

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

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_____AD3d_____

Submitted - May 26, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2008-09565

DECISION & ORDER

In the Matter of Pauline Petulla, petitioner-respondent,
v Vincent Petulla, et al., respondents, Dolores Moscato,
appellant.

(Docket Nos. V-04230-06, V-04231-06)

Michael S. Bromberg, Sag Harbor, N.Y., for appellant.

Claire Cody Miller, Staten Island, N.Y., for petitioner-respondent.

Mitchell P. Newman, Staten Island, N.Y., attorney for the children.

In related child custody proceedings pursuant to Family Court Act article 6, the mother appeals from an order of the Family Court, Richmond County (McElrath, J.), dated September 12, 2008, which denied her motion to vacate an order of the same court (Stanton, Ct. Atty. Ref.) dated March 5, 2008, which, upon her default in appearing at a hearing, inter alia, granted the paternal grandmother's petition for custody of the subject children.

ORDERED that the order dated September 12, 2008, is affirmed, without costs or disbursements.

“The determination whether to relieve a party of an order entered upon his or her default is a matter left to the sound discretion of the Family Court” (*Matter of Cassidy Sue R.*, 58 AD3d 744, 745, quoting *Matter of Francisco R.*, 19 AD3d 502, 502; see *Matter of Tenisha Tishonda T.*, 302 AD2d 534, 534). A party seeking to vacate such an order must establish that there was a reasonable excuse for the default and a potentially meritorious defense to the demand for relief sought in the petition (see CPLR 5015[a][1]; *Matter of Cassidy Sue R.*, 58 AD3d at 745; *Matter of Coates*

June 14, 2011

Page 1.

MATTER OF PETULLA v PETULLA

v Lee, 32 AD3d 539, 539; *Matter of Francisco R.*, 19 AD3d at 502). We agree with the Family Court that the mother failed to make the requisite showing.

The mother's remaining contentions are without merit, refer to matter de hors the record, or are otherwise not properly before this Court.

RIVERA, J.P., FLORIO, DICKERSON and ENG, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court