

DISSENT BY ACOBA, J., IN WHICH DUFFY, J., JOINS

The February 8, 2005 order denying the motion to set aside the default of Mother-Appellant is arguably an appealable final order because it finally determined the matter of Mother's default at the permanent custody hearing. In this case, Mother was apparently defaulted for being about an hour-and-a-half late and the permanent custody hearing proceeded after default. Mother moved that same day to set aside the default. It cannot be concluded reasonably that the family court's award of permanent custody was not based on Mother's default, and that, therefore, the issue of Mother's default will not affect the award of permanent custody. For if Mother's default is set aside, the permanent custody hearing could not proceed without her participation. That being the case, the permanent custody order would have to be vacated. Thus, an appellate court ruling on the issue of Mother's default will indeed affect the award of permanent custody. Mother's motion for reconsideration of the order dismissing her appeal, then, should be granted.



James E. Duffy, Jr.