

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

Finley v. Turner

2026 NY Slip Op 03147 · No. 2022-04728 · Decided May 20, 2026

SUMMARY

The Appellate Division, Second Department modified a judgment of divorce concerning income calculations, maintenance, child support, equitable distribution, and custody. It held that the trial court improperly averaged income and imputed unsupported income, improperly distributed certain Ameriprise funds, and failed to determine the distribution of a retirement account and the value and distribution of a vehicle. The matter was remitted for new determinations, while joint legal custody with final decision-making authority to the defendant and sole physical custody to the defendant were directed, and interim maintenance and child support payments were continued.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Per curiam; Lara J. Genovesi, J.P.; Linda Christopher, J.; Lillian Wan, J.; Donna-Marie E. Golia, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	May 20, 2026
DOCKET	2022-04728
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from a judgment of divorce entered after a nonjury trial in an action for divorce and ancillary relief.
STANDARD OF REVIEW	The Appellate Division reviewed the judgment on the law, the facts, and in the exercise of discretion. It afforded deference to the trial court's credibility determinations and reviewed the custody determination for a sound and substantial basis in the record.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Terry Finley v. Jennifer Turner

TOPICS

dissolution of marriage

equitable distribution

spousal support

child support

child custody

PRACTICE AREAS

family law

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QUESTIONS PRESENTED

1. Whether the trial court properly calculated and imputed the parties' incomes for maintenance and child-support purposes.
2. Whether the trial court properly determined the parties' equitable distribution of the Ameriprise accounts and related property.
3. Whether the trial court properly addressed distribution of the defendant's individual retirement account, the 2017 Honda Pilot, and credits for carrying charges on the marital residence.
4. Whether the trial court properly awarded the defendant sole legal and physical custody.
5. Whether the judgment should be modified and remanded for new determinations and entry of an amended judgment.

HOLDINGS

1. The trial court improperly averaged each party's income from 2014 through 2018 and its imputation of income to the plaintiff, including reliance on purported rejected job offers, was unsupported by the record. The income determinations, maintenance award, and child-support award were deleted and remanded for new determinations.
2. The trial court properly considered relevant equitable-distribution factors and properly awarded the defendant half of the appreciation in the plaintiff's premarital apartment, but its distribution of the Ameriprise accounts and additional awards of \$150,000 and \$180,000 were unsupported or improper. The affected property determinations were deleted or remanded for redetermination.
3. The trial court erred by failing to determine the distribution of the defendant's individual retirement account and by failing to consider the plaintiff's request for equitable distribution of the 2017 Honda Pilot. The matter was remanded for those determinations, including a determination of the vehicle's value.
4. The award of sole physical custody to the defendant, with parenting time to the plaintiff, had a sound and substantial basis in the record. The award of sole legal custody to the defendant did not, because both parties requested joint legal custody and the judgment contemplated joint legal custody with final decision-making authority to the defendant. The judgment was modified to award joint legal custody, final decision-making authority to the defendant, and sole physical custody to the defendant subject to the existing parenting schedule.

KEY QUOTATIONS

*“The court may impute income to a party based on his or her employment history, future earning capacity, educational background, or money received from friends and relatives” ([*1])*

“While a court is afforded considerable discretion in determining whether to impute income to a party, a determination to impute income will be rejected where the amount imputed was not supported by the record, or the imputation was an improvident exercise of discretion” ([*1])

“Domestic Relations Law § 236 mandates that the equitable distribution of marital assets be based on the circumstances of the particular case and directs the courts to consider a number of statutory factors” ([*2])

“The Supreme Court's award of sole physical custody of the children to the defendant, with parenting time to the plaintiff, has a sound and substantial basis in the record” ([*3])

FACTUAL BACKGROUND

The parties married in 2009 and have two children, born in 2010 and 2012. In the divorce action, the trial court imputed annual income of \$455,855 to the plaintiff and determined the defendant's annual income to be \$102,212, then awarded maintenance, child support, equitable distribution, and sole legal and physical custody to the defendant. The marital-property issues included Ameriprise accounts, the plaintiff's premarital apartment, an individual retirement account, a 2017 Honda Pilot, severance proceeds, and carrying charges on the marital residence.

