

Barry v. Barry, 60 A.D.3d 882 (2009)

874 N.Y.S.2d 916, 2009 N.Y. Slip Op. 02310

60 A.D.3d 882
Supreme Court, Appellate Division,
Second Department, New York.

Caroline BARRY, respondent,
v.
Kevin A. BARRY, appellant.

March 24, 2009.

Attorneys and Law Firms

Heather G. Kress, Huntington, N.Y. (James J. Kelly of counsel), for appellant.

Cohen Hennessy Bienstock & Rabin P.C., New York, N.Y. (Patricia Hennessey of counsel), for respondent.

Opinion

In a matrimonial action in which the parties' marriage was annulled by a judgment entered November 16, 2000, the defendant appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (Blydenburgh, J.), dated May 3, 2006, as, upon the plaintiff's application, modified his visitation rights and, upon consent, assigned a portion of his disability and retirement pension to the plaintiff for the payment of child support.

ORDERED that the appeal is dismissed, with costs.

The defendant appeals from those portions of an order of the Supreme Court which assigned a portion of his disability and retirement pension to the plaintiff for the payment of child support, and modified his visitation rights. However, that portion of the order concerning the assignment was entered upon the defendant's consent, and no appeal lies from an order entered on consent (*see Bahr v. Bahr*, 105 A.D.2d 725, 481 N.Y.S.2d 394; *Baecher v. Baecher*, 95 A.D.2d 841, 842, 464 N.Y.S.2d 199). The modification of the defendant's visitation rights did not decide a motion made on notice, and no appeal lies as of right from such an order (*see CPLR 5701[a][2]*). Nor has leave to appeal been granted (*see CPLR 5701[c]*). To obtain appellate review, the defendant must move to vacate or modify the order, and appeal, if necessary, from the resulting order (*see Sholes v. Meagher*, 100 N.Y.2d 333, 763 N.Y.S.2d 522, 794 N.E.2d 664; *Egwuonwu v. Simpson*, 4 A.D.3d 500, 771 N.Y.S.2d 725; *Koczen v. VMR Corp.*, 300 A.D.2d 285, 750 N.Y.S.2d 877).

RIVERA, J.P., RITTER, MILLER and CHAMBERS, JJ.,
concur.

Parallel Citations

60 A.D.3d 882, 874 N.Y.S.2d 916 (Mem), 2009 N.Y. Slip Op. 02310