

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

D18056
Y/kmg

_____AD3d_____

Submitted - January 10, 2008

ROBERT A. SPOLZINO, J.P.
HOWARD MILLER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2007-08646

DECISION & ORDER

In the Matter of Donna A. Bartley, respondent,
v Ronald C. Bartley, appellant.

(Docket No. O-03065-07)

Sheila Callahan O'Donnell, Cornwall, N.Y., for appellant.

In a family offense proceeding pursuant to Family Court Act article 8, Ronald C. Bartley appeals from an order of disposition of the Family Court, Orange County (Bivona, J.), entered October 2, 2007, which, after a hearing, and upon a finding that he committed the family offense of disorderly conduct, directed him to abide by the conditions set forth in an order of protection of the same court entered August 23, 2007.

ORDERED that the notice of appeal from the order of protection is deemed a premature notice of appeal from the order of disposition (*see* CPLR 5520[c]); and it is further,

ORDERED that the order of disposition is reversed, on the law, without costs or disbursements, the order of protection is vacated, and the proceeding is dismissed.

Contrary to the Family Court's determination, the record does not support its finding that the petitioner proved by a preponderance of the evidence (*see* Family Ct Act § 832; *Matter of Philips v LaLand*, 4 AD3d 529, 530) that the appellant committed acts constituting the family offense of disorderly conduct, warranting the issuance of an order of protection. The testimony and evidence demonstrates that while the appellant was clearly upset with the petitioner during and after the event celebrating their daughter's college graduation, and demonstrated poor judgment in confronting the petitioner in the upstairs of the marital home and in arguing with her and three others in the kitchen,

February 19, 2008

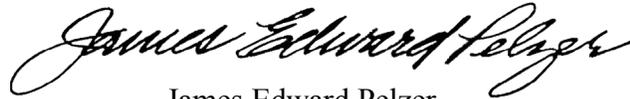
Page 1.

MATTER OF BARTLEY v BARTLEY

he barely raised his voice, he did not threaten the petitioner, and his conduct did not cause those involved in the argument to leave the home (*see* Family Ct Act §§ 812, 832; Penal Law § 240.20; *cf. Matter of Rankoth v Sloan*, 44 AD3d 863; *Matter of Bonsignore v Bonsignore*, 37 AD3d 602; *Matter of Kraus v Kraus*, 26 AD3d 494; *Matter of Sarmuksnis v Priest*, 21 AD3d 381, 383; *Matter of Clarke v Clarke*, 8 AD3d 375; *Matter of Platsky v Platsky*, 237 AD2d 610).

SPOLZINO, J.P., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court