

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

D21545
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_____AD3d_____

Argued - December 1, 2008

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2005-08725

DECISION & ORDER

Melvin Evans, appellant, v Windell Evans, as
administrator of the estate of Patty Evans, deceased,
respondent.

(Index No. 15766/03)

Philip L. Kamaras, New York, N.Y. (Martin Karopkin of counsel), for appellant.

Mirkin & Gordon, P.C., Great Neck, N.Y. (Matthew A. Steele of counsel), for
respondent.

In an action for a divorce and ancillary relief, the plaintiff appeals, as limited by his
brief, from stated portions of a judgment of the Supreme Court, Kings County (Prus, J.), entered July
19, 2005, which, after a nonjury trial, inter alia, directed him to pay the defendant the sum of \$1,000
in monthly child support retroactive to the service of the pleadings, awarded him only 15% of the
value of the marital residence, and awarded him only 10% of the defendant's pension as accrued prior
to 1989.

ORDERED that the judgment is modified, on the facts, by deleting from the sixth
decretal paragraph thereof the year "1989" and substituting therefor the year "1998"; as so modified,
the judgment is affirmed insofar as appealed from, with costs to the defendant.

Since the plaintiff presented insufficient and incredible evidence to establish his
income, the Supreme Court properly awarded child support based on the needs of the child (*see*
Domestic Relations Law § 240[1-b][k]; *Amsellem v Amsellem*, 15 AD3d 510, 510-511). Additionally,
the Supreme Court properly directed that this award was to be retroactive to the date of the initial
pleadings (*see Amsellem v Amsellem*, 15 AD3d at 511; *see also Nolfo v Nolfo*, 188 AD2d 451, 453).

December 16, 2008

Page 1.

EVANS v EVANS, as administrator of THE ESTATE OF EVANS, DECEASED

The trial court has great flexibility in fashioning an equitable distribution of marital assets (*see Smulczeski v Smulczeski*, 18 AD3d 734, 735; *Niland v Niland*, 291 AD2d 876, 877). Equitable distribution does not necessarily mean equal distribution (*see Groesbeck v Groesbeck*, 51 AD3d 722, 723; *Falgoust v Falgoust*, 15 AD3d 612, 614; *Rizzuto v Rizzuto*, 250 AD2d 829, 830). In light of the evidence that the plaintiff contributed minimally to the marriage, the court's determination with regard to the equitable distribution of the marital property was a provident exercise of discretion (*see Arrigo v Arrigo*, 38 AD3d 807, 807-808; *Chalif v Chalif*, 298 AD2d 348; *Greene v Greene*, 250 AD2d 572; *cf. Simmons v Simmons*, 301 AD2d 515).

However, modification of the order is required in light of the concession in the defendant's brief that the date of the cutoff of the award of a share of the defendant's pension benefits to the plaintiff should be December 31, 1998, not December 31, 1989.

The plaintiff's remaining contentions are without merit.

SKELOS, J.P., SANTUCCI, McCARTHY and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court