

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

D25237  
G/kmg

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Argued - October 23, 2009

STEVEN W. FISHER, J.P.  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG  
PLUMMER E. LOTT, JJ.

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2008-11707  
2009-02621  
2009-02622  
2009-04589  
2009-05122

DECISION & ORDER

John Frates, respondent, v Kelly Frates, appellant.

(Index No. 1493/07)

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Debra P. Marin, Valhalla, N.Y., for appellant.

Stephen M. Santoro, Sr., P.C., Carmel, N.Y. (Sarah R. Scigliano of counsel), for respondent.

In an action for a divorce and ancillary relief, the defendant wife appeals, as limited by her brief, (1) from stated portions of an order of the Supreme Court, Putnam County (O'Rourke, J.), dated November 19, 2008, which, inter alia, granted that branch of her motion which was for interim child support and maintenance only to the extent of awarding her the sum of \$3,000 per month plus reimbursement for mortgage, taxes, and home insurance in the sum of \$3,376 per month, and denied those branches of her motion which were for an award of interim attorney's fees and to direct the plaintiff husband to obtain additional life insurance, (2) from so much of an order of the same court dated February 19, 2009, as, upon reargument, adhered to the original determinations in the order dated November 19, 2008, granting that branch of her motion which was for interim child support and maintenance only to the extent of awarding her the sum of \$3,000 per month, plus

December 8, 2009

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reimbursement for mortgage, taxes, and home insurance in the sum of \$3,376 per month, and denying those branches of her motion which were for an award of interim attorney's fees and to direct the plaintiff to obtain additional life insurance, (3) from stated portions of an order of the same court, also dated February 19, 2009, which, inter alia, directed her to pay the sum of \$325 per month toward repayment of a bank loan, (4) from stated portions of an order of the same court dated April 3, 2009, which, inter alia, denied that branch of her motion which was to hold the plaintiff in contempt for failure to comply with the order dated November 19, 2008, for alleged nonpayment of interim child support and maintenance and denied her application for an award of interim attorney's fees, and (5) from stated portions of an order of the same court dated May 15, 2009, which, inter alia, denied those branches of her motion which were to appoint a forensic expert and to vacate the note of issue.

ORDERED that the appeal from so much of the order dated November 19, 2008, as granted that branch of the defendant's motion which was for interim child support and maintenance only to the extent of awarding her the sum of \$3,000 per month plus reimbursement for mortgage, taxes, and home insurance in the sum of \$3,376 per month, and denied those branches of her motion which were for an award of interim attorney's fees and to direct the plaintiff to obtain additional life insurance is dismissed, as those portions of the order were superseded by the first order dated February 19, 2009, made upon reargument; and it is further,

ORDERED that the order dated November 19, 2008, is affirmed insofar as reviewed; and it is further,

ORDERED that the two orders dated February 19, 2009, and the orders dated April 3, 2009, and May 15, 2009, are affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

The defendant's contention that the Supreme Court's pendente lite award of child support and maintenance was inadequate is without merit. The purpose of a pendente lite award is to "ensure that a needy spouse is provided with funds for his or her support and reasonable needs and those of the children in his or her custody" (*Pascale v Pascale*, 226 AD2d 439, 440; see *Mueller v Mueller*, 61 AD3d 652, 653). Moreover, the proper remedy for any perceived inequity in a pendente lite award is a speedy trial (see *Anderson v Anderson*, 50 AD3d 610).

Here, in addition to awarding the defendant pendente lite maintenance and child support in the sum of \$3,000 per month, the Supreme Court directed the plaintiff to pay the sum of \$3,376 per month for the mortgage, taxes, and home insurance on the marital residence, and the sum of \$325 per month toward repayment of a bank loan the parties had jointly executed. Additionally, the plaintiff was directed to maintain life and health insurance for the defendant and the parties' children, and to pay 70% of the children's unreimbursed medical expenses and extracurricular activities.

Under these circumstances, the pendente lite child support and maintenance awards were sufficient to meet the reasonable needs of the defendant and the children during the pendency

of the action (*see McGarrity v McGarrity*, 49 AD3d 824, 825).

The parties' remaining contentions are without merit.

FISHER, J.P., ANGIOLILLO, ENG and LOTT, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court