

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

D23475
T/kmg

_____AD3d_____

Submitted - April 14, 2009

WILLIAM F. MASTRO, J.P.
HOWARD MILLER
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2008-04560

DECISION & ORDER

In the Matter of Daryl Jones, respondent,
v Denise Stewart, appellant.

(Docket Nos. V-35323-05, V-35324-05)

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

Karen P. Simmons, Brooklyn, N.Y. (Lisa Ruesch and Barbara H. Dildine of counsel),
attorney for the children.

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 April 4, 2008, which denied her motion to vacate an order of the same court dated October 1, 2007, which, upon her default in appearing at a hearing, awarded custody of the subject children to the father.

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

The mother's contention that the court erred in denying her motion to vacate the order awarding custody to the father is without merit. A party seeking to vacate an order entered upon his or her default must establish that there was a reasonable excuse for the default and a meritorious defense to the relief sought in the petition (*see Matter of Princess M.*, 58 AD3d 854; *Matter of Atkin v Atkin*, 55 AD3d 905). Although the mother established that she had a reasonable excuse for her default, she failed to establish that she had a meritorious defense. Therefore, the Family Court properly denied her motion to vacate the order awarding custody to the father.

MASTRO, J.P., MILLER, CHAMBERS and AUSTIN, JJ., concur.

ENTER:


James Edward Pelzer

June 9, 2009

MATTER OF JONES v STEWART

Clerk of the Court

June 9, 2009

MATTER OF JONES v STEWART