

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

M93793
E/sl

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2009-02549, 2009-03857

DECISION & ORDER ON MOTION

Sandra Jiminez Zuluaga, respondent-appellant,
v Fabian Ospina Diaz, appellant-respondent.

(Index No. 06-4618)

Motion by Fabian Ospina Diaz on appeals and cross appeals from two money judgments of the Supreme Court, Westchester County, dated February 23, 2009, and March 9, 2009, respectively, to dismiss the cross appeals on the ground that Sandra Jiminez Zuluaga has failed to pay one-half of the cost of the joint transcript, and to enlarge the time to serve and file a reply brief.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that on the court's own motion, the cross appeals are dismissed, without costs or disbursements, on the ground that the issues raised on the cross appeals are not properly before the court, without prejudice to taking an appeal from the judgment of divorce entered in the above-entitled action (*see* CPLR 5511); and it is further,

ORDERED that Points II through IX of the brief filed by Sandra Jiminez Zuluaga are stricken and on or before November 30, 2009, Sandra Jiminez Zuluaga shall either remove the stricken material from the copies of the brief filed with the Clerk of the court or serve and file a replacement brief that does not contain the stricken material; and it is further,

ORDERED that the branch of the motion which is to dismiss the cross appeals on the ground that Sandra Jiminez Zuluaga has failed to pay one-half of the cost of the joint transcript is denied as academic; and it is further,

October 28, 2009

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ORDERED that the branch of the motion which is to enlarge the time to serve and file a brief is granted, Fabian Ospina Diaz time to serve and file a reply brief is enlarged until December 10, 2009, and the reply brief must be served and filed on or before that date.

MASTRO, J.P., SANTUCCI, ENG and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court