PROCEDURAL HISTORY

The plaintiff commenced the divorce action in 2019. After a nonjury trial, the Supreme Court, Westchester County, entered a judgment of divorce dated June 10, 2022, based on an amended decision dated April 8, 2022. The judgment addressed income attribution, maintenance, child support, equitable distribution, and custody. The Appellate Division modified the judgment and remitted the matter for new determinations on specified financial and custody issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Supreme Court, Westchester County, must make new determinations of each party's annual income, the plaintiff's maintenance obligation, the parties' child-support obligations, the equitable distribution of the defendant's individual retirement account, the 2017 Honda Pilot, and the Ameriprise accounts, and the credit due to the plaintiff for carrying charges paid on the marital residence from commencement of the action until its sale in June 2020, including pendente lite arrears. The court must then enter an appropriate amended judgment of divorce. Pending remand, the plaintiff must continue paying \$1,680 per month in maintenance and \$5,979 per month in child support.

CASES CITED

- Tuchman v. Tuchman, 201 AD3d 986, 990
- Weiss v. Nelson, 196 AD3d 722, 724
- Koutsouras v. Mitsos-Koutsouras, 198 AD3d 630, 632

- Fairchild v. Fairchild, 149 AD3d 810, 810-811
- Spera v. Spera, 71 AD3d 661, 662
- Fishman v. Fishman, 186 AD3d 1199, 1201
- Majauskas v. Majauskas, 61 NY2d 481
- Weidman v. Weidman, 162 AD3d 720, 725
- Massimi v. Massimi, 35 AD3d 400, 403
- Novick v. Novick, 214 AD3d 995, 999
- D'Amico v. D'Amico, 66 AD3d 951, 952
- Uttamchandani v. Uttamchandani, 175 AD3d 1457, 1458-1459
- Albert v. Albert, 60 AD3d 979, 979

OPINION

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PER CURIAM.

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Finley v Turner

2026 NY Slip Op 03147

May 20, 2026

Appellate Division, Second Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

Terry Finley, appellant,

v.

Jennifer Turner, respondent.

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

Decided on May 20, 2026

2022-04728, (Index No. 54676/19)

Lara J. Genovesi, J.P.

Linda Christopher

Lillian Wan

Donna-Marie E. Golia, JJ.

Friedman & Friedman, PLLC, White Plains, NY (Andrea B. Friedman of counsel), for appellant.

Lepore Law Group, New York, NY (Lauren B. Lepore of counsel), for respondent.

DECISION & ORDER

In an action for a divorce and ancillary relief, the plaintiff appeals from a judgment of divorce of the Supreme Court, Westchester County (James W. Hubert, J.), dated June 10, 2022. The judgment of divorce, insofar as appealed from, upon an amended decision of the same court dated April 8, 2022, made after a nonjury trial, imputed annual income to the plaintiff in the amount of \$455,855 and determined the defendant's annual income to be \$102,212, directed the plaintiff to pay the defendant maintenance in the amount of \$1,680 per month for a period of 35 months, directed the plaintiff to pay the

defendant child support in the amount of \$5,979 per month, equitably distributed certain property, including the appreciation in value of the plaintiff's premarital apartment, a 2017 Honda Pilot vehicle, and \$1,314,018.42 contained in certain accounts held at Ameriprise, and awarded the defendant sole legal and physical custody of the parties' children.

