

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 25, 2018

522910

XIAOLING SHIRLEY HE,
Appellant,

v

MEMORANDUM AND ORDER

XIAOKANG XU,
Respondent.

Calendar Date: September 4, 2018

Before: McCarthy, J.P., Devine, Aarons, Rumsey and
Pritzker, JJ.

Xiaoling Shirley He, Clifton Park, appellant pro se.

Xiaokang Xu, Vernon Hills, Illinois, respondent pro se.

Pritzker, J.

Appeals (1) from an order of the Supreme Court (Buchanan, J.), dated November 24, 2015, which denied plaintiff's ex parte motion for permission to file a claim against defendant, and (2) from an order of said court, entered January 29, 2016 in Schenectady County, which denied plaintiff's motion to reargue and/or renew.

Given plaintiff's "persistent attempts to relitigate the issues resolved in the [2005] divorce action through a series of unsuccessful and meritless filings," this Court affirmed an order of Supreme Court that directed plaintiff to obtain court approval prior to filing anything pertaining to the matrimonial action between the parties (Xiaoling Shirley He v Xiaokang Xu,

126 AD3d 1052, 1053 [2015]). To that end, in October 2015, plaintiff sought permission to bring a claim seeking a money judgment against defendant based upon a June 2000 letter from defendant to the office of Immigration and Naturalization Service stating that he would cover plaintiff's tuition and living expenses in connection with her graduate studies. By order dated November 24, 2015, Supreme Court denied plaintiff's application. Plaintiff thereafter moved to reargue and/or renew, which was denied by an order dated January 29, 2016. In a letter dated March 21, 2016, the court declined to sign plaintiff's subsequent order to show cause seeking to vacate the court's November 24, 2015 and January 29, 2016 orders. Plaintiff appeals.¹

The matters appealed from involve the denial of ex parte applications and are not appealable as of right (see CPLR 5701 [a] [2]; Matter of Joint Diseases N. Gen. Hosp. [Department of Taxation & Fin. of State of N.Y.], 148 AD2d 873, 874 [1989]). Further, this Court has already denied relief pursuant to CPLR 5704 (a) (2016 NY Slip Op 74818[U] [3d Dept 2016]; see Matter of Joint Diseases N. Gen. Hosp. [Department of Taxation & Fin. of State of N.Y.], 148 AD2d at 874). As such, the appeals must be dismissed.

McCarthy, J.P., Devine, Aarons and Rumsey, JJ., concur.

¹ To the extent that plaintiff appeals from the March 21, 2016 letter, "[n]o appeal lies from a writing declining to sign an order to show cause" (USA Recycling, Inc. v Baldwin Endico Realty Assoc., Inc., 147 AD3d 697, 698 [2017]; see Matter of Azeem v Murphy, 139 AD3d 610, 610 [2016]).

ORDERED that the appeals are dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court