

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

D32383  
G/prt

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

Submitted - September 6, 2011

PETER B. SKELOS, J.P.  
RANDALL T. ENG  
LEONARD B. AUSTIN  
ROBERT J. MILLER, JJ.

---

2010-00739  
2010-00740  
2010-00741

DECISION & ORDER

Maria Gkanios, appellant, v Fotios Gkanios,  
etc., respondent.

(Index No. 1972/90)

---

Marie Gkanios, Mahopac, N.Y., appellant pro se.

In an action for a divorce and ancillary relief, the plaintiff appeals, as limited by her brief, from stated portions of (1) an order of the Supreme Court, Putnam County (O'Rourke, J), dated November 16, 2009, which, inter alia, granted those branches of the defendant's motion which were to dismiss, as abandoned, so much of the complaint as sought equitable distribution and ancillary relief and to vacate certain judgments for support arrears, (2) a judgment of the same court, also dated November 16, 2009, which, upon the order, among other things, dismissed so much of the complaint as sought equitable distribution and ancillary relief and vacated the judgments for support arrears, and (3) an amended order of the same court dated December 1, 2009.

ORDERED that the appeal from the order dated November 16, 2009, is dismissed; and it is further,

ORDERED that the judgment is modified, on the facts and in the exercise of discretion, by deleting the provisions thereof dismissing so much of the complaint as sought equitable distribution and ancillary relief and vacating the judgments for support arrears; as so modified, the judgment is affirmed insofar as appealed from, without costs or disbursements, the order dated November 16, 2009, is vacated insofar as it granted those branches of the defendant's

October 4, 2011

GKANIOS v GKANIOS

Page 1.

motion which were to dismiss, as abandoned, so much of the complaint as sought equitable distribution and ancillary relief and to vacate certain judgments for support arrears; and it is further,

ORDERED that the appeal from the amended order dated December 1, 2009, is dismissed as academic in light of our determination on the appeal from the judgment; and it is further,

ORDERED that the matter is remitted to the Supreme Court, Putnam County, for a determination as to whether the plaintiff's financial situation at the time of a hearing, held in August and September 2008, entitled her to a free transcript of the proceedings of that hearing, pursuant to CPLR 1102(b), and a new determination thereafter of those branches of the defendant's motion which were to dismiss, as abandoned, so much of the complaint as sought equitable distribution and ancillary relief and to vacate certain judgments for support arrears.

The appeal from the intermediate order dated November 16, 2009, must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the intermediate order are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501[a][1]).

The plaintiff commenced this action in December 1990 for a divorce and ancillary relief. Her motion for poor person relief was granted on May 31, 1994. A hearing was held in August and September 2008, regarding equitable distribution and ancillary relief, including whether certain judgments for support arrears should be vacated. At the conclusion of the hearing, the Supreme Court directed the plaintiff to provide the defendant husband with a copy of the transcript of the hearing, so that the parties could submit post-trial memoranda. The plaintiff failed to provide the transcript, on the grounds that she had been granted poor person relief and could not afford to pay for the transcript. The defendant subsequently moved, inter alia, to dismiss so much of the complaint as sought equitable distribution and ancillary relief and to vacate the judgments for support arrears, contending that by her failure to provide the transcript, the plaintiff abandoned her claims. In an order dated November 16, 2009, the Supreme Court, among other things, granted those branches of the defendant's motion. A judgment was entered upon the order, and an order amending the November 16, 2009, order, was issued on December 1, 2009. The plaintiff appeals.

CPLR 1102(b) provides that stenographic transcripts of trials or hearings must be provided without cost to a party who has been permitted to appeal as a poor person, but that "[a] poor person *may* be furnished with a stenographic transcript without fee by order of the court in proceedings other than appeal" (CPLR 1102[b] [emphasis added]; *see Panek v McLaughlin*, 110 Misc 2d 1017, 1019-1020). Here, the Supreme Court improvidently exercised its discretion in denying the plaintiff's request for a free transcript of the August and September 2008 hearing without first inquiring into the plaintiff's finances. Since the hearing in question concerned issues central to the claims between the parties, the court should have inquired into the wife's financial situation at the time of the hearing. If the court determined that the wife maintained her status as a poor person for the purposes of CPLR 1102, under the circumstances of this case, it should have provided her with a free transcript. If the wife did not maintain her status as a poor person, the

Supreme Court's determinations in this matter were correct.

The plaintiff's remaining contentions are without merit.

Accordingly, we remit the matter to the Supreme Court, Putnam County, for a determination as to whether the plaintiff's financial situation at the time of the hearing, held in August and September 2008, entitled her to a free transcript of the proceedings of that hearing, pursuant to CPLR 1102(b), and a new determination thereafter of those branches of the defendant's motion which were to dismiss, as abandoned, so much of the complaint as sought equitable distribution and ancillary relief and to vacate certain judgments for support arrears.

SKELOS, J.P., ENG, AUSTIN and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court