

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

D24831
H/prt

_____AD3d_____

Submitted - September 22, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2008-10528

DECISION & ORDER

David Bruce McMahan, appellant,
v Elena McMahan, respondent.

(Index No. 05/399)

The Wallack Firm, P.C., New York, N.Y. (Robert M. Wallack of counsel), for
appellant.

Law Office of Yonatan S. Levoritz, P.C., Brooklyn, N.Y., for respondent.

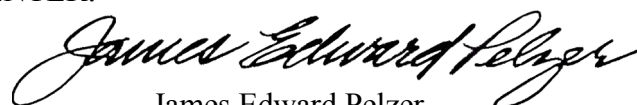
In an action for a divorce and ancillary relief, the plaintiff appeals, as limited by his notice of appeal and brief, from so much of an order of the Supreme Court, Westchester County (Lubell, J.), entered November 3, 2008, as granted that branch of the defendant's cross motion which was for an additional award of interim counsel fees in the sum of \$100,000.

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

Contrary to the plaintiff's contention, the award of interim counsel fees was not precluded by the parties' stipulation of settlement (*see McMahan v McMahan*, _____AD3d_____[Appellate Division Docket No. 2008-02499; decided herewith]). Moreover, under the circumstances, the award was a provident exercise of the Supreme Court's discretion (*see Rosenbaum v Rosenbaum*, 55 AD3d 713, 714; *Prichep v Prichep*, 52 AD3d 61).

RIVERA, J.P., FLORIO, ENG and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

October 27, 2009

McMAHAN v McMAHAN