

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D15154
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_____AD3d_____

Submitted - April 12, 2007

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
MARK C. DILLON
EDWARD D. CARNI, JJ.

2006-03031

DECISION & ORDER

In the Matter of Fa'Shon S. (Anonymous).
Heart Share Human Services of New York, Roman
Catholic Diocese of Brooklyn, petitioner-respondent;
William R. (Anonymous), appellant, et al., respondent.

(Docket No. B-6305-04)

Elliot Green, Brooklyn, N.Y., for appellant.

Wingate, Kearney & Cullen, Brooklyn, N.Y. (Angelique I. Segarra and Richard J. Cea
of counsel), for petitioner-respondent.

Steven Banks, New York, N.Y. (Judith Waksberg, Tamara Steckler, and Proskauer
Rose, LLP [Susan D. Friedfel] of counsel; Joseph S. Anker on the brief), Law
Guardian for the child.

In a proceeding pursuant to Social Services Law § 384-b to terminate parental rights
on the ground of permanent neglect, the father appeals, as limited by his brief, from so much of an
order of fact-finding and disposition of the Family Court, Kings County (Lim, J.), dated February 9,
2006, as, after fact-finding and dispositional hearings, upon his default in appearing at the fact-finding
hearing, and upon denying his motion to vacate his default, inter alia, terminated his parental rights
and transferred guardianship and custody of the subject child to the Heart Share Human Services of
New York, Roman Catholic Diocese of Brooklyn and the Commissioner of Social Services of the
City of New York for the purpose of adoption.

May 15, 2007

MATTER OF S. (ANONYMOUS), FA'SHON

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ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

The father's incarceration at the time of the fact-finding hearing was not a reasonable excuse for his default because he provided no explanation as to why he did not notify his attorney or the court of his imprisonment (*see Matter of Tiffany L.*, 294 AD2d 365, 366; *Matter of Raymond Anthony A.*, 192 AD2d 529, 530). Since the father established neither a reasonable excuse for his failure to appear nor a meritorious defense to the proceeding, the Family Court properly denied the father's motion to vacate his default (*see CPLR 5015[a][1]*; *Matter of Michael William O.*, 16 AD3d 511).

The father's remaining contention is without merit.

RIVERA, J.P., FLORIO, DILLON and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court