

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

Matter of Sevastianov v. Sevastyanova

2026 NY Slip Op 00249 · No. 2024-10023 · Decided January 21, 2026

SUMMARY

The New York Appellate Division, Second Department, affirmed an order dismissing a Family Court Act article 8 family offense petition. The court held that the petitioner failed to establish a prima facie case based on allegations actually charged in the petition.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Linda Christopher, J.; Barry E. Warhit, J.; Lourdes M. Ventura, J.
JURISDICTION	New York Appellate Division, Second Department
DECIDED	January 21, 2026
DOCKET	2024-10023
DISPOSITION	affirmed
PROCEDURAL POSTURE	The petitioner appealed from an order of the Family Court, Kings County, dismissing his Family Court Act article 8 family-offense petition after granting the respondent's motion to dismiss at the close of the petitioner's case for failure to establish a prima facie case.
STANDARD OF REVIEW	On a motion to dismiss for failure to establish a prima facie case, the evidence must be accepted as true and given the benefit of every reasonable inference; credibility is not considered. The appellate court reviewed whether the petitioner established a prima facie family offense based on conduct actually charged in the petition.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Nicolai Sevastianov v. Yuliya Sevastyanova

TOPICS

- family law procedure domestic violence motions to dismiss appellate procedure standard of review

PRACTICE AREAS

family law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the petitioner established a prima facie family offense under Family Court Act article 8 based on conduct charged in the petition.
2. Whether the Family Court properly granted the respondent's motion to dismiss at the close of the petitioner's case.

HOLDINGS

1. The petitioner failed to establish prima facie that the respondent committed a family offense based on allegations actually charged in the petition.
2. The Family Court properly granted the respondent's motion to dismiss and dismissed the petition.

KEY QUOTATIONS

"In a family offense proceeding, the petitioner has the burden of establishing that the charged conduct was committed as alleged in the petition by a fair preponderance of the evidence"

"In determining a motion to dismiss for failure to establish a prima facie case, the evidence must be accepted as true and given the benefit of every reasonable inference which may be drawn therefrom. The question of credibility is irrelevant, and should not be considered"

"may not be based upon allegations not charged in the petition"

FACTUAL BACKGROUND

The petitioner alleged that his former wife committed a family offense in a proceeding under Family Court Act article 8. At the fact-finding hearing, the petitioner presented his case, after which the respondent moved to dismiss. The court determined that the petitioner had not established prima facie that the respondent committed a family offense based on allegations actually charged in the petition.

PROCEDURAL HISTORY

Nicolai Sevastianov commenced a family-offense proceeding against his former wife, Yuliya Sevastyanova. At the close of the petitioner's case at a fact-finding hearing, the Family Court granted the respondent's motion to dismiss for failure to establish a prima facie case and dismissed the petition. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Stibrany v. Lamprea, 229 AD3d 557

- Matter of Prince v. Ford, 195 AD3d 724
- Matter of Brown v. Brown, 127 AD3d 969
- Matter of Czop v. Czop, 21 AD3d 958
- Matter of Bessent v. Bessent, 113 AD3d 847
- Matter of Ungar v. Ungar, 80 AD3d 771

OPINION

PER CURIAM.

Matter of Sevastianov v Sevastyanova (2026 NY Slip Op 00249) Matter of Sevastianov v Sevastyanova 2026 NY Slip Op 00249 Decided on January 21, 2026 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 21, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department LARA J. GENOVESI, J.P. LINDA CHRISTOPHER BARRY E. WARHIT LOURDES M. VENTURA, JJ. 2024-10023 (Docket No. O-12485-22) [*1]In the Matter of Nicolai Sevastianov, appellant, v Yuliya Sevastyanova, respondent. Christian P. Myrill, Jamaica, NY, for appellant.

Carol Kahn, New York, NY, for respondent. DECISION & ORDER In a proceeding pursuant to Family Court Act article 8, the petitioner appeals from an order of the Family Court, Kings County (Sharon N. Clarke, J.), dated September 18, 2024.

The order, upon the granting of the respondent's motion, made at the close of the petitioner's case at a fact-finding hearing, to dismiss the petition for failure to establish a prima facie case, dismissed the petition. 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, who is his ex-wife. At the close of the petitioner's case at a fact-finding hearing, the respondent moved to dismiss the petition for failure to establish a prima facie case.

In an order dated September 18, 2024, the Family Court dismissed the petition. The petitioner appeals. "In a family offense proceeding, the petitioner has the burden of establishing that the charged conduct was committed as alleged in the petition by a fair preponderance of the evidence" (Matter of Stibrany v Lamprea, 229 AD3d 557, 557 [internal quotation marks omitted]; see Matter of Prince v Ford, 195 AD3d 724, 724).

"In determining a motion to dismiss for failure to establish a prima facie case, the evidence must be accepted as true and given the benefit of every reasonable inference which may be drawn therefrom. The question of credibility is irrelevant, and should not be considered" (Matter of

Stibrany v Lamprea, 229 AD3d at 557-558 [internal quotation marks omitted]; see Matter of Brown v Brown, 127 AD3d 969, 969).

However, the petitioner's case "may not be based upon allegations not charged in the petition" (Matter of Czop v Czop, 21 AD3d 958, 959; see Matter of Bessent v Bessent, 113 AD3d 847, 848; Matter of Ungar v Ungar, 80 AD3d 771, 772).

Here, the petitioner failed to establish, prima facie, that the respondent committed acts constituting a family offense based on allegations actually charged in the petition (see Matter of Bessent v Bessent, 113 AD3d at 848; Matter of Ungar v Ungar, 80 AD3d at 772).

Accordingly, the Family Court properly granted the respondent's motion to dismiss the petition for failure to establish a prima facie case and dismissed the petition. GENOVESI, J.P., CHRISTOPHER, WARHIT and VENTURA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court