

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

D55633  
C/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 18, 2018

SHERI S. ROMAN, J.P.  
SANDRA L. SGROI  
JOSEPH J. MALTESE  
HECTOR D. LASALLE, JJ.

---

2017-04716

DECISION & ORDER

In the Matter of Reyna M. U.-A. (Anonymous).  
Children's Aid Society, petitioner-respondent,  
et al., petitioner; Isaac U. (Anonymous), appellant,  
et al., respondent.  
(Proceeding No. 1)

In the Matter of Kimberly U. (Anonymous).  
Children's Aid Society, petitioner-respondent,  
et al., petitioner; Isaac U. (Anonymous), appellant,  
et al., respondent.  
(Proceeding No. 2)

In the Matter of Anita J. U. (Anonymous).  
Children's Aid Society, petitioner-respondent,  
et al., petitioner; Isaac U. (Anonymous), appellant,  
et al., respondent.  
(Proceeding No. 3)

(Docket Nos. B-4112-15, B-4113-15, B-4114-15)

---

Mitchell P. Newman, Staten Island, NY, for appellant.

Rosin Steinhagen Mendel, New York, NY (Douglas H. Reiniger of counsel), for  
petitioner-respondent.

June 13, 2018

Page 1.

MATTER OF U.-A. (ANONYMOUS), REYNA M.  
MATTER OF U. (ANONYMOUS), KIMBERLY  
MATTER OF U. (ANONYMOUS), ANITA J.

Seymour W. James, Jr., New York, NY (Dawne A. Mitchell and Patricia Colella of counsel), attorney for the children.

In three related proceedings pursuant to Social Services Law § 384-b, the father appeals from an order of the Family Court, Richmond County (Arnold Lim, J.), dated March 21, 2017. The order denied the father's motion to vacate three orders of fact-finding and disposition of the same court (one as to each child), all dated October 24, 2016, which, upon his failure to appear at a fact-finding and dispositional hearing, and after a fact-finding and dispositional inquest, terminated his parental rights on the ground of permanent neglect, and transferred guardianship and custody of the subject children to the Children's Aid Society and the Commissioner of the Administration for Children's Services for the purpose of adoption.

ORDERED that the order dated March 21, 2017, is affirmed, without costs or disbursements.

In September 2015 the petitioners commenced these three related proceedings pursuant to Social Services Law § 384-b, inter alia, to terminate the father's parental rights with respect to the three subject children on the ground of permanent neglect. The father failed to appear at a fact-finding hearing scheduled for September 22, 2016. The father was found to be in default, and the Family Court conducted a fact-finding and dispositional inquest. In three orders of fact-finding and disposition (one as to each child), all dated October 24, 2016, the court, inter alia, determined that the children were permanently neglected by the father, terminated the father's parental rights, and transferred guardianship and custody of the children to the petitioners for the purpose of adoption. In March 2017, the father moved to vacate his default. In the order appealed from, the court denied the father's motion, and the father appeals.


“The determination of whether to relieve a party of a default is within the sound discretion of the Family Court” (*Matter of Brandon G. [Tiyinia M.]*, 155 AD3d 626, 626; see *Matter of Clarence D.H. [Fidelina A.]*, 150 AD3d 1113, 1114; *Matter of Isabella R.W. [Jessica W.]*, 142 AD3d 503, 504). “A parent seeking to vacate an order entered upon his or her default in a termination of parental rights proceeding must establish a reasonable excuse for the default, as well as a potentially meritorious defense to the relief sought in the petition” (*Matter of Johanna B. [Grace B.]*, 157 AD3d 668, 669; see CPLR 5015[a][1]; *Matter of Brandon G. [Tiyinia M.]*, 155 AD3d at 626-627; *Matter of Clarence D.H. [Fidelina A.]*, 150 AD3d at 1114).

Here, the father, who was present in court when the hearing was scheduled, failed to provide a reasonable excuse for his default (see *Matter of Dominique Beyonce R. [Maria Isabel R.]*, 82 AD3d 984, 985; *Matter of Nicholas S.*, 46 AD3d 830, 831; *Matter of Porscha Monique J.*, 21 AD3d 415, 416). Furthermore, the father offered no explanation as to why he waited until March 2017 to move to vacate his default (see *Matter of Devon Dupree F.*, 298 AD2d 103). In any event, the father failed to set forth a potentially meritorious defense to the allegations in the petition (see *Matter of Qwin L.X.P. [Leonard P.]*, 158 AD3d 698, 699; *Matter of Dominique Beyonce R. [Maria Isabel R.]*, 82 AD3d at 985-986).

Accordingly, we agree with the Family Court's determination denying the father's motion to vacate the orders of fact-finding and disposition entered upon his default.

ROMAN, J.P., SGROI, MALTESE and LASALLE, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court