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

D30469
C/prt

_____AD3d_____ Argued - January 25, 2011

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

2009-07905
2009-07911
2009-07912
1020-00491

DECISION & ORDER

Elise Flangos, respondent, v Paul Flangos, defendant-appellant; Provident Mutual Life Insurance Company of Philadelphia, nonparty-appellant.

(Index No. 18399/04)

White and Williams LLP, New York, N.Y. (Rafael Vergara of counsel), for nonparty-appellant.

Jones Garneau, LLP, Scarsdale, N.Y. (Stephen J. Jones and Marcy Blake of counsel), for respondent.

In an action for a divorce and ancillary relief, nonparty Provident Mutual Life Insurance Company of Philadelphia appeals, as limited by its brief, from (1) so much of an order of the Supreme Court, Westchester County (Walker, J.), entered August 16, 2006, as directed it to make certain payments, (2) so much of an order of the same court, also entered August 16, 2006, as directed it to make certain payments, (3) so much of an amended judgment of the same court dated September 25, 2007, as directed it to make certain payments, and (4) so much of an order of the same court (Scarpino, Jr., J.), entered November 19, 2009, as denied those branches of its motion which were to vacate so much of the amended judgment dated September 25, 2007, and the two orders entered August 16, 2006, as directed it to make certain payments and, sua sponte, in effect, amended a provision in the amended judgment directing it to give notice of stated proposed changes in the payments, and the defendant separately appeals from the amended judgment.

ORDERED that the appeals from the orders entered August 16, 2006, are dismissed; and it is further,

ORDERED that the appeal from so much of the order entered November 19, 2009, as denied those branches of the motion of the nonparty-appellant which were to vacate the subject portions of the two orders entered August 16, 2006, is dismissed, as the subject portions of the two orders entered August 16, 2006, were superseded by the amended judgment; and it is further,

ORDERED that on the Court's own motion, so much of the notice of appeal as purports to appeal from so much of the order entered November 19, 2009, as, sua sponte, in effect, amended a provision in the amended judgment, is deemed to be an application for leave to appeal from that portion of the order, and leave to appeal from that portion of the order is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order entered November 19, 2009, is reversed insofar as reviewed, on the law, that branch of the nonparty-appellant's motion which was to vacate so much of the amended judgment as directed it to make certain payments is granted, so much of the amended judgment as directed the nonparty-appellant to make certain payments is vacated, and that portion of the order entered November 19, 2009, which, sua sponte, in effect, amended a provision in the amended judgment is vacated, and the orders entered August 16, 2006, are modified accordingly; and it is further,

ORDERED that the nonparty-appellant's appeal from the amended judgment is dismissed as academic in light of our determination on the appeal from the order entered November 19, 2009; and it is further,

ORDERED that the defendant's appeal from the amended judgment is dismissed, for failure to perfect the same in accordance with the rules of this Court (*see* 22 NYCRR 670.8[c], [e]); and it is further,

ORDERED that one bill of costs is awarded to the nonparty-appellant, payable by the plaintiff.

The appeals from the intermediate orders must be dismissed, because the right of direct appeal therefrom terminated with the entry of the amended judgment in the action (*see Matter of Aho,* 39 NY2d 241, 248). The issues raised on the appeals from the intermediate orders are brought up for review and have been considered on the appeals from the amended judgment and the order entered November 19, 2009.

The Supreme Court lacked jurisdiction to impose obligations in the amended judgment upon the nonparty-appellant. "A court has no power to grant relief against an entity not named as a party and not properly summoned before the court" (*Riverside Capital Advisors, Inc. v First Secured Capital Corp.,* 28 AD3d 457, 460). Accordingly, the Supreme Court should have granted that branch of the nonparty-appellant's motion which was to vacate so much of the amended judgment as directs it to make certain payments. Similarly, the Supreme Court erred to the extent that it, sua sponte, in effect, amended a provision in the amended judgment directing the nonparty-appellant to give notice of stated proposed changes in the payments. Contrary to the plaintiff's contention, the amended judgment itself is not a proper income execution order under CPLR 5241, nor is it a proper income deduction order under CPLR 5242.

The remaining contentions are improperly raised for the first time on appeal (*see e.g.*

Global Connect Strategic Voice of Broadcasting, Corp. v Oxford Collection Agency, Inc., 50 AD3d 737, 737; *Lake Anne Realty Corp. v Lake Anne Monroe Assoc., LLC,* 29 AD3d 866, 866).

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

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DECISION & ORDER ON MOTION

Elise Flangos, respondent, v Paul Flangos, defendant-appellant; Provident Mutual Life Insurance Company of Philadelphia, nonparty-appellant.

(Index No. 18399/04)

Cross motion by the respondent on appeals from, inter alia, two orders of the Supreme Court, Westchester County, both entered August 16, 2006, to dismiss the appeals from those two orders on the ground that the right of direct appeal from those orders terminated upon the entry of an amended judgment dated September 25, 2007. By decision and order on motion of this Court dated May 17, 2010, that branch of the cross motion was held in abeyance and referred to the panel of Justices hearing the appeals for determination upon the argument or submission of the appeals.

Upon the papers submitted in support of the cross motion and the papers submitted in opposition thereto, and upon the argument of the appeals, it is

ORDERED that the branch of the cross motion which was to dismiss the appeals from the two orders entered August 16, 2006, on the ground that the right of direct appeal from those orders terminated upon the entry of the amended judgment is denied in light of our determination of the appeals (*see Flangos v Flangos,* __ AD3d __ [decided herewith]).

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

ENTER:

Matthew G. Kiernan
Clerk of the Court