

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

D28827
H/prt

_____AD3d_____

Argued - October 4, 2010

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2010-01643

DECISION & ORDER

William Alderman, respondent,
v Donna Alderman, appellant.

(Index No. 9918/04)

Wilson Elser Moskowitz Edelman & Dicker LLP, New York, N.Y. (Patrick J. Lawless and John M. Ruti of counsel), for appellant.

Fredman Baken & Kosan, LLP, White Plains, N.Y. (E. Michael Kosan of counsel), for respondent.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by her brief, from so much of an order of the Supreme Court, Westchester County (Walker, J.), entered January 21, 2010, as denied her motion to vacate an order of the same court dated October 2, 2009 (Snyder, Ct. Atty. Ref.), which directed her to return the sum of \$1,165,608.16 which had been removed from two bank accounts in her name, and enjoined her from transferring or withdrawing those funds without court approval.

ORDERED that the order entered January 21, 2010, is affirmed insofar as appealed from, with costs.

Pursuant to CPLR 5015(a), a court may vacate an order upon the grounds of excusable default, newly discovered evidence, fraud, misrepresentation or other misconduct, lack of jurisdiction to render the order, or reversal of a prior order or judgment upon the which the current order is based. Here, the defendant (hereinafter the wife) failed to show that there was a basis to vacate the order dated October 2, 2009, on any of these grounds. Moreover, the wife failed to show

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that there was a basis to vacate that order in the interest of justice (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68; *Matter of McKenna v County of Nassau, Off. of County Attorney*, 61 NY2d 739, 741-742; *Katz v Marra*, 74 AD3d 888, 890-891).

The wife's remaining contentions are without merit.

RIVERA, J.P., ANGIOLILLO, CHAMBERS and AUSTIN, JJ., concur.

2010-01643

DECISION & ORDER ON MOTION

William Alderman, respondent,
v Donna Alderman, appellant.

(Index No. 9918/04)

Motion by the appellant on an appeal from an order of the Supreme Court, Westchester County (Walker, J.), entered January 21, 2010, inter alia, to strike the respondent's brief on the ground that it refers to matter dehors the record. By decision and order on motion of this Court dated July 30, 2010, the branch of the motion which was to strike the respondent's brief 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, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the branch of the motion which was to strike the respondent's brief is denied.

RIVERA, J.P., ANGIOLILLO, CHAMBERS and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court