

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

Matter of A.K. v. P.C.

2025 NY Slip Op 06649 · No. Docket No. O-06624/22; Appeal No. 5265; Case No. 2025-01003 · Decided December 2, 2025

SUMMARY

The Appellate Division, First Department affirmed a Family Court order finding that the respondent father committed multiple family offenses, including assault, menacing, harassment, and criminal obstruction of breathing or blood circulation. The court upheld the five-year order of protection benefiting the petitioner mother and the parties’ child, concluding that the mother’s testimony and corroborating evidence supported the findings and that aggravating circumstances justified the order’s duration.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Renwick, P.J.; Scarpulla, J.; Kapnick, J.; Mendez, J.; O'Neill Levy, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	December 2, 2025
DOCKET	Docket No. O-06624/22; Appeal No. 5265; Case No. 2025-01003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondent father appealed from a Family Court order entered after a fact-finding hearing that found he committed multiple family offenses and issued a five-year order of protection in favor of petitioner mother and the parties' child.
STANDARD OF REVIEW	The Appellate Division deferred to Family Court's credibility determinations when supported by the record and reviewed the issuance and terms of the order of protection for abuse or improvident exercise of discretion. The family offenses were required to be established by a fair preponderance of the evidence.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; precedential within the First Department subject to New York appellate hierarchy.

TOPICS

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family law procedure

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the mother established the alleged family offenses by a fair preponderance of the evidence.
2. Whether Family Court properly credited the mother's testimony over the father's conflicting account.
3. Whether the father's unpreserved request for a missing-witness charge or negative inference warranted reversal.
4. Whether aggravating circumstances supported a five-year order of protection.
5. Whether the child was properly included in the order of protection and the father's parenting-access rights were properly preserved.

HOLDINGS

1. The mother established by a fair preponderance of the evidence that the father committed the family offenses of assault in the second degree, assault in the third degree, menacing in the third degree, and criminal obstruction of breathing or blood circulation.
2. There was no basis to disturb Family Court's credibility determination crediting the mother's testimony.
3. The father's contention was unpreserved because he did not request a missing-witness charge during the fact-finding hearing; in any event, the record did not support such relief because the mother did not testify that anyone other than the child witnessed the violent acts.
4. Family Court providently exercised its discretion in finding aggravating circumstances warranting a five-year order of protection.
5. Family Court properly included the parties' child in the order of protection because the father committed violent acts and made threats in the child's presence, while expressly preserving the father's parenting-access rights.

KEY QUOTATIONS

"The mother established by a fair preponderance of the evidence that the father engaged in the family offenses alleged in the petition" ([*1])

"there is no basis to disturb that credibility determination" ([*1])

FACTUAL BACKGROUND

The mother testified that in July 2019 the father attacked her in an incinerator room, threatened her life, choked and lifted her by the neck, slammed her head into a concrete wall, bit her finger, and stepped on her bare foot with construction boots while their two-year-old child was nearby. She also described two 2021 incidents in which the father slapped her and later threatened her life in the child's presence. Photographs, medical records documenting a fractured toe and other injuries, and an email in which the father apologized and acknowledged putting his hands on her corroborated her account.

PROCEDURAL HISTORY

Family Court, Bronx County, found that respondent committed harassment in the first degree, assault in the second and third degrees, menacing in the third degree, and criminal obstruction of breathing or blood circulation. The court granted a five-year order of protection for petitioner and the child. The Appellate Division, First Department, unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Melissa Marie G. v. John Christopher W., 57 AD3d 314, 314 (1st Dept 2008)
- Matter of Sheila M. v. Jodeci S., 231 AD3d 519, 520 (1st Dept 2024), lv denied 42 NY3d 912 (2025)
- Matter of Alexei S. v. Michael M., 132 AD3d 466, 467 (1st Dept 2015)
- Matter of Madochee F. v. Dieudonne M., 216 AD3d 453, 454 (1st Dept 2023)
- People v. Reese, 222 AD3d 535, 535 (1st Dept 2023), lv denied 41 NY3d 1020 (2024)
- Matter of E.L. [Justin L.], 232 AD3d 546, 547 (1st Dept 2024)
- Matter of Anecia S.H. v. Grevelle D.B., 173 AD3d 441, 441 (1st Dept 2019)
- Matter of Antoinette T. v. Michael J.M., 157 AD3d 531, 532 (1st Dept 2018)
- Matter of Danta P.C. v. Tyrell C., 125 AD3d 568, 568 (1st Dept 2015)
- Matter of Coumba F. v. Mamdou D., 102 AD3d 634, 635 (1st Dept 2013)
- Matter of Tatyana M. v. Mark R., 205 AD3d 420, 422 (1st Dept 2022)

OPINION

PER CURIAM.

