

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

D56913
C/htr

_____AD3d_____

Submitted - September 25, 2018

RUTH C. BALKIN, J.P.
SANDRA L. SGROI
ROBERT J. MILLER
FRANCESCA E. CONNOLLY, JJ.

2017-11734

DECISION & ORDER

In the Matter of Ayesha Khan, respondent,
v Mahmudul H. Khan, appellant.

(Docket No. O-18126-15/16B)

Deana Balahtsis, New York, NY, for appellant.

New York Legal Assistance Group, New York, NY (Beth E. Goldman and Mark M. Hager of counsel), for respondent.

In a family offense proceeding pursuant to Family Court Act article 8, the husband appeals from an order of protection of the Family Court, Kings County (Lisa Aschkenasy, Ct. Atty. Ref.), dated September 28, 2017. The order, after a hearing, and upon a finding that the husband committed family offenses within the meaning of Family Court Act § 812, directed him, inter alia, to stay away from the wife until and including August 1, 2022.

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


A family offense must be established by a fair preponderance of the evidence (*see* Family Ct Act § 832; *Matter of Malik v Syed*, 133 AD3d 761, 761-762; *Matter of Scanziani v Hairston*, 100 AD3d 1007, 1007). “The determination of whether a family offense was committed is a factual issue to be resolved by the Family Court, and that 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” (*Matter of Konstatine v Konstatine*, 107 AD3d 994, 994 [internal quotation marks omitted]).

Here, the evidence adduced at the hearing established, by a fair preponderance of the evidence, that the husband committed acts which constituted the family offense of stalking in the

fourth degree (*see* Penal Law § 120.45; Family Ct Act § 812), warranting the issuance of an order of protection against him. Contrary to the husband's further contention, there was sufficient evidence to support the Family Court's finding of the existence of aggravating circumstances (*see* Family Ct Act § 827[a][vii]).

BALKIN, J.P., SGROI, MILLER and CONNOLLY, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court