

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

D33064
W/prt

_____AD3d_____

Submitted - October 31, 2011

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
SHERI S. ROMAN, JJ.

2010-08278

DECISION & ORDER

In the Matter of Lisa Ann Parrella, respondent,
v Heather Freely, appellant.

(Docket No. O-6754-09)

Kent V. Moston, Hempstead, N.Y. (Jeremy L. Goldberg and Dori Cohen of counsel),
for appellant.

Edward J. Emanuele, Mineola, N.Y., attorney for the child.

In a family offense proceeding pursuant to Family Court Act article 8, Heather Freely appeals from an order of protection of the Family Court, Nassau County (Eisman, J.), dated July 13, 2010, which, after a hearing, in effect, granted the petition of Lisa Ann Parrella to hold her in violation of a prior order of protection dated September 15, 2009, as amended December 30, 2009, and directed her, inter alia, to stay away from Lisa Ann Parrella and to refrain from communication with or about Lisa Ann Parrella for a period of two years.

ORDERED that the order of protection dated July 13, 2010, is reversed, on the law, without costs or disbursements, the petition is denied, the order of protection dated September 15, 2009, as amended December 30, 2009, is vacated, and the proceeding is dismissed for lack of subject matter jurisdiction.

In January 2010 the appellant was dating the former boyfriend of Lisa Ann Parrella, with whom Parrella had a child. At that time, Parrella filed a petition against the appellant, alleging that the appellant violated a previous order of protection. On July 13, 2010, the Family Court entered an order which, in effect, granted the petition and, inter alia, directed the appellant to stay

December 6, 2011

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away from Parrella and to refrain from communicating with or about Parrella for a period of two years. On this appeal, the appellant argues, among other things, that the Family Court lacked subject matter jurisdiction over the proceeding.

“The Family Court is a court of limited jurisdiction and, thus, it ‘cannot exercise powers beyond those granted to it by statute’” (*Matter of Seye v Lamar*, 72 AD3d 975, 975-976, quoting *Matter of Johna M. S. v Russell E. S.*, 10 NY3d 364, 366). Where the Family Court had no jurisdiction to issue an order of protection or temporary order of protection initially, such an order “was void ab initio for all purposes, including the power to hold [a party] in contempt” (*Matter of Robert B.-H. [Robert H.]*, 82 AD3d 1221, 1222; see *Matter of Fish v Horn*, 14 NY2d 905, 906).

Pursuant to Family Court Act § 812(1), the Family Court's jurisdiction in family offense proceedings is limited to certain proscribed criminal acts that occur among enumerated classes of people, including persons who share an “intimate relationship” with each other (Family Ct Act § 812[1][e]; see *Matter of LaVann v Bell*, 77 AD3d 1422, 1423; *Matter of Jessica D. v Jeremy H.*, 77 AD3d 87, 88-89). Here, there is no evidence in the record that the appellant and Parrella had a direct relationship. Instead, the evidence revealed that the parties had met personally only during the course of the court proceedings and that the appellant had never met Parrella’s child. Therefore, there is no evidence that the parties’ relationship was an “intimate relationship” within the meaning of Family Court Act § 812(1)(e) (see *Matter of Tyrone T. v Katherine M.*, 78 AD3d 545, 545; *Matter of Seye v Lamar*, 72 AD3d at 976-977).

Since the parties did not have an “intimate relationship” within the meaning of Family Court Act § 812(1)(e), the Family Court lacked subject matter jurisdiction to issue the original order of protection or to issue the order appealed from (see *Matter of Fish v Horn*, 14 NY2d 905).

In light of the foregoing, the appellant’s remaining contentions have been rendered academic.

RIVERA, J.P., DICKERSON, ENG and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court