

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

D23976
G/kmg

_____AD3d_____

Argued - June 12, 2009

WILLIAM F. MASTRO, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
L. PRISCILLA HALL, JJ.

2008-04955

DECISION & ORDER

In the Matter of Renessta Olds, petitioner-respondent, v Robert Binyard, appellant, et al., respondent.
(Proceeding No. 1)

In the Matter of Robert Binyard, appellant, v Renessta K. Olds, et al., respondents.
(Proceeding No. 2)

(Docket No. V-21312-06)

Matthew M. Lupoli, Flushing, N.Y., for appellant.

Jeffrey C. Bluth, Brooklyn, N.Y., for petitioner-respondent.

Karen P. Simmons, Brooklyn, N.Y. (Janet Neustaetter and Barbara H. Dildine of counsel), attorney for the child.

In related child custody proceedings pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Kings County (Graham, J.), dated May 2, 2008, which denied his motion to vacate an order of the same court dated October 13, 2006, entered upon his default in appearing or answering, granting the petition of a maternal aunt for an award of custody of the subject child, and denied, without a hearing, his petition to modify the order dated October 13, 2006.

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

July 14, 2009

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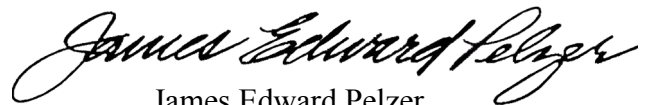
MATTER OF OLDS v BINYARD
MATTER OF BINYARD v OLDS

The Family Court providently exercised its discretion in denying the father's motion to vacate the custody order entered upon his default as the father failed to demonstrate either a reasonable excuse for the default or a meritorious defense to the petition for custody (*see Matter of Taylor v Staples*, 33 AD3d 1089; *Matter of Burns v Carriere-Knapp*, 278 AD2d 542).

Additionally, the Family Court properly denied, without a hearing, the father's petition to modify the custody order. Contrary to the father's contention, the Family Court applied the appropriate standard (*see Matter of Metcalf v Odums*, 35 AD3d 865; *Matter of Fishburne v Teelucksingh*, 34 AD3d 804; *Matter of Guinta v Doxtator*, 20 AD3d 47, 51). Here, the father failed to make a sufficient showing of a change of circumstances to warrant a hearing (*see Spratt v Fontana*, 46 AD3d 670; *McNally v McNally*, 28 AD3d 526).

MASTRO, J.P., DICKERSON, ENG and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court