

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

D32473
N/kmb

_____AD3d_____

Submitted - September 20, 2011

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2009-11061

DECISION & ORDER

In the Matter of Maria Aruti, appellant,
v Ike Aruti, respondent.

(Docket No. O-13214-07)

Tennille M. Tatum-Evans, New York, N.Y., for appellant.

In a family offense proceeding pursuant to Family Court Act article 8, the petitioner appeals from an order of the Family Court, Queens County (Jackman-Brown, J.), dated August 21, 2009, which, after a fact-finding hearing, in effect, denied the petition and dismissed the proceeding.

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 Ct 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 (*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 petitioner failed to establish by a preponderance of the evidence that the respondent committed acts constituting a cognizable family offense (*see* Family Ct 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 Family Court properly, in effect, denied the petition and dismissed the proceeding (*see* Family Ct Act § 841[a]; *Matter of Hasbrouck v*

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Hasbrouck, 59 AD3d at 622; *Matter of King v Flowers*, 13 AD3d 629; *Matter of Garland v Garland*, 3 AD3d 496).

MASTRO, J.P., FLORIO, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court