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

D36852
T/kmb

_____AD3d_____ Submitted - November 9, 2012

WILLIAM F. MASTRO, J.P.
DANIEL D. ANGIOLILLO
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-10984 DECISION & ORDER

In the Matter of Mia Smith, respondent,
v Franck Amedee, appellant.

(Docket No. O-11632-10)

Placidus Aguwa, Jamaica, N.Y., for appellant.

Elliot Green, Brooklyn, N.Y., for respondent.

In a family offense proceeding pursuant to Family Court Act article 8, Franck Amedee appeals from an order of protection of the Family Court, Queens County (Fitzmaurice, J.), dated November 2, 2011, which, after a hearing, and upon a finding that he had committed the family offenses of disorderly conduct, reckless endangerment in the second degree, and harassment in the second degree, directed him, inter alia, to stay away from the petitioner until and including November 2, 2013.

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

"The determination of whether a family offense was committed is a factual issue to be resolved by the hearing court" (*Matter of Creighton v Whitmore*, 71 AD3d 1141, 1141; *see* Family Ct Act §§ 812, 832; *Matter of Kaur v Singh*, 73 AD3d 1178), "and that court's determination regarding the credibility of witnesses is entitled to considerable deference on appeal" (*Matter of Cruz v Rodriguez*, 96 AD3d 838, 838; *see Matter of Kaur v Singh*, 73 AD3d at 1178; *Matter of Creighton v Whitmore*, 71 AD3d at 1141). Contrary to the appellant's contention, a fair preponderance of the credible evidence supported the Family Court's determination that he committed acts which constituted the family offenses of disorderly conduct (*see* Penal Law § 240.20[1]; Family Ct Act § 812[1]; *Matter of Pearlman v Pearlman*, 78 AD3d 711), reckless endangerment in the second degree (*see* Penal Law § 120.20; Family Ct Act § 812[1]; *Matter of Knibbs v Zeman*, 86 AD3d 568), and

harassment in the second degree (*see* Penal Law § 240.26[1]; Family Ct Act § 812[1]; *Matter of Kaur v Singh*, 73 AD3d at 1178), warranting the issuance of an order of protection.

The appellant's remaining contentions are either without merit or not properly before this Court.

MASTRO, J.P., ANGIOLILLO, SGROI and MILLER, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court