

## APPENDIX A

### State of New York Court of Appeals

APL -2024-00107

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Decided and Entered on the  
Seventeenth Day of October 2024

Present: Hon. Rowan D. Wilson, Chief  
Judge Presiding

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Leaticia C. Osuagwu,  
*Respondent,*

*v.*

Chinonyerem O. Osuagwu  
*Appellant.*

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## ORDER

Appellant having appealed to the  
*Court of Appeals* in the above title; upon  
papers filed and due deliberation, it is  
ORDERED, that the appeal is dismissed  
without cost, by the Court *sua sponte*,  
upon the ground that no substantial

2a

constitutional question is directly involved.

*H. Davis*

Heather Davis  
Deputy Clerk of the Court

## APPENDIX B

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

Docket No: 2022-04034

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Submitted - May 28, 2024

Present: Mark C. Dillon J.P. Colleen D. Duffy, Linda Christopher, Carl J. Landicino, JJ.

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Leaticia C. Osuagwu,  
*Respondent,*

v.

Chinonyerem O. Osuagwu  
*Appellant.*

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## DECISION & ORDER

Chinonyerem O. Osuagwu, New City, NY, appellant *pro se.*

Phyllis E. Simon, New City, NY, *for respondent.*

Nicole DiGiacomo, New City, NY, *attorney for the child.*

In an action for a divorce and ancillary relief, the defendant appeals from stated portions of a judgment of divorce of the Supreme Court, Rockland County (Sherri L. Eisenpress, J.), dated February 3, 2022. The judgment of divorce, upon a decision of the same court, also dated February 3, 2022, made after a nonjury trial, *inter alia*, determined that certain premises are marital property subject to equitable distribution, with the parties to share equally in the net proceeds of the sale of those premises, directed that the defendant was solely responsible for payment of unpaid federal and state income taxes, penalties, fines, or interest due, awarded the plaintiff sole legal and physical custody of the parties' children, and awarded the plaintiff counsel fees in the amount of \$15,000.

ORDERED that the judgment of divorce is affirmed insofar as appealed from, with costs.

The parties were married in 2012 and have two children. In 2020, the plaintiff commenced this action for a divorce and ancillary relief. After a

nonjury trial and upon a decision dated February 3, 2022, the Supreme Court entered a judgment of divorce, also dated February 3, 2022. The defendant appeals from stated portions of the judgment of divorce.

“The trial court is vested with broad discretion in making an equitable distribution of marital property and unless it can be shown that the court improvidently exercised that discretion, its determination should not be disturbed” (*Kamm v Kamm*, 182 AD3d 590, 591 [internal quotation marks omitted]). “Moreover, where, as here, the determination as to equitable distribution has been made after a nonjury trial, the trial court’s assessment of the credibility of witnesses is afforded great weight on appeal” (*Tzu Ching Kao v Bonalle*, 214 AD3d 922, 924).

The Supreme Court properly determined that the marital residence constituted marital property. “Property acquired during the marriage is presumed to be marital property and the party seeking to overcome such

presumption has the burden of proving that the property in dispute is separate property" (*Keren v Keren*, 201 AD3d 906, 907, quoting *Steinberg v Steinberg*, 59 AD3d 702, 704 [internal quotation marks omitted]). Here, the record established that the residence was acquired during the marriage with marital funds, and the defendant failed to adduce sufficient evidence so as to overcome the marital property presumption (see *Novick v Novick*, 214 AD3d 995, 999; *Cuomo v Moss*, 199 AD3d 635, 636).

The defendant's contentions regarding prior orders of the Supreme Court that authorized the plaintiff to sign certain documents on behalf of the defendant in order to effectuate the sale of the marital residence are properly raised on this appeal from the judgment of divorce (see CPLR 5501[a][1]; *Shah v Oral Cancer Prevention Intl., Inc.*, 138 AD3d 722, 723-724). The defendant contends that the plaintiff committed forgery when, pursuant to the court's authorization, the plaintiff signed certain documents on behalf of the defendant in order to effectuate the sale

of the marital residence. However, the plaintiff did not commit forgery as there was no “intent to defraud, deceive, or injure another” (Penal Law §§ 170.05, 170.10), in that the plaintiff was authorized by the court to sign for the defendant (see *People v Briggins*, 50 NY2d 302, 306; *Pauyo v Pauyo*, 102 AD3d 847, 848).

