

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

Casella v. Casella

Casella, 2026 NY Slip Op 03226 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 365119/20; Appeal No. 6687; Case No. 2024-06897 · Decided May 21, 2026

SUMMARY

The New York Supreme Court, Appellate Division, First Department reversed an order directing marital escrow funds to pay the husband's legal fees and the attorney for the children. The court held that the relief granted was dramatically unlike the relief requested and that any fee application failed to comply with Domestic Relations Law § 237(a) and 22 NYCRR 202.16(k)(2). The legal fee awards were vacated without costs.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Scarpulla, J.; Mendez, J.; Rodriguez, J.; Rosado, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 21, 2026
DOCKET	Index No. 365119/20; Appeal No. 6687; Case No. 2024-06897
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant wife appealed from an order of Supreme Court, New York County, directing that marital escrow funds be used to pay the plaintiff husband's legal fees and the attorney for the children.
STANDARD OF REVIEW	Whether the motion court improvidently exercised its discretion, reviewed on the law and in the exercise of discretion.
PRECEDENTIAL VALUE	Published; precedential under New York appellate practice, subject to correction and publication in the Official Reports.
PARTIES	Gina Casella v. Marco Casella

TOPICS

- family law procedure
- attorney fees
- appellate procedure
- waiver

PRACTICE AREAS

family law

matrimonial litigation

appellate procedure

QUESTIONS PRESENTED

1. Whether Supreme Court could grant relief directing payment of the husband's counsel and the attorney for the children from marital escrow funds when the notice of motion sought materially different relief.
2. Whether an award of counsel fees under Domestic Relations Law § 237(a) was proper without a retainer agreement, statement of net worth, current billing statements, and a record concerning the parties' financial circumstances and the relative merits of their positions.
3. Whether the wife's withdrawal of \$50,000 to pay her own counsel waived her challenge to the distinct fee provisions appealed from.

HOLDINGS

1. A court may grant relief not specifically demanded only when the relief is warranted by the papers, is not too dramatically unlike the relief sought, is supported by the proof, and causes no prejudice. Supreme Court improvidently exercised its discretion by directing release of escrow funds for the husband's counsel and the attorney for the children because that relief was dramatically unlike the relief sought.
2. A counsel-fee application under Domestic Relations Law § 237(a) must comply with the applicable statutory and procedural requirements, including submission of a retainer agreement, statement of net worth, and current billing statements. Without a proper application supported by competent evidence, the court lacks an adequate record to assess the parties' financial circumstances and the relative merits of their positions, and the fee award must be denied.
3. The wife's withdrawal of \$50,000 to pay her own counsel did not waive her right to challenge distinct provisions directing payment to the husband's counsel and the attorney for the children.

KEY QUOTATIONS

“A notice of motion must specify the relief demanded and the grounds therefor (CPLR 2214 [a]).” (at 1)

“An award of counsel fees pursuant to Domestic Relations Law § 237(a) requires the court to consider the financial circumstances of the parties and the relative merits of their positions.” (at 1)

“Nor does the wife's compliance with a portion of the order constitute a waiver of her right to challenge other, distinct provisions on appeal.” (at 2)

FACTUAL BACKGROUND

The parties maintained a marital escrow account containing \$100,000. Supreme Court directed that the funds be used to pay the husband's legal fees and the trial retainer for the attorney for the children, allocating 66.7% of the latter cost to the husband and 33.3% to the wife, subject to reallocation after trial. The husband's motion had sought relief concerning his counsel's application to be relieved, and the fee application lacked a retainer agreement, statement of net worth, and current billing statements.

PROCEDURAL HISTORY

Supreme Court, New York County, entered an order on November 18, 2024, directing release of \$100,000 from a marital escrow account for the husband's legal fees and the attorney for the children, with the parties' respective shares subject to reallocation after trial. The Appellate Division reversed the order to the extent appealed from and vacated those legal fee awards.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The legal fee awards were vacated. No specific remand instruction was stated.

CASES CITED

- Frankel v. Stavsky, 40 AD3d 918, 918-919 (2d Dept. 2007)
- Caride v. Alonso, 78 AD3d 466, 468 (1st Dept. 2010), lv dismissed in part & denied in part, 16 NY3d 806 (2011)
- Gass v. Gass, 91 AD3d 557, 558 (1st Dept. 2012)

OPINION

Casella v. Casella 2026 NY Slip Op 03226

PER CURIAM.

Casella v Casella - 2026 NY Slip Op 03226 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 Casella v Casella 2026 NY Slip Op 03226 May 21, 2026 Appellate Division, First 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. Marco Casella, Plaintiff-Respondent, v Gina Casella, Defendant-Appellant. Decided and Entered: May 21, 2026 Index No. 365119/20|Appeal No. 6687|Case No. 2024-06897| Before: Kennedy, J.P., Scarpulla, Mendez, Rodriguez, Rosado, JJ. Law Offices of Deana Balahtsis, New York (Deana Balahtsis of counsel), for appellant. Bryant & Bleier, LLP, New York (Anne Peyton Bryant of counsel), for respondent. Marion C. Perry, New York, attorney for the children. [*1] Order, Supreme Court, New York County (Jeffrey H. Pearlman, J.), entered on November 18, 2024, which, to the extent appealed from as limited by the briefs, directed that \$100,000 held in a marital escrow account be used to pay plaintiff husband's legal fees, and authorized payment in full of the trial retainer for the attorney for the children from the same escrow account, with the husband responsible for 66.7% of the cost and defendant wife responsible for 33.3%, subject to reallocation after trial, unanimously reversed, on the law, and in the exercise of discretion, without costs, and the legal fee awards

