

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

D26558  
G/mv

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

Submitted - March 2, 2010

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
HOWARD MILLER  
RANDALL T. ENG, JJ.

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2008-10444

DECISION & ORDER

In the Matter of Brianna M. (Anonymous).  
Administration for Children's Services, petitioner-  
respondent; Kenny J. (Anonymous), appellant,  
et al., respondent.  
(Proceeding No. 1)

In the Matter of Victoria Y. (Anonymous).  
Administration for Children's Services, petitioner-  
respondent; Kenny J. (Anonymous), appellant,  
et al., respondent.  
(Proceeding No. 2)

(Docket Nos. N-6328/06, N-6329/06)

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Rayaz N. Khan, Jamaica, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Pamela Seider Dolgow  
and Fay Ng of counsel), for petitioner-respondent.

Steven Banks, New York, N.Y. (Tamara A. Steckler and Susan Clement of counsel),  
attorney for the children.

In two related child protective proceedings pursuant to Family Court Act article 10,  
Kenny J. appeals from an order of the Family Court, Queens County (Richroath, J.), dated November  
7, 2008, which denied his motion to vacate a fact-finding order of the same court dated October 3,

March 16, 2010

Page 1.

MATTER OF M. (ANONYMOUS), BRIANNA  
MATTER OF Y. (ANONYMOUS), VICTORIA

2006, which, upon his default in appearing at a fact-finding hearing, found that he had neglected the subject children.

ORDERED that the order dated November 7, 2008, is affirmed, without costs or disbursements.

The Family Court providently exercised its discretion in denying the motion of the appellant, a “person legally responsible for the child’s care” (Family Ct Act § 1042), to vacate the fact-finding order entered upon his default in appearing at the fact-finding hearing, as the record showed that he “willfully refused to appear at the hearing” (*id.*; see *Matter of Nicholas S.*, 46 AD3d 830, 831; *Matter of Coates v Lee*, 32 AD3d 539, 539; *Matter of Vanessa F.*, 9 AD3d 464; *Matter of Ricky V.*, 4 AD3d 368, 368-369; *Matter of Clifford J.*, 238 AD2d 244, 244). Moreover, the appellant failed to set forth a meritorious defense to the allegations in the petition (see Family Ct Act § 1042; *Matter of Arthur S.*, 68 AD3d 1123; *Matter of Carlana B.*, 61 AD3d 752, 752).

The appellant’s remaining contentions are either unpreserved for appellate review or without merit.

RIVERA, J.P., FLORIO, MILLER and ENG, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court