The Supreme Court properly directed that the defendant was solely responsible for payment of unpaid federal and state income taxes, penalties, fines, or interest due. The income tax liability of the parties is subject to equitable distribution (see *Lago v Adrion*, 93 AD3d 697; *Conway v Conway*, 29 AD3d 725), but equitable distribution does not necessarily mean equal distribution (see *Auriemmo v Auriemmo*, 87 AD3d 1090). Here, the credible evidence established that the plaintiff filed separate tax returns and that the defendant had not filed any tax returns since approximately 2013. Inasmuch as the plaintiff paid her tax liability by filing separate income tax returns, the court properly directed that the defendant was responsible for any

outstanding tax liability and that the defendant would indemnify the plaintiff for any tax liability, penalties, fines, or interest due (see *Frey v Frey*, 68 AD3d 1052, 1053).

The Supreme Court properly awarded the plaintiff sole legal and physical custody of the children, with parental access to the defendant. "The paramount consideration in any custody dispute is the best interests of the child" (*Matter of Khan v Potdar*, 185 AD3d 822, 822-823; see *Eschbach v Eschbach*, 56 NY2d 167, 171). "Inasmuch as a court's custody determination is dependent in large part upon its assessment of the witnesses' credibility and upon the character, temperament, and sincerity of the parents, the court's custody determination will not be disturbed if supported by a sound and substantial basis in the record" (*Matter of Turcios v Cordero*, 173 AD3d 1048, 1049). Here, the court's determination awarding custody to the plaintiff, who, *inter alia*, was the primary caregiver for the children, is supported by a sound and substantial basis in the record (see

*Matter of Chung v Toppin*, 209 AD3d 647).

An award of counsel fees is a matter within the sound discretion of the trial court, taking into consideration the equities and circumstances of the particular case, including the parties' respective financial conditions and the relative merits of their positions (see Domestic Relations Law § 237[a]; *Johnson v Chapin*, 12 NY3d 461). Here, considering the equities and circumstances of the case, including the parties' respective financial conditions, the Supreme Court providently exercised its discretion in awarding the plaintiff counsel fees.

The defendant's remaining contentions either are without merit or have been rendered academic by the sale of the marital residence (see *Matter of Hearst Corp. v Clyne*, 50 NY2d 707; *Newrez, LLC v City of Middletown*, 216 AD3d 654).

DILLON, J.P., DUFFY,  
CHRISTOPHER and LANDICINO, JJ.,  
concur.

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ENTER:

Darrell M. Joseph

Darrell M. Joseph Clerk of the Court

## APPENDIX C

### New York Supreme Court Ninth Circuit

Index No. 036070/2020

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At an IAS Part of the New York State Supreme Court held at the Rockland County Courthouse, One South Main Street, New City, N.Y. on the 3rd Day of February 2022.

Present: Hon. SHERRI L.  
EISENPRESS, Justice

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Leaticia C. Osuagwu,  
*Plaintiff,*

*-against-*

Chinonyerem O. Osuagwu,  
*Defendant.*

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## JUDGMENT OF DIVORCE

EACH PARTY HAS A RIGHT TO  
SEEK A MODIFICATION OF THE

CHILD SUPPORT ORDER UPON A SHOWING OF (1) A SUBSTANIAL CHANGE IN CIRCUMSTANCES; OR (II) THAT THREE YEARS HAVE PASSED SINCE THE ORDER WAS ENTERED, LAST MODIFIED OR ADJUSTED; OR (III) THERE HAS BEEN A CHANGE IN EITHER PARTY'S GROSS INCOME BY FIFTEEN EPR CENT OR MORE SINCE THE ORDER WAS ENTERED, LAST MODIFIED, OR ADJUSTED. HOWEVER, IF THE PARTIES HAVE SPECIFICALLY OPTED OUT OF SUBPARAGRAPH (II) OR (III) OF THIS PARAGRAPH IN A VALIDLY EXECUTED AGREEMENT OR STIPULATION, THEN THAT BASIS TO SEEK MODIFICATION DOES NOT APPLY. THE PARTIES ARE NOT OPTING OUT.

