

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

D21668
C/kmg

_____AD3d_____

Argued - December 2, 2008

WILLIAM F. MASTRO, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
EDWARD D. CARNI, JJ.

2008-00021

DECISION & ORDER

James Reid, respondent, v
Claire J. Reid, appellant.

(Index No. 203185/05)

Sheresky Aronson Mayefsky & Sloan, LLP, New York, N.Y. (Norman M. Sheresky
and Heidi Harris of counsel), for appellant.

Andrew M. Doktofsky, Huntington, N.Y., for respondent.

In an action for a divorce and ancillary relief, the defendant wife appeals from an interlocutory judgment of the Supreme Court, Kings County (Diamond, J.), entered May 19, 2008, which, after a nonjury trial, awarded the plaintiff husband a divorce on the ground of abandonment.

ORDERED that the interlocutory judgment is affirmed, with costs.

Contrary to the defendant's contention, the plaintiff made out a prima facie case of divorce on the ground of constructive abandonment by testifying at trial that for at least one year prior to the commencement of this action, the defendant had unjustifiably refused to engage in sexual relations with him, despite his repeated requests (*see Czaban v Czaban*, 44 AD3d 894).

The defendant's testimony that the parties had reached an agreement that they would continue in a sexless marriage raised an issue of credibility, and we decline to disturb the Supreme Court's determination with respect thereto (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492; *Zeltser v Sacerdote*, 52 AD3d 834; *Campbell v Campbell*, 50 AD3d 614).

December 30, 2008

Page 1.

REID v REID

The defendant's remaining contentions are without merit.

MASTRO, J.P., MILLER, ANGIOLILLO and CARNI, 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