

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

D36206  
N/kmb

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Submitted - September 13, 2012

MARK C. DILLON, J.P.  
RUTH C. BALKIN  
LEONARD B. AUSTIN  
JEFFREY A. COHEN, JJ.

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2011-07406

DECISION & ORDER

Debra Sluyk, appellant, v James Sluyk, respondent.

(Index No. 828/09)

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Guttman & Guttman, P.C., Melville, N.Y. (Robin N. Guttman of counsel), for appellant.

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

In an action for a divorce and ancillary relief, the plaintiff appeals from an order of the Supreme Court, Queens County (Esposito, J.), dated June 20, 2011, which granted the defendant's motion for a downward modification of his pendente lite support obligation and, thereupon, reduced the defendant's pendente lite support obligation by 50%, and denied her cross motion for an award of an attorney's fee.

ORDERED that the order is modified, on the facts, by deleting the provision thereof reducing the defendant's pendente lite support obligation by 50%; as so modified, the order is affirmed, without costs or disbursements, and the matter is remitted to the Supreme Court, Queens County, for a hearing in accordance herewith and, thereafter, a new determination of the amount by which the defendant's pendente lite support obligation should be reduced.

The defendant met his burden of proving that a substantial and unanticipated change in circumstances warranted a reduction of his pendente lite support obligation (*see generally Matter of Rodriguez v Mendoza-Gonzalez*, 96 AD3d 766; *Matter of Riendeau v Riendeau*, 95 AD3d 891; *Reback v Reback*, 93 AD3d 652, 652-653). However, given that the parties' affidavits revealed the existence of genuine issues of fact as to the amount by which the defendant's support obligation should be reduced, the matter must be remitted to the Supreme Court, Queens County, for a hearing

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on that issue and, thereafter, a new determination as to the amount of such reduction (*see Ritchey v Ritchey*, 82 AD3d 948, 949; *Severino v Severino*, 243 AD2d 702, 703; *Schnoor v Schnoor*, 189 AD2d 809, 810).

The Supreme Court properly denied the plaintiff's cross motion for an award of an attorney's fee for defending against the defendant's motion. Contrary to the plaintiff's contention set forth in her motion papers, the defendant's motion was not frivolous (*see Muller v Muller*, 233 AD2d 486, 487-488; 22 NYCRR § 130-1.1).

DILLON, J.P., BALKIN, AUSTIN and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court