

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

D27114  
C/kmg

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Argued - April 9, 2010

WILLIAM F. MASTRO, J.P.  
FRED T. SANTUCCI  
ARIEL E. BELEN  
CHERYL E. CHAMBERS, JJ.

2009-04981

DECISION & ORDER

Susan Gordon, respondent, v John Grocki, appellant.

(Index No. 202030/07)

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Breiter and Gura, LLP, Garden City, N.Y. (Jeanne C. Breiter of counsel), for appellant.

Gassman, Baiamonte, Betts & Tannenbaum, P.C., Garden City, N.Y. (Stephen Gassman of counsel), for respondent.

In an action for a divorce and ancillary relief, the defendant appeals from an order of the Supreme Court, Nassau County (Brown, J.), dated May 11, 2009, which denied his motion to dismiss the complaint for failure to prosecute pursuant to CPLR 3216, or to stay all proceedings for 30 days pursuant to CPLR 321, but permit him to proceed in all other matters that were not before the Supreme Court, including, but not limited to, pending appeals taken by him. Motion by the plaintiff, inter alia, to dismiss the appeal as academic. By decision and order on motion of this Court dated January 22, 2010, that branch of the motion which was to dismiss the appeal as academic was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the argument of the appeal, it is,

ORDERED that the branch of the motion which is to dismiss, as academic, the appeal insofar as it relates to the stay request is granted, and the motion is otherwise denied; and it is further,

April 27, 2010

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ORDERED that the order is affirmed insofar as reviewed; and it is further,

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

Under the circumstances of this case, the Supreme Court did not improvidently exercise its discretion in denying that branch of the defendant's motion which was to dismiss the complaint.

MASTRO, J.P., SANTUCCI, BELEN and CHAMBERS, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court