

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

D32839
G/kmb

_____AD3d_____

Submitted - October 21, 2011

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-01085
2011-01087

DECISION & ORDER

Katherine Palladino, appellant-respondent, v
Thomas Palladino, respondent-appellant.

(Index No. 5359/09)

Steven E. Rosenfeld, P.C., New York, N.Y. (Isaiah Juste of counsel), for appellant-respondent.

Paul D. Stone, P.C., Tarrytown, N.Y., for respondent-appellant.

In an action for a divorce and ancillary relief, (1) the wife appeals, as limited by her brief, from so much of an order of the Supreme Court, Westchester County (Tolbert, J.), entered December 8, 2010, as denied her cross motion for an award of interim counsel fees, and the husband cross-appeals, as limited by his brief, from so much of the same order as denied his motion to hold the wife in civil contempt for failure to comply with a so-ordered stipulation dated April 24, 2009, and (2) the wife appeals, as limited by her brief, from so much of an order of the same court entered December 23, 2010, as denied her motion to hold the husband in civil contempt for failure to comply with the so-ordered stipulation dated April 24, 2009, and for an award of interim counsel fees.

ORDERED that the order entered December 8, 2010, is affirmed insofar as appealed and cross-appealed from, and the order entered December 23, 2010, is affirmed insofar as appealed from, without costs or disbursements.

The parties are involved in a divorce action after an 18-year marriage. In an order dated March 20, 2009, the husband was restrained from transferring, withdrawing, or otherwise

November 9, 2011

Page 1.

PALLADINO v PALLADINO

using any of the funds deposited in any of the parties' accounts at nine different financial institutions, including Chase Bank, except for ordinary business and personal expenses. On April 24, 2009, the parties entered into a so-ordered stipulation which continued the restraints imposed by the order dated March 20, 2009, except that the restraints with respect to certain financial institutions, including Chase Bank, were vacated. The wife was restrained from transferring or disposing of property except for ordinary business and personal expenses.

In July 2010 the husband moved to hold the wife in civil contempt, asserting that she had disposed of at least \$155,000 of joint property in violation of the April 24, 2009, so-ordered stipulation. The wife cross-moved for an award of interim counsel fees.

In an order entered December 8, 2010, the Supreme Court, inter alia, denied the husband's motion and the wife's cross motion, finding that the use of the money by the wife did not rise to the level of contempt.

In November 2009 the wife moved to hold the husband in civil contempt on the ground that he had withdrawn funds from a joint bank account, and for an award of interim counsel fees. In an order entered December 23, 2010, the Supreme Court denied the wife's motion.

The Supreme Court providently exercised its discretion in denying the motions to hold the respective parties in civil contempt, as the respective parties failed to demonstrate, by clear and convincing evidence, that the other party to be held in contempt willfully violated a clear and unequivocal mandate of a court order, with knowledge of that order's terms, thereby prejudicing the movant's rights (*see McGrath v McGrath*, 85 AD3d 742; *Rubin v Rubin*, 78 AD3d 812; *Soehngen v Soehngen*, 58 AD3d 829; *Galanos v Galanos*, 46 AD3d 507; *Pantelidis v Pantelidis*, 297 AD2d 791).

The parties' remaining contentions are without merit.

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

ENTER:


Matthew G. Kiernan
Clerk of the Court