

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

D36440
N/kmb

_____AD3d_____

Submitted - September 27, 2012

RANDALL T. ENG, P.J.
ANITA R. FLORIO
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-08860

DECISION & ORDER

In the Matter of Scott M. Nelson, respondent,
v Wilhelmena A. Norman, appellant.

(Docket No. O-20397-10)

Steven P. Forbes, Jamaica, N.Y., for appellant.

Paul B. Guttenberg, Syosset, N.Y., attorney for the children.

In a family offense proceeding pursuant to Family Court Act article 8, the mother appeals, as limited by her brief, from so much of an order of the Family Court, Queens County (Lebwohl, J.), dated August 4, 2011, as denied her motion to vacate an order of protection of the same court dated April 29, 2011, entered upon her default in appearing at a hearing.

ORDERED that the order dated August 4, 2011, is affirmed insofar as appealed from, without costs or disbursements.

The mother failed to appear for a hearing on the father's family offense petition. Thereafter, the mother moved to vacate the resulting order of protection dated April 29, 2011, entered upon her default. The Family Court, in effect, denied her motion on the ground of improper service of the motion papers. The mother then filed a second motion to vacate the order of protection; her second motion was virtually identical to her first motion to vacate that order. In the order appealed from, dated August 4, 2011, the Family Court denied the mother's second motion on the merits.

On appeal, the mother's sole argument is that the Family Court erred in denying her first motion to vacate the order of protection on the ground of improper service of the motion papers.

November 14, 2012

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However, that issue is not properly before this Court on this appeal, as it involves matters that were not the subject of the order appealed from.

ENG, P.J., FLORIO, SGROI and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court