

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

D33745
O/prt

_____AD3d_____

Submitted - January 9, 2012

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

2010-11403

DECISION & ORDER

In the Matter of Robert Burris, appellant, v
Jennifer Burris, respondent.
(Proceeding No. 1)

In the Matter of Jennifer Burris, respondent,
v Robert Burris, appellant.
(Proceeding No. 2)

(Docket Nos. F-1247-08, F-1248-08)

Robert Burris, Highland Hills, N.Y., appellant pro se.

Jennifer Burris, Ridgefield, N.J., respondent pro se.

In two related child support proceedings pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Rockland County (Warren, J.), entered November 5, 2010, which denied his objections to an order of the same court (Miklistsch, S.M.), entered June 21, 2010, granting the mother's motion for an award of an attorney's fee to the extent of directing him to pay an attorney's fee in the principal sum of \$47,820.25 and fees in the principal sum of \$1,342.10.

ORDERED that the order is affirmed, with costs.

Family Court Act § 438(a) provides that in any proceeding under Family Court Act article 4, "the court may allow counsel fees at any stage of the proceeding, to the attorney representing the spouse, former spouse or person on behalf of children" (Family Ct Act § 438[a]).

January 24, 2012

Page 1.

MATTER OF BURRIS v BURRIS

“As with an award of an attorney’s fee made pursuant to Domestic Relations Law § 237(b), the court will base its decision primarily upon both parties’ ability to pay, the nature and extent of the services required to deal with the support dispute, and the reasonableness of their performance under the circumstances” (*Matter of Nieves-Ford v Gordon*, 47 AD3d 936, 937). “The determination of whether to award an attorney’s fee is within the sound discretion of the hearing court” (*Matter of Wade v Smith*, 86 AD3d 577, 578; see *Matter of Dinhofer v Zabezhanskaya*, 79 AD3d 1039, 1040; *Matter of Sarfaty v Recine*, 57 AD3d 552, 552).

Considering all of the circumstances of this case, including that the protracted nature of this dispute and the extent of the services required to deal with it were attributable to the actions and inactions of the father and his former counsel, the attorney’s fee awarded to the mother was not an improvident exercise of discretion.

The father’s remaining contentions either are without merit or are not properly before this Court, as they were not raised in his objections to the Support Magistrate’s order entered June 21, 2010 (see *Matter of Tosques v Ponyicky*, 89 AD3d 1097; *Matter of Feng Lucy Luo v Yang*, 89 AD3d 946; *Matter of Hicks v Hicks*, 87 AD3d 1143, 1143-1144).

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

ENTER:

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

Aprilanne Agostino
Clerk of the Court