

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

Dietzman v. Dietzman

112 A.D.3d 1370, 978 N.Y.S.2d 516 (N.Y. App. Div. 4th Dep't 2013) · Decided December 27, 2013

SUMMARY

The New York Appellate Division affirmed an order of protection issued in a Family Court Act article 8 proceeding. The court held that the finding that respondent committed assault in the third degree, harassment in the second degree, and disorderly conduct was supported by a preponderance of the evidence, rejected his self-defense argument, and found no ineffective assistance of counsel.

OPINION

PER CURIAM.

Appeal from an order of the Family Court, Genesee County (Eric R. Adams, J.), entered April 26, 2012 in a proceeding pursuant to Family Court Act article 8. The order, among other things, directed respondent to stay away from petitioner. It is hereby ordered that the order so appealed from is unanimously affirmed without costs. Memorandum: In this proceeding pursuant to article 8 of the Family Court Act, respondent, the former husband of petitioner and the father of her two children, appeals from an order of protection directing him, inter alia, to stay away from petitioner.

Contrary to respondent's contention, Family Court's finding that he committed the family offenses of assault in the third degree (Penal Law § 120.00 [1]), harassment in the second degree (§ 240.26 [1]), and disorderly conduct (§ 240.20 [1]) is supported by a preponderance of the evidence (see *Matter of Marquardt v Marquardt*, 97 AD3d 1112, 1113 [2012]; see generally Family Ct Act § 812 [1]).

The testimony presented at the fact-finding hearing established that respondent kicked petitioner in the face, resulting in bruises, swelling, and a cut lip requiring stitches, and that while on top of petitioner he put his hands around her neck to prevent her from breathing.

The court's determination that respondent was not acting in self-defense is supported by the record and will not be disturbed (see *Matter of Medranda v Mondelli*, 74 AD3d 972, 972 [2010]). We reject respondent's further contention that he was denied effective assistance of counsel (see *Matter of Amodea D. [Jason D.]*, 112 AD3d 1367 [2013]). Present — Smith, J.P., Fahey, Lindley, Valentino and Whalen, JJ.

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