ORDERED that the judgment of divorce is modified, on the law, on the facts, and in the exercise of discretion, (1) by deleting the provision thereof imputing annual income to the plaintiff in the amount of \$455,855, (2) by deleting the provision thereof determining the defendant's annual income to be \$102,212, (3) by deleting the provision thereof directing the plaintiff to pay the defendant maintenance in the amount of \$1,680 per month for a period of 35 months, (4) by deleting the provision thereof directing the plaintiff to pay the defendant child support in the amount of \$5,979 per month, (5) by deleting the provision thereof directing the plaintiff to pay the defendant \$150,000 from the amount of \$227,438 from the Ameriprise joint account, (6) by deleting the provision thereof equitably distributing the plaintiff's Ogilvy severance so as to award the defendant \$180,000, (7) by deleting the provision thereof equitably distributing the \$1,314,018.42 contained in certain accounts held at Ameriprise, (8) by deleting the provision thereof awarding the defendant ownership and possession of the 2017 Honda Pilot vehicle, and (9) by deleting the provision thereof awarding the defendant sole legal and physical custody of the parties' children, and substituting therefor a provision awarding the parties joint legal custody of the children, with final decision-making authority to the defendant, and awarding the defendant sole physical custody of the children subject to the parenting schedule set forth in the judgment of divorce; as so modified, the judgment of divorce is affirmed insofar as appealed from, without costs or disbursements, and the matter is remitted to the Supreme Court, Westchester County, for a new determination in accordance herewith of each party's annual income, the plaintiff's maintenance obligation, the parties' child support obligations, the equitable distribution of the defendant's individual retirement account and the 2017 [*2] Honda Pilot vehicle in accordance herewith, the equitable distribution of the Ameriprise accounts in accordance herewith, and the amount to be credited to the plaintiff for his payment of the carrying charges on the marital residence from the commencement of this action until its sale in June 2020, including the amount of pendente lite arrears, and in accordance herewith, the entry of an appropriate amended judgment of divorce thereafter; and it is further,

ORDERED that, in the interim, the plaintiff shall continue to pay to the defendant maintenance in the amount of \$1,680 per month and child support in the amount of \$5,979 per month.

The parties were married in 2009 and have two children together, born in 2010 and 2012. In 2019, the plaintiff commenced this action for a divorce and ancillary relief. The Supreme Court conducted a nonjury trial on the issues of, inter alia, maintenance, child custody, child support, and equitable distribution. The plaintiff appeals from the resultant judgment of divorce.

In determining maintenance and child support obligations, "[t]he court has considerable discretion in determining whether income should be imputed to a party and the court's credibility determinations are accorded deference on appeal"

(*Tuchman v Tuchman*, 201 AD3d 986, 990 [internal quotation marks omitted]). "The court may impute income to a party based on his or her employment history, future earning capacity, educational background, or money received from friends and relatives" (*id.* [internal quotation marks omitted]). "While a court is afforded considerable discretion in determining whether to impute income to a party, a determination to impute income will be rejected where the amount imputed was not supported by the record, or the imputation was an improvident exercise of discretion" (*Weiss v Nelson*, 196 AD3d 722, 724 [internal quotation marks omitted]).

Here, the Supreme Court improperly averaged each party's income from the years 2014 through 2018 to calculate their respective annual income for maintenance and child support purposes (*see Koutsouras v Mitsos-Koutsouras*, 198 AD3d 630, 632). Moreover, the court's imputation of income, including its reference to purported job offers rejected by the plaintiff, is not supported by the record. Accordingly, the matter is remitted for a new determination of each party's annual income, the plaintiff's maintenance obligation, and the parties' child support obligations (*see Domestic Relations Law* §§ 236[B][6]; 240[1-b]).

"Domestic Relations Law § 236 mandates that the equitable distribution of marital assets be based on the circumstances of the particular case and directs the courts to consider a number of statutory factors" (*Fairchild v Fairchild*, 149 AD3d 810, 810-811; *see Domestic Relations Law* § 236[B][5][c], [d]). While the court is required to discuss the statutory factors it relied upon in distributing marital property, it is not required to specifically cite to and analyze each statutory factor where it is evident that it considered the relevant factors and the reasons for its decision are articulated (*see Spera v Spera*, 71 AD3d 661, 662).

Here, contrary to the plaintiff's contention, it is evident that the Supreme Court considered and applied a number of the relevant statutory factors set forth in Domestic Relations Law § 236(B)(5)(d) in making its equitable distribution determination (*see Fishman v Fishman*, 186 AD3d 1199, 1201). However, the court's distribution of the \$1,314,018.42 balance contained in certain accounts held at Ameriprise is not supported by the record. Contrary to the court's conclusion, the plaintiff established by clear and convincing evidence, through the report and testimony of his accounting expert, that of the \$1,028,140.91 held in an Ameriprise IRA retirement account, \$552,486.71 constituted his separate property (*see Domestic Relations Law* § 236[B][1][d] [1]). Accordingly, the court should have awarded the distribution of the remaining portion of the funds held in that Ameriprise IRA retirement account in accordance with the formula approved in *Majauskas v Majauskas* (61 NY2d 481), calculated from the date of the marriage to the commencement of this action.

