

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

D35359  
O/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 22, 2012

PETER B. SKELOS, J.P.  
ANITA R. FLORIO  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

2011-05894  
2011-05895

DECISION & ORDER

In the Matter of Shahin Sultana, respondent,  
v Abdul Malek, appellant.  
(Proceeding No. 1)

In the Matter of Abdul Malek, appellant,  
v Shahin Sultana, respondent.  
(Proceeding No. 2)

(Docket Nos. O-19192/09, O-19193/09)

Richard L. Herzfeld, P.C., New York, N.Y., for appellant.

Rhonda R. Weir, Brooklyn, N.Y., for respondent.

In related family offense proceedings pursuant to Family Court Act article 8, Abdul Malek appeals from (1) an order of the Family Court, Kings County (Feldman, J.H.O.), dated May 26, 2011, which, after a hearing, dismissed his petition, and (2) an order of protection of the same court dated June 7, 2011, which, upon a finding that he committed certain family offenses, directed him, inter alia, to stay away from Shahin Sultana for a period up to and including May 25, 2013.

ORDERED that the appeal from the order dated May 26, 2011, is dismissed as abandoned, without costs or disbursements; and it is further,

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

The determination of whether a family offense was committed is a factual issue to

June 20, 2012

Page 1.

MATTER OF SULTANA v MALEK  
MATTER OF MALEK v SULTANA

be resolved by the hearing court, whose determination regarding the credibility of witnesses is entitled to deference (*see Matter of Harry v Harry*, 85 AD3d 790, 790; Family Ct Act §§ 812, 832; *Matter of Kaur v Singh*, 73 AD3d 1178; *Matter of Creighton v Whitmore*, 71 AD3d 1141). Here, a fair preponderance of the credible evidence supports a determination that the appellant committed acts constituting certain family offenses warranting the issuance of an order of protection (*see* Family Ct Act § 812; Penal Law § 120.00[1]; § 240.26[3]).

The appellant's remaining contentions are without merit.

SKELOS, J.P., FLORIO, LOTT and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court