

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

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_____AD3d_____

Submitted - December 18, 2017

CHERYL E. CHAMBERS, J.P.
SYLVIA O. HINDS-RADIX
JOSEPH J. MALTESE
ANGELA G. IANNACCI, JJ.

2016-11233

DECISION & ORDER

In the Matter of Kolien Thompson-Richmond, respondent,
v Robert A. Perez, appellant.

(Docket No. O-5381-12/15A)

Carol Kahn, New York, NY, for appellant.

Arza R. Feldman, Uniondale, NY (Steven Feldman of counsel), for respondent.

Neal D. Futerfas, White Plains, NY, attorney for the child.

Appeal from an order of the Family Court, Dutchess County (Joan S. Posner, J.), dated September 16, 2016. The order denied the father's motion to vacate an order of protection that was entered against him upon his failure to appear at a scheduled court date.

ORDERED that the order is affirmed, without costs or disbursements.

On March 29, 2016, the Family Court in this family offense proceeding granted the mother's motion pursuant to Family Court Act § 842 for an extension of an order of protection against the father and in her favor, upon the father's failure to appear at a scheduled court conference. The court thereupon issued, upon the father's default, an order of protection due to expire on March 29, 2018. Thereafter, the father moved pursuant to CPLR 5015(a)(1) to vacate the default order of protection. In an order dated September 16, 2016, the court denied his motion. The father appeals.

"A party seeking to vacate an order entered on default must establish that there was

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a reasonable excuse for the default and a potentially meritorious defense” (*Matter of Mongitore v Linz*, 95 AD3d 1130, 1130). Here, even if the father provided a reasonable excuse for his failure to appear at the conference, he did not establish a potentially meritorious defense to the mother’s motion (*see Matter of McKinney v Jones*, 151 AD3d 973; *Matter of Mongitore v Linz*, 95 AD3d at 1131; *cf. Matter of Gastaldi v Gastaldi*, 125 AD3d 657). Accordingly, the Family Court properly denied the father’s motion pursuant to CPLR 5015(a)(1) to vacate the default order of protection.

CHAMBERS, J.P., HINDS-RADIX, MALTESE and IANNACCI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court