Moreover, although the Supreme Court properly awarded equitable distribution of the parties' personal Ameriprise accounts, the court improperly awarded the additional sums of $\$150,000$ and $\$180,000$ to the defendant. Accordingly, the provisions of the judgment of divorce awarding the defendant the additional sums of $\$150,000$ and $\$180,000$ should be deleted.

Contrary to the plaintiff's further contentions, the Supreme Court's determination to award the defendant half of the appreciation in value of the

plaintiff's premarital apartment is supported by the record (*see* *Weidman v Weidman*, 162 AD3d 720, 725). Additionally, contrary to the plaintiff's contention, the court properly declined to award the plaintiff any portion of a certain Finley Management bank account, since the plaintiff failed to offer any proof as to the value of Finley Management, the defendant's business (*see* *Massimi v Massimi*, 35 AD3d 400, 403).

However, the Supreme Court failed to determine the distribution of an individual retirement account titled in the defendant's name and should consider those distributions upon remittal (*see* *Novick v Novick*, 214 AD3d 995, 999). Similarly, the court erred by failing to consider the plaintiff's request for the equitable distribution of the 2017 Honda Pilot, a vehicle purchased by the parties during the marriage (*see* *D'Amico v D'Amico*, 66 AD3d 951, 952). "Although [t]his court has the authority to determine whether marital property shall be distributed or a distributive award shall be made in lieu of, or to supplement, facilitate or effectuate a distribution of marital property, we are not in a position to make an award because insufficient evidence was adduced at trial concerning the value of the" Honda Pilot (*id.* [citations and internal quotation marks omitted]). Accordingly, we also remit this matter to the Supreme Court, Westchester County, for a determination of the value of the Honda Pilot and an appropriate distribution thereof (*see* Domestic Relations Law § 236[B][5][d]; *D'Amico v D'Amico*, 66 AD3d at 952). Additionally, upon remittal, the court shall determine the amount to be credited to the plaintiff for his payment of the carrying charges on the marital residence from the commencement of this action until its sale in June 2020, including the amount of pendente lite arrears (*see* *Uttamchandani v Uttamchandani*, 175 AD3d 1457, 1458-1459).

The Supreme Court's award of sole physical custody of the children to the defendant, with parenting time to the plaintiff, has a sound and substantial basis in the record (*see* *Albert v Albert*, 60 AD3d 979, 979). However, the court's determination to award the defendant sole legal custody lacks a sound and substantial basis in the record where both parties requested joint legal custody and the judgment of divorce contemplates a joint legal custody arrangement with final decision-making authority to the defendant.

Accordingly, the matter must be remitted to the Supreme Court, Westchester County, for new determinations in accordance herewith, and the entry of an appropriate amended judgment of divorce thereafter.

The plaintiff's remaining contentions are unpreserved for appellate review, without merit, or need not be reached in light of our determination.

GENOVESI, J.P., CHRISTOPHER, WAN and GOLIA, JJ., concur.

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PER CURIAM.

