

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

D33445  
C/kmb

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Submitted - November 14, 2011

PETER B. SKELOS, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

2010-05734  
2011-01082

DECISION & ORDER

Joseph C. Scopelliti, appellant, v Maria C. Scopelliti,  
respondent.

(Index No. 14438/05)

Carl F. Lodes, Carmel, N.Y., for appellant.

Patricia T. Bisesto, White Plains, N.Y., for respondent.

In an action for a divorce and ancillary relief, the plaintiff former husband appeals, as limited by his brief, from (1) so much of a judgment of the Supreme Court, Westchester County (Jamieson, J.), entered May 19, 2010, as, after a nonjury trial, awarded the defendant former wife 50% of the proceeds from the sale of the marital residence, which it determined to be marital property, awarded child support in the sum of \$1,417 per month until April 12, 2011, when the parties' daughter reached the age of 21 years, directed the plaintiff to pay 78% of the daughter's college expenses, awarded the defendant maintenance in the sum of \$2,200 per month for a period of five years from March 1, 2010, and awarded the defendant the sum of \$80,000 in counsel fees, \$63,000 payable to her former attorney Kitson & Kitson, and \$17,000 payable to her current attorney, Patricia T. Bisesto, and (2) stated portions of an order of the same court (Connolly, J.), entered December 30, 2010, which, inter alia, granted that branch of the defendant's motion which was to compel him to pay \$7,258.68 toward his daughter's spring 2010 college expenses, and \$6,009.12 toward his daughter's fall 2010 college expenses.

ORDERED that the judgment and the order are affirmed insofar as appealed from, with one bill of costs.

December 27, 2011

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The plaintiff failed to meet his burden of proving that the marital residence was his separate property (*see Frey v Frey*, 68 AD3d 1052, 1053; *Embury v Embury*, 49 AD3d 802, 804). Moreover, the Supreme Court's imputation of income to the plaintiff was proper (*see Duffy v Duffy*, 84 AD3d 1151, 1152; *Wesche v Wesche*, 77 AD3d 921, 923; *Fabrikant v Fabrikant*, 62 AD3d 585, 586).

We further find that, under the circumstances of this case, the award of counsel fees to the defendant was a provident exercise of discretion (*see Levy v Levy*, 289 AD2d 379; *Cooper v Cooper*, 32 AD3d 376, 377; *see also Frankel v Frankel*, 2 NY3d 601).

The plaintiff's remaining contentions are without merit, or not properly before this Court.

SKELOS, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court