

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

D28097  
O/kmg

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Submitted - June 18, 2010

JOSEPH COVELLO, J.P.  
DANIEL D. ANGIOLILLO  
JOHN M. LEVENTHAL  
SANDRA L. SGROI, JJ.

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2009-06770

DECISION & ORDER

In the Matter of Christopher S. Davy, respondent,  
v Paula D. Davy, appellant.

(Docket No. V-5481-08)

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Paula D. Davy, Westbury, N.Y., appellant pro se.

Bondi & Iovino, Garden City, N.Y. (Anthony F. Iovino of counsel), for respondent.

Elaine Miller, Great Neck, N.Y., attorney for the child.

In a proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Nassau County (Doyle, Ct. Atty. Ref.), dated June 12, 2009, which, upon her default in appearing at a hearing, granted the father's petition to enforce the visitation provisions of the parties' judgment of divorce entered February 1, 2008.

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

No appeal lies from an order made upon the default of the appealing party (*see* CPLR 5511; *Matter of Bouie v Arvelo-Smith*, 17 AD3d 461; *Matter of Heitler v Glucksman*, 309 AD2d 866). The proper procedure is for that party to move to vacate his or her default and, if necessary, appeal from the order determining the motion to vacate (*see Matter of Layne v Wyllie*, 277 AD2d 239; *Matter of Geraldine Rose W.*, 196 AD2d 313).

COVELLO, J.P., ANGIOLILLO, LEVENTHAL and SGROI, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

July 6, 2010

MATTER OF DAVY v DAVY