

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

D17240
Y/cb

_____AD3d_____

Argued - November 13, 2007

ROBERT W. SCHMIDT, J.P.
PETER B. SKELOS
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2006-10534

DECISION & ORDER

Dominick Ogazi, appellant, v Chioma Ogazi,
respondent.

(Index No. 203344/04)

Anthony C. Emengo, Williamsburg, N.Y., for appellant.

Maureen Dougherty, Garden City, N.Y., for respondent.

In an action for a divorce and ancillary relief, the plaintiff appeals from an order of the Supreme Court, Nassau County (Iannacci, J.), dated October 20, 2006, which denied his motion to vacate an order of the same court dated June 27, 2006, entered upon his default in appearing at a pretrial conference.

ORDERED the order is affirmed, with costs.

Although this Court has adopted a liberal policy with respect to vacating defaults in matrimonial actions, it is still within the Supreme Court's discretion to determine whether a default should be vacated (*see Passas v Passas*, 18 AD3d 842; *Viner v Viner*, 291 AD2d 398; *Black v Black*, 141 AD2d 689). Here, the plaintiff failed to establish a reasonable excuse for his default in appearing at a pretrial conference (*see Rolston v Rolston*, 261 AD2d 377; *Benito v Childs*, 253 AD2d 474). In light of the lack of a reasonable excuse, it is unnecessary to consider whether the plaintiff demonstrated a meritorious cause of action or defense to a counterclaim (*see Matter of Lutz v*

Goldstone, 31 AD3d 449, 450). Accordingly, the court providently exercised its discretion in denying the motion to vacate the order entered upon the appellant's default.

SCHMIDT, J.P., SKELOS, COVELLO and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court