

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

D29630
H/prt

_____AD3d_____

Submitted - December 16, 2010

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
SANDRA L. SGROI, JJ.

2009-10152

DECISION & ORDER

Mark Musachio, plaintiff, v Annmarie Musachio,
appellant; Kenneth J. Weinstein, nonparty-respondent.

(Index No. 21672/04)

Annmarie Musachio, Kings Park, N.Y., appellant pro se.

In an action for a divorce and ancillary relief, the defendant appeals from an order of the Supreme Court, Suffolk County (Bivona, J.), dated September 21, 2009, which, inter alia, granted that branch of the motion of the nonparty, Kenneth J. Weinstein, which was for leave to withdraw as her counsel.

ORDERED that the order is affirmed, without costs or disbursements.

“The decision to grant or deny permission for counsel to withdraw lies within the discretion of the trial court, and the court’s decision should not be overturned absent a showing of an improvident exercise of discretion” (*Cashdan v Cashdan*, 243 AD2d 598, 598; *see Ben-Yu Zhan v Sun Wing Wo Realty Corp.*, 208 AD2d 668). Based upon the papers submitted in support of and in opposition to the motion of the defendant’s counsel for leave to withdraw and the record of proceedings on the motion, the Supreme Court did not improvidently exercise its discretion in permitting counsel to withdraw on the grounds of the defendant’s nonpayment of legal fees and a breakdown in the attorney-client relationship (*see Misesk-Falkoff v Metropolitan Tr. Auth.*, 65 AD3d 576; *Weiss v Spitzer*, 46 AD3d 675; *Winters v Winters*, 25 AD3d 601; *Kay v Kay*, 245 AD2d 549;

January 25, 2011

Page 1.

MUSACHIO v MUSACHIO

Galvano v Galvano, 193 AD2d 779; *Stephen Eldridge Realty Corp. v Green*, 174 AD2d 564; Rules of Professional Conduct [22 NYCRR 1200.0] rule 1.16[c][5], [7]).

PRUDENTI, P.J., ANGIOLILLO, FLORIO and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court