

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Matter of Jacklyn PP. v. Jonathan QQ.

2023 NY Slip Op 06009 (App. Div. 2023) · No. 533906 · Decided November 22, 2023

SUMMARY

The Appellate Division, Third Department, affirmed a Family Court order finding the father committed stalking in the third and fourth degrees, issuing a two-year order of protection, and awarding the mother sole legal and primary physical custody. The court held that the evidence supported the family-offense findings and that the parents' inability to communicate made joint custody inappropriate. The court also rejected the father's claims concerning the custody hearing, witness testimony, and ineffective assistance of counsel.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Reynolds Fitzgerald, J.; Garry, P.J.; Lynch, J.; Fisher, J.; Powers, J.
JURISDICTION	New York
DECIDED	November 22, 2023
DOCKET	533906
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Family Court order that found Jonathan QQ. committed a family offense, issued a two-year order of protection, and awarded Jacklyn PP. sole legal and primary physical custody, with parenting time to the father.
STANDARD OF REVIEW	Family Court's factual findings and credibility determinations receive great deference and will not be disturbed if supported by a sound and substantial basis in the record. In family-offense proceedings, the Appellate Division independently reviews whether the evidence supports the finding when Family Court does not specify the statutory subsection or degree. Preservation issues are reviewed for timely objection, and ineffective-assistance claims are evaluated under the meaningful-representation standard.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion

PARTIES

Jonathan QQ. v. Jacklyn PP.

TOPICS

family law procedure

domestic violence

child custody

writ of certiorari

appellate procedure

PRACTICE AREAS

family law

family offenses

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ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the evidence supported Family Court's finding that the father committed the family offenses of stalking in the third and fourth degrees.
2. Whether Family Court properly issued a two-year stay-away order of protection.
3. Whether Family Court properly considered evidence of the August 16, 2020 incident at the dispositional hearing without reopening the fact-finding hearing.
4. Whether Family Court's award of sole legal and primary physical custody to the mother was in the child's best interests.
5. Whether the father's challenge to the exclusion of testimony from his girlfriend and mother was preserved.
6. Whether the father was deprived of meaningful representation by counsel's failure to call certain witnesses, introduce documentary evidence, or file a petition.

HOLDINGS

1. A fair preponderance of the evidence supported findings that the father committed stalking in the third degree and stalking in the fourth degree.
2. Family Court properly granted the mother a two-year stay-away order of protection.
3. Family Court did not abuse its discretion by considering testimony regarding the August 16, 2020 incident at the dispositional hearing without reopening the fact-finding hearing.
4. Family Court properly awarded the mother sole legal and primary physical custody because the father's proven family offenses and the parties' inability to communicate made joint custody infeasible and the custody determination had a sound and substantial basis in the record.
5. The father's challenge to the exclusion of testimony from his girlfriend and mother was unpreserved because he did not make a timely objection during the hearing.
6. The father received meaningful representation and therefore failed to establish ineffective assistance of counsel.

KEY QUOTATIONS

"In a family offense proceeding pursuant to Family Ct Act article 8, the petitioner bears the burden of

proving, by a fair preponderance of the evidence” ([2])

“When making an initial custody determination, Family Court's primary focus is the best interests of the child” ([4])

“To successfully maintain an ineffective assistance of counsel claim, a party must demonstrate that he or she was deprived of meaningful representation as a result of his or her lawyer's deficiencies” ([5])

FACTUAL BACKGROUND

The parties are the parents of a child born in 2017 and ended their relationship in July 2020. The mother alleged that the father engaged in stalking and other abusive conduct, including threats with a firearm, following her, forcibly touching her, repeatedly appearing at her home and workplace, and causing her to fear for her safety. Family Court credited the mother's testimony, found the father committed stalking in the third and fourth degrees, and determined that the parties' inability to communicate and the father's family offenses made joint custody infeasible.

PROCEDURAL HISTORY

The mother filed a Family Court Act article 8 family-offense petition, and the father filed an article 6 custody petition. After a joint fact-finding hearing, Family Court found that the father committed stalking, continued the temporary order of protection, and later entered a permanent order of protection and final custody order. The father appealed the June 17, 2021 order, challenging the family-offense finding, custody determination, evidentiary rulings, and effectiveness of counsel.

DISPOSITION

affirmed

CASES CITED

- Matter of Heather E. v Christopher F., 189 AD3d 1937, 1937 [3d Dept 2020]
- Matter of Awawdeh v Awawdeh, 217 AD3d 1109, 1111 [3d Dept 2023]
- Matter of Putnam v Jenney, 168 AD3d 1155, 1156 [3d Dept 2019]
- Matter of Susan WW. v Alan WW., 161 AD3d 1249, 1250 [3d Dept 2018]
- Matter of Pauline DD. v Dawn DD., 212 AD3d 1039, 1040 [3d Dept 2023], lv denied 39 NY3d 915 [2023]
- Matter of Bedford v Seeley, 176 AD3d 1338, 1340 [3d Dept 2019]
- Matter of Stefanow v Stefanow, 214 AD3d 1215, 1217 [3d Dept 2023]
- Matter of Lynn TT. v Joseph O., 129 AD3d 1129, 1130 [3d Dept 2015]
- Matter of Derek KK. v Jennifer KK., 196 AD3d 765, 770 [3d Dept 2021]
- Matter of Allen v Emery, 187 AD3d 1339, 1342 [3d Dept 2020]
- Matter of Colona v Colona, 125 AD3d 1123, 1125-1126 [3d Dept 2015]
- Matter of Scott LL. v Rachel MM., 98 AD3d 1197, 1197 [3d Dept 2012]
- Matter of Zaida DD. v Noel EE., 177 AD3d 1220, 1220 [3d Dept 2019]

- Matter of William Z. v Kimberly Z., 212 AD3d 1036, 1037-1038 [3d Dept 2023]
- Matter of Brandon QQ. v Shelby QQ., 216 AD3d 1212, 1213 [3d Dept 2023]
- Matter of Nicole J. v Joshua J., 206 AD3d 1186, 1187, 1190 [3d Dept 2022]
- Matter of Warda NN. v Muhammad OO., 217 AD3d 1086, 1089-1090 [3d Dept 2023]
- Matter of Paul CC. v Nicole DD., 151 AD3d 1235, 1236 [3d Dept 2017]
- Matter of Adam E. v Heather F., 151 AD3d 1212, 1213 [3d Dept 2017]
- Matter of Nicole V. v Jordan U., 192 AD3d 1355, 1358 [3d Dept 2021]
- Matter of Imrie v Lyon, 158 AD3d 1018, 1021 [3d Dept 2018]
- Matter of Audreanna VV. v Nancy WW., 158 AD3d 1007, 1010 [3d Dept 2018]
- Matter of Ronan L. [Jeana K.], 195 AD3d 1072, 1077 [3d Dept 2021]
- Matter of Madelyn V. [Lucas W.-Jared V.], 199 AD3d 1249, 1252 [3d Dept 2021], lv denied 38 NY3d 901 [2022]
- Matter of Bennett v Abbey, 141 AD3d 882, 883-884 [3d Dept 2016]
- Matter of John V. v Sarah W., 143 AD3d 1069, 1071 [3d Dept 2016]
- Matter of Coleman v Millington, 140 AD3d 1245, 1248 [3d Dept 2016]
- Matter of Farideh P. v Ahmed Q., 202 AD3d 1391, 1394 [3d Dept 2022], lv denied 38 NY3d 909 [2022], cert denied ___ US ___, 143 S Ct 606 [2023]
- Matter of Nicole R. v Richard S., 184 AD3d 978, 983 [3d Dept 2020]