

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of Frederick Little v. Sandye Renz

137 A.D.3d 916 (N.Y. App. Div. 2d Dep't 2016) · No. 2015-00150 · Decided March 9, 2016

SUMMARY

The Appellate Division, Second Department affirmed dismissal of the father's Family Court Act article 8 family offense petition against the mother. The court held that the father failed to establish a prima facie case for disorderly conduct or prove the other alleged family offenses, and that the Family Court properly limited consideration to incidents alleged in the petition.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	William F. Mastro, J.P.; Cheryl E. Chambers; Sheri S. Roman; Betsy Barros
JURISDICTION	New York
DECIDED	March 9, 2016
DOCKET	2015-00150
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Family Court, Kings County, dismissing the father's family offense petition after a fact-finding hearing.
STANDARD OF REVIEW	The Family Court's factual findings, including credibility determinations, are upheld when supported by the record; the petitioner bears the burden of establishing a family offense by a preponderance of the evidence and must make a prima facie case.
PRECEDENTIAL VALUE	published opinion
PARTIES	Frederick Little v. Sandye Renz

TOPICS

- family law procedure
- domestic violence
- appellate procedure
- evidence
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Family Court properly refused to consider evidence concerning incidents not alleged in the family offense petition.
2. Whether the father established a prima facie case that the mother committed disorderly conduct.
3. Whether the Family Court's finding that the father failed to establish the other alleged family offenses was supported by the record.

HOLDINGS

1. The Family Court properly refused to consider evidence concerning incidents between the parties that were not alleged in the father's petition.
2. The father failed to establish a prima facie case that the mother committed the family offense of disorderly conduct.
3. The Family Court's finding that the father failed to establish that the mother committed any of the other alleged family offenses was supported by the record and credibility determinations.

KEY QUOTATIONS

"The Family Court did not err by refusing to consider evidence concerning incidents between the parties which were not alleged in the father's petition."

"Specifically, he failed to present evidence to support a finding that the mother's conduct was committed with the intent to cause, or recklessly posed a risk of causing, public inconvenience, annoyance or alarm."

FACTUAL BACKGROUND

The father alleged that the mother of the parties' child committed several family offenses, including second-degree harassment and disorderly conduct. At the fact-finding hearing, the father presented evidence concerning the incidents alleged in his petition. The Family Court found that he failed to prove that the mother committed any alleged family offense and dismissed the petition.

PROCEDURAL HISTORY

Frederick Little commenced a Family Court Act article 8 family offense proceeding against Sandye Renz, alleging harassment in the second degree, disorderly conduct, and other family offenses. At the close of the father's case, the Family Court dismissed the disorderly-conduct allegation for failure to establish a prima facie case. After the fact-finding hearing, the court found that the father had not established any alleged family offense by a preponderance of the evidence and dismissed the petition. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Salazar v. Melendez, 97 A.D.3d 754, 755
- Matter of Cassie v. Cassie, 109 A.D.3d 337, 344
- Matter of Giresi-Palazzolo v. Palazzolo, 127 A.D.3d 752

OPINION

PER CURIAM.

Matter of Little v Renz (2016 NY Slip Op 01676) Matter of Little v Renz 2016 NY Slip Op 01676 Decided on March 9, 2016 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on March 9, 2016 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P.

CHERYL E. CHAMBERS SHERI S. ROMAN BETSY BARROS, JJ. 2015-00150 (Docket No. O-36543-10) [*1]In the Matter of Frederick Little, appellant, vSandye Renz, respondent. Michael D. Carlin, Brooklyn, NY, for appellant. Karen P. Simmons, Brooklyn, NY (Susan M. Cordaro and Janet Neustaetter of counsel), attorney for the child. DECISION & ORDER Appeal from an order of the Family Court, Kings County (Michael L. Katz, J.), dated December 17, 2014.

The order, after a hearing, dismissed the father's family offense petition against the mother. ORDERED that the order is affirmed, without costs or disbursements. The father commenced this family offense proceeding pursuant to Family Court Act article 8 against the mother of the parties' child, alleging that she committed the family offenses of, inter alia, harassment in the second degree and disorderly conduct.

At a fact-finding hearing, at the close of the father's case, the Family Court granted the motion of the attorney for the child to dismiss so much of the petition as alleged that the mother committed the family offense of disorderly conduct for failure to make a prima facie case. At the close of the fact-finding hearing, the court found that the father failed to establish by a preponderance of the evidence that the mother committed any family offense, based on the incidents alleged in the petition, and accordingly, dismissed the petition.

The Family Court did not err by refusing to consider evidence concerning incidents between the parties which were not alleged in the father's petition (see Matter of Salazar v Melendez, 97 AD3d 754, 755). We agree with the Family Court that the father failed to establish a prima facie case with respect to the family offense of disorderly conduct (see Penal Law § 240.20; Family Ct Act § 812[1]).

Specifically, he failed to present evidence to support a finding that the mother's conduct was committed with the intent to cause, or recklessly posed a risk of causing, public inconvenience, annoyance or alarm (see *Matter of Cassie v Cassie*, 109 AD3d 337, 344).

Moreover, the Family Court's finding that the father did not establish that the mother committed any of the other family offenses alleged in the petition was based on credibility determinations that are supported by the record (see *Matter of Giresi-Palazzolo v Palazzolo*, 127 AD3d 752).

The father's remaining contention is without merit. MASTRO, J.P., CHAMBERS, ROMAN and BARROS, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court