

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

D33741
N/ct

_____AD3d_____

Submitted - January 9, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2011-01710

DECISION & ORDER

Karrie L. Truglia, appellant, v
Joseph A. Truglia, respondent.

(Index No. 12170/10)

Larkin, Axelrod, Ingrassia & Tetenbaum, LLP, Newburgh, N.Y. (William J. Larkin III of counsel), for appellant.

Alysia R. Baker, Goshen, N.Y., for respondent.

Martin R. Goldberg, Middletown, N.Y., attorney for the child.

In an action for a divorce and ancillary relief, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Orange County (Alfieri, J.), dated December 2, 2010, as, after a hearing, granted that branch of the defendant's motion which was for an award of pendente lite maintenance and directed her to pay the defendant pendente lite maintenance in the sum of \$2,628.47 per week.

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

“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 obligations, or justice otherwise requires” (*Palmeri v Palmeri*, 87 AD3d 572, 573 [internal quotation marks omitted]; *see Renga v Renga*, 86 AD3d 634, 635). “Any perceived inequities in pendente lite support can best be remedied by a speedy trial, at which the parties’ financial circumstances can be fully explored” (*Conyea v Conyey*, 81 AD3d 869, 870; *see Renga v Renga*, 86 AD3d at 635; *Malik v Malik*, 66 AD3d 968, 968).

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In determining an award of pendente lite maintenance, a court should not rely on the new statutory formula in Domestic Relations Law § 236(B)(5-a) in actions, such as this one, commenced prior to its effective date (*see Ingersoll v Ingersoll*, 86 AD3d 684, 685). Here, however, the Supreme Court’s award, while erroneously arrived at using the new statutory formula, can be upheld in accordance with the prior standard under former Domestic Relations Law § 236(B)(6)(a). The award of pendente lite maintenance reflected “an accommodation between the reasonable needs of the moving spouse and the financial ability of the other spouse . . . with due regard for the pre-separation standard of living” (*Dowd v Dowd*, 74 AD3d 1013, 1014, quoting *Levy v Levy*, 72 AD3d 651, 652). The plaintiff has not demonstrated any exigent circumstances that would warrant a modification of the pendente lite maintenance award.

RIVERA, J.P., ENG, LOTT and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court