

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

D35461  
C/kmb

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Submitted - May 31, 2012

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

2011-09407

DECISION & ORDER

In the Matter of Jan Baginski, respondent,  
v Mieczystaw Rostkowski, appellant.

(Docket No. O-1282-11)

John C. Macklin, New Hyde Park, N.Y., for appellant.

Jonathan Edward Kirchner, P.C., Commack, N.Y., for respondent.

In a family offense proceeding pursuant to Family Court Act article 8, Mieczystaw Rostkowski appeals from an order of protection of the Family Court, Queens County (Fitzmaurice, J.), dated September 26, 2011, which, upon a finding, made after a hearing, that he had committed a family offense, directed him, inter alia, to stay away from the petitioner until and including September 12, 2013.

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

Although the Family Court failed to specify the particular family offense under Family Court Act § 812(1) that the appellant committed, remittal is not necessary because the record is sufficient for this Court to conduct an independent review of the evidence (*see Matter of Drury v Drury*, 90 AD3d 754, 754). The evidence adduced at the hearing established, by a preponderance of the evidence, that the appellant engaged in acts which would constitute the offenses of menacing in the third degree, disorderly conduct, and harassment in the second degree (*see Family Ct Act § 812[1]; § 832; Penal Law §§ 120.15, 240.20, 240.26[1]; Matter of Melissa K. v Brian K.*, 72 AD3d 1129; *Matter of Sblendorio v D'Agostino*, 60 AD3d 773; *Matter of Miriam M. v Warren M.*, 51 AD3d 581; *Matter of Sinclair v Batista-Mall*, 50 AD3d 1044).

June 27, 2012

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RIVERA, J.P., ENG, LOTT and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court