

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

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Submitted - March 27, 2018

CHERYL E. CHAMBERS, J.P.
LEONARD B. AUSTIN
ROBERT J. MILLER
JOSEPH J. MALTESE, JJ.

2017-07726

DECISION & ORDER

Cheryl Wasserman, appellant, v Harold Wasserman,
defendant.

(Index No. 201929/06)

Joann Peraino, Garden City, NY, for appellant.

In a matrimonial action, the plaintiff appeals from an order of the Supreme Court, Nassau County (Hope Schwartz Zimmerman, J.), entered June 29, 2017. The order, insofar as appealed from, denied that branch of the plaintiff's unopposed motion which was for a money judgment against the defendant in the sum of \$614,619.16.

ORDERED that the order is reversed insofar as appealed from, on the law and the facts, without costs or disbursements, and the matter is remitted to the Supreme Court, Nassau County, for further proceedings consistent herewith.

In this matrimonial action, the parties were divorced by a judgment dated May 24, 2012. The judgment directed the defendant to maintain a life insurance policy issued by the Guardian Life Insurance Company of America, insuring his life in the face amount of \$500,000, for the benefit of the parties' children, with the plaintiff being named as the beneficiary, "until [the defendant] is no longer obligated to pay child support." In addition, the Supreme Court issued a qualified life insurance order dated May 24, 2012, directing the defendant to maintain the same life insurance policy. On December 4, 2014, the life insurance policy was cancelled after the defendant failed to pay the premiums and the policy's cash value became depleted by loans taken from the policy by the plaintiff and the defendant. On February 13, 2017, the defendant's obligation to pay the premiums of the life insurance policy terminated when the parties' youngest child turned 21 years of age. In April 2017, the plaintiff moved, inter alia, for a money judgment against the defendant in the sum of \$614,619.16, representing the face value of the policy plus the total lost value of the

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policy due to the defendant's failure to pay the premiums. The court, inter alia, denied that branch of the plaintiff's unopposed motion which was for a money judgment in the sum of \$614,619.16. The plaintiff appeals.

The plaintiff is not entitled to a money judgment against the defendant for the face value of the \$500,000 life insurance policy, since the defendant was obligated to maintain that policy only until February 13, 2017, and the event of his death did not occur prior to that date.

The plaintiff is entitled to a money judgment against the defendant for what the cash surrender value of the life insurance policy would have been on February 13, 2017, had the defendant timely paid all of the premiums between May 24, 2012, and February 13, 2017, less the cash surrender value of the life insurance policy on May 24, 2012. Accordingly, the matter must be remitted to the Supreme Court, Nassau County, for a determination of that amount.

CHAMBERS, J.P., AUSTIN, MILLER and MALTESE, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court