

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

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Submitted - November 3, 2025

VALERIE BRATHWAITE NELSON, J.P.
HELEN VOUTSINAS
JANICE A. TAYLOR
DONNA-MARIE E. GOLIA, JJ.

2021-00294

DECISION & ORDER

Anas Sawas, appellant,
v Sherene H. Elzanaty, respondent.

(Index No. 201587/18)

Robert Hiltzik, Jericho, NY, for appellant.

Law Office of John M. Zenir, Esq., P.C., Garden City, NY, for respondent.

In an action for a divorce and ancillary relief, the plaintiff appeals from stated portions of a judgment of divorce of the Supreme Court, Nassau County (Edmund M. Dane, J.), entered December 8, 2020. The judgment of divorce, inter alia, upon two decisions of the same court (Hope Schwartz Zimmerman, J.), both dated February 24, 2020, made after a nonjury trial, (1) awarded each party 50% of the marital assets, (2) determined that certain assets were the defendant's separate property not subject to equitable distribution, (3) directed the plaintiff to continue paying maintenance to the defendant in accordance with a pendente lite order of the same court (Hope Schwartz Zimmerman, J.) dated October 9, 2018, until entry of the judgment of divorce, (4) directed the plaintiff to pay the defendant \$2,639.22 per month in child support, plus 83% of the cost of unreimbursed medical expenses and extracurricular activities, (5) directed the plaintiff to pay a counsel fee in the sum of \$65,000 to the defendant's attorney, and (6) declined to modify the plaintiff's responsibility to pay 100% of the counsel fee for the attorney for the child as directed in an order of the same court (Hope Schwartz Zimmerman, J.) dated March 6, 2019.

ORDERED that the judgment of divorce is modified, on the law and in the exercise of discretion, by (1) deleting the provision thereof directing the plaintiff to pay the defendant 83% of the cost of extracurricular activities, and (2) by adding thereto a provision awarding the plaintiff a credit for 50% of the net proceeds received by the defendant from an insurance payment made resulting from the loss of a Land Rover; as so modified, the judgment of divorce is affirmed insofar as appealed from, without costs or disbursements.

July 8, 2026

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The parties were married in January 2015. There is one child of the marriage, born in 2018. Approximately two weeks after the birth of the child, the plaintiff commenced this action for a divorce and ancillary relief. A pendente lite order directed the plaintiff to pay the defendant temporary maintenance and child support, as well as an interim counsel fee of \$10,000. A separate order appointing an attorney for the child directed the plaintiff to pay 100% of any resulting counsel fee for the attorney for the child. The parties thereafter stipulated to custody and parental access. After a nonjury trial, in two decisions, both dated February 24, 2020, the Supreme Court, inter alia, determined the issues of maintenance, equitable distribution, child support, and counsel fees. A judgment of divorce, upon the decisions, was entered December 8, 2020. The plaintiff appeals.

“The trial court is vested with broad discretion in making an equitable distribution of marital property . . . and unless it can be shown that the court improvidently exercised that discretion, its determination should not be disturbed” (*Ambrose v Ambrose*, 176 AD3d 1148, 1151, quoting *Morille-Hinds v Hinds*, 169 AD3d 896, 898). “[W]here, as here, the determination as to equitable distribution has been made after a nonjury trial, the trial court’s assessment of the credibility of witnesses is afforded great weight on appeal” (*Osuagwu v Osuagwu*, 229 AD3d 802, 803 [internal quotation marks omitted]).

Here, the Supreme Court providently exercised its discretion in awarding each party 50% of the marital assets. Domestic Relations Law § 236(B)(5)(c) provides that “[m]arital property shall be distributed equitably between the parties, considering the circumstances of the case and of the respective parties.” “Equitable distribution is based on the premise that a marriage is, among other things, an economic partnership to which both parties contribute as spouse, parent, wage earner or homemaker” (*Davis v O’Brien*, 79 AD3d 695, 696 [internal quotation marks omitted]; see *Potvin v Potvin*, 193 AD3d 995, 997). Contrary to the plaintiff’s contention, the record evidence shows that the parties functioned as an economic partnership during their marriage (see *Potvin v Potvin*, 193 AD3d at 997-998; *Iwanow v Iwanow*, 39 AD3d 471, 475).

“The party alleging that his or her spouse has engaged in wasteful dissipation of marital assets bears the burden of proving such waste by a preponderance of the evidence” (*Kirshner v Kirshner*, 228 AD3d 923, 925, quoting *Silvers v Silvers*, 197 AD3d 1195, 1198). Here, the record established by a preponderance of the evidence (see *Epstein v Messner*, 73 AD3d 843, 846) that, between the time of the parties’ separation and the commencement of this action, the plaintiff engaged in “the wasteful dissipation of assets” (Domestic Relations Law § 236[B][5][d][12]) and made numerous large transfers of funds out of his bank accounts “in contemplation of a matrimonial action” (*id.* § 236[B][5][d][13]). Moreover, the Supreme Court found the plaintiff’s explanations for these large withdrawals and transfers to not be credible. Accordingly, the defendant is entitled to 50% of the amount of the marital assets improperly dissipated or transferred, and the court properly included the amounts dissipated or wrongfully transferred in calculating equitable distribution (see *Kaufman v Kaufman*, 189 AD3d 31, 64; *Sotnik v Zavilyansky*, 101 AD3d 1102, 1104).

