

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

D29980  
H/kmb

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Submitted - January 20, 2011

A. GAIL PRUDENTI, P.J.  
REINALDO E. RIVERA  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

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2010-00352

DECISION & ORDER

Sidney Waldon Witter, respondent,  
v Mourad Daire, appellant.

(Index No. 6004/08)

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Grimes & Zimet, Chappaqua, N.Y. (John J. Grimes of counsel), for appellant.

Bodnar & Milone, LLP, White Plains, N.Y. (David Elbaum of counsel), for respondent.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Westchester County (Tolbert, J.), entered November 30, 2009, as granted that branch of the plaintiff's motion which was for an award of an attorney's fee pursuant to 22 NYCRR 130-1.1.

ORDERED that the order is reversed insofar as appealed from, on the facts and in the exercise of discretion, with costs, and that branch of the plaintiff's motion which was for an award of an attorney's fee pursuant to 22 NYCRR 130-1.1 is denied.

It is not clear from the record that the failure of the defendant's counsel to turn over certain documents to the plaintiff's counsel was "frivolous" within the meaning of 22 NYCRR 130-1.1(c). Indeed, the Supreme Court did not find that either the defendant or his attorney acted purposefully, but rather characterized the conduct in question as an "error." Accordingly, under the

February 8, 2011

Page 1.

WITTER v DAIRE

circumstances of this case, the award of an attorney's fee in the sum of \$7,713.75 to the plaintiff pursuant to 22 NYCRR part 130 was not warranted.

PRUDENTI, P.J., RIVERA, LOTT and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court