

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

D55929
G/htr

_____AD3d_____

Argued - June 12, 2018

MARK C. DILLON, J.P.
SHERI S. ROMAN
JOSEPH J. MALTESE
LINDA CHRISTOPHER, JJ.

2017-07027
2017-07028

DECISION & ORDER

In the Matter of Saphora Magana, respondent, v Dirk
Delph, appellant.

(Docket No. O-25051-16)

Ronna Gordon-Galchus, Fresh Meadows, NY, for appellant.

Michael D. Carlin, Brooklyn, NY, for respondent.

Karen P. Simmons, Brooklyn, NY (Janet Neustatetter of counsel), and Simpson
Thatcher & Bartlett LLP, New York, NY (Joseph M. McLaughlin and Jordan A.
Botjer of counsel), attorney for the child Athalia D (one brief filed).

Lisa Lewis, Brooklyn, NY, attorney for the child Emelia M.

In a proceeding pursuant to Family Court Act article 8, Dirk Delph appeals from an order of fact-finding and disposition of the Family Court, Kings County (Javier E. Vargas, J.), dated May 30, 2017, and an order of protection of the same court against him, also dated May 30, 2017. The order of fact-finding and disposition, after a fact-finding hearing, found that Dirk Delph committed the family offenses of disorderly conduct, harassment in the second degree, and sexual misconduct. The order of protection, inter alia, directed Dirk Delph to stay away from the petitioner and the child Emelia M. for a period up to and including October 6, 2018.

ORDERED that the orders are affirmed, without costs or disbursements.

“A family offense must be established by a fair preponderance of the evidence” (*Matter of Washington v Washington*, 158 AD3d 717, 718; *see* Family Ct Act § 832). “The

determination of whether a family offense was committed is a factual issue to be resolved by the Family Court” (*Matter of Washington v Washington*, 158 AD3d at 718; *see Matter of Pierre v Dal*, 142 AD3d 1021, 1023). The Family Court’s determination regarding the credibility of witnesses is entitled to great weight on appeal and will not be disturbed if supported by the record (*see Matter of Washington v Washington*, 158 AD3d at 718; *Matter of Pierre v Dal*, 142 AD3d at 1023; *Matter of Maiorino v Maiorino*, 107 AD3d 717).

Contrary to the appellant’s contentions, a fair preponderance of the credible evidence supports the Family Court’s determination that he committed the family offenses of disorderly conduct, harassment in the second degree, and sexual misconduct (*see Penal Law §§ 240.20[1]; 240.26[1], [3]; 130.20[1]*). The appellant’s remaining contentions are without merit. Accordingly, there is no basis to disturb the order of protection (*see Matter of Washington v Washington*, 158 AD3d at 718-719).

DILLON, J.P., ROMAN, MALTESE and CHRISTOPHER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court