The Supreme Court also properly determined that certain assets owned by the defendant were her separate property not to be included in the calculation of marital assets subject to equitable distribution. “[M]arital property” is “all property acquired by either or both spouses

during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action. . . . Marital property shall not include separate property” (Domestic Relations Law § 236[B][1][c]). The evidence presented at trial established that any money contained in the defendant’s Uniform Transfers to Minors Account was acquired by the defendant from her father prior to the marriage and was therefore her separate property (*see id.* § 236[B][1][d][1]). Moreover, the court properly determined that certain real property located in Egypt was the defendant’s separate property (*see Embury v Embury*, 49 AD3d 802, 804). The evidence demonstrated that the defendant’s father acquired the subject property through a government land allocation, and neither the plaintiff nor the defendant contributed anything to the purchase price or the cost of improvements.

An automobile purchased during the marriage and prior to the commencement of the divorce action is marital property subject to equitable distribution (*see D’Amico v D’Amico*, 66 AD3d 951, 952). The Supreme Court providently exercised its discretion in declining to include the defendant’s automobile in its calculation of equitable distribution and ordered that each party simply retain their respective vehicles. However, the court improvidently exercised its discretion in failing to equitably distribute the insurance proceeds received by the defendant after a Land Rover, which was undisputably marital property, was totaled. Accordingly, the plaintiff is entitled to a credit of 50% of those proceeds (*see Nerayoff v Rokhsar*, 168 AD3d 1071, 1075; *Mistretta v Mistretta*, 138 AD3d 1075, 1076-1077).

“When a pendente lite award of maintenance is found at trial to be excessive or inequitable, the Court may make an appropriate adjustment in the equitable distribution award” (*Johnson v Chapin*, 12 NY3d 461, 466). “The amount and duration of spousal maintenance is an issue generally committed to the sound discretion of the trial court and each case is to be resolved upon its own unique facts and circumstances” (*Diliberto v Diliberto*, 230 AD3d 637, 640, quoting *Silvers v Silvers*, 197 AD3d at 1199). Here, the Supreme Court providently exercised its discretion in awarding the defendant temporary maintenance using the formula in Domestic Relations Law § 236(B)(5-a)(c) and terminating that maintenance upon the issuance of the judgment of divorce in accordance with Domestic Relations Law § 236(B)(5-a)(g). Moreover, as the defendant was not earning an income during the pendency of this action, it was reasonable to require the plaintiff to pay medical insurance for the defendant and the child pendente lite.

Moreover, the Supreme Court properly calculated the plaintiff’s child support obligation in accordance with Domestic Relations Law § 240(1-b)(c) and (f). The court providently exercised its discretion in applying the statutory percentages to a portion of parental income up to \$225,000, when considering the relevant factors (*see Varnit v Varnit*, 233 AD3d 917, 922). Moreover, the court properly included medical insurance for the child as part of the plaintiff’s child support obligations.

The plaintiff correctly contends, however, that extracurricular activities are not an add-on expense specifically provided for by the statute (*see* Domestic Relations Law § 240[1-b][c][4], [5], [6], [7]). Extracurricular activities are encompassed within the basic child support award and should not be an add-on expense unless the court articulates the basis for the deviation (*see Tuchman v Tuchman*, 201 AD3d 986, 992-993; *Sinnott v Sinnott*, 194 AD3d 868, 877). Here,

the Supreme Court failed to articulate a basis for this deviation (*see Davydova v Sasonov*, 109 AD3d 955, 958). Accordingly, the court erred in including extracurricular activities in the category of add-on expenses for which the plaintiff is to be 83% responsible, and we modify the judgment of divorce accordingly.

Pursuant to Domestic Relations Law § 237(a), “the court may direct either spouse . . . to pay counsel fees and fees and expenses of experts directly to the attorney of the other spouse to enable the other party to carry on or defend the action or proceeding as, in the court’s discretion, justice requires, having regard to the circumstances of the case and of the respective parties. There shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse.” Thus “[a] counsel fee award generally will be warranted where there is a significant disparity in the financial circumstances of the parties” (*Fredericks v Fredericks*, 85 AD3d 1107, 1108).

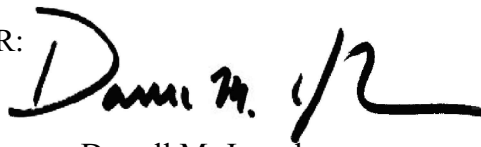
Here, the defendant is the less-monied spouse, as the plaintiff was earning more than \$300,000 per year, while the defendant had been out of the workforce to care for the parties’ child and was capable of earning in the range of only \$100,000 per year. The plaintiff failed to rebut the presumption that a counsel fee should be awarded to the defendant as the less-monied spouse (*see* Domestic Relations Law § 237[a]; *Weidman v Weidman*, 162 AD3d 720, 726). In considering “whether either party has delayed the proceedings unreasonably or engaged in unnecessary litigation” (*Kaufman v Kaufman*, 189 AD3d at 74), the Supreme Court properly concluded that neither party engaged in frivolous litigation (*see* 22 NYCRR 130-1.1). Accordingly, the court providently exercised its discretion in directing the plaintiff to pay a counsel fee in the sum of \$65,000 to the defendant’s attorney (*see Plotkin v Esposito-Plotkin*, 216 AD3d 676, 678-679).

The Supreme Court providently exercised its discretion in declining to reallocate the counsel fee for the attorney for the child, for which the plaintiff was made 100% responsible. Appointment of an attorney for the child in a contested custody matter is the strongly preferred practice (*see Ambrose v Ambrose*, 176 AD3d 1151). Here, in considering the parties’ financial circumstances, the court providently exercised its discretion in requiring the plaintiff to pay the full cost of providing an attorney for the child (*see Matter of Young v Young*, 161 AD3d 1182, 1182-1183; *Matter of Plovnick v Klinger*, 10 AD3d 84, 91).

The plaintiff’s remaining contention is without merit.

BRATHWAITE NELSON, J.P., VOUTSINAS, TAYLOR and GOLIA, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", followed by a stylized flourish.

Darrell M. Joseph
Clerk of the Court