

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

D32570
O/kmb

_____AD3d_____

Submitted - September 27, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2011-01940

DECISION & ORDER

In the Matter of Carline Gustave-Francois, respondent,
v Herod Francois, appellant.

(Docket No. U-17915-06)

Herod Francois, Brooklyn, N.Y., appellant pro se.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and
Scott Shorr of counsel), for respondent.

In a child support proceeding pursuant to Family Court Act article 4, the father appeals from an order of the Family Court, Kings County (Weinstein, J.), dated January 18, 2011, which denied his objections to an order of the same court (LaFreniere, S.M.), dated November 4, 2010, denying his motion to vacate a prior order of support dated June 22, 2010, which, upon his default in appearing at a hearing, granted the mother's petition and set his child support obligation at the sum of \$770 per month.

ORDERED that the order dated January 18, 2011, is affirmed, without costs or disbursements.

While this Court prefers to resolve matters concerning child support on the merits, it is still necessary for a party seeking to vacate an order entered upon default to show that there was a reasonable excuse for the default and a potentially meritorious defense (*see Matter of Proctor-Shields v Shields*, 74 AD3d 1347; *Matter of Coates v Lee*, 32 AD3d 539). Here, the father offered no excuse for his failure to appear at a hearing. Thus, the Family Court providently exercised its discretion in denying the father's objections to the order dated November 4, 2010, denying his motion to vacate a prior order of support entered upon his default.

October 18, 2011

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Since the father failed to establish a reasonable excuse for his default, we need not reach the issue of whether he presented a potentially meritorious defense.

RIVERA, J.P., FLORIO, AUSTIN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court