

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

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CAF 24-00247

PRESENT: WHALEN, P.J., BANNISTER, OGDEN, NOWAK, AND KEANE, JJ.

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IN THE MATTER OF PATRICIA TOWNSEND,  
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

GREGORY MYERS, JR., RESPONDENT-APPELLANT,  
AND ASHLEY MYERS, RESPONDENT-RESPONDENT.

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THOMAS L. PELYCH, HORNELL, FOR RESPONDENT-APPELLANT.

WALTER BURKARD, MANLIUS, ATTORNEY FOR THE CHILD.

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Appeal from an order of the Family Court, Onondaga County (Christina F. DeJoseph, J.), entered October 24, 2023, in a proceeding pursuant to Family Court Act article 6. The order, inter alia, granted petitioner sole legal and physical custody with respect to the subject child.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: In this proceeding pursuant to Family Court Act article 6, respondent father appeals from an order effectively granting, on the father's default, the petition of the subject child's maternal aunt seeking sole custody of the child. Because neither the father nor his attorney appeared at the custody hearing, Family Court deemed the father to be in default (*see generally Matter of Malachi S. [Michael W.]*, 195 AD3d 1445, 1446 [4th Dept 2021], *lv dismissed* 37 NY3d 1081 [2021]). " '[I]t is well settled that no appeal lies from an order that is entered upon the default of the appealing party' " (*Matter of Roache v Hughes-Roache*, 153 AD3d 1653, 1653 [4th Dept 2017]; *see Matter of Rottenberg v Clarke*, 144 AD3d 1627, 1627 [4th Dept 2016]). We therefore dismiss the appeal.

Entered: April 25, 2025

Ann Dillon Flynn  
Clerk of the Court