Finley v Turner - 2026 NY Slip Op 03147 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Finley v Turner 2026 NY Slip Op 03147 May 20, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Terry Finley, appellant, v Jennifer Turner, respondent. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on May 20, 2026 2022-04728, (Index No. 54676/19) Lara J. Genovesi, J.P. Linda Christopher Lillian Wan Donna-Marie E. Golia, JJ. Friedman & Friedman, PLLC, White Plains, NY (Andrea B. Friedman of counsel), for appellant. Lepore Law Group, New York, NY (Lauren B. Lepore of counsel), for respondent. [*1] DECISION & ORDER In an action for a divorce and ancillary relief, the plaintiff appeals from a judgment of divorce of the Supreme Court, Westchester County (James W. Hubert, J.), dated June 10, 2022. The judgment of divorce, insofar as appealed from, upon an amended decision of the same court dated April 8, 2022, made after a nonjury trial, imputed annual income to the plaintiff in the amount of \$455,855 and determined the defendant's annual income to be \$102,212, directed the plaintiff to pay the defendant maintenance in the amount of \$1,680 per month for a period of 35 months, directed the plaintiff to pay the defendant child support in the amount of \$5,979 per month, equitably distributed certain property, including the appreciation in value of the plaintiff's premarital apartment, a 2017 Honda Pilot vehicle, and \$1,314,018.42 contained in certain accounts held at Ameriprise, and awarded the defendant sole legal and physical custody of the parties' children. ORDERED that the judgment of divorce is modified, on the law, on the facts, and in the exercise of discretion, (1) by deleting the provision thereof imputing annual income to the plaintiff in the amount of \$455,855, (2) by deleting the provision thereof determining the defendant's annual income to be \$102,212, (3) by deleting the provision thereof directing the plaintiff to pay the defendant maintenance in the amount of \$1,680 per month for a period of 35 months, (4) by deleting the provision thereof directing the plaintiff to pay the defendant child support in the amount of \$5,979 per month, (5) by deleting the provision thereof directing the plaintiff to pay the defendant \$150,000 from the amount of \$227,438 from the Ameriprise joint account, (6) by deleting the provision thereof equitably distributing the plaintiff's Ogilvy severance so as to award the defendant \$180,000, (7) by deleting the provision thereof equitably distributing the \$1,314,018.42 contained in certain accounts held at Ameriprise, (8) by deleting the provision thereof awarding the defendant ownership and possession of the 2017 Honda Pilot vehicle, and (9) by deleting the provision thereof awarding the defendant sole legal and physical custody of the parties' children, and substituting therefor a provision awarding the

parties joint legal custody of the children, with final decision-making authority to the defendant, and awarding the defendant sole physical custody of the children subject to the parenting schedule set forth in the judgment of divorce; as so modified, the judgment of divorce is affirmed insofar as appealed from, without costs or disbursements, and the matter is remitted to the Supreme Court, Westchester County, for a new determination in accordance herewith of each party's annual income, the plaintiff's maintenance obligation, the parties' child support obligations, the equitable distribution of the defendant's individual retirement account and the 2017 [*2] Honda Pilot vehicle in accordance herewith, the equitable distribution of the Ameriprise accounts in accordance herewith, and the amount to be credited to the plaintiff for his payment of the carrying charges on the marital residence from the commencement of this action until its sale in June 2020, including the amount of pendente lite arrears, and in accordance herewith, the entry of an appropriate amended judgment of divorce thereafter; and it is further, ORDERED that, in the interim, the plaintiff shall continue to pay to the defendant maintenance in the amount of \$1,680 per month and child support in the amount of \$5,979 per month. The parties were married in 2009 and have two children together, born in 2010 and 2012. In 2019, the plaintiff commenced this action for a divorce and ancillary relief. The Supreme Court conducted a nonjury trial on the issues of, inter alia, maintenance, child custody, child support, and equitable distribution. The plaintiff appeals from the resultant judgment of divorce. In determining maintenance and child support obligations, "[t]he court has considerable discretion in determining whether income should be imputed to a party and the court's credibility determinations are accorded deference on appeal" (*Tuchman v Tuchman* , 201 AD3d 986 , 990 [internal quotation marks omitted]). "The court may impute income to a party based on his or her employment history, future earning capacity, educational background, or money received from friends and relatives" (*id.* [internal quotation marks omitted]). "While a court is afforded considerable discretion in determining whether to impute income to a party, a determination to impute income will be rejected where the amount imputed was not supported by the record, or the imputation was an improvident exercise of discretion" (*Weiss v Nelson* , 196 AD3d 722, 724 [internal quotation marks omitted]). Here, the Supreme Court improperly averaged each party's income from the years 2014 through 2018 to calculate their respective annual income for maintenance and child support purposes (see *Koutsouras v Mitsos-Koutsouras* , 198 AD3d 630, 632). Moreover, the court's imputation of income, including its reference to purported job offers rejected by the plaintiff, is not supported by the record. Accordingly, the matter is remitted for a new determination of each party's annual income, the plaintiff's maintenance obligation, and the parties' child support obligations (see Domestic Relations Law §§ 236[B][6]; 240[1-b]). "Domestic Relations Law § 236 mandates that the equitable distribution of marital assets be based on the circumstances of the particular case and directs the courts to consider a number of statutory factors" (*Fairchild v Fairchild* , 149 AD3d 810, 810-811 ; see Domestic Relations Law § 236[B][5][c], [d]). While the court is required to discuss the statutory factors it relied upon in distributing marital property, it is not required to

