

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

D30480
H/kmb

_____AD3d_____

Submitted - February 28, 2011

JOSEPH COVELLO, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2010-01379

DECISION & ORDER

Todd R. Coven, respondent, v Aurily T. Coven,
appellant.

(Index No. 35954/08)

Gassman, Baiamonte, Betts & Tannenbaum, P.C., Garden City, N.Y. (Steven D. Kommor and Stephen Gallman of counsel), for appellant.

Thomas K. Campagna, P.C., Ronkonkoma, N.Y., for respondent.

In an action for a divorce and ancillary relief, the defendant wife appeals, as limited by her brief, from so much of an order of the Supreme Court, Suffolk County (Kent, J.), dated January 12, 2010, as (1) granted that branch of her cross motion which was for an award of interim counsel fees in the sum of \$25,000 only to the extent of awarding her the sum of \$10,000, (2) granted that branch of her cross motion which was for an award of pendente lite maintenance and child support to the extent of awarding her only the sum of \$5,000 per month in pendente lite maintenance and \$3,500 per month in pendente lite child support, and (3) directed her to return the sum of \$125,000 to the parties' home equity line of credit account.

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

“The purpose of pendente lite relief is to ensure that a needy spouse is provided with funds for his or her support and reasonable needs pending trial, and it is not to determine the correct ultimate distribution” (*Viola v Viola*, 294 AD2d 493, 493; *see Albanese v Albanese*, 234 AD2d 489, 490). “Modifications of pendente lite awards should rarely be made by an appellate court and then only under exigent circumstances, such as where a party is unable to meet his or her financial

March 29, 2011

Page 1.

COVEN v COVEN

obligations, or justice otherwise requires” (*Malik v Malik*, 66 AD3d 968, 968 [internal quotation marks and citation omitted]). “Consequently, any perceived inequities in pendente lite [relief] can best be remedied by a speedy trial, at which the parties’ financial circumstances can be fully explored” (*Dowd v Dowd*, 74 AD3d 1013, 1014). Here, the defendant wife has not demonstrated any exigency which warrants modification of the pendente lite maintenance or child support awards (*see Shurka v Shurka*, 68 AD3d 488; *Marohn v Marohn*, 157 AD2d 771, 772; *Samuelsen v Samuelsen*, 124 AD2d 650).

A determination of an application for interim counsel fees is committed to the sound discretion of the trial court (*see Dodson v Dodson*, 46 AD3d 305). Such an award is intended to “[ensure] that the nonmonied spouse will be able to litigate the action, and do so on equal footing with the monied spouse” (*Prichep v Prichep*, 52 AD3d 61, 65). Under the circumstances of this case, the award of the sum of \$10,000 in interim counsel fees was a provident exercise of the court’s discretion (*see Domestic Relations Law § 237[a]*; *McMahan v McMahan*, 66 AD3d 971; *Rosenbaum v Rosenbaum*, 55 AD3d 713).

The wife’s remaining contentions are without merit.

COVELLO, J.P., DICKERSON, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court