



132 A.D.3d 815, 18 N.Y.S.3d
147, 2015 N.Y. Slip Op. 07624

*1 Petra Kandus, Formerly Known
as Petra Forlenza, Appellant
v
Riccardo Forlenza, Respondent.

Supreme Court, Appellate Division,
Second Department, New York
10127/05, 2014-00068
October 21, 2015

CITE TITLE AS: Kandus v Forlenza

Swidler & Messi, LLP, New York, N.Y. (Steven A. Swidler
of counsel), for appellant.

Guttridge & Cambareri, P.C., Tarrytown, N.Y. (John C.
Guttridge and Scott Stone of counsel), for respondent.

Appeal by the plaintiff from an order of the Supreme
Court, Westchester County (Colleen D. Duffy, J.), entered
September 13, 2013. The order, insofar as appealed from,
denied the plaintiff's motion for an upward modification of the
defendant's child support obligation pursuant to the parties'
separation agreement, and for an award of counsel fees.

Ordered that the order is affirmed insofar as appealed from,
with costs.

The parties' separation agreement, which set forth the parties'
child support obligations, was executed in 2005, prior to

the effective date of the 2010 amendments to the Domestic
Relations Law (*see* L 2010, ch 182, § 13). Therefore, in
order to establish her entitlement to an upward modification
of the defendant's child support obligation, the plaintiff
had the burden of establishing a substantial, unanticipated,
and unreasonable change in circumstances resulting in a
concomitant need, or that the agreement was not fair and
equitable when entered into (*see Matter of [redacted] Gravlin v
Ruppert*, 98 NY2d 1, 5 [2002]; *Zaratzian v Abadir*, 128 AD3d
953 [2015]; *Matter of Suchan v Eagar*, 121 AD3d 910 [2014];
Nelson v Nelson, 75 AD3d 593, 593-594 [2010]), or that the
reasonable needs of the child are not being met (*see Matter
of [redacted] Brescia v Fitts*, 56 NY2d 132, 140 [1982]; *Nelson v
Nelson*, 75 AD3d 593, 593-594 [2010]; *Matter of Alexander
v Strathairn*, 69 AD3d 930, 931 [2010]).

Here, the plaintiff failed to meet that burden. Although the
defendant relocated to the Czech Republic for an extended
period of time to fulfill the responsibilities of his employment,
the plaintiff failed to offer proof that this affected her
expenses, or the children's needs (*see Matter of Alexander v
Strathairn*, 69 AD3d at 931).

Under the circumstances here, the denial of counsel fees
to the plaintiff was a provident exercise of discretion (*see
[redacted] DeCabrera v Cabrera-Rosete*, 70 NY2d 879, 880 [1987];
Matter of Alexander v Strathairn, 69 AD3d at 931).

The plaintiff's remaining contentions are without merit. Hall,
J.P., Austin, Sgroi and Hinds-Radix, JJ., concur.

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