

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

D29386  
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Submitted - November 29, 2010

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

2010-00746

DECISION & ORDER

In the Matter of Richard B. Kushner, respondent, v  
Linda A. Tennen-Kushner Mendenhall, appellant.

(Index No. V-7834-09)

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Linda A. Tennen-Kushner Mendenhall, Meridianville, Alabama, appellant pro se.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Suffolk County (Freundlich, J.), dated January 14, 2010, which, in effect, denied her motion to vacate an order of the same court (Lechtrecker, Ct. Atty. Ref.), dated September 15, 2009, which, upon her default in appearing, granted the father's petition to modify a temporary order of custody dated July 8, 2009, so as to award him primary residential custody of the parties' minor child.

ORDERED that the order dated January 14, 2010, is affirmed, without costs or disbursements.

"The determination of whether to relieve a party of an order entered upon his or her default is within the sound discretion of the Family Court" (*Matter of Atkin v Atkin*, 55 AD3d 905; *see Matter of Coates v Lee*, 32 AD3d 539), and a party seeking to vacate an order entered upon his or her default must establish that there was a reasonable excuse for the default and a potentially meritorious defense to the relief sought in the petition (*see Matter of Jones v Stewart*, 63 AD3d 836; *Matter of Atkin v Atkin*, 55 AD3d 905).

Here, the Family Court providently exercised its discretion in denying the mother's motion to vacate the order of custody entered upon her default in appearing, inasmuch as she failed

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to demonstrate a reasonable excuse for the default and a potentially meritorious defense to the relief sought in the petition (*see Matter of Olds v Binyard*, 64 AD3d 658, 659; *Matter of Atkin v Atkin*, 55 AD3d at 905; *Matter of Coates v Lee*, 32 AD3d 539).

MASTRO, J.P., FISHER, ROMAN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court