

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

D32752
G/nl

_____AD3d_____

Submitted - September 13, 2011

MARK C. DILLON, J.P.
RANDALL T. ENG
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-10713

DECISION & ORDER

Alan L. Bushlow, respondent, v Abby Lynn
Bushlow, appellant.

(Index No. 16198/07)

Saltzman Chetkof & Rosenberg, LLP, Garden City, N.Y. (Lee Rosenberg and Andrea M. Brodie of counsel), for appellant.

John A. Gemelli, P.C., Forest Hills, N.Y. (David M. Gross and Emily C. Walsh of counsel), for respondent.

In a matrimonial action in which the parties were divorced by judgment dated March 19, 2010, the defendant appeals, as limited by her notice of appeal and brief, from stated portions of an order of the Supreme Court, Queens County (Strauss, J.), dated September 27, 2010, which, inter alia, denied that branch of her motion which was, in effect, to vacate so much of the judgment dated March 19, 2010, as incorporated, but did not merge, the provisions of an oral stipulation of settlement entered into in open court on September 9, 2008, and a so-ordered stipulation of settlement dated January 26, 2009, relating to basic child support and child support “add-ons,” and directed her to commence payment of her share of the child support “add-ons” pursuant to the parties’ stipulations of settlement, and to pay arrears related to such obligation.

ORDERED that the appeal from so much of the order as denied that branch of the defendant’s motion which was, in effect, to vacate so much of the judgment dated March 19, 2010, as incorporated, but did not merge, the provisions of the so-ordered stipulation of settlement dated January 26, 2009, relating to basic child support and child support “add-ons,” is dismissed as academic in light of our determination on the appeal from the judgment dated March 19, 2010

November 1, 2011

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(*Bushlow v Bushlow*, _____AD3d_____ [Appellate Division Docket No. 2010-03413; decided herewith]); and it is further,

ORDERED that the order is modified, on the law, by deleting the provisions thereof directing the defendant to commence payment of her share of child support “add-ons” relating to child care and unreimbursed medical expenses pursuant to the so-ordered stipulation of settlement dated January 26, 2009, and to pay arrears related to such obligation; as so modified, the order is affirmed insofar as reviewed, and the matter is remitted to the Supreme Court, Queens County, for a recalculation of the defendant’s arrears relating to child care and reasonable unreimbursed health care expenses following the court’s determination of the basic child support obligation in accordance with the Child Support Standards Act (*see Bushlow v Bushlow*, _____AD3d_____ [Appellate Division Docket No. 2010-03413; decided herewith]); and it is further,

ORDERED that one bill of costs is awarded to the defendant.

Since the provisions of the parties’ so-ordered stipulation of settlement dated January 26, 2009, concerning child support “add-ons” relating to child care and unreimbursed medical expenses are not enforceable and should not have been incorporated into the judgment of divorce (*see Bushlow v Bushlow*, _____AD3d_____ [Appellate Division Docket No. 2010-03413; decided herewith]), the Supreme Court should not have directed the defendant to commence payment of her share of such “add-ons” pursuant to the stipulation, and to pay arrears related to them. Accordingly, the matter must be remitted to the Supreme Court, Queens County, for a recalculation of the defendant’s arrears relating to child care and reasonable unreimbursed health care expenses, insofar as substantiated by the plaintiff (*see Matter of Mayer v Strait*, 251 AD2d 713, 715), following the court’s determination of the basic child support obligation in accordance with the Child Support Standards Act (*see Bushlow v Bushlow*, _____AD3d_____ [Appellate Division Docket No. 2010-03413; decided herewith]; *see also Donovan v Szlepcsik*, 52 AD3d 563, 564; *Irene v Irene*, 41 AD3d 1179, 1181).

The parties’ remaining contentions have been rendered academic in light of our determination, are not properly before this Court, or are without merit.

DILLON, J.P., ENG, SGROI and MILLER, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court