

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

D26929
G/kmg

_____AD3d_____

Submitted - March 22, 2010

FRED T. SANTUCCI, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2008-11153

DECISION & ORDER

Seemita Ray, plaintiff-respondent, v Arka Ray, appellant;
Eric Ole Thorsen, nonparty-respondent.

(Index No. 4929/06)

William A. Gerard, Palisades, N.Y., for appellant.

Eric Ole Thorsen, New City, N.Y., nonparty-respondent pro se.

In an action for a divorce and ancillary relief, the defendant appeals from a judgment of the Supreme Court, Rockland County (Weiner, J.), dated September 4, 2008, which, upon a decision of the same court dated May 21, 2008, made after a hearing, and upon the granting of the motion of the nonparty, Eric Ole Thorsen, for an award of counsel fees to the extent of directing the defendant to pay him counsel fees in the principal sum of \$10,000, representing a portion of the plaintiff's counsel fees, is in favor of the nonparty, Eric Ole Thorsen, and against him in the principal sum of \$10,000.

ORDERED that the judgment is reversed, on the facts and in the exercise of discretion, with costs, and the motion of the nonparty, Eric Ole Thorsen, is denied in its entirety.

Considering the financial circumstances of both parties and other circumstances of this case (*see* Domestic Relations Law § 237[a]; *Johnson v Chapin*, 12 NY3d 461, 467; *De Cabrera v Cabrera-Rosete*, 70 NY2d 879, 881), the Supreme Court improvidently exercised its discretion in

April 13, 2010

Page 1.

RAY v RAY

directing the defendant to pay \$10,000 of the plaintiff's counsel fees. On this record, the plaintiff had sufficient funds to pay her counsel fees.

SANTUCCI, J.P., ANGIOLILLO, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court