

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

**1357**

**CA 09-01094**

PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, CARNI, AND PINE, JJ.

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GARY BEITER, PLAINTIFF-APPELLANT,

V

ORDER

MARY ANNE BEITER, DEFENDANT-RESPONDENT.  
(APPEAL NO. 2.)

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MAUREEN A. PINEAU, ROCHESTER, FOR PLAINTIFF-APPELLANT.

CERULLI, MASSARE & LEMBKE, ROCHESTER (EDWARD J. MASSARE OF COUNSEL),  
FOR DEFENDANT-RESPONDENT.

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Appeal from a second amended order of the Supreme Court, Monroe County (Daniel J. Doyle, J.), entered April 14, 2008 in a divorce action. The second amended order, among other things, adjudged that certain retirement benefits of plaintiff are marital property.

It is hereby ORDERED that said appeal is unanimously dismissed without costs (*see Gartley v Gartley*, 15 AD3d 995, 996).

Entered: November 13, 2009

Patricia L. Morgan  
Clerk of the Court