

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

D32378
O/kmb

_____AD3d_____

Submitted - September 12, 2011

DANIEL D. ANGIOLILLO, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-09140

DECISION & ORDER

In the Matter of Brian G. Smith, respondent,
v Donna L. Falco-Boric, appellant.

(Docket No. O-3098-10)

Neal D. Futerfas, White Plains, N.Y., for appellant.

In a family offense proceeding pursuant to Family Court Act article 8, Donna L. Falco-Boric appeals from an order of protection of the Family Court, Dutchess County (Forman, J.), dated August 12, 2010, which, after a fact-finding hearing and upon, in effect, a finding that she had committed certain family offenses, directed her, inter alia, to stay 500 feet away from the petitioner, Brian G. Smith, until and including August 12, 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.

Although the order of protection expired by its own terms on August 12, 2011, the appeal has not been rendered academic in light of “the enduring consequences which may potentially flow from a finding that the appellant committed a family offense” (*Matter of Willis v Rhineheart*, 76 AD3d 641, 642; *see Matter of Wallace v Wallace*, 45 AD3d 599; *Matter of Hogan v Hogan*, 271 AD2d 533).

The Family Court failed to state on the record the facts which it deemed essential to its determination to grant the petition for an order of protection (*see CPLR 4213[b]; Matter of Jose L.I.*, 46 NY2d 1024, 1025-1026; *Matter of Destiny H. [Valerie B.]*, 83 AD3d 939). However, remittal is not necessary because the record is sufficient for this Court to conduct an independent review of the evidence (*see Matter of Jose L.I.*, 46 NY2d at 1026; *Matter of Destiny H. [Valerie B.]*,

September 27, 2011

Page 1.

MATTER OF SMITH v FALCO-BORIC

83 AD3d 939). The record does not support the Family Court's finding, in effect, that the appellant committed a family offense warranting the issuance of an order of protection (*see* Family Ct Act § 812).

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

ANGIOLILLO, J.P., BALKIN, HALL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court