

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

D23024
C/hu

_____AD3d_____

Submitted - January 16, 2009

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2008-01727
2008-01732

DECISION & ORDER

In the Matter of Jeannie Gelardi, respondent,
v Michelle Gelardi, appellant.

(Index No. O-4924-07)

Feldman, Kleidman & Coffey, LLP, Fishkill, N.Y. (David R. Zagon of counsel), for
appellant.

In a family offense proceeding pursuant to Family Court Act article 8, Michelle Gelardi appeals, as limited by her brief, from (1) so much of an order of protection of the Family Court, Orange County (Bovina, J.), entered December 11, 2007, as directed that it remain in effect up to and including December 11, 2011, and (2) so much of an order of fact-finding and disposition of the same court dated January 2, 2008, as, after a fact-finding and dispositional hearing, found that she committed the family offense of aggravated harassment in the second degree within the meaning of Family Court Act § 812, and, in effect, directed her to comply with the terms of the order of protection entered December 11, 2007.

ORDERED that the order of protection is modified, on the law, by deleting the provision thereof directing that it shall remain in effect up to and including December 11, 2011, and substituting therefor a provision directing that the order of protection shall remain in effect up to and including December 11, 2009; as so modified, the order of protection is affirmed insofar as appealed from, without costs or disbursements; and it is further,

ORDERED that the order of fact-finding and disposition is affirmed insofar as appealed from, without costs or disbursements.

May 5, 2009

Page 1.

MATTER OF GELARDI v GELARDI

The order of protection, which states that it shall remain in effect up to and including December 11, 2011, fails to set forth, as required by Family Court Act § 842, the required finding of aggravating circumstances. Thus, the duration of the order of protection may not exceed a period of two years. Accordingly, the order of protection must be modified to remain in effect up to and including December 11, 2009 (*see* Family Ct Act §§ 842, 827[a][vii]; *Matter of Rosario WW. v Ellen WW.*, 309 AD2d 984; *Matter of Baker v Ratoon*, 251 AD2d 921; *Matter of Zirkind v Zirkind*, 218 AD2d 745; *cf. Matter of Guernsey v Guernsey*, 37 AD3d 989; *Matter of Reilly v Reilly*, 254 AD2d 361, 362; *see also Matter of Charlene J.R. v Walter A.M.*, 307 AD2d 1038).

The appellant's remaining contentions are without merit.

FISHER, J.P., FLORIO, DICKERSON and BELEN, 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