

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

D20839  
G/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 6, 2008

REINALDO E. RIVERA, J.P.  
ROBERT A. LIFSON  
HOWARD MILLER  
RANDALL T. ENG, JJ.

2007-09907

DECISION & ORDER

In the Matter of Susanna Atkin, appellant,  
v Michael Atkin, respondent.

(Docket No. V-1159-06)

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Mark Brandys, New York, N.Y., for appellant.

Cheryl S. Solomon, Brooklyn, N.Y., for respondent.

Janet Neustaetter, Brooklyn, N.Y. (Barbara H. Dildine of counsel), attorney for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Kings County (O'Shea, J.), dated October 1, 2007, which denied her motion to vacate an order of the same court dated September 17, 2007, which, upon her default in appearing at a hearing, granted the father's petition to modify the parties' judgment of divorce to award him sole custody of the parties' child.

ORDERED that the order is affirmed, without costs or disbursements.

The determination of whether to relieve a party of an order entered upon his or her default is within the sound discretion of the Family Court (*see Matter of Coates v Lee*, 32 AD3d 539; *Matter of Vanessa F.*, 9 AD3d 464, 464-465). A party seeking to vacate such an order must establish that there was a reasonable excuse for the default and a meritorious defense to the petition (*see CPLR 5015[a][1]*; *Matter of Coates v Lee*, 32 AD3d 539). We agree with the Family Court that the mother's conclusory, unsupported allegations failed to demonstrate a meritorious defense to the father's petition (*see Matter of Coates v Lee*, 32 AD3d 539; *Matter of Shirley C.*, 145 AD2d 631,

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632).

The mother's remaining contentions are without merit.

RIVERA, J.P., LIFSON, MILLER and ENG, 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