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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 117 SSM 10
Anne B. Washington,
Appellant,
v.
Barry A. Washington,
Respondent.

Submitted by Amy S. Nord, for appellant.
Submitted by respondent pro se.

Memorandum:

The order of the Appellate Division should be reversed,
with costs, and the judgment of Supreme Court reinstated.

In this nonjury trial, the parties charted their own
course, effectively removing from the case the question whether

the trust funds were exhausted and thereby eliminating plaintiff mother's burden on this issue. The Appellate Division erred in holding that no evidence was adduced as to the means and abilities of the parties to contribute to their children's college education expenses. Such evidence was adduced, and we conclude as a matter of law that defendant father had sufficient means to contribute to his sons' college education expenses within the meaning of the parties' separation agreement. Defendant father's remaining arguments in support of affirmance are without merit.

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and judgment of Supreme Court, Queens County, reinstated, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided March 25, 2010