

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1047

CA 09-01404

PRESENT: MARTOCHE, J.P., CARNI, GREEN, PINE, AND GORSKI, JJ.

JOHN J. BIRD, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

VICKIE L. BIRD, DEFENDANT-APPELLANT.

MARK S. CARNEY, BUFFALO (JASON R. DIPASQUALE OF COUNSEL), FOR
DEFENDANT-APPELLANT.

Appeal from an order of the Supreme Court, Cattaraugus County (Michael L. Nenno, A.J.), dated June 10, 2009. The order, insofar as appealed from, denied that part of the motion of defendant to vacate a default judgment of divorce.

It is hereby ORDERED that the order insofar as appealed from is unanimously reversed on the law without costs, the motion is granted in part and the default judgment of divorce is vacated.

Memorandum: Defendant, as limited by her brief on appeal, contends that Supreme Court abused its discretion in denying that part of her motion seeking to vacate the default judgment of divorce. We agree. "Although a party seeking to vacate a default judgment must demonstrate a reasonable excuse for the default and a meritorious defense, '[o]ur courts have embraced a liberal policy with respect to vacating default judgments in matrimonial actions' " (*Dunbar v Dunbar*, 233 AD2d 922, 922; *see De Pass v De Pass*, 42 AD3d 723, 724). In support of her motion, defendant submitted evidence that she was not represented by counsel and that plaintiff misled her with respect to his intention to pursue the divorce action (*see generally D'Alleva v D'Alleva*, 127 AD2d 732, 735). In addition, defendant established a meritorious claim to her distributive share of the marital property from the marriage of nearly 20 years' duration (*see Viner v Viner*, 291 AD2d 398). We thus conclude, particularly in light of the public policy favoring the disposition of matrimonial actions on the merits, that the court erred in denying defendant's motion insofar as it sought vacatur of the default judgment of divorce (*see id.* at 399; *see also Dunbar*, 233 AD2d 922).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court