

Chiarello v. Chiarello

185 N.Y.S.3d 307 (N.Y. App. Div. 2023) · 214 A.D.3d 853
Decided Mar 22, 2023

2019–02934 Index No. 940/16

03-22-2023

Nicholas CHIARELLO, appellant, v. Geraldine CHIARELLO, respondent.

Gorlick, Kravitz & Listhaus, P.C., New York, NY (Courtney A. Chua of counsel), for appellant.
Picarello & Saciolo, P.C., Islandia, NY (Nicholas E. Arazoza of counsel), for respondent.

Gorlick, Kravitz & Listhaus, P.C., New York, NY (Courtney A. Chua of counsel), for appellant.

Picarello & Saciolo, P.C., Islandia, NY (Nicholas E. Arazoza of counsel), for respondent.

BETSY BARROS, J.P., ROBERT J. MILLER,
LARA J. GENOVESI, JANICE A. TAYLOR, JJ.

DECISION & ORDER

In an action for a divorce and ancillary relief, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Glenn A. Murphy, J.), dated December 20, 2018. The order, insofar as appealed from, granted the defendant's motion for an award of interim counsel fees to the extent of directing the plaintiff to pay interim counsel fees for the defendant in the sum of \$20,000.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In 2016, the plaintiff commenced this action for a divorce and ancillary relief against the defendant. In September 2018, the defendant moved for an award of interim counsel fees in the sum of

\$25,000. In an order dated December 20, 2018, the Supreme Court granted the motion to the extent of directing the plaintiff to pay interim counsel fees for the defendant in the sum of \$20,000. The plaintiff appeals.

"The purpose of an award of interim counsel fees is to ensure that the less monied spouse will be able to litigate the action on equal footing with the monied spouse" (*Tomassetti v. Tomassetti*, 194 A.D.3d 882, 883, 143 N.Y.S.3d 617 [internal quotation marks omitted]). Unlike a final award of counsel fees, a detailed inquiry or evidentiary hearing is not required prior to an award of interim counsel fees (see *Vistocco v. Jardine*, 116 A.D.3d 842, 844, 985 N.Y.S.2d 578 ; *Prichep v. Prichep*, 52 A.D.3d 61, 65, 858 N.Y.S.2d 667). Under the circumstances presented here, including the disparity of income between the parties, the plaintiff's litigation tactics, and the evidence showing that the defendant lacked the resources necessary to continue litigating the action, the Supreme Court providently exercised its discretion in granting the defendant's motion for an award of interim counsel fees to the extent of directing the plaintiff to pay the sum of \$20,000 to the defendant's counsel (see *Domestic Relations Law* § 237[a] ; *Doscher v. Doscher*, 137 A.D.3d 962, 965, 27 N.Y.S.3d 231 ; *Rosenbaum v. Rosenbaum*, 55 A.D.3d 713, 714, 866 N.Y.S.2d 234 ; *Prichep v. Prichep*, 52 A.D.3d at 65–66, 858 N.Y.S.2d 667).

BARROS, J.P., MILLER, GENOVESI and TAYLOR, JJ., concur.

