



Neutral

As of: September 29, 2020 4:33 PM Z

Cohen v Cohen

Supreme Court of New York, Appellate Division, Second Department

April 18, 2018, Decided

2016-13143

Reporter

160 A.D.3d 804 *; 74 N.Y.S.3d 349 **; 2018 N.Y. App. Div. LEXIS 2603 ***; 2018 NY Slip Op 02596 ****; 2018 WL 1833272

Outcome

Order reversed.

[****1] Ilan Cohen, Respondent, v Tamara Cohen, Appellant. (Index No. 202619/11)

LexisNexis® Headnotes

Prior History: [Cohen v Cohen, 125 AD3d 589, 2 NYS3d 605 \(2015\)](#)

Core Terms

interim, spouse, disparity, divorce, reallocation, non-monied, ancillary, updated

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

Family Law > Marital Termination & Spousal Support > Costs & Attorney Fees

HN1 **Basis of Recovery, Statutory Awards**

Case Summary

Overview

HOLDINGS: [1]-The Supreme Court improvidently exercised its discretion in denying the defendant's motion made in September 2016 for an award of an interim attorney's fee.; [2]-Considering all of the relevant factors, including the parties' relative circumstances, the disparity in their respective incomes, the plaintiff husband's failure to pay the earlier interim counsel fee awards, and his failure to file an updated statement of net worth, an award of an attorney's fee in the sum of \$30,000 was appropriate, subject to reallocation after trial if deemed appropriate by the court.

The Domestic Relations Law provides that, in an action for divorce, the court may direct either spouse to pay such sum or sums of money directly to the attorney of the other spouse to enable that spouse to carry on or defend the action or proceeding as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. [Domestic Relations Law § 237\(a\)](#). The decision to award an attorney's fee lies, in the first instance, in the discretion of the trial court and then in the Appellate Division whose discretionary authority is as broad as that of the trial court. An award of interim counsel fees is designed to redress the economic disparity between the monied spouse and the non-monied spouse and ensures that the nonmonied spouse will be able to litigate the action, and do so on equal footing with the monied spouse. The issue of interim counsel fees is controlled by the equities of the case and the financial circumstances of the parties, and such fees will generally be warranted where there is a significant

disparity in the parties' financial circumstances.

The plaintiff moved to disqualify the law firm representing the defendant in this action, and by order dated September 26, 2012, the Supreme Court denied the motion. The plaintiff appealed [***2] from that order, and the defendant moved for an award of appellate counsel fees in the sum of \$13,000 to defend against the plaintiff's appeal.

Headnotes/Summary

Headnotes

Husband and Wife and Other Domestic Relationships—Counsel Fees—Award of Interim Counsel Fees—Economic Disparity between Monied Spouse and Non-Monied Spouse

Counsel: [***1] Quatela Chimeri, PLLC, Hauppauge, NY (Christopher J. Chimeri and Sophia Arzoumanidis of counsel), for appellant.

Judges: MARK C. DILLON, J.P., ROBERT J. MILLER, BETSY BARROS, LINDA CHRISTOPHER, JJ. DILLON, J.P., MILLER, BARROS and CHRISTOPHER, JJ., concur.

In 2013, the plaintiff moved for a schedule of parenting time with the children, and the defendant cross-moved for an award of an interim attorney's fee. In her cross motion, the defendant asserted that she was a homemaker with no steady income. By order dated July 15, 2013, the Supreme Court found that the plaintiff, a self-employed real estate developer, was the monied spouse and awarded the defendant \$30,000 as an interim attorney's fee. The court noted that in opposition to the defendant's cross motion, the plaintiff alleged that the defendant was employed throughout the marriage but failed to provide any evidence regarding her income [**351] and failed to file a statement of net worth. The plaintiff appealed from the order dated July 15, 2013, and this Court affirmed the order insofar as appealed from (*see Cohen v Cohen*, 134 AD3d 881, 20 NYS3d 896 [2015]). By order dated [****2] August 19, 2013, the Supreme Court granted the defendant's motion for an award of appellate counsel fees in the sum of \$13,000 to defend against the plaintiff's appeal from the order dated September 26, 2012.

