

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

D35700
Y/ct

_____AD3d_____

Argued - June 4, 2012

DANIEL D. ANGIOLILLO, J.P.
ARIEL E. BELEN
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2011-03798

DECISION & ORDER

Ellen Bluth, respondent, v Harvey Bluth, appellant.

(Index No. 13623/05)

Steven Greenfield, West Hampton Dunes, N.Y., for appellant.

Sager and Gellerman, Forest Hills, N.Y. (Audrey M. Sager of counsel), for respondent.

In a matrimonial action in which the parties were divorced by judgment dated September 18, 2006, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County (Jackman-Brown, J.), dated April 19, 2011, as denied that branch of his motion which was to vacate so much of an order of the same court dated February 28, 2011, as appointed a neutral appraiser to value (a) his enhanced earnings capacity due to his medical license, certifications, and additional professional training and (b) the plaintiff's enhanced earnings capacity due to her teaching degrees and certification.

ORDERED that the order dated April 19, 2011, is affirmed insofar as appealed from, with costs.

Contrary to the defendant's contention, the Supreme Court properly appointed a neutral appraiser to value his enhanced earnings capacity due to his medical license, certifications, and additional professional training, since the enhanced earnings capacity due to the license, certifications, and additional training is a marital asset which potentially has a residual economic value independent of the value of his medical practice (*see McSparron v McSparron*, 87 NY2d 275, 285-286). The Supreme Court also properly directed the neutral appraiser to conduct a valuation of the plaintiff's enhanced earnings capacity due to her teaching degrees and certification.

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There is no merit to the defendant's contention that the doctrine of law of the case barred the Supreme Court from appointing an appraiser to value his enhanced earning capacity due to his medical license, certifications, and additional professional training (*see Light v Light*, 64 AD3d 633, 634; *Kopsidas v Krokos*, 18 AD3d 822, 823).

The defendant's remaining contention is without merit (*see* 22 NYCRR 202.18; *Pryba v Pryba*, 70 AD3d 1109, 1109-1110).

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

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court