THE FOLLOWING NOTICE IS NOT APPLICABLE:

NOTE: (1) THIS ORDER OF CHILD SUPPORT SHALL BE ADJUSTED BY THE APPLICATION OF A COST-OF-LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT

COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER THIS ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED UPON THE REQUEST OF ANY PARTY TO THE ORDER OR PURSUANT TO PARAGRAPH (2) BELOW. UPON APPLICATION OF A COST-OF-LIVING ADJUSTMENT AT THE DIRECTION

FILED: ROCLAND COUNTY CLERK:  
02/07/202

OF THE SUPPORT COLLECTION UNIT, AN ADJUSTED ORDER SHALL BE SENT TO THE PARTIES WHO, IF THEY OBJECT TO THE COST-OF-LIVING ADJUSTMENT SHALL HAVE THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING TO SUBMIT A WRITTEN OBJECTION TO THE COURT INDICATED ON SUCH ADJUSTED ORDER. UPON RECEIPT OF SUCH WRITTEN OBJECTION, THE COURT SHALL SCHEDULE A HEARING AT WHICH THE PARTIES MAY BE PRESENT TO OFFER EVIDENCE WHICH THE COURT WILL CONSIDER IN ADJUSTING

THE CHILD SUPPORT ORDER IN  
ACCORDANCE WITH THE CHILD  
SUPPORT STANDARDS ACT.

(2) A. RECIPIENT OF FAMILY  
ASSISTANCE SHALL HAVE THE  
CHILD SUPPORT ORDER REVIEWED  
AND ADJUSTED AT THE DIRECTION  
OF THE SUPPORT COLLECTION  
UNIT NO EARLIER THAN TWENTY-  
FOUR MONTHS AFTER SUCH  
ORDER IS ISSUED, LAST MODIFIED  
OR LAST ADJUSTED WITHOUT  
FURTHER APPLICITON BY ANY  
PARTY ALL PARTIES WILL RECEIVE  
A COPY OF THE ADJUSTED ORDER.

(3) WHERE ANY PARTY FAILS TO  
PROVIDE, AND UPDATE UPON ANY  
CHANGE, THE SUPPORT  
COLLECTION UNIT WITH A  
CURRENT ADDRESS AS REQUIRED  
BY SECTION 240(B) OF THE  
DOMESTIC RELATIONS LAW, TO  
WHICH AN ADJUSTED SUPPORT  
ORDER CAN BE SENT, THE  
SUPPORT OBLIGATION AMOUNT  
CONTAINED THEREIN SHALL  
BECOME DUE AND OWING ON THE  
DATE THE FIRST PAYMENT IS DUE

UNDER THE TERMS OF THE ORDER OF SUPPORT WHICH WAS REVIEWED AND ADJUSTED OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THE ADJUSTED ORDER, REGARDLESS OF WHETHER OR NOT THE PARTY HAS RECEIVED A COPY OF THE ADJUSTED ORDER.

This action was submitted to this Court for consideration on Jan. 26, 2028.

The *Plaintiff* submitted a *Summons* and *Notice of Automatic Orders, Verified Complaint, and Verified Reply*. by her attorney Phyllis E. Simon, Esq. Defendant appeared in this matter *pro se* and submitted a *Verified Answer and Counterclaims*. The Plaintiff's address is 203 Pineview Avenue, Bardonia, NY 10954 and her social security number is XXX-XX-7969. Defendant did not provide an address to the Court but can be reached by e-mail at obi@lebene.net. His social security number is XXX-XX-0749.

Both Plaintiff and Defendant testified extensively in this matter.

Plaintiff testified that the relationship between herself and Defendant had broken down irretrievably for a period of more than six months. Plaintiff also testified that she would take all steps within her power to remove all barriers to the Defendant's remarriage.

NOW, on motion of Plaintiff's Attorney, Phyllis E. Simon, Esq.,

ORDERED, ADJUDGED AND DECREED that the application of plaintiff is hereby granted to dissolve the marriage between LEATICIA C. OSUAGWU, Plaintiff, and CHINONYEREM O. OSUAGWU, Defendant, by reason of the relationship between Plaintiff and Defendant has broken down irretrievably for a period of at least six months pursuant to DRL Section 170(7); and The requirements of DRL Section 240-1(a-1) have been met and the Court having considered the results of such inquiries, it is ORDERED AND ADJUDGED that the Plaintiff, Leaticia C. Osuagwu, shall have sole legal and physical custody of the minor children of the marriage;<sup>1</sup> and

