

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

D33867  
O/kmb

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Submitted - January 17, 2012

PETER B. SKELOS, J.P.  
RUTH C. BALKIN  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

2010-08302

DECISION & ORDER

Penelope Reddan, appellant, v Harold Reddan,  
respondent.

(Index No. 200934/06)

Cohen & Prizer, Hicksville, N.Y. (Linda A. Prizer of counsel), for appellant.

DiGirolomo & DiGirolomo, P.C., Garden City, N.Y. (Alfred DiGirolomo, Jr., of  
counsel), for respondent.

In an action for a divorce and ancillary relief, the plaintiff wife appeals, as limited by her brief, from so much of a judgment of the Supreme Court, Nassau County (Shifrin, Ct. Atty. Ref.), entered July 19, 2010, as declined to award her maintenance and a credit for her purported separate property contribution to improvements made to the marital residence, and failed to award her an attorney's fee, and the defendant husband cross-appeals from the same judgment.

ORDERED that the cross appeal is dismissed, without costs or disbursements, for failure to perfect the same in accordance with the rules of this Court (*see* 22 NYCRR 670.8[c], [e]); and it is further,

ORDERED that the judgment is modified, on the facts and in the exercise of discretion, by adding thereto a provision directing that the plaintiff is entitled to an award of an attorney's fee; as so modified, the judgment is affirmed insofar as appealed from, without costs or disbursements, and the matter is remitted to the Supreme Court, Nassau County, to determine the amount of the attorney's fee and thereafter for the entry of an appropriate amended judgment.

February 7, 2012

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The Supreme Court providently exercised its discretion in declining to award the plaintiff maintenance (*see* Domestic Relations Law § 236[B][6][a]; *Dellafiora v Dellafiora*, 38 AD3d 825, 826; *Almeda v Hopper*, 2 AD3d 471; *Mica v Mica*, 275 AD2d 765, 766; *Kraeger v Kraeger*, 271 AD2d 657).

Contrary to the plaintiff's contention, the Supreme Court properly denied her request for a credit for her purported separate property contribution to improvements made to the marital residence (*see Traut v Traut*, 181 AD2d 671, 672). The determination as to whether separate property was used for certain renovations depended upon the credibility of the parties at the hearing, and the credibility determinations made by the Supreme Court are supported by the record.

The Supreme Court improvidently exercised its discretion in failing to award the plaintiff an attorney's fee (*see* Domestic Relations Law § 237[a]). An attorney's fee should have been awarded based on the relative financial positions of the parties and the relative merits of their respective positions (*see Prichep v Prichep*, 52 AD3d 61, 64; *Schek v Schek*, 49 AD3d 625, 626). Therefore, the matter must be remitted to the Supreme Court, Nassau County, to determine an appropriate amount to be awarded as an attorney's fee (*see Kalinich v Kalinich*, 234 AD2d 344, 344-345).

SKELOS, J.P., BALKIN, ROMAN and SGROI, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court