

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

Matter of Nassy v. Mckenzie

2026 NY Slip Op 03966 · No. 2025-08418 · Decided June 24, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order of protection issued after finding that Donald S. Mckenzie II committed the family offenses of menacing in the third degree and harassment in the second degree. The court held that the appeal was not academic despite the order's expiration because enduring consequences could flow from the family-offense finding, and it upheld the Family Court's credibility determinations and evidentiary rulings. The court also denied the respondent's motion to dismiss the appeal as academic.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Colleen D. Duffy, J.P.; Angela G. Iannacci, J.; Paul Wooten, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	June 24, 2026
DOCKET	2025-08418
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of protection issued by the Family Court, Kings County, after a fact-finding hearing in a Family Court Act article 8 family offense proceeding.
STANDARD OF REVIEW	The Family Court's factual determination and credibility findings are entitled to great weight on appeal and will not be disturbed if supported by the record. The allegations in a family offense proceeding must be established by a fair preponderance of the evidence. Any evidentiary error is reviewed for harmlessness.
PRECEDENTIAL VALUE	Published New York Appellate Division decision; the opinion is uncorrected and subject to revision before publication in the Official Reports.

PARTIES

Donald S. Mckenzie II v. Carla Nassy

TOPICS

domestic violence

family law procedure

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evidence

PRACTICE AREAS

family law

family offenses

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evidence

QUESTIONS PRESENTED

1. Whether the appeal remained justiciable after the order of protection expired.
2. Whether the evidence supported the Family Court's finding, by a fair preponderance of the evidence, that Mckenzie committed menacing in the third degree and harassment in the second degree.
3. Whether the Family Court's credibility determination should be disturbed on appeal.
4. Whether permitting testimony concerning incidents not alleged in the petition constituted reversible error.

HOLDINGS

1. The appeal was not rendered academic because enduring consequences may flow from a finding that the appellant committed a family offense.
2. A fair preponderance of the evidence supported the Family Court's finding that Mckenzie committed menacing in the third degree and harassment in the second degree.
3. Any error in permitting testimony concerning prior incidents was harmless because the Family Court expressly stated that it was not relying on that evidence and based its findings on the conduct alleged in the petition.

KEY QUOTATIONS

“Although the order of protection expired by its own terms on May 20, 2026, the appeal from the order of protection has not been rendered academic in light of the enduring consequences which may flow from a finding that the appellant committed a family offense” ([*1])

“The appellant argues that the Family Court erred in permitting the petitioner to testify regarding incidents not alleged in the petition. Any error in permitting that testimony was harmless, however, as the Family Court expressly indicated that it was not relying upon the evidence regarding prior incidents and found that the family offenses were committed based upon the conduct alleged in the petition” ([*2])

FACTUAL BACKGROUND

The parties were never married and have one child together. Nassy alleged that Mckenzie committed family offenses during an incident on October 3, 2024. After hearing conflicting testimony, the Family Court credited Nassy's account, found that Mckenzie committed menacing in the third degree and harassment in the second

degree, and issued an order of protection directing him to stay away from Nassy and the child, subject to future parental-access orders.

PROCEDURAL HISTORY

Carla Nassy commenced a family offense proceeding against Donald S. Mckenzie II in 2024. After a fact-finding hearing, the Family Court found that Mckenzie committed menacing in the third degree and harassment in the second degree and issued an order of protection effective through May 20, 2026. Mckenzie appealed, and Nassy moved to dismiss the appeal as academic after the order expired. The Appellate Division denied dismissal and affirmed the order of protection.

DISPOSITION

affirmed

CASES CITED

- Matter of Veronica P. v. Radcliff A., 24 NY3d 668, 671-673
- Matter of Bunin v. Bunin, 187 AD3d 1180, 1181, 1182
- Matter of Levay v. Gurrera, 236 AD3d 1032, 1033
- Matter of Mitchell-George v. George, 234 AD3d 969, 969-970
- Matter of Townes v. Diggs, 216 AD3d 1104, 1105
- Matter of Fraser v. Miller, 241 AD3d 826, 827
- Matter of Flores v. Mark, 107 AD3d 796, 798

OPINION

Matter of Nassy v. Mckenzie 2026 NY Slip Op 03966

PER CURIAM.

