

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

D26997
O/kmg

_____AD3d_____

Argued - March 19, 2010

PETER B. SKELOS, J.P.
LEONARD B. AUSTIN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-05788

DECISION & ORDER

In the Matter of Meurse Newman, petitioner-respondent, v Katherine Newman, respondent, Carl Pierotte, appellant.

(Docket No. V-01552-06)

Richard J. Cardinale, Brooklyn, N.Y., for appellant.

Helene Bernstein, Brooklyn, N.Y., for petitioner-respondent.

Karen P. Simmons, Brooklyn, N.Y., attorney for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the putative father appeals from an order of the Family Court, Kings County (O'Shea, J.), dated May 5, 2009, which, after a hearing, granted the maternal grandmother's petition for sole custody of the subject child.

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

The appellant argues that the Family Court improperly denied his oral motion, in effect, to re-open the hearing held on the maternal grandmother's petition for sole custody of the subject child. Although the appellant failed to appear in person at the hearing, his counsel appeared on his behalf and participated in the hearing. Thus, contrary to his contention, the order dated May 5, 2009, was not entered upon his default (*see Matter of Pollard v Pollard*, 63 AD3d 1628; *Matter of Vanessa M.*, 263 AD2d 542, 543; *Matter of Geraldine Rose W.*, 196 AD2d 313, 318).

To the extent the appellant is raising issues on this appeal which relate to an order of

April 20, 2010

Page 1.

MATTER OF NEWMAN v NEWMAN

the Family Court dated June 9, 2009, which, among other things, “dismissed” his motion, inter alia, to vacate the order dated May 5, 2009, those issues are not addressed in the order from which he appeals and, accordingly, are not properly before this Court (*see Matter of Sims v Narain*, 23 AD3d 1162). We note that the appellant has not appealed from the order dated June 9, 2009.

SKELOS, J.P., AUSTIN, ROMAN 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