

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

1055

CA 16-02206

PRESENT: WHALEN, P.J., CENTRA, DEJOSEPH, NEMOYER, AND WINSLOW, JJ.

SHANNON POOLER, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

DENNY L. POOLER, DEFENDANT-APPELLANT.

UNDERBERG & KESSLER LLP, ROCHESTER (RONALD G. HULL OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAW OFFICE OF MARK A. YOUNG, ROCHESTER (BRIDGET L. FIELD OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Ontario County (Daniel P. Majchrzak, Jr., R.), entered May 19, 2016. The order, inter alia, determined that the debt owed on the Discover Card account is marital debt.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by determining that the debt owed on the Discover Card account is the separate debt of plaintiff and is not marital debt, and as modified the order is affirmed without costs.

Memorandum: In this postdivorce proceeding, defendant husband appeals from an order that, inter alia, determined that the debt owed on a Discover Card account is marital debt and equitably distributed that debt between the parties. "[T]he initial determination of whether a particular asset is marital or separate property is a question of law, subject to plenary review on appeal" (*Fields v Fields*, 15 NY3d 158, 161 [internal quotation marks omitted]). Here, Supreme Court erroneously classified the Discover Card account as marital debt subject to equitable distribution inasmuch as plaintiff wife asserted in her net worth statement that the Discover Card debt belonged to her alone (*see generally Koch v Koch*, 134 AD2d 574, 574; *Jolis v Jolis*, 98 AD2d 692, 692-693). We therefore modify the order accordingly. We reject defendant's remaining contentions for reasons stated in the decision at Supreme Court.

Entered: October 6, 2017

Mark W. Bennett
Clerk of the Court