

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Panos v. Panos

2025 NY Slip Op 06818 (Appellate Division of the Supreme Court of the State of New York First Department 2025) · No. Index No. 365148/21; Appeal Nos. 5140-5141; Case Nos. 2025-02624, 2025-03519 · Decided December 9, 2025

SUMMARY

The Appellate Division, First Department affirmed a \$1 million interim counsel-fee award to the wife, finding a significant financial disparity between the parties and no requirement that she first spend down her assets. The court vacated directives requiring the husband to pay all family expenses and modified the order to apply the parties’ prenuptial agreement to the distribution of remaining marital property. It also reversed the vacatur of the automatic stay and vacated a separate \$40,000 counsel-fee award.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                     |
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| COURT                 | Appellate Division of the Supreme Court of the State of New York, First Department                                                                                                                                                                                  |
| WRITING FOR THE COURT | Manzanet-Daniels, J.P.; Kennedy, J.; Pitt-Burke, J.; Rosado, J.; Chan, J.                                                                                                                                                                                           |
| JURISDICTION          | New York Appellate Division, First Department                                                                                                                                                                                                                       |
| DECIDED               | December 9, 2025                                                                                                                                                                                                                                                    |
| DOCKET                | Index No. 365148/21; Appeal Nos. 5140-5141; Case Nos. 2025-02624, 2025-03519                                                                                                                                                                                        |
| DISPOSITION           | other                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Appeals from an amended Supreme Court, New York County order awarding the wife interim counsel fees and directing payment of family expenses and an appraisal process, and from a subsequent order vacating an automatic stay and awarding additional counsel fees. |
| STANDARD OF REVIEW    | The interim counsel-fee award was reviewed for abuse of discretion; the challenged provisions were reviewed on the law, the facts, and as a matter of discretion in the interest of justice.                                                                        |
| PRECEDENTIAL VALUE    | Published                                                                                                                                                                                                                                                           |
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## TOPICS

family law procedure

prenuptial agreements

equitable distribution

spousal support

appellate procedure

## PRACTICE AREAS

family law

matrimonial law

appellate practice

## QUESTIONS PRESENTED

1. Whether the wife was entitled to an interim counsel-fee award despite her substantial assets and income and despite having already paid the fees.
2. Whether a hearing was required on the interim counsel-fee application.
3. Whether Supreme Court could direct the husband to pay all family expenses during the litigation despite the prenuptial agreement and the absence of an application or order for pendente lite child support or maintenance.
4. Whether the prenuptial agreement required use of its contractual procedures rather than appraisals for distributing the parties' remaining marital personal property.
5. Whether the \$40,000 counsel-fee award associated with the motion to vacate the automatic stay should stand.

## HOLDINGS

1. The court properly exercised its discretion in awarding the wife \$1 million in interim counsel fees subject to reallocation after trial because she was the less monied spouse and there was a significant financial disparity between the parties.
2. A hearing was not required because the award was interim and subject to reallocation at the end of the case.
3. Supreme Court improperly directed the husband to continue paying all family expenses for the duration of the litigation; that provision was vacated.
4. The order was modified to apply the prenuptial agreement's procedures for distributing the parties' remaining marital property, and the parties were directed to comply with those terms.
5. The order vacating the automatic stay and awarding the wife \$40,000 in counsel fees was reversed, and the fee award was vacated.

## KEY QUOTATIONS

*“There is no requirement that she spend down a substantial portion of her assets in order to qualify for an award of counsel fees”* ([\*1])

*“As the award is subject to reallocation at the end of the case, a hearing would be premature and an unnecessary expenditure of resources in an already heavily litigated case”* ([\*1])

*"The court incorrectly directed the husband to continue paying for all "family expenses" for the duration of this litigation."* ([\*1])

## FACTUAL BACKGROUND

The parties entered into a prenuptial agreement that waived the wife's entitlement to temporary and permanent spousal maintenance above \$100,000 in annual support payments and established procedures for distributing remaining marital property. The wife, although possessing substantial assets and income, was the less monied spouse and had incurred and paid significant legal fees during the matrimonial litigation. Supreme Court awarded her \$1 million in interim counsel fees, directed the husband to pay all family expenses during the litigation, and effectively ordered appraisal of marital furniture, furnishings, and artwork.

## PROCEDURAL HISTORY

Supreme Court awarded the wife \$1 million in reimbursement for accrued and paid interim counsel fees, directed her use of the parties' accounts for customary household expenses, directed the husband to continue paying all family expenses during the litigation, and effectively required appraisal of certain marital personal property. The court later vacated an automatic stay obtained through posting a bond and awarded the wife \$40,000 in counsel fees for that motion. The First Department modified the amended order, reversed the later order, vacated the \$40,000 award, and otherwise affirmed.

## DISPOSITION

other

## REMAND INSTRUCTIONS

The parties were directed to comply with the prenuptial agreement's procedures governing distribution of the remaining marital property. The \$1 million interim counsel-fee award remained subject to reallocation after trial.

## CASES CITED

- Ader v. Ader, 205 AD3d 637 (1st Dept 2022)
- Prichep v. Prichep, 52 AD3d 61 (2d Dept 2008)
- Wolinsky v. Berkowitz, 227 AD3d 433 (1st Dept 2024)
- O'Shea v. O'Shea, 93 NY2d 187 (1999)
- Matter of Balber v. Zealand, 169 AD3d 500 (1st Dept 2019)
- Babbio v. Babbio, 119 AD3d 474 (1st Dept 2014)
- Khaira v. Khaira, 93 AD3d 194 (1st Dept 2012)