

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

D26493
Y/mv

_____AD3d_____

Submitted - February 19, 2010

MARK C. DILLON, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
SANDRA L. SGROI, JJ.

2008-10420

DECISION & ORDER

Malina Nealis, appellant, v
Kevin Nealis, respondent.

(Index No. 4602/07)

Gaines, Gruner, Ponzini & Novick, LLP, White Plains, N.Y. (Steven H. Gaines and
Denise M. Cossu of counsel), for appellant.

Alysia R. Baker, Goshen, N.Y., for respondent.

In an action for a divorce and ancillary relief, the plaintiff appeals, as limited by her brief and a letter dated February 18, 2010, from so much of an order of the Supreme Court, Orange County (Alessandro, J.), dated September 30, 2008, as granted that branch of her cross motion which was for an award of \$25,000 per month in pendente lite child support only to the extent of awarding her \$1,500 per month in pendente lite child support.

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

The plaintiff wife and the defendant husband were married on August 25, 1984; they have three children. During their marriage, the parties invested in small and mid-sized rental properties throughout the tri-state area, eventually owning 23 buildings with an estimated total value of \$50,000,000. On or about May 25, 2007, the plaintiff commenced this action for a divorce and ancillary relief. Approximately one year later, she cross-moved for certain pendente lite relief, including \$25,000 per month in child support. The Supreme Court granted that branch of her motion to the extent of awarding her \$1,500 per month in child support. The plaintiff appeals. We affirm.

March 16, 2010

NEALIS v NEALIS

Page 1.

Modifications of pendente lite awards should rarely be made by an appellate court and then only under exigent circumstances, such as when a party cannot meet his or her financial obligations (*see Brooks v Brooks*, 30 AD3d 363, 364; *Otto v Otto*, 13 AD3d 503). “[A]ny perceived inequities in pendente lite support and maintenance can best be remedied by a speedy trial, at which the parties’ financial circumstances can be fully explored” (*Swickle v Swickle*, 47 AD3d 704, 705). Here, the plaintiff failed to meet her burden of demonstrating exigent circumstances.

We reject the defendant’s contention that the plaintiff should be sanctioned for filing an allegedly frivolous appeal (*see generally* 22 NYCRR 130-1.1).

DILLON, J.P., SANTUCCI, BALKIN and SGROI, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court