vacated. A notice of motion must specify the relief demanded and the grounds therefor (CPLR 2214 [a]). An exception to this rule applies where "relief that is warranted by the facts plainly appear[s] on the papers on both sides, if the relief granted is not too dramatically unlike the relief sought, the proof offered supports it, and there is no prejudice to any party" (Frankel v Stavsky , 40 AD3d 918, 918-919 [2d Dept 2007], see also Caride v Alonso , 78 AD3d 466, 468 [1st Dept 2010], lv dismissed in part & denied in part 16 NY3d 806 [2011]). Here, the motion court improvidently exercised its discretion in directing that escrow funds be released to pay the husband's counsel and the attorney for the children because the relief granted was "dramatically unlike" the relief sought, the husband's counsel's application to be relieved (Frankel , 40 AD3d at 918-919). Indeed, the court acknowledged on the record that the relief it was considering differed significantly from the relief requested in the motion. In any event, to the extent the husband's motion could be interpreted as requesting legal fees, it should have been denied for failing to comply with both Domestic Relations Law § 237(a) and 22 NYCRR 202.16(k)(2), as it was not supported by a copy of the retainer agreement, a statement of net worth, or current billings statements (see Gass v Gass , 91 AD3d 557, 558 [1st Dept 2012]). An award of counsel fees pursuant to Domestic Relations Law § 237(a) requires the court to consider the financial circumstances of the parties and the relative merits of their positions. In the absence of a proper application supported by competent evidence, the court lacked an adequate record upon which to make such determinations. [*2] The husband's contention that the order should be affirmed because the wife already transferred \$50,000 from escrow to pay her counsel is unavailing. The wife sought a stay only of the portions of the order directing payment to the husband's counsel and the attorney for the children, not her own counsel. Moreover, the husband did not appeal from the portion of the order awarding fees to the wife, and his arguments regarding that award are not properly before this Court. Nor does the wife's compliance with a portion of the order constitute a waiver of her right to challenge other, distinct provisions on appeal. In any event, the wife has already withdrawn \$50,000 from escrow to pay her counsel and, that amount remains subject to reallocation after trial. We have considered the husband's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 21, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

PER CURIAM.

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Casella v Casella

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May 21, 2026

Appellate Division, First Department

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

Marco Casella, Plaintiff-Respondent,

v

Gina Casella, Defendant-Appellant.

Decided and Entered: May 21, 2026

Index No. 365119/20|Appeal No. 6687|Case No. 2024-06897|

Before: Kennedy, J.P., Scarpulla, Mendez, Rodriguez, Rosado, JJ.

Law Offices of Deana Balahtsis, New York (Deana Balahtsis of counsel), for appellant.

Bryant & Bleier, LLP, New York (Anne Peyton Bryant of counsel), for respondent.

Marion C. Perry, New York, attorney for the children.

[*1]

Order, Supreme Court, New York County (Jeffrey H. Pearlman, J.), entered on November 18, 2024, which, to the extent appealed from as limited by the briefs, directed that \$100,000 held in a marital escrow account be used to pay plaintiff husband's legal fees, and authorized payment in full of the trial retainer for the attorney for the children from the same escrow account, with the husband responsible for 66.7% of the cost and defendant wife responsible for 33.3%, subject to reallocation after trial, unanimously reversed, on the law, and in the exercise of discretion, without costs, and the legal fee awards vacated.

A notice of motion must specify the relief demanded and the grounds therefor (CPLR 2214 [a]). An exception to this rule applies where "relief that is warranted by the facts plainly appear[s] on the papers on both sides, if the relief granted is not too dramatically unlike the relief sought, the proof offered supports it, and there is no prejudice to any party" (*Frankel v Stavsky*, 40 AD3d 918, 918-919 [2d Dept 2007], *see also Caride v Alonso*, 78 AD3d 466, 468 [1st Dept 2010], *lv dismissed in part & denied in part* 16 NY3d 806 [2011]). Here, the motion court improvidently exercised its discretion in directing that escrow funds be released to pay the husband's counsel and the attorney for the children because the relief granted was "dramatically unlike" the relief sought, the husband's counsel's application to be relieved (*Frankel*, 40 AD3d at 918-919). Indeed, the court acknowledged on the record that the relief it was considering differed significantly from the relief requested in the motion.

In any event, to the extent the husband's motion could be interpreted as requesting legal fees, it should have been denied for failing to comply with both Domestic Relations Law § 237(a) and 22 NYCRR 202.16(k)(2), as it was not supported by a copy of the retainer agreement, a statement of net worth, or current billings statements (*see Gass v Gass*, 91 AD3d 557, 558 [1st Dept 2012]). An award of counsel fees pursuant to Domestic Relations Law § 237(a) requires the court to consider the financial circumstances of the parties and the relative merits of their positions. In the absence of a proper application supported by

competent evidence, the court lacked an adequate record upon which to make such determinations.

The husband's contention that the order should be affirmed because the wife already transferred \$50,000 from escrow to pay her counsel is unavailing. The wife sought a stay only of the portions of the order directing payment to the husband's counsel and the attorney for the children, not her own counsel. Moreover, the husband did not appeal from the portion of the order awarding fees to the wife, and his arguments regarding that award are not properly before this Court. Nor does the wife's compliance with a portion of the order constitute a waiver of her right to challenge other, distinct provisions on appeal. In any event, the wife has already withdrawn \$50,000 from escrow to pay her counsel and, that amount remains subject to reallocation after trial.

We have considered the husband's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 21, 2026

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