

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

745

CA 12-01573

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND LINDLEY, JJ.

JOSEPH A. VARLARO, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

DEBORA VARLARO, DEFENDANT-RESPONDENT.

LORRAINE H. LEWANDROWSKI, HERKIMER, FOR PLAINTIFF-APPELLANT.

MCLANE, SMITH AND LASCURETTES, L.L.P., UTICA (TOD M. LASCURETTES OF COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Herkimer County (Patrick L. Kirk, A.J.), entered December 15, 2011. The order granted the motion of defendant to amend the Qualified Domestic Relations Order dated July 11, 2003.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: We affirm for reasons stated in the decision at Supreme Court. We add only that, regardless of the potential merit to plaintiff's contention in opposition to defendant's motion to amend the Qualified Domestic Relations Order dated July 11, 2003 (*see e.g. Lemesis v Lemesis*, 38 AD3d 1331, 1332; *Hoke v Hoke*, 27 AD3d 1055, 1056; *see generally Kazel v Kazel*, 3 NY3d 331, 332-335), the court properly refused to consider the relief requested by plaintiff inasmuch as he did not file or serve a notice of cross motion (*see CPLR 2215; see e.g. Free in Christ Pentecostal Church v Julian*, 64 AD3d 1153, 1153-1154; *New York State Div. of Human Rights v Oceanside Cove II Apt. Corp.*, 39 AD3d 608, 609; *Khaolaead v Leisure Video*, 18 AD3d 820, 821; *Torre v Torre* [appeal No. 1], 142 AD2d 942, 942).

Entered: June 14, 2013

Frances E. Cafarell
Clerk of the Court