

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

D26893  
Y/prt

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Submitted - March 19, 2010

PETER B. SKELOS, J.P.  
LEONARD B. AUSTIN  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

2009-04921

DECISION & ORDER

In the Matter of Donald K. Sellers, Sr., appellant,  
v Debra Sellers-Boykin, respondent.

(Docket No. O-2591-09)

Robert C. Mitchell, Central Islip, N.Y. (Jorge L. Rosario of counsel), for appellant.

Glenn Gucciardo, Northport, N.Y., for respondent.

In a family offense proceeding pursuant to Family Court Act article 8, the husband appeals from an order of the Family Court, Suffolk County (Burke, Ct. Atty. Ref.), dated May 18, 2009, which granted the wife's motion, made at the close of his case, to dismiss the petition for failure to establish a prima facie case, and vacated a temporary order of protection of the same court (Tarantino, J.) dated February 11, 2009.

ORDERED that the order dated May 18, 2009, is affirmed, without costs or disbursements.

The evidence proffered in support of the petition failed to establish that the wife committed the family offenses of criminal mischief, disorderly conduct, or harassment in the second degree (*see* Family Ct Act § 812[1]; Penal Law §§ 145.00, 240.20, 240.26).

SKELOS, J.P., AUSTIN, ROMAN and SGROI, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

April 13, 2010

MATTER OF SELLERS v SELLERS-BOYKIN