

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

Sperling v. Sperling

96 A.D.3d 1067, 946 N.Y.S.2d 877 (N.Y. App. Div. 2012) · Decided June 27, 2012

SUMMARY

The Appellate Division affirmed a Family Court order of protection issued after finding that the wife committed harassment in the second degree. The court held that although the Family Court failed to state its essential factual findings and did not conduct a separate dispositional hearing, remittal was unnecessary because the record permitted independent review, and the two-year order of protection was supported by the evidence.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Skelos, J.P.; Dickerson, J.; Leventhal, J.; Roman, J.
JURISDICTION	New York
DECIDED	June 27, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gladis Sperling appealed from an order of protection issued by the Family Court, Suffolk County, after a hearing in a Family Court Act article 8 family offense proceeding.
STANDARD OF REVIEW	The Appellate Division conducted an independent review of the hearing evidence and exercised its factual review power to determine whether the finding and disposition were supported by the record and were not against the weight of the evidence.
PRECEDENTIAL VALUE	published
PARTIES	Gladis Sperling v. Petitioner husband

TOPICS

family law procedure

domestic violence

appellate procedure

standard of review

remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Family Court's failure to state on the record the facts essential to its determination required reversal or remittal.
2. Whether the hearing evidence established by a preponderance of the evidence that the appellant committed harassment in the second degree.
3. Whether the Family Court's failure to hold a dispositional hearing before issuing a two-year order of protection required reversal.
4. Whether the two-year order of protection was against the weight of the evidence.

HOLDINGS

1. Although the Family Court failed to state on the record the facts it deemed essential to granting the petition, remittal was unnecessary because the appellate record was sufficient for independent review of the evidence.
2. The evidence established by a preponderance of the evidence that the appellant committed harassment in the second degree, warranting issuance of an order of protection.
3. Under the circumstances, the Family Court's failure to hold a dispositional hearing before issuing a two-year order of protection did not require reversal.
4. The Family Court's disposition awarding the husband a two-year order of protection was not against the weight of the evidence.

FACTUAL BACKGROUND

After a hearing in a family offense proceeding, the Family Court determined that Gladis Sperling had committed harassment in the second degree. It issued an order of protection directing her to stay away from the petitioner through June 6, 2013. The appellate record contained sufficient evidence for the Appellate Division to independently review the determination.

PROCEDURAL HISTORY

The Family Court found, in effect, that the appellant had committed harassment in the second degree and issued a two-year order of protection directing her to stay away from the petitioner. The Appellate Division affirmed, concluding that although the Family Court failed to state the essential facts supporting its determination and did not hold a prior dispositional hearing, the appellate record permitted independent review and supported the order.

DISPOSITION

affirmed

CASES CITED

- Matter of Jose L.I., 46 N.Y.2d 1024, 1025-1026 (1979)
- Matter of Drury v. Drury, 90 A.D.3d 754, 755 (2011)
- Matter of Smith v. Falco-Boric, 87 A.D.3d 1146, 1147 (2011)
- Matter of Destiny H. [Valerie B.], 83 A.D.3d 939 (2011)
- Matter of Genzen v. Genzen, 74 A.D.3d 1196 (2010)
- Barbara E. v. John E., 44 A.D.3d 426, 427 (2007)
- Matter of Jessica C. v. Esteban B., 13 A.D.3d 183 (2004)
- Matter of Sblendorio v. D'Agostino, 60 A.D.3d 773, 773-774 (2009)
- Matter of Hassett v. Hassett, 4 A.D.3d 527 (2004)
- Matter of Dabbene v. Dabbene, 297 A.D.2d 812 (2002)
- Matter of Annie C. v. Marcellus W., 278 A.D.2d 177, 177-178 (2000)
- Matter of Quintana v. Quintana, 237 A.D.2d 130 (1997)

OPINION

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PER CURIAM.

In a family offense proceeding pursuant to Family Court Act article 8, Gladis Sperling appeals from an order of protection of the Family Court, Suffolk County (Burke, Ct. Atty. Ref.), dated June 6, 2011, which, after a hearing, and, in effect, upon a finding that she had committed the family offense of harassment in the second degree, directed her, inter alia, to stay away from the petitioner until and including June 6, 2013. Ordered that the order of protection is affirmed, without costs or disbursements. The Family Court failed to state on the record the facts which it deemed essential to its determination to grant the petition for an order of protection (see CPLR 4213 [b]; Matter of Jose L.I., 46 NY2d 1024, 1025-1026 [1979]; Matter of Drury v Drury, 90 AD3d 754, 755 [2011]; Matter of Smith v Falco-Boric, 87 AD3d 1146, 1147 [2011]). However, remittal to the Family Court is not necessary because the record is sufficient for this Court to conduct an independent review of the evidence (see Matter of Jose L. I., 46 NY2d at 1026; Matter of Drury v Drury, 90 AD3d at 755; Matter of Smith v Falco-Boric, 87 AD3d at 1147; Matter of Destiny H. [Valerie B.], 83 AD3d 939 [2011]). The evidence adduced at the hearing established, by a preponderance of the evidence, that the wife committed the family offense of harassment in the second degree, warranting the issuance of an order of protection (see Family Ct Act §§ 812, 832; Penal Law § 240.26 [1]; Matter of Genzen v Genzen, 74 AD3d 1196 [2010]; Barbara E. v John E., 44 AD3d 426, 427 [2007]; Matter of Jessica C. v Esteban B., 13 AD3d 183 [2004]). Moreover, contrary to the wife's contention, under the circumstances of this case, the Family Court's failure to hold a dispositional hearing prior to issuing a two-year order of protection does not require reversal (see Matter of Sblendorio v *1068D'Agostino, 60 AD3d 773, 773-774 [2009]; Matter of Hassett v Hassett, 4 AD3d 527 [2004]; Matter of Dabbene v Dabbene, 297 AD2d 812

[2002]; *Matter of Annie C. v Marcellus W.*, 278 AD2d 177, 177-178 [2000]; *Matter of Quintana v Quintana*, 237 AD2d 130 [1997]). In addition, upon the exercise of our factual review power, the Family Court's disposition awarding the husband a two-year order of protection was not against the weight of the evidence (see *Matter of Sblendorio v D'Agostino*, 60 AD3d at 774; *Barbara E. v John E.*, 44 AD3d at 427). Skelos, J.P., Dickerson, Leventhal and Roman, JJ., concur.

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