

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

Matter of Johnson v. Johnson

2017 NY Slip Op 00470 (App. Div. 2017) · No. 2015-10639 · Decided January 25, 2017

SUMMARY

The Appellate Division, Second Department, affirmed an order of the Queens County Family Court that denied a family offense petition and dismissed the proceeding. The court held that the petitioner failed to establish by a fair preponderance of the evidence that the respondent committed the alleged family offenses, and it deferred to the Family Court's credibility determination.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; Leonard B. Austin, J.; Sylvia O. Hinds- Radix, J.; Betsy Barros, J.
JURISDICTION	New York
DECIDED	January 25, 2017
DOCKET	2015-10639
DISPOSITION	affirmed
PROCEDURAL POSTURE	The petitioner appealed from an order of the Family Court, Queens County, that, after a hearing, effectively denied his family offense petition and dismissed the proceeding.
STANDARD OF REVIEW	The Family Court's factual and credibility determinations are entitled to great weight on appeal and will not be disturbed if supported by the record.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Everette Johnson v. Gary Johnson

TOPICS

family law procedure

appellate procedure

standard of review

family law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the petitioner established by a fair preponderance of the evidence that the respondent committed a family offense.
2. Whether the Family Court's factual and credibility determinations were supported by the record and should be disturbed on appeal.

HOLDINGS

1. The petitioner failed to establish by a fair preponderance of the evidence that the respondent committed a family offense.
2. The Family Court's credibility determination was supported by the record, and there was no basis to disturb it on appeal.

KEY QUOTATIONS

"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" (*1)

"The allegations in a family offense proceeding must be "supported by a fair preponderance of the evidence" (*1)

FACTUAL BACKGROUND

The petitioner alleged that his brother committed the family offenses of assault in the third degree, harassment in the second degree, and disorderly conduct. Following a hearing, the Family Court found that the petitioner had not established that the respondent committed a family offense by a preponderance of the evidence and dismissed the proceeding.

PROCEDURAL HISTORY

Everette Johnson commenced a Family Court Act article 8 family offense proceeding against his brother, Gary Johnson, alleging assault in the third degree, harassment in the second degree, and disorderly conduct. After a hearing, the Family Court denied the petition and dismissed the proceeding. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Davis v. Wright, 140 A.D.3d 753, 754
- Matter of Giresi-Palazzolo v. Palazzolo, 127 A.D.3d 752, 752

- Matter of Tulshi v. Tulshi, 118 A.D.3d 716, 716
- Matter of Cassie v. Cassie, 109 A.D.3d 337, 340
- Matter of Richardson v. Richardson, 80 A.D.3d 32, 43-44
- Matter of Bah v. Bah, 112 A.D.3d 921, 922
- Matter of Graham v. Rawley, 140 A.D.3d 765, 767-768

OPINION

PER CURIAM.

Matter of Johnson v Johnson (2017 NY Slip Op 00470) Matter of Johnson v Johnson 2017 NY Slip Op 00470 Decided on January 25, 2017 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 January 25, 2017 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department CHERYL E. CHAMBERS, J.P.

LEONARD B. AUSTIN SYLVIA O. HINDS-RADIX BETSY BARROS, JJ. 2015-10639 (Docket No. O-23771-13) [*1]In the Matter of Everette Johnson, appellant, vGary Johnson, respondent. Olga J. Rodriguez, Forest Hills, NY, for appellant. Linda C. Braunsberg, Staten Island, NY, for respondent. DECISION & ORDER Appeal by the petitioner from an order of the Family Court, Queens County (Anne-Marie Jolly, J.), dated October 5, 2015.

The order, after a hearing, in effect, denied the petitioner's family offense petition and dismissed the proceeding. ORDERED that the order is affirmed, without costs or disbursements. The petitioner commenced this family offense proceeding pursuant to Family Court Act article 8 against the respondent, his brother, alleging, inter alia, that the respondent committed the family offenses of assault in the third degree, harassment in the second degree, and disorderly conduct.

After a hearing, the Family Court, in effect, denied the petition and dismissed the proceeding. The allegations in a family offense proceeding must be "supported by a fair preponderance of the evidence" (Family Ct Act § 832; see Matter of Davis v Wright, 140 AD3d 753, 754; Matter of Giresi-Palazzolo v Palazzolo, 127 AD3d 752, 752; Matter of Tulshi v Tulshi, 118 AD3d 716, 716; Matter of Cassie v Cassie, 109 AD3d 337, 340).

"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 Richardson v Richardson, 80 AD3d 32, 43-44; see Matter of Davis v Wright, 140 AD3d at 754; Matter of Giresi-Palazzolo v Palazzolo, 127 AD3d at 752; Matter of Tulshi v Tulshi, 118 AD3d at 716; Matter of Bah v Bah, 112 AD3d 921, 922).

Here, the Family Court properly determined that the petitioner failed to establish, by a preponderance of the evidence, that the respondent committed a family offense (see *Matter of Graham v Rawley*, 140 AD3d 765, 767-768; *Matter of Davis v Wright*, 140 AD3d at 754; *Matter of Bah v Bah*, 112 AD3d at 922; *Matter of Richardson v Richardson*, 80 AD3d at 44).

The court's credibility determination is supported by the record, and we discern no basis for disturbing it (see *Matter of Davis v Wright*, 140 AD3d at 754; *Matter of Giresi-Palazzolo v Palazzolo*, 127 AD3d at 752; *Matter of Tulshi v Tulshi*, 118 AD3d at 716; *Matter of Bah v Bah*, 112 AD3d at 922; *Matter of [*2]Richardson v Richardson*, 80 AD3d at 44).

Accordingly, the court properly, in effect, denied the petition and dismissed the proceeding. CHAMBERS, J.P., AUSTIN, HINDS-RADIX and BARROS, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court