

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

D26679  
W/kmg

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

Submitted - February 19, 2010

MARK C. DILLON, J.P.  
FRED T. SANTUCCI  
RUTH C. BALKIN  
SANDRA L. SGROI, JJ.

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2009-02922

DECISION & ORDER

In the Matter of Edward F. Handibode, Jr.,  
respondent, v Helen Martensen, appellant.

(Docket No. V-14886-07)

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Del Atwell, East Hampton, N.Y., for appellant.

Kim Nohilly, Central Islip, N.Y., for respondent.

Michael E. Repole, Smithtown, N.Y., 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, Suffolk County (Burke, Ct. Atty. Ref.), dated February 19, 2009, which, after an inquest held upon her default in appearing in opposition to the father's petition to modify the custody provisions of a stipulation of settlement dated June 4, 1998, which was incorporated but not merged into a judgment of divorce of the same court (Tanenbaum, J.), dated August 7, 1998, granted the petition and awarded the father sole legal and physical custody of the subject child, and declined to award her visitation.

ORDERED that the appeal is dismissed, without costs or disbursements.

The mother did not appear at an inquest held upon her default in appearing in opposition to the father's petition to modify the custody provisions of a stipulation of settlement, and her attorney did not participate therein. Accordingly, the order granting the petition to modify the existing custody arrangement, and declining to award visitation to the mother, was entered on the mother's default and is not appealable by her (*see* CPLR 5511; *Matter of Joseph Kenneth B.*, 47

March 30, 2010

Page 1.

MATTER OF HANDIBODE v MARTENSEN

AD3d 809; *Pinchas v Pinchas*, 19 AD3d 673, 673-674; *Circelli v Goodman*, 262 AD2d 519; *Matter of McConnell v Montagriff*, 233 AD2d 512, 512-513).

DILLON, J.P., SANTUCCI, BALKIN and SGROI, 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