

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

D31114
O/kmb

_____AD3d_____

Submitted - April 15, 2011

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2010-10420

DECISION & ORDER

In the Matter of Roseann Tauriello, respondent,
v Brett James Thompson, appellant.

(Docket No. O-13151-10)

Thomas K. Campagna, P.C., Hauppauge, N.Y. (Ettore Simeone of counsel), for appellant.

Elizabeth Harrington, East Moriches, N.Y., for respondent.

In a family offense proceeding pursuant to Family Court Act article 8, Brett James Thompson appeals from an order of protection of the Family Court, Suffolk County (Hoffmann, J.), dated October 13, 2010, which, after a hearing, inter alia, directed him to refrain from any acts or threats of physical violence against the petitioner for a period up to and including October 13, 2011.

ORDERED that the order of protection is reversed, on the law, without costs or disbursements, the petition is denied, and the proceeding is dismissed.

According due deference to the credibility determinations of the hearing court, and without taking issue with those determinations (*see Matter of Foxworth v DeJesus*, 74 AD3d 1064), the evidence adduced at the hearing was insufficient to prove by a preponderance of the evidence that the appellant's acts on July 25, 2010, constituted a family offense (*see Family Ct Act § 832; Matter of Bartley v Bartley*, 48 AD3d 678, 679). Consequently, the order of protection must be reversed, the petition denied, and the proceeding dismissed (*see Matter of Hasbrouck v Hasbrouck*, 59 AD3d 621, 622).

May 3, 2011

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In light of our determination, we need not reach the appellant's remaining contention.

MASTRO, J.P., BALKIN, LEVENTHAL and BELEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court