

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

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