

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

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Submitted - June 10, 2008

DAVID S. RITTER, J.P.
HOWARD MILLER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2007-06715

DECISION & ORDER

In the Matter of Henirich Feldman, appellant, v
Peri Feldman, respondent.

(Index No. 4200/06)

Mallow, Konstam & Hager, P.C., New York, N.Y. (Abe H. Konstam, Alla Kurolapnik, and Syma Diamond of counsel), for appellant.

Sally DeLuca, Brooklyn, N.Y. (Steven M. Bernstein of counsel), for respondent.

In a proceeding pursuant to Domestic Relations Law § 72 for grandparent visitation, the petitioner appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Kramer, J.), dated June 22, 2007, as granted the respondent's motion to confirm the report of a Referee dated April 27, 2007, to vacate her default in appearing, and to dismiss the petition.

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

Contrary to the petitioner's contentions, the Supreme Court correctly confirmed the Referee's report finding that service of process was not made upon the respondent in accordance with the order to show cause (*see* CPLR 2214[d]). Since personal jurisdiction was never acquired over the respondent, the order entered against her upon default was properly vacated, and the petition was properly dismissed (*see Alden Personnel, Inc. v David*, 38 AD3d 697; *Matter of Kapsis v Kelleher*, 37 AD3d 381; *European Am. Bank v Legum*, 248 AD2d 206; *Goldmark v Keystone & Grading Corp.*, 226 AD2d 143). There is no evidentiary support in the record for the petitioner's conclusory assertion that the deadline for service specified in the order to show cause was extended by the court.

August 12, 2008

Page 1.

MATTER OF FELDMAN v FELDMAN

The petitioner's remaining contentions are without merit.

RITTER, J.P., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court