Matter of Nassy v Mckenzie - 2026 NY Slip Op 03966 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Matter of Nassy v Mckenzie 2026 NY Slip Op 03966 June 24, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. In the Matter of Carla Nassy, respondent, v Donald S. Mckenzie II, appellant. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 24, 2026 2025-08418, (Docket No. O-21921-24) Colleen D. Duffy, J.P. Angela G. Iannacci Paul Wooten James P. McCormack, JJ. Patrick R. Garcia, Brooklyn, NY, for appellant. Liberty Aldrich, Brooklyn, NY (Janet Neustaetter and Eva D. Stein of counsel), attorney for the child. [*1] DECISION & ORDER In a proceeding pursuant to Family Court Act article 8, Donald S. Mckenzie II appeals from an order of protection of the Family Court, Kings County (Sharon N.

Clarke, J.), dated May 20, 2025. The order of protection, upon a finding that Donald S. Mckenzie II committed the family offenses of menacing in the third degree and harassment in the second degree, made after a fact-finding hearing, directed him, inter alia, to stay away from the petitioner and the parties' child, subject to future orders of parental access, until and including May 20, 2026. ORDERED that the order of protection is affirmed, without costs or disbursements. In 2024, the petitioner commenced this family offense proceeding against Donald S. Mckenzie II (hereinafter the appellant). The parties, who were never married, have one child together. After a fact-finding hearing, the Family Court determined that the appellant committed the family offenses of menacing in the third degree (Penal Law § 120.15) and harassment in the second degree (Penal Law § 240.26[1]; see Family Ct Act § 812). The court issued an order of protection directing the appellant, inter alia, to stay away from the petitioner and the parties' child, subject to future orders of parental access, until and including May 20, 2026. This appeal ensued. Although the order of protection expired by its own terms on May 20, 2026, the appeal from the order of protection has not been rendered academic in light of the enduring consequences which may flow from a finding that the appellant committed a family offense (see Matter of Veronica P. v Radcliff A. , 24 NY3d 668, 671-673 ; Matter of Bunin v Bunin , 187 AD3d 1180 , 1181). The allegations in a family offense proceeding must be supported by a fair preponderance of the evidence (see Family Ct Act § 832; Matter of Levay v Gurrera , 236 AD3d 1032 , 1033). 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 (see Matter of Levay v Gurrera , 236 AD3d at 1033; Matter of Mitchell-George v George , 234 AD3d 969 , 969). Here, a fair preponderance of the evidence adduced at the fact-finding hearing [*2] supports a finding that, on October 3, 2024, the appellant committed the family offenses of menacing in the third degree and harassment in the second degree, warranting the issuance of an order of protection (see Family Ct Act §§ 812[1], 842[a]; Bunin v Bunin , 187 AD3d at 1182). The Family Court was presented with conflicting accounts by the parties regarding the incident on that date, and the court's determination to credit the petitioner's testimony over the appellant's testimony is supported by the record (see Matter of Mitchell-George v George , 234 AD3d at 969-970; Matter of Townes v Diggs , 216 AD3d 1104, 1105). The appellant argues that the Family Court erred in permitting the petitioner to testify regarding incidents not alleged in the petition. Any error in permitting that testimony was harmless, however, as the Family Court expressly indicated that it was not relying upon the evidence regarding prior incidents and found that the family offenses were committed based upon the conduct alleged in the petition (see Matter of Fraser v Miller , 241 AD3d 826 , 827; Matter of Flores v Mark , 107 AD3d 796, 798). The appellant's remaining contention is without merit.

2025-08418 DECISION & ORDER ON MOTION

In the Matter of Carla Nassy, respondent, v Donald S. Mckenzie II, appellant. (Docket No. O-21921-24) Appeal from an order of protection of the Family Court, Kings County, dated May 20,

2025. Motion by the respondent to dismiss the appeal on the ground that it has been rendered academic. By decision and order on motion of this Court dated May 1, 2026, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof. Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the submission of the appeal, it is ORDERED that the motion to dismiss the appeal on the ground that the appeal has been rendered academic is denied. DUFFY, J.P., IANNACCI, WOOTEN and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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