

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

D30985
H/kmb

_____AD3d_____

Submitted - April 8, 2011

WILLIAM F. MASTRO, J.P.
ARIEL E. BELEN
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2010-01709

DECISION & ORDER

In the Matter of Maria Christina Alicea,
appellant, v Edward N. Alfano, respondent.

(Docket No. O-32032/08)

Helene Chowes, New York, N.Y., for appellant.

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

In a family offense proceeding pursuant to Family Court Act article 8, Maria Christina Alicea appeals from an order of the Family Court, Kings County (Feldman, J.H.O.), dated January 26, 2010, which, after a hearing, dismissed the petition.

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

A family offense must be established by a fair preponderance of the evidence (*see* Family Court Act § 832; *Matter of Hasbrouck v Hasbrouck*, 59 AD3d 621). The determination of whether a family offense was committed is a factual issue to be resolved by the Family Court; its determination regarding the credibility of witnesses is entitled to great weight on appeal (*see Matter of Pearlman v Pearlman*, 78 AD3d 711, 712; *Matter of Fleming v Fleming*, 52 AD3d 600; *Matter of Rivera v Quinones-Rivera*, 15 AD3d 583; *Matter of King v Flowers*, 13 AD3d 629; *Matter of Topper v Topper*, 271 AD2d 613).

Here, the appellant failed to establish by a preponderance of the evidence that the respondent committed acts constituting a cognizable family offense (*see* Family Court Act § 812[1], § 832; *Matter of Ann P. v Nicholas C.P.*, 44 AD3d 776; *Matter of London v Blazer*, 2 AD3d 860, 861). Since the allegations in the petition were not established, the petition was properly dismissed

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(see Family Court Act § 841[a]; *Matter of Hasbrouck v Hasbrouck*, 59 AD3d at 622; *Matter of King v Flowers*, 13 AD3d 629; *Matter of Garland v Garland*, 3 AD3d 496).

MASTRO, J.P., BELEN, CHAMBERS and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court