

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

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Submitted - January 28, 2010

A. GAIL PRUDENTI, P.J.
MARK C. DILLON
RANDALL T. ENG
SHERI S. ROMAN, JJ.

2009-03606

DECISION & ORDER

In the Matter of Herode Laplante, appellant, v
Nadine Laplante, respondent.

(Docket No. O-4552-09)

Jeffrey C. Bluth, Brooklyn, N.Y., for appellant.

In a family offense proceeding pursuant to Family Court Act article 8, the petitioner appeals from an order of the Family Court, Kings County (Ross, J.H.O.), dated April 16, 2009, which dismissed the petition.

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

We reject the petitioner's contention that the Family Court should have amended his petition sua sponte to include an allegation that the respondent slapped him. A pleading may be amended to conform to the proof, unless the amendment would prejudice the opposing party (*see* CPLR 3025[c]). Here, such an amendment would have prejudiced the respondent because, without notice of the factual allegation, she could not prepare her case.

PRUDENTI, P.J., DILLON, ENG and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

February 23, 2010

MATTER OF LAPLANTE v LAPLANTE