it is ORDERED AND ADJUDGED that the Defendant shall have parental access time with the children on Saturdays from 10 AM until 8 PM and, if and when Defendant establishes a home suitable for the children he may instead have access time with the children on alternate weekends from Friday at 6 PM until Sunday at 6 PM and a dinner visit every Wednesday from 5 PM until 8 PM; and since Defendant did not wish to have holiday visitation with the children the children will be with Plaintiff every Christmas Eve, Christmas Day, Easter Sunday and Thanksgiving Day; and it is further ORDERED AND ADJUDGED that there is no award of maintenance to either party pursuant to this Court's decision; and it is further ORDERED AND ADJUDGED that the Defendant pay to Plaintiff as basic child support for the minor children of the marriage

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<sup>1</sup> In order to protect the privacy of the children, their names and other sensitive identifiers were deliberately excluded from this court document, especially as they are not directly relevant to this *petition*.

by direct payment to Plaintiff the sum of Three thousand two hundred and 33/100 (\$3208.33) per month on the first of every month, retroactive to March 19, 2021, the date Plaintiff filed a motion for pendent lite child support, with an appropriate credit for \$6,000.00 previously paid by Defendant as of 10.24.2021, and a further credit he makes any further payments prior to the entry of Judgment; and it is further. ORDERED AND ADJUDGED the basic child support obligation as defined in DRL Section240(1-b) presumptively results in the correct amount of child support to be awarded, and the amount ordered conforms to the basic child support obligation attributable to the non-custodial parent; The amount awarded is neither unjust nor inappropriate and the Court has approved such award through the Findings of Fact and Conclusions of Law, and it is further. ORDERED AND ADJUDGED: Defendant shall pay in addition to basic child support each month 71.34% of the marginal cost of health insurance for the children, \$215.40 monthly provided by Plaintiff

through her employment; Defendant's share is \$153.66 per month, retroactive to March 19, 2021; and it is further. ORDERED AND ADJUDGED, that the Defendant pay to Plaintiff in addition to basic child support each month, 71.34% of the cost of providing childcare for the parties' children to allow Plaintiff to work, commute or take additional training. Said expenses include 71.34% of the \$1,870.00 for children's activities during summer, 2021, Defendant's share being \$1,334.05, and the recurring weekly cost of \$350, 00, \$1,516.67 monthly, Defendant's 71.34% share being \$1,081.16 per month retroactive to June 1, 2021; for the employment of a babysitter for children and it is further, ORDERED AND ADJUDGED that any other add-on expenses including the cost of unreimbursed health care or different childcare costs including summer day camp, be shared by the parties with Defendant paying 71.34% and Plaintiff paying 28.66% thereof; and it is further. ORDERED AND ADJUDGED that equitable distribution of the marital

assets and liabilities including retirement funds is as follows:

The former marital home located at *49 King Arthur Court, New City* is marital property, and each party will be entitled to fifty per cent of the net proceeds of sale after the October 25, 2021 closing, subject to the adjustments detailed in in this *Judgment*, and such proceeds shall be held in the Escrow-IOLTA account of Plaintiff's Attorney until the entry of this *Judgment*, at which time funds will be disbursed pursuant to the terms of this *Judgment*. Plaintiff waives all interest she may have in Defendant's business, *Valide Health Care Systems, Inc.* Defendant waives any interest he may have in Plaintiff's retirement accounts. Each party is the owner of any bank accounts in his/her name. Each party is responsible for the balance on any credit card or other debts in his/her own name, and it is further. ORDERED AND ADJUDGED: that in the event Defendant is audited, assessed or charged with any state or federal taxes including, penalties, interest and fines, for his failure to file income tax returns

during the marriage, he will pay all such taxes, penalties, interest or fines for such failure and will hold Plaintiff harmless from any charges there-from; and it is further ORDERED AND ADJUDGED: that Defendant as the moneyed spouse is directed to pay to Plaintiff's counsel, Phyllis E. Simon, Esq., by deduction from his share of sale proceeds, the sum of \$15,000 for counsel fees on behalf of Plaintiff; and it is further ORDERED AND ADJUDGED: that any sums due and owing to the Attorney for the Children, Stacy Sabatini, Esq., at the time of the entry of this *Judgment* be paid out of each party's respective share of the proceeds of sale of the marital home; and it is further ORDERED AND ADJUDGED that the following deductions be made from the Defendant's share of the proceeds of the sale of the house:

