

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

D30262  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 28, 2011

WILLIAM F. MASTRO, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
ROBERT J. MILLER, JJ.

2009-08041

DECISION & ORDER

Deirdre Stevens, respondent, v  
Thomas Stevens, appellant.

(Index No. 28540/99)

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Robert A. Bruno, Hauppauge, N.Y., for appellant.

John Ray, Miller Place, N.Y., for respondent.

In a matrimonial action in which the parties were divorced by judgment entered April 23, 2002, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (McNulty, J.), dated June 30, 2009, as, after a hearing, denied that branch of his motion which was to modify the judgment by vacating the provision obligating him to pay child support for the parties' daughter, and granted that branch of his motion which was to enforce an obligation to pay a certain loan the plaintiff had agreed to pay pursuant to the stipulation of settlement which was incorporated, but not merged, into the divorce judgment, only to the extent of determining that the plaintiff must pay only \$4,500 of the principal and only the interest accrued from January 5, 2007.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Child support payments may be waived prospectively, before the obligation to make such payments has accrued (*see Matter of O'Connor v Curcio*, 281 AD2d 100). The party claiming a waiver must come forward with evidence of a voluntary and intentional relinquishment of a known and otherwise enforceable right to child support (*see Matter of Barrio v Montanez*, 71 AD3d 1140). We agree with the Supreme Court that while the evidence supports a finding that the plaintiff waived

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her right to child support for the parties' son, upon their agreement for the defendant to take physical custody of him, the plaintiff did not waive her right to child support for their daughter, who continued to live with her.

Furthermore, the Supreme Court providently exercised its discretion in determining that the plaintiff only was responsible for the payment of \$4,500 of the principal and for interest which accrued on a loan she agreed to pay pursuant to the parties' stipulation of settlement, from the date of the defendant's motion, *inter alia*, seeking to enforce that obligation, January 5, 2007.

MASTRO, J.P., BALKIN, LEVENTHAL and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court