

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

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Submitted - May 3, 2010

STEVEN W. FISHER, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2009-03424

DECISION & ORDER

In the Matter of Devon Defonte B.-S. (Anonymous).
Administration for Children's Services,
petitioner-respondent; Christine B. (Anonymous),
appellant; Jeffrey S. (Anonymous), nonparty-respondent.

(Docket Nos. N-23358-06, V-29887-06)

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

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Jane L. Gordon and Edward F. X. Hart of counsel), for petitioner-respondent.

Vivienne M. Hewitt, Brooklyn, N.Y., for nonparty-respondent.

Sandra L. Schpoont, New York, N.Y., attorney for the child.

In a neglect proceeding pursuant to Family Court Act article 10, the mother appeals from an order of the Family Court, Kings County (Danoff, J.), dated February 23, 2009, which denied her motion to vacate an order of fact-finding and disposition dated July 16, 2008, which, upon her default in appearing at the fact-finding and dispositional hearing, found that she derivatively neglected the subject child and awarded custody to the father.

ORDERED that the order dated February 23, 2009, is affirmed, without costs or disbursements.

The Family Court properly denied the mother's motion to vacate the fact-finding and dispositional order dated July 16, 2008, entered upon her default in appearing at the hearing

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scheduled for 9:30 A.M. on that day. The mother failed to demonstrate a reasonable excuse for the default or a meritorious defense to the petition. The mother's unsworn assertion that she was misinformed by the Family Court as to the date and time of the hearing is belied by the record, which shows that she was present when the scheduling of the hearing was announced. Accordingly, the Family Court correctly concluded that the mother "willfully refused to appear at the hearing" (Family Ct Act § 1042; *see Matter of Nicholas S.*, 46 AD3d 830, 831; *Matter of W. Children*, 256 AD2d 412, 413; *Matter of Jamel H.*, 187 AD2d 513). Moreover, the mother failed to demonstrate a meritorious defense to the derivative allegations based on the proceedings concerning the subject child's siblings (*see Matter of Amber C.*, 38 AD3d 538, 540; *Matter of Hannah UU.*, 300 AD2d 942, 944; *Matter of Baby Boy W.*, 283 AD2d 584, 585; *Matter of Cruz*, 121 AD2d 901, 902-903), or to offer any reason why it would be against the child's best interest to remain with the father, in whose custody he has been since he was one month old.

FISHER, J.P., DICKERSON, ENG and BELEN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court