

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

D30363
O/prt

_____AD3d_____

Submitted - February 17, 2011

JOSEPH COVELLO, J.P.
ARIEL E. BELEN
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-00857

DECISION & ORDER

Renata Brody, etc., appellant, v
Dennis Brody, respondent.

(Index No. 24130/03)

Wisselman, Harounian & Associates, P.C., Great Neck, N.Y. (Lloyd C. Rosen of counsel), for appellant.

Cordova & Schwartzman, LLP, Garden City, N.Y. (Jonathan B. Schwartzman of counsel), for respondent.

In a matrimonial action in which the parties were divorced by judgment entered March 8, 2004, the plaintiff appeals, as limited by her brief, from stated portions of an order of the Supreme Court, Suffolk County (McNulty, J.), dated December 11, 2009, which, inter alia, denied those branches of her motion which were to set aside the child support provisions of a stipulation of settlement entered into by the parties on September 13, 2002, which was incorporated but not merged into the judgment of divorce, on the ground that those provisions did not comply with Domestic Relations Law § 240(1-b)(h), and to recalculate child support de novo.

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

The Supreme Court properly denied those branches of the plaintiff's motion which were to set aside the child support provisions of a stipulation of settlement entered into by the parties on September 13, 2002, which was incorporated but not merged into a judgment of divorce, on the ground that those provisions did not comply with Domestic Relations Law § 240(1-b)(h), and to recalculate child support de novo. "A postjudgment motion in a matrimonial action is not the proper

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vehicle for challenging the propriety of child support provisions contained in a stipulation of settlement incorporated but not merged into a judgment of divorce” (*Lepe v Rodriguez*, 73 AD3d 710, 710-711; *see Barany v Barany*, 71 AD3d 613, 614; *Makara v Makara*, 65 AD3d 1018, 1019; *cf. Luisi v Luisi*, 6 AD3d 398, 400). “A challenge to such a stipulation must be made by the commencement of a separate plenary action to set aside the stipulation” (*Lepe v Rodriguez*, 73 AD3d at 711; *see Barany v Barany*, 71 AD3d at 614; *Makara v Makara*, 65 AD3d at 1019).

The plaintiff’s remaining contentions are either improperly raised for the first time on appeal or without merit.

COVELLO, J.P., BELEN, HALL and COHEN, 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