

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

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Submitted - May 10, 2012

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2010-09799

DECISION & ORDER

Janeen A. Sudaka-Karlsson, appellant, v Kent B.
Karlsson, respondent.

(Index No. 19983/02)

Janeen A. Sudaka-Karlsson, Bedford Hills, N.Y., appellant pro se.

Kent Karlsson, named herein as Kent B. Karlsson, Pound Ridge, N.Y., respondent pro se.

In a matrimonial action in which the parties were divorced by judgment dated October 13, 2004, the plaintiff appeals from an order of the Supreme Court, Westchester County (Tolbert, J.), entered September 1, 2010, which denied her motion, inter alia, in effect, to modify certain provisions of the parties' stipulation of settlement dated June 23, 2004, which was incorporated but not merged into the judgment of divorce.

ORDERED that the order is affirmed, with costs.

A challenge to a stipulation of settlement which is incorporated but not merged into a judgment of divorce must be made by plenary action, and not by motion (*see Weissman v Weissman*, 68 AD3d 981; *Reiter v Reiter*, 39 AD3d 616; *Spataro v Spataro*, 268 AD2d 467, 468). Here, the plaintiff sought to modify the stipulation of settlement by motion rather than by plenary action. Consequently, the Supreme Court properly denied her motion.

ANGIOLILLO, J.P., FLORIO, BELEN and CHAMBERS, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

July 18, 2012

SUDAKA-KARLSSON v KARLSSON