In 2015, the defendant [***3] moved for pendente lite relief, including an award of an interim attorney's fee in the sum of \$100,000. By order dated April 24, 2015, the Supreme Court granted that branch of the defendant's motion which was for an award of an interim attorney's fee to the extent of awarding her the sum of \$50,000. In that order, the court noted that the plaintiff had not yet paid the defendant's \$13,000 appellate counsel fee award. It also noted that a judgment had been entered by the Nassau County Clerk in the sum of \$30,331.92, reflecting the plaintiff's failure to pay the \$30,000 interim attorney's fee award from July 2013. By order dated April 6, 2016, the court, upon the defendant's motion, awarded her an [**806] interim attorney's fee in the sum of \$10,000. In September 2016, the defendant moved for an award of an interim attorney's fee in the sum of \$34,392.50. The motion was supported, inter alia, by the affidavit of the defendant's new attorney indicating that he had been retained on September 9, 2016, and that he required payment of a \$30,000 retainer. The plaintiff opposed the motion but failed to provide an updated statement of net worth. By order dated November 7, 2016, the court denied the [***4] motion. The defendant

Opinion

[**350] [*804] In an action for a divorce and ancillary relief, the defendant appeals from an order of the Supreme Court, Nassau County (Jeffrey A. Goodstein, J.), dated November 7, 2016. The order denied the defendant's motion for an award of an interim attorney's fee.


[**805] Ordered that the order is reversed, on the facts and in the exercise of discretion, with costs, and the defendant's motion for an award of an interim attorney's fee is granted to the extent of awarding her an interim attorney's fee in the sum of \$30,000, subject to reallocation after trial if deemed appropriate by the Supreme Court.

The parties were married in 2000 and are the parents of three unemancipated children. In 2011, the plaintiff commenced this action for a divorce and ancillary relief.

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appeals from that order.

Dillon, J.P., Miller, Barros and Christopher, JJ., concur.

[HN1](#)  "The Domestic Relations Law provides that, in an action for divorce, 'the court may direct either spouse . . . to pay such sum or sums of money directly to the attorney of the other spouse to enable that spouse to carry on or defend the action or proceeding as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties' " ([Prichep v Prichep](#), [52 AD3d 61](#), [64](#), [858 NYS2d 667 \[2008\]](#)), quoting [Domestic Relations Law § 237 \[a\]](#)). " 'The decision to award an attorney's fee lies, in the first instance, in the discretion of the trial court and then in the Appellate Division whose discretionary authority is as broad as that of the trial court' " ([Peritore v Peritore](#), [50 AD3d 874](#), [874-875](#), [855 NYS2d 646 \[2008\]](#)), quoting [Burger v Holzberg](#), [290 AD2d 469](#), [471](#), [736 NYS2d 416 \[2002\]](#)). An award of interim counsel fees "is designed to redress the economic disparity between the monied spouse and the non-monied spouse" ([O'Shea v O'Shea](#), [93 NY2d 187](#), [190](#), [711 NE2d 193](#), [689 NYS2d 8 \[1999\]](#)), and "ensures that the nonmonied spouse will be able to litigate the action, and do so on equal footing with the monied spouse" ([Prichep v Prichep](#), [52 AD3d at 65](#); see [Shakil v Rehman](#), [134 AD3d 1093](#), [23 NYS3d 289 \[2015\]](#); [Witter v Daire](#), [81 AD3d 719](#), [720](#), [917 NYS2d 870 \[2011\]](#); [Amante v Amante](#), [78 AD3d 622](#), [909 NYS2d 666 \[2010\]](#)). The issue of interim counsel fees is controlled by the equities of the case and the financial circumstances of the parties, and such fees will generally be warranted where there is a significant disparity in the parties' financial circumstances (see [Dunleavy v Dunleavy](#), [125 AD3d 832](#), [833](#), [4 NYS3d 252 \[2015\]](#) [*****5**]; [Carlin v Carlin](#), [120 AD3d 734](#), [735](#), [991 NYS2d 335 \[2014\]](#); [Palmeri v Palmeri](#), [87 AD3d 572](#), [929 NYS2d 153 \[2011\]](#)).

Here, the Supreme Court improvidently exercised its discretion in denying the defendant's motion made in September 2016 for an award of an interim attorney's fee. Considering all of the relevant factors, [*****352**] including the parties' relative circumstances, the disparity in their respective incomes, the plaintiff's failure to pay the earlier interim counsel fee awards, and his failure to file an updated statement of net worth, we find, in the exercise of discretion, that an award of an attorney's fee in [***807**] the sum of \$30,000 is appropriate, subject to reallocation after trial if deemed appropriate by the court (see [Shakil v Rehman](#), [134 AD3d 1093](#), [23 NYS3d 289 \[2015\]](#); [Dunleavy v Dunleavy](#), [125 AD3d 832](#), [4 NYS3d 252 \[2015\]](#); [Amante v Amante](#), [78 AD3d 622](#), [909 NYS2d 666 \[2010\]](#); [Prichep v Prichep](#), [52 AD3d 61](#), [858 NYS2d 667 \[2008\]](#)).

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