

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

appellate procedure

mootness

evidence

PRACTICE AREAS

family law

family offenses

appellate procedure

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