

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

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CAF 08-00698

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

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IN THE MATTER OF KENDALL DANNER-NEPAGE,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

CHAD NEPAGE, RESPONDENT-RESPONDENT.

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PALOMA A. CAPANNA, PENFIELD, FOR PETITIONER-APPELLANT.

THEODORE W. STENUF, LAW GUARDIAN, MINOA, FOR EMILY D.

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Appeal from an order of the Family Court, Oswego County (David J. Roman, J.), entered January 31, 2008 in a proceeding pursuant to Family Court Act article 6. The order denied petitioner's motion to vacate the default order entered September 24, 2007.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion is granted, the order entered September 24, 2007 is vacated, and the matter is remitted to Family Court, Oswego County, for a hearing on the petitions.

Memorandum: "In view of the unintentional nature of the default, the reasonable nature of the excuse, . . . and the judicial preference for resolving cases on their merits," we conclude that Family Court abused its discretion in denying petitioner's motion to vacate the September 2007 default order (*Cavagnaro v Frontier Cent. School Dist.*, 17 AD3d 1099; see *Petrosino v Petrosino*, 24 AD3d 1210, 1212). Petitioner established a reasonable excuse for her failure to appear as well as a meritorious defense to respondent's petition for custody of the parties' minor daughter (see *Matter of Bey v Perez*, 39 AD3d 631; see generally CPLR 5015 [a] [1]).

Entered: March 27, 2009

JoAnn M. Wahl  
Clerk of the Court