

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

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_____AD3d_____

Submitted - October 10, 2008

ANITA R. FLORIO, J.P.
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2008-00913

DECISION & ORDER

In the Matter of Carol Gray, respondent, v
Gerard P. Gray, appellant.

(Docket No. O-01048-07)

Samuel Weinbaum, Brooklyn, N.Y., for appellant.

In a family offense proceeding pursuant to Family Court Act article 8, Gerard P. Gray appeals from an order of protection of the Supreme Court, Kings County (Morgenstern, J.), dated January 16, 2008, which, after a hearing, inter alia, directed him to stay away from the petitioner until January 15, 2013.

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

The determination of whether a family offense was committed is a factual issue to be resolved by the hearing court (*see Matter of Hall v Hall*, 45 AD3d 842; *Matter of Pastore v Russo*, 38 AD3d 556), and that court's determination regarding the credibility of witnesses is entitled to great weight on appeal unless clearly unsupported by the record (*see Matter of Hall v Hall*, 45 AD3d 842; *Matter of Wallace v Wallace*, 45 AD3d 599; *Matter of Dancer v Robertson*, 38 AD3d 887; *Matter of Meiling Zhang v Jinghong Zhu*, 36 AD3d 704; *Matter of Kraus v Kraus*, 26 AD3d 494). A fair preponderance of the credible evidence did not support the hearing court's determination that the appellant committed the family offense of assault in the third degree (*see* Family Ct Act § 812[1]; § 832; Penal Law § 120.00; *Matter of Ford v Pitts*, 30 AD3d 419; *Matter of Strully v Schwartz*, 255 AD2d 593). However, a fair preponderance of the credible evidence adduced at the fact-finding hearing supports the hearing court's finding that the appellant committed the family offenses of harassment in the second degree (*see* Penal Law § 240.26[3]; *Matter of Fleming v Fleming*, 52 AD3d

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600; *Matter of Larson v Gilliam*, 49 AD3d 650; *Matter of Wallace v Wallace*, 45 AD3d 599), attempted assault in the third degree (*see* Penal Law §§ 110, 120.00; *Matter of Wright v Wright*, 4 AD3d 683, 684), menacing in the second degree (*see* Penal Law § 120.14[2]; *Matter of Onuoha v Onuoha*, 28 AD3d 563), and menacing in the third degree (*see* Penal Law § 120.15; *Matter of Sinclair v Batista-Mall*, 50 AD3d 1044; *Matter of Mazzola v Mazzola*, 280 AD2d 674), warranting the issuance of an order of protection.

The appellant's remaining contentions are either unpreserved for appellate review or not properly before this Court.

FLORIO, J.P., ANGIOLILLO, McCARTHY and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court