

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

880

CA 12-01238

PRESENT: CENTRA, J.P., FAHEY, LINDLEY, SCONIERS, AND WHALEN, JJ.

---

MELISSA MANISCALCO, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

PHILIP MANISCALCO, DEFENDANT-APPELLANT.  
(APPEAL NO. 2.)

---

KUSTELL LAW GROUP, LLP, BUFFALO (CARL B. KUSTELL OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

SPADAFORA & VERRASTRO, LLP, BUFFALO (KELLY A. FERON OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

---

Appeal from a judgment of the Supreme Court, Erie County  
(Frederick J. Marshall, J.), entered June 28, 2012 in a divorce  
action. The judgment, inter alia, equitably distributed the marital  
assets of the parties.

It is hereby ORDERED that the judgment so appealed from is  
unanimously modified on the law by reducing the duration of  
maintenance to four years from April 3, 2012 and deleting from the  
third ordering paragraph of the order granted June 25, 2012 that is  
incorporated therein the language "any property, including but not  
limited to cash accounts, bank accounts, stocks, mutual funds" and  
"M&T bank accounts" and as modified the judgment is affirmed without  
costs.

Memorandum: In appeal No. 1, defendant appeals from an order  
entered prior to the judgment of divorce and, in appeal No. 2,  
defendant appeals from the judgment of divorce. We note at the outset  
that appeal No. 1 must be dismissed inasmuch as the order in that  
appeal is subsumed in the final judgment of divorce (see *Rooney v*  
*Rooney* [appeal No. 3], 92 AD3d 1294, 1295, lv denied 19 NY3d 810; see  
also *Hughes v Nussbaumer, Clarke & Velzy*, 140 AD2d 988, 988). We  
affirm the judgment in appeal No. 2 in all but two respects. First,  
we conclude that the maintenance award is excessive. Based on the  
statutory factors (see Domestic Relations Law § 236 [B] [6] [a]; see  
also *Hartog v Hartog*, 85 NY2d 36, 51), and under the circumstances of  
this case, we modify the judgment by reducing the duration of  
maintenance to four years from April 3, 2012, i.e., the date of the  
Matrimonial Referee's decision (see generally *Smith v Smith*, 79 AD3d  
1643, 1644; *Burroughs v Burroughs*, 269 AD2d 765, 765). Second, we  
conclude that Supreme Court abused its discretion in sequestering  
defendant's cash, bank accounts, stocks and mutual funds (cf.

*Brinckerhoff v Brinckerhoff*, 53 AD3d 592, 593; *Adler v Adler*, 203 AD2d 81, 81). We thus further modify the judgment accordingly.

Entered: September 27, 2013

Frances E. Cafarell  
Clerk of the Court