

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

D36907
W/kmb

_____AD3d_____

Submitted - October 23, 2012

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2012-04629

DECISION & ORDER

Jennifer-Anne Vollkommer, appellant, v
Michael J. Vollkommer, Jr., respondent.

(Index No. 201074/10)

Richard A. Kraslow, P.C., Melville, N.Y., for appellant.

Hopkins & Kopilow, Garden City, N.Y. (Nicholas F. Miraglia 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 an order of the Supreme Court, Nassau County (J. Murphy, J.), entered April 23, 2012, as denied that branch of her motion which was to modify the visitation provisions of a stipulation of settlement dated May 19, 2010, so as to require that the defendant's visitation with the subject children be supervised, and granted that branch of the defendant's cross motion which was for an award of an attorney's fee, and directed that the attorney's fee was payable by the plaintiff's attorney.

ORDERED that the appeal by the plaintiff from so much of the order as granted that branch of the defendant's cross motion which was for an award of an attorney's fee, and directed that the attorney's fee was payable by the plaintiff's attorney, is dismissed, as the plaintiff is not aggrieved by that portion of the order (*see* CPLR 5511; *Scopelliti v Town of New Castle*, 92 NY2d 944; *Matter of Miller v Miller*, 96 AD3d 943, 943-944); and it is further,

ORDERED that the order is affirmed insofar as reviewed, with one bill of costs.

"A custody or visitation order may be modified only 'upon a showing that there has

been a subsequent change of circumstances and modification is required” (*Galanti v Kraus*, 85 AD3d 723, 724, quoting Family Ct Act § 467[b][ii]; see *Matter of Wilson v McGlinchey*, 2 NY3d 375, 380-381). “The paramount concern in any custody or visitation determination is the best interests of the child, under the totality of the circumstances” (*Galanti v Kraus*, 85 AD3d at 724; see *Matter of Wilson v McGlinchey*, 2 NY3d at 380-381; *Eschbach v Eschbach*, 56 NY2d 167, 172; *Friederwitzer v Friederwitzer*, 55 NY2d 89, 96; *Messinger v Messinger*, 16 AD3d 562, 563). Here, the Supreme Court properly denied that branch of the plaintiff’s motion which was to modify the visitation provisions of the stipulation of settlement so as to require that the defendant’s visitation with the subject children be supervised, since the plaintiff failed to demonstrate a change of circumstances warranting that the visitation provisions of the stipulation of settlement be so modified (see *Gallagher v Dalton*, 46 AD3d 746, 746-747; *Messinger v Messinger*, 16 AD3d at 563).

MASTRO, J.P., RIVERA, CHAMBERS and LOTT, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court