

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

D26797  
G/kmg

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Submitted - February 23, 2010

WILLIAM F. MASTRO, J.P.  
PETER B. SKELOS  
RANDALL T. ENG  
SHERI S. ROMAN, JJ.

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2009-06613

DECISION & ORDER

In the Matter of Carol Luke, appellant, v Gustavo Luke,  
respondent.

(Docket No. O-9914-08)

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Yasmin Daley Duncan, Brooklyn, N.Y., for appellant.

Gustavo Luke, New York, N.Y., respondent pro se.

In a family offense proceeding pursuant to Family Court Act article 8, the petitioner appeals from an order of the Family Court, Kings County (Sheares, J.), dated July 8, 2009, which, after a hearing, dismissed the petition.

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

The determination of whether a family offense was committed is a factual issue to be resolved by the Family Court, and that court's determination regarding the credibility of witnesses is entitled to great weight on appeal, and will not be disturbed if supported by the record (*see Matter of Holder v Francis*, 67 AD3d 679; *Matter of Sblendorio v D'Agostino*, 60 AD3d 773; *Matter of Fernandez v Pacheco*, 59 AD3d 542, 543; *Matter of Gray v Gray*, 55 AD3d 909; *Matter of Barnes v Barnes*, 54 AD3d 755; *Matter of Wilkins v Wilkins*, 47 AD3d 823, 824). Here, the Family Court was presented with sharply conflicting testimony as to whether the respondent assaulted or attempted to assault the petitioner during the course of the subject incident. The Family Court's determination that the petitioner had failed to establish that a family offense was committed was based solely upon its assessment of the credibility of the parties and of an eyewitness, and is supported by the record

April 6, 2010

Page 1.

MATTER OF LUKE v LUKE

(see *Matter of Barnes v Barnes*, 54 AD3d at 756; *Matter of Wilkins v Wilkins*, 47 AD3d at 824; *Matter of Hall v Hall*, 45 AD3d 842, 843). Accordingly, we decline to disturb the Family Court's determination.

MASTRO, J.P., SKELOS, ENG and ROMAN, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court