specifically cite to and analyze each statutory factor where it is evident that it considered the relevant factors and the reasons for its decision are articulated (see *Spera v Spera* , 71 AD3d 661, 662). Here, contrary to the plaintiff's contention, it is evident that the Supreme Court considered and applied a number of the relevant statutory factors set forth in Domestic Relations Law § 236(B)(5)(d) in making its equitable distribution determination (see *Fishman v Fishman* , 186 AD3d 1199, 1201). However, the court's distribution of the \$1,314,018.42 balance contained in certain accounts held at Ameriprise is not supported by the record. Contrary to the court's conclusion, the plaintiff established by clear and convincing evidence, through the report and testimony of his accounting expert, that of the \$1,028,140.91 held in an Ameriprise IRA retirement account, \$552,486.71 constituted his separate property (see Domestic Relations Law § 236[B][1][d][1]). Accordingly, the court should have awarded the distribution of the remaining portion of the funds held in that Ameriprise IRA retirement account in accordance with the formula approved in *Majauskas v Majauskas* (61 NY2d 481), calculated from the date of the marriage to the commencement of this action. Moreover, although the Supreme Court properly awarded equitable distribution of the parties' personal Ameriprise accounts, the court improperly awarded the additional sums of [*3] \$150,000 and \$180,000 to the defendant. Accordingly, the provisions of the judgment of divorce awarding the defendant the additional sums of \$150,000 and \$180,000 should be deleted. Contrary to the plaintiff's further contentions, the Supreme Court's determination to award the defendant half of the appreciation in value of the plaintiff's premarital apartment is supported by the record (see *Weidman v Weidman* , 162 AD3d 720 , 725). Additionally, contrary to the plaintiff's contention, the court properly declined to award the plaintiff any portion of a certain Finley Management bank account, since the plaintiff failed to offer any proof as to the value of Finley Management, the defendant's business (see *Massimi v Massimi* , 35 AD3d 400, 403). However, the Supreme Court failed to determine the distribution of an individual retirement account titled in the defendant's name and should consider those distributions upon remittal (see *Novick v Novick* , 214 AD3d 995, 999). Similarly, the court erred by failing to consider the plaintiff's request for the equitable distribution of the 2017 Honda Pilot, a vehicle purchased by the parties during the marriage (see *D'Amico v D'Amico* , 66 AD3d 951, 952). "Although [t]his court has the authority to determine whether marital property shall be distributed or a distributive award shall be made in lieu of, or to supplement, facilitate or effectuate a distribution of marital property, we are not in a position to make an award because insufficient evidence was adduced at trial concerning the value of the" Honda Pilot (*id.* [citations and internal quotation marks omitted]). Accordingly, we also remit this matter to the Supreme Court, Westchester County, for a determination of the value of the Honda Pilot and an appropriate distribution thereof (see Domestic Relations Law § 236[B][5][d]; *D'Amico v D'Amico* , 66 AD3d at 952). Additionally, upon remittal, the court shall determine the amount to be credited to the plaintiff for his payment of the carrying charges on the marital residence from the commencement of this action until its sale in June 2020, including the amount of pendente lite arrears (see

Uttamchandani v Uttamchandani , 175 AD3d 1457 , 1458-1459). The Supreme Court's award of sole physical custody of the children to the defendant, with parenting time to the plaintiff, has a sound and substantial basis in the record (see Albert v Albert , 60 AD3d 979, 979). However, the court's determination to award the defendant sole legal custody lacks a sound and substantial basis in the record where both parties requested joint legal custody and the judgment of divorce contemplates a joint legal custody arrangement with final decision-making authority to the defendant. Accordingly, the matter must be remitted to the Supreme Court, Westchester County, for new determinations in accordance herewith, and the entry of an appropriate amended judgment of divorce thereafter. The plaintiff's remaining contentions are unpreserved for appellate review, without merit, or need not be reached in light of our determination. GENOVESI, J.P., CHRISTOPHER, WAN and GOLIA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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