

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

D21936
C/kmg

_____AD3d_____

Submitted - December 19, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
RANDALL T. ENG, JJ.

2007-10726

DECISION & ORDER

In the Matter of Princess M. (Anonymous).
Forestdale, Inc., et al., respondents;
Fatish M. (Anonymous), appellant.

(Docket No. B-12114/06)

Linda C. Braunsberg, Staten Island, N.Y., for appellant.

John R. Eyerman, New York, N.Y., for respondent Forestdale, Inc.

Steven Banks, New York, N.Y. (Tamara A. Steckler, Judith Waksberg, and Proskauer Rose LLP, New York, N.Y. [David A. Lewis], of counsel), attorney for the child.

In a proceeding pursuant to Social Services Law § 384-b to terminate parental rights on the ground of permanent neglect, the mother appeals from an order of the Family Court, Queens County (Tally, J.), dated October 29, 2007, which denied her motion, in effect, to vacate an order of fact-finding and disposition of the same court dated July 13, 2007, which, upon her default in appearing at the fact-finding and dispositional hearings, terminated her parental rights and transferred guardianship and custody of the child to the Commissioner of Social Services of the City of New York and Forestdale, Inc., for the purpose of adoption.

ORDERED that the order dated October 29, 2007, is affirmed, without costs or disbursements.

A parent seeking to vacate an order entered upon his or her default in a termination of parental rights proceeding must establish that there was a reasonable excuse for the default and a meritorious defense to the relief sought in the petition (*see* CPLR 5015[a][1]; *Matter of Anna Coral*

January 27, 2009

Page 1.

MATTER OF M. (ANONYMOUS), PRINCESS; FORESTDALE, INC.

DeL., 50 AD3d 792; *Matter of Unique M.C.*, 16 AD3d 1155; *Matter of Vanessa F.*, 9 AD3d 464). The determination of whether to relieve a party of a default is within the sound discretion of the Family Court (*see Matter of Anna Coral DeL.*, 50 AD3d at 792-793). Here, the mother failed to present a reasonable excuse for her default and failed to set forth a meritorious defense. Accordingly, the Family Court providently exercised its discretion in denying her motion to vacate the order of fact-finding and disposition entered upon her default.

MASTRO, J.P., FLORIO, BALKIN 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