

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

D30263  
Y/prt

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

Argued - January 25, 2011

MARK C. DILLON, J.P.  
JOSEPH COVELLO  
ANITA R. FLORIO  
L. PRISCILLA HALL, JJ.

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2009-08816

DECISION & ORDER

Dina Ann Goldkranz, appellant, v  
Gerard Goldkranz, respondent.

(Index No. 20992/05)

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Parola & Gross, LLP, Wantagh, N.Y. (Barry J. Gross of counsel), for appellant.

Del Vecchio & Recine, LLP, Garden City, N.Y. (Phyllis Recine and Jaclene Agazarian  
of counsel), for respondent.

In an action for a divorce and ancillary relief, the plaintiff appeals, as limited by her brief, from stated portions of an order of the Supreme Court, Queens County (Strauss, J.), dated July 27, 2009, which, inter alia, denied those branches of her motion which were, in effect, for an award of interest pursuant to Domestic Relations Law § 244 on unpaid counsel fees in the sum of \$39,104 and for an award of arrears of pendente lite maintenance.

ORDERED that the order is modified, on the law, by (1) deleting the provision thereof denying that branch of the plaintiff's motion which was, in effect, for an award of interest pursuant to Domestic Relations Law § 244 on unpaid counsel fees of \$39,104 and substituting therefor a provision granting that branch of the motion, and (2) deleting the provision thereof denying that branch of the plaintiff's motion which was for an award of arrears of pendente lite maintenance; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements, and the matter is remitted to the Supreme Court, Queens County, for further proceedings consistent herewith.

The Supreme Court erred in denying that branch of the plaintiff's motion which was, in effect, for an award of interest pursuant to Domestic Relations Law § 244 on unpaid counsel fees

March 1, 2011

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in the sum of \$39,104. Domestic Relations Law § 244 provides that, in enforcement proceedings, an award of prejudgment interest is mandatory where “the default was willful, in that the obligated spouse knowingly, consciously and voluntarily disregarded the obligation under a lawful court order” (Domestic Relations Law § 244). Here, in an order dated January 25, 2008, the defendant was directed to pay the plaintiff counsel fees in the sum of \$39,104, and in the order appealed from, the Supreme Court found that the defendant’s default in paying that sum was willful. Accordingly, an award of prejudgment interest on the unpaid counsel fees was required by statute (*see Perri v Perri*, 265 AD2d 539, 540; *Lewis v Weiner*, 191 AD2d 172, 173; *Powers v Powers*, 171 AD2d 737, 738), and the matter must be remitted to the Supreme Court for calculation of the interest due.

In addition, the Supreme Court erred in summarily denying that branch of the plaintiff’s motion which was for an award of arrears of pendente lite maintenance. In opposition to this branch of the plaintiff’s motion, the defendant contended that he had made certain specific pendente lite maintenance payments which the plaintiff alleged had not been paid, but he conceded that for 21 consecutive weeks during the relevant period of time, he had failed to pay the plaintiff maintenance in the amount of \$1,250 per week as required by the pendente lite support order. However, he averred that he had subsequently paid the plaintiff the sum of \$15,000 towards his pendente lite maintenance arrears, “thus substantially reducing the arrears in direct support.” In light of the parties’ sharply conflicting factual allegations, the Supreme Court should have set the matter down for an evidentiary hearing to determine the amount, if any, of pendente lite maintenance arrears due pursuant to the pendente lite order (*see Fackelman v Fackelman*, 50 AD3d 732, 734; *D’Anna v D’Anna*, 17 AD3d 400, 401; *Vogel v Vogel*, 12 AD3d 592, 592-593; *Rogers v Rogers*, 151 AD2d 738). Accordingly, this matter must be remitted to the Supreme Court, Queens County, for a hearing on this issue, and a new determination thereafter.

The plaintiff’s remaining contention is without merit.

DILLON, J.P., COVELLO, FLORIO and HALL, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court