(A) Basic child support arrears of \$,3208.33 per month retroactive from March 19, 2021 less a credit for \$6,000 in child support already paid and less a credit for any amount Defendant may have paid after October 25, 2021 until the date of entry of this *Judgment*;

- (B) Any arrears for his share of the marginal cost of children's health insurance, Defendant's share being \$153.66 per month retroactive to March 19, 2021 until the date of entry of this *Judgment*;
- (C) Any arrears in unreimbursed health care for the children from March 19, 2021, until date of entry of this *Judgment*, currently Defendant's share is \$71.34;
- (D) Any arrears in Defendant's share of childcare costs retroactive to March 19, 2021, until the date of entry of this *Judgment* including \$1334.05 as Defendant's share of children's summer activity expenses and \$1,081.16 per month retroactive to June 1, 2021, until the date of entry of this *Judgment* for childcare expenses;
- (E) Fifty per cent of the cost of the fix-up expenses for preparing the marital home for sale all paid by Plaintiff in the sum of \$5,925.59, Defendant's share being \$2,962.80;
- (F) Fifteen thousand (\$15,000.00) in counsel fees for the benefit of Plaintiff to

Plaintiff's counsel, Phyllis E. Simon, Esq;

(G) The sum of \$3,132.25 due and owing to Stacy Sabatini, Esq., the Attorney for the children less any payments made by Defendant prior to the entry of *Judgment*;

(H) The sum of \$5,000, half the sum escrowed by Park Place Abstract, the title company insuring the sale of the marital residence held in escrow by the title company to facilitate payment of a recorded *Judgment* by Discover Bank against Defendant and any part of this sum not used to pay off said Judgment will be returned to Defendant when the satisfaction of such Discover Bank judgment is filed; and it is further ORDERED AND ADJUDGED: That the following sum shall be deducted from Plaintiff's share of proceeds:

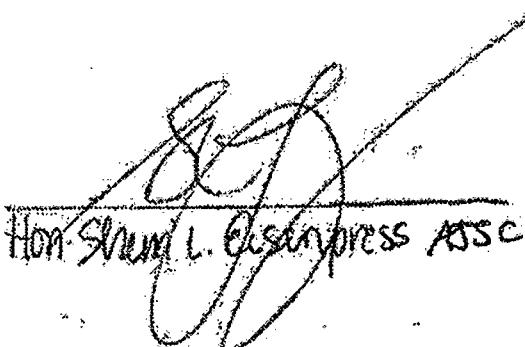
(A) The sum of \$2,126.25 owed to Stacy Sabatini, Esq., Attorney for Children as Plaintiff's share of outstanding counsel fee, unless sooner paid; and it is further ORDERED AND ADJUDGED: That thirty-six months of basic child support payments \$3,208.33 per month, as well

as thirty-six months of fixed add-on expenses including Defendant's share of marginal cost of health insurance for children, \$\$153.66 per month, and Defendant's pro rata share of monthly child care costs, \$1081.16 per month be sequestered in escrow, a total of \$159,953.40, to ensure that Plaintiff will regularly receive monthly child support and predictable add-on payments without being required to seek enforcement of these charges. Defendant has testified he has no regular employment, has no intention of seeking regular employment, and does not anticipate having a regular income for at least three years; and it is further ORDERED AND ADJUDGED that there is an *Order of Protection* against Defendant for the benefit of Plaintiff and the children which is continued until October 24, 2022, and it is further ORDERED AND ADJUDGED that this Court retains jurisdiction of this matter, concurrently with the Family Court, for the purposes of specifically enforcing the terms of this *Judgment* which are capable of specific enforcement to the extent permitted by law, and of making

such further judgment as it finds appropriate under the circumstances existing at the time application for that purpose is made to it, or both, and it is further; ORDERED AND ADJUDGED that both parties are authorized to resume the use of any prior surname and it is further ORDERED AND ADJUDGED that Defendant shall be served with a copy of this *Judgment* with *Notice of Entry* by the Plaintiff within thirty days of such entry, by e-mail unless he first provides an address for mailing.

Dated: February 3, 2022

ENTER

  
Hon. Shirley L. Casanpresa, ASSC

DONNA GORMAN SILBERMAN  
COUNTY CLERK

  
Donna Gorman Silberman