

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

D35471
C/kmb

_____AD3d_____

Submitted - May 25, 2012

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2011-10013

DECISION & ORDER

Olga Dinoto, appellant, v Spero Dinoto, respondent.

(Index No. 30928/07)

Jay D. Raxenberg, P.C., Garden City, N.Y., for appellant.

Dikman & Dikman, Lake Success, N.Y. (David S. Dikman of counsel), for respondent.

In an action for a divorce and ancillary relief, the plaintiff appeals, as limited by her brief, from so much of a judgment of the Supreme Court, Queens County (Gartenstein, J.H.O.), entered March 11, 2011, as, upon a decision of the same court dated December 9, 2010, made after a nonjury trial, adjudged that the appreciation in the value of the former marital residence was the defendant's separate property, failed to direct that her name be placed on the deed for, and grant her equal use of, the parties' condominium unit in Fort Lauderdale, Florida, awarded her only one-third of the net proceeds from any sale of marital real property located in Whitestone, Queens, and failed to award her an attorney's fee.

ORDERED that the judgment is modified, on the law, by adding a provision to the third decretal paragraph thereof directing that the plaintiff's name be placed on the deed of the parties' condominium unit in Fort Lauderdale, Florida, as a tenant in common with the defendant; as so modified, the judgment is affirmed insofar as appealed from, with costs to the defendant.

“[W]here the determination as to equitable distribution has been made after a nonjury trial, the trial court's assessment of the credibility of witnesses is afforded great weight on appeal” (*Aloi v Simoni*, 82 AD3d 683, 685; *see Lurie v Lurie*, 94 AD3d 1376). Here, the trial court providently exercised its discretion in drawing unfavorable inferences from the plaintiff's testimony. In particular, the court correctly determined that the plaintiff's testimony was substantially unworthy

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of belief.

The trial court also properly determined that the plaintiff was not entitled to share in the appreciation in value of the former marital residence, which was the defendant's separate property. "Appreciation in the value of separate property is considered separate property, 'except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse'" (*Bernholz v Bornstein*, 72 AD3d 625, 628, quoting *Johnson v Chapin*, 12 NY3d 461, 466; see Domestic Relations Law § 236[B][1][d][3]). Here, the plaintiff failed to demonstrate that she made either direct financial or any nonfinancial contributions to this property such that the appreciated value was subject to equitable distribution.

Additionally, inasmuch as the court concluded that the plaintiff was responsible for causing damage to the former marital residence, the court providently exercised its discretion by awarding her only one-third of the net proceeds from any sale of marital real property located in Whitestone, Queens, rather than one-half of the net proceeds from the sale. "While the distribution of marital property must be equitable, there is no requirement that the assets be split evenly" (*Giokas v Giokas*, 73 AD3d 688, 689).

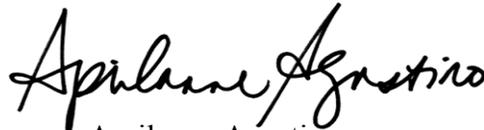
The trial court properly determined that a condominium unit located in Fort Lauderdale, Florida, was marital property, and that the parties were to share equally in either the financial loss or gain realized upon the sale or transfer of the property. Accordingly, the judgment is modified to direct that the plaintiff's name be placed on the deed to that property as a tenant in common with the defendant.

The plaintiff's claim that the court should have awarded her an attorney's fee is without merit, "since she never made a formal application for such an award, and submitted no supporting documentation regarding the legal services rendered" (*Poli v Poli*, 286 AD2d 720, 723-724; see *Nichols v Nichols*, 19 AD3d 775, 779-780; *Cynoske v Cynoske*, 8 AD3d 720, 724; *Beece v Beece*, 289 AD2d 352, 353).

The plaintiff's remaining contentions are without merit.

MASTRO, A.P.J., ANGIOLILLO, AUSTIN and SGROI, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court