

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

665

**CA 18-02122**

PRESENT: SMITH, J.P., CARNI, DEJOSEPH, TROUTMAN, AND WINSLOW, JJ.

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KYLIE F. KESHAV, PLAINTIFF-APPELLANT-RESPONDENT,

V

MEMORANDUM AND ORDER

KESHAV F. SINGH, DEFENDANT-RESPONDENT-APPELLANT.

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KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (SHARI JO REICH OF COUNSEL),  
FOR PLAINTIFF-APPELLANT-RESPONDENT.

MATTINGLY CAVAGNARO LLP, BUFFALO (CHRISTOPHER S. MATTINGLY OF  
COUNSEL), FOR DEFENDANT-RESPONDENT-APPELLANT.

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Appeal and cross appeal from a judgment of the Supreme Court,  
Erie County (James H. Dillon, J.), entered June 23, 2017. The  
judgment, inter alia, awarded plaintiff maintenance.

It is hereby ORDERED that the judgment so appealed from is  
unanimously affirmed without costs.

Memorandum: Plaintiff wife appeals and defendant husband cross-  
appeals from a decision that, inter alia, distributed the parties'  
marital property and awarded plaintiff maintenance. Although "[n]o  
appeal lies from a mere decision" (*Kuhn v Kuhn*, 129 AD2d 967, 967 [4th  
Dept 1987]), we nevertheless exercise our discretion to treat the  
notices of appeal and cross appeal as valid and deem the appeal and  
cross appeal as taken from the judgment of divorce (see CPLR 5520 [c];  
*Ponzi v Ponzi*, 45 AD3d 1327, 1327 [4th Dept 2007]; *Hughes v*  
*Nussbaumer, Clarke & Velzy*, 140 AD2d 988, 988 [4th Dept 1988]).

Contrary to the parties' contentions on appeal and cross appeal,  
we conclude that Supreme Court did not abuse its discretion in setting  
the amount and duration of plaintiff's maintenance award. "Although  
the authority of this Court in determining issues of maintenance is as  
broad as that of the trial court" (*D'Amato v D'Amato*, 132 AD3d 1424,  
1425 [4th Dept 2015]), "[a]s a general rule, the amount and duration  
of maintenance are matters committed to the sound discretion of the  
trial court" (*Gately v Gately*, 113 AD3d 1093, 1093 [4th Dept 2014], *lv*  
*dismissed* 23 NY3d 1048 [2014] [internal quotation marks omitted]).  
Here, the court properly "considered plaintiff's reasonable needs and  
predivorce standard of living in the context of the other enumerated  
statutory factors set forth in the statute" (*Peck v Peck*, 167 AD3d  
1518, 1519 [4th Dept 2018] [internal quotation marks omitted]; see  
Domestic Relations Law § 236 [B] [former (6) (a)]), including that  
plaintiff's disability prevented her from working (see § 236 [B]

[former (6) (a) (8)]), that the equitable distribution of marital property alone would be insufficient to support her needs (see § 236 [B] [former (6) (a) (15)]; see generally *Zufall v Zufall*, 109 AD3d 1135, 1136 [4th Dept 2013], lv denied 22 NY3d 859 [2014]), and that defendant's present and future earning capacity, for the most part, remained consistent (see § 236 [B] [former (6) (a) (1)]; see generally *Morrissey v Morrissey*, 259 AD2d 472, 473 [2d Dept 1999]). We decline to substitute our discretion for that of the court.

Plaintiff further contends on appeal that the court erred in using a 2014 appraisal, rather than a 2016 appraisal, in determining the value of the marital residence. Here, the judgment provided defendant the option of purchasing plaintiff's interest in the marital residence (*cf. Lamparillo v Lamparillo*, 130 AD3d 580, 582 [2d Dept 2015]), and the 2014 appraisal was used only for the limited purpose of calculating the amount defendant would be required to pay if he exercised that option (buyout amount). Although defendant provided the requisite notice of his intent to exercise the option, he failed to comply with the requirement in the judgment that he pay plaintiff the buyout amount within 90 days. Thus, pursuant to the judgment, the marital residence was required to be immediately listed for sale. We therefore conclude that plaintiff's contention regarding the use of the 2014 appraisal is moot.

We have examined the remaining contentions raised on the appeal and the cross appeal and conclude that they are without merit.