

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Fagan v. Gorbatko

Fagan, 2025 NY Slip Op 06992 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2025) · No. 2023-07561; 2023-07807 · Decided December 17, 2025

SUMMARY

The New York Appellate Division, Second Department held that a nonparty attorney who acted only as counsel to the defendant’s attorney of record lacked standing to seek attorney’s fees directly under Domestic Relations Law § 237(a). The court nevertheless determined that the attorney’s conduct was not frivolous under 22 NYCRR 130-1.1, vacated the \$17,300 sanctions award, and dismissed the related appeal as academic.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Helen Voutsinas, J.; Janice A. Taylor, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 17, 2025
DOCKET	2023-07561; 2023-07807
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	A nonparty law firm appealed from orders denying its motion for attorney's fees and imposing attorney's-fee sanctions against it in a matrimonial action.
STANDARD OF REVIEW	The court reviewed the attorney-standing determination for legal correctness and reviewed the imposition of sanctions for an improvident exercise of discretion.
PRECEDENTIAL VALUE	published
PARTIES	Chaim Steinberger, P.C., nonparty-appellant v. Justin Fagan, respondent

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QUESTIONS PRESENTED

1. Whether an attorney who acted only as counsel to the attorney of record, and did not file a notice of appearance, had standing to seek attorney's fees directly from the opposing spouse under Domestic Relations Law § 237(a).
2. Whether the Supreme Court improvidently exercised its discretion by imposing attorney's-fee sanctions under 22 NYCRR 130-1.1 based on Steinberger's fee motion.

HOLDINGS

1. An attorney who functions as counsel to the attorney of record may not properly seek attorney's fees and disbursements directly in the litigation from the opposing spouse; the attorney's remedy is to seek fees from the attorney of record. Because Steinberger was not the defendant's attorney of record, it lacked standing to bring the fee motion.
2. The Supreme Court improvidently exercised its discretion by imposing attorney's-fee sanctions against Steinberger because its conduct, under the circumstances, was not frivolous within the meaning of 22 NYCRR 130-1.1. The plaintiff's sanctions cross-motion was therefore denied and the sanctions award was vacated.

KEY QUOTATIONS

*"However, with respect to fees due to an attorney who functions as "of counsel" to an attorney of record, the "of counsel" attorney may only properly seek fees and disbursements from the attorney of record in the litigation" (*2)*

*"Here, the Supreme Court improvidently exercised its discretion in imposing sanctions against Steinberger, as its conduct, under the circumstances, was not frivolous within the meaning of 22 NYCRR 130-1.1" (*2)*

FACTUAL BACKGROUND

Steinberger entered into a retainer agreement with the defendant but did not file a notice of appearance in the matrimonial action. It appeared only as counsel to the defendant's attorney of record, primarily to assist with an application to disqualify that attorney based on alleged misconduct. Steinberger's representation ended when the attorney of record was replaced by another firm.

PROCEDURAL HISTORY

In a divorce action, Chaim Steinberger, P.C., which had acted as counsel to the defendant's attorney of record, moved under Domestic Relations Law § 237(a) for attorney's fees. The plaintiff cross-moved under 22 NYCRR 130-1.1 for sanctions, asserting that the fee motion was frivolous. The Supreme Court, Westchester County,

denied Steinberger's fee motion, found the motion frivolous, and awarded the plaintiff \$17,300 in attorney's fees. The Appellate Division modified the first order to deny sanctions, vacated the fee award, dismissed the appeal from the fee-award order as academic, and awarded Steinberger one bill of costs.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order dated April 12, 2023, was modified to deny the plaintiff's sanctions cross-motion; the order dated May 1, 2023, awarding \$17,300 in attorney's fees was vacated. The appeal from the May 1 order was dismissed as academic, and one bill of costs was awarded to Steinberger.

CASES CITED

- Frankel v. Frankel, 2 N.Y.3d 601, 606
- Roskind v. Brown, 29 A.D.2d 549, 550
- Menendez v. Abingdon Ct. Owners Corp., 200 A.D.3d 464, 465
- Spallone v. Spallone, 171 A.D.3d 527
- Dobbins v. County of Erie, 58 A.D.2d 733, 733
- Crudele v. Price, 218 A.D.3d 539, 540
- NHD Nigani, LLC v. Angelina Zabel Props., Inc., 161 A.D.3d 758, 761
- Joan 2000, Ltd. v. Deco Constr. Corp., 66 A.D.3d 841, 842