

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

D34781
C/ct

____AD3d____

Submitted - April 2, 2012

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
JEFFREY A. COHEN, JJ.

2011-04501

DECISION & ORDER

In the Matter of Rosanne DeGasero, respondent, v
Philip DeGasero, appellant.

(Docket No. 0-18604-10)

Glen A. Suarez, P.C., Huntington, N.Y., for appellant.

Del Atwell, East Hampton, N.Y., for respondent.

In a family offense proceeding pursuant to Family Court Act article 8, Philip DeGasero appeals from an order of protection of the Family Court, Suffolk County (Burke, Ct. Atty. Ref.), dated April 6, 2011, which, upon the denial of his motion to dismiss the petition for failure to establish a prima facie case, and upon a finding, made after a hearing, that he committed the family offense of disorderly conduct, directed him, inter alia, to refrain from threatening Rosanne DeGasero.

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

“In determining a motion to dismiss for failure to establish a prima facie case, the evidence must be accepted as true and given the benefit of every reasonable inference which may be drawn therefrom . . . The question of credibility is irrelevant, and should not be considered” (*Gonzalez v Gonzalez*, 262 AD2d 281, 282 [internal citation omitted]; see *Matter of Ramroop v Ramsagar*, 74 AD3d 1208, 1209). The Family Court applied the correct standard in denying the appellant’s motion to dismiss, as the evidence presented by the petitioner, when viewed in the light most favorable to her, established prima facie that the appellant committed the family offense of disorderly conduct.

Moreover, “[t]he determination of whether a family offense was committed is a factual issue to be resolved by the hearing court . . . and that court’s determination regarding the credibility of witnesses is entitled to great weight on appeal” (*Matter of Creighton v Whitmore*, 71 AD3d 1141, 1141 [internal citations omitted]; see Family Ct Act §§ 812, 832; *Matter of Halper v Halper*, 61 AD3d 687; *Matter of Gray v Gray*, 55 AD3d 909; *Matter of Lallmohamed v Lallmohamed*, 23 AD3d 562). The Family Court’s determination that the appellant committed the family offense of disorderly conduct was based upon its assessment of the credibility of the parties and an eyewitness, and is supported by the record (see *Matter of Richardson v Richardson*, 80 AD3d 32, 44). Accordingly, we decline to disturb the Family Court’s determination.

RIVERA, J.P., DICKERSON, LEVENTHAL and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court