

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

D22658
W/kmg

_____AD3d_____

Submitted - March 3, 2009

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
JOSEPH COVELLO
RANDALL T. ENG, JJ.

2007-07777

DECISION & ORDER

Anamika Roy Guha, respondent,
v Steven Guha, a/k/a Subrata Guha,
a/k/a Shone Guha, appellant.

(Index No. 200410/03)

Ialenti & Macari, Mineola, N.Y. (Marc J. Ialenti of counsel), for appellant.

Law Offices of Russell I. Marnell, P.C., East Meadow, N.Y. (Scott R. Schwartz of counsel), for respondent.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by his brief, from stated portions of a judgment of the Supreme Court, Nassau County (Iannacci, J.), entered June 22, 2007, which, upon a decision of the same court dated March 23, 2007, made after a nonjury trial, inter alia, awarded him only 30% of the value of the marital residence, and only 5% of the value of the plaintiff's enhanced earning capacity, and failed to award him maintenance.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

Contrary to the defendant's contention, the Supreme Court did not err in awarding him only 30% of the value of the marital residence and 5% of the value of the plaintiff's enhanced earning capacity. "Equitable distribution does not necessarily mean equal distribution" (*Evans v Evans*, 57 AD3d 718, 719; see *Groesbeck v Groesbeck*, 51 AD3d 722, 723; *Falgoust v Falgoust*, 15 AD3d 612, 614). "Where only modest contributions are made by the nontitled spouse toward the other spouse's attainment of a degree or professional license, and the attainment is more directly the result of the titled spouse's own ability, tenacity, perseverance and hard work, it is appropriate for courts to limit

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the distributed amount of that enhanced earning capacity” (*Higgins v Higgins*, 50 AD3d 852, 853, quoting *Farrell v Cleary-Farrell*, 306 AD2d 597, 599-600).

Here, the evidence at trial established that the defendant made minimal financial contributions to the marriage (*see Evans v Evans*, 57 AD3d at 719; *Arrigo v Arrigo*, 38 AD3d 807; *Sade v Sade*, 251 AD2d 646, 647). The defendant, moreover, failed to satisfy his burden of demonstrating that he made substantial contributions to the plaintiff's attainment of her license to practice medicine in the United States (*see Higgins v Higgins*, 50 AD3d at 853; *Brough v Brough*, 285 AD2d 913, 914; *Sade v Sade*, 251 AD2d at 647). The record reflects that the plaintiff completed medical school in India prior to meeting the defendant and that she passed the United States Medical Licensing Examination based on her own ability, tenacity, perseverance, and hard work (*see Gandhi v Gandhi*, 283 AD2d 782, 784-785). Thus, the Supreme Court, after properly considering the relevant statutory factors (*see Domestic Relations Law* § 236[B][5]; *Arrigo v Arrigo*, 38 AD3d 807; *Falgoust v Falgoust*, 15 AD3d at 614), providently exercised its discretion in distributing the marital estate.

Contrary to the defendant's contention, the Supreme Court properly declined to award him maintenance (*see Arrigo v Arrigo*, 38 AD3d at 808; *Gainey v Gainey*, 303 AD2d 628, 630-631).

The defendant's remaining contentions are without merit.

SPOLZINO, J.P., FLORIO, COVELLO and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court