

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

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Argued - October 19, 2012

RUTH C. BALKIN, J.P.  
SHERI S. ROMAN  
SANDRA L. SGROI  
JEFFREY A. COHEN, JJ.

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2011-03992

DECISION & ORDER

Cathy Elias, appellant-respondent, v Albert Elias,  
respondent-appellant.

(Index No. 200435/08)

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McLaughlin & Stern LLP, New York, N.Y. (Peter C. Alkalay of counsel), for  
appellant-respondent.

Glenn S. Koopersmith, Garden City, N.Y. (Steven J. Eisman and Michael E. Ratner  
of counsel), for respondent-appellant.

In an action for a divorce and ancillary relief, the plaintiff appeals, as limited by her brief, from stated portions of a judgment of the Supreme Court, Nassau County (Diamond, J.), entered March 8, 2011, which, upon a decision of the same court dated October 6, 2010, and an amended decision dated December 15, 2010, made after a nonjury trial, inter alia, awarded her only 25% of the value of the defendant's interest in certain business entities, and awarded her child support in the sum of only \$192.31 per week, and the defendant cross-appeals, as limited by his brief, from so much of the same judgment as awarded the plaintiff 25% of the value of his interest in certain business entities.

ORDERED that the judgment is modified, on the law, by deleting the provision thereof awarding the plaintiff child support in the sum of \$192.31 per week; as so modified, the judgment is affirmed insofar as appealed and cross-appealed from, with costs to the plaintiff, and the matter is remitted to the Supreme Court, Nassau County, for a new determination of the defendant's

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child support obligation and the entry of an appropriate amended judgment thereafter; in the interim, the defendant shall continue to pay to the plaintiff child support in the sum of \$192.31 per week.

Contrary to the plaintiff's contentions, the Supreme Court providently exercised its discretion in awarding the plaintiff 25% of the value of the defendant's interest in Ben Elias Industries Corp. "Although in a marriage of long duration, where both parties have made significant contributions to the marriage, a division of marital assets should be made as equal as possible . . . there is no requirement that the distribution of each item of marital property be made on an equal basis" (*Baron v Baron*, 71 AD3d 807, 809 [internal quotation marks omitted]; see *Arvantides v Arvantides*, 64 NY2d 1033, 1033; *Kaplan v Kaplan*, 51 AD3d 635, 637; *Griggs v Griggs*, 44 AD3d 710, 713). Here, the 25% share "takes into account the plaintiff's minimal direct and indirect involvement in the defendant's company, while not ignoring her contributions as the primary caretaker for the parties' children, which allowed the defendant to focus on his business" (*Baron v Baron*, 71 AD3d at 809; see *Ventimiglia v Ventimiglia*, 307 AD2d 993, 994; *Chalif v Chalif*, 298 AD2d 348, 349).

However, the Supreme Court failed to properly calculate child support pursuant to the Child Support Standards Act (Domestic Relations Law § 240[1-b]; hereinafter the CSSA). The CSSA provides "a precisely articulated, three-step method for determining child support" (*Matter of Cassano v Cassano*, 85 NY2d 649, 652). The first step requires the computation of statutory "[c]ombined parental income" after which a limited number of deductions are allowed (Domestic Relations Law § 240[1-b][b][4]; [c][1]). Second, the court multiplies that figure, up to \$130,000, by a specified percentage based upon the number of children in the household—25% for two children—and then allocates that amount between the parents according to their share of the total income (see Domestic Relations Law § 240[1-b][b][3]; [c][2]). Finally in the third step, where combined parental income exceeds \$130,000, "the court shall determine the amount of child support for the amount of the combined parental income in excess of such dollar amount through consideration of the factors set forth in paragraph (f) of [Domestic Relations Law § 240(1-b)] and/or the child support percentage" (Domestic Relations Law § 240[1-b][c][3]).

Here, in determining child support, the Supreme Court failed to set forth the manner in which the defendant's income was calculated (see *McLoughlin v McLoughlin*, 63 AD3d 1017, 1019; *Sirgant v Sirgant*, 35 AD3d 437, 438). The Court also improperly deducted the distributive award from the defendant's income, a deduction that is not recognized in the CSSA (see Domestic Relations Law § 240[1-b][b][5][vii][A]-[H]; *Holterman v Holterman*, 3 NY3d 1, 10-11). Still further, the record indicates that the Supreme Court improperly capped the defendant's income at \$125,000, which was below the statutory ceiling of \$130,000 that became effective on January 31, 2010 (see Domestic Relations Law § 240[1-b][c][2]; Social Services Law § 111-i[2][b]; L 2009, ch 343; *Lago v Adrion*, 93 AD3d 697, 699). Accordingly, we remit the matter to the Supreme Court, Nassau County, for a recalculation of the defendant's child support obligation (see *McLoughlin v McLoughlin*, 63 AD3d at 1019).

The plaintiff's remaining contentions are without merit.

We do not consider the defendant's contention on his cross appeal, as it is improperly raised for the first time on the cross appeal (*see Abrams v Abrams*, 57 AD3d 809, 810-811; *Levy v Levy*, 289 AD2d 379, 380; *Fascaldi v Fascaldi*, 209 AD2d 576, 578).

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

ENTER:

  
Aprilanne Agostino  
Clerk of the Court