the Supreme Court failed to articulate the statutory factors it considered in setting maintenance, the record is sufficiently developed to allow this Court to make its own factual findings (*see Gainer v Gainer*, 100 AD2d 533).

The amount and duration of maintenance are matters left to the sound discretion of the trial court (*see Griggs v Griggs*, 44 AD3d 710). We agree with the Supreme Court that the defendant is not entitled to permanent maintenance. However, given the fact that the parties were married for more than 18 years, that the defendant was 47 years of age at the time judgment was entered and had minimal employment history, that there was a large disparity in the parties' income and educational credentials, and considering the distribution of the marital property, we find that the

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five-year duration of the award is inadequate and should be increased to 10 years (*see DeNapoli v DeNapoli*, 282 AD2d 494; *Costello v Costello*, 268 AD2d 403), and that the judgment should be modified accordingly.

MASTRO, J.P., SPOLZINO, RITTER and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court