Matter of A.K. v P.C. (2025 NY Slip Op 06649) Matter of A.K. v P.C. 2025 NY Slip Op 06649 Decided on December 02, 2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: December 02, 2025 Before: Renwick, P.J., Scarpulla, Kapnick, Mendez, O'Neill Levy, JJ. Docket No. O-06624/22|Appeal No. 5265|Case No. 2025-01003| [*1]In the Matter of A.K., Petitioner-Respondent, v P.C., Respondent-Appellant.

Dora M. Lassinger, East Rockaway, for appellant. Marrion C. Perry, New York, for respondent. Willkie Farr & Gallagher LLP, New York (Ciara Sisco of counsel), attorney for the child. Order, Family Court, Bronx County (Judith D. Waksberg, J.), entered on or about January 22, 2025, which, after a fact-finding hearing determining that respondent father had committed the family offenses of harassment in the first degree, assault in the second degree, assault in the third degree, menacing in the third degree, and criminal obstruction of breathing or blood circulation, granted a five-year order of protection in favor of petitioner mother and the parties' child, unanimously affirmed, without costs.

The mother established by a fair preponderance of the evidence that the father engaged in the family offenses alleged in the petition (see Family Ct Act §§ 812[1], 832; *Matter of Melissa Marie G. v John Christopher W.*, 57 AD3d 314, 314 [1st Dept 2008]).

The mother testified that in July 2019, the father attacked her in an incinerator room, threatened her life, choked her and lifted her by the neck, slammed her head into the concrete wall multiple times, bit her finger, and stepped on her bare foot with his heavy construction boots, all while the parties' two-year-old child was outside in a hallway. She also testified about two incidents in 2021 in which the father slapped her during an argument and later threatened her life in their child's presence.

The mother's testimony was sufficient to establish that the father committed the family offenses of assault in the second degree (Penal Law § 120.05[4]), assault in the third degree (Penal Law § 120.00[1]), menacing in the third degree (Penal Law § 120.15), and criminal obstruction of breathing or blood circulation (Penal Law § 121.11).

Although the parties each provided different accounts of the events underlying the petition, Family Court resolved the conflicting testimony in favor of the mother, and there is no basis to disturb that credibility determination (see *Matter of Sheila M. v Jodeci S.*, 231 AD3d 519, 520 [1st Dept 2024], lv denied 42 NY3d 912 [2025]; *Matter of Alexei S. v Michael M.*, 132 AD3d 466, 467 [1st Dept 2015]).

The court's assessment was based both on its observations of the witnesses and the mother's photographic and documentary evidence, which fully corroborated her detailed account and refuted the father's statements. The mother's photos depicted wounds to her fingertip, a swollen and bloody lip, and a deep bruise to her toe. Furthermore, her medical records established that her toe had been fractured, causing her to suffer pain and ongoing impairment and ultimately requiring surgical repair.

The mother also proffered an email exchange with the father, sent days after the incident, in which she accused him of committing those violent acts and he apologized for harming the family, acknowledging that he had caused problems by "putting hands" on her. That the mother did not

immediately seek medical attention or report the 2019 incident does not discredit her testimony (see *Matter of Madochee F. v Dieudonne M.*, 216 AD3d 453, 454 [1st Dept 2023]; see also *People v Reese*, 222 AD3d 535, 535 [1st Dept 2023], lv denied 41 NY3d 1020 [2024]).

The father's contention that the court should have applied a missing witness charge or drawn negative inferences against the mother for neglecting to call additional witnesses is unpreserved, as he never sought a missing witness charge during the fact-finding hearing (see *Matter of E.L. [Justin L.]*, 232 AD3d 546, 547 [1st Dept 2024]).

In any event, the mother did not testify that anyone other than the child was present during the father's violent and threatening acts (*id.*). Family Court providently exercised its discretion in finding aggravating circumstances warranting a five-year order of protection based on the father's July 2019 attack, which caused the mother to sustain both physical injury and serious physical injury (see Family Ct Act §§ 827[a][vii], 842; *Matter of Anecia S.H. v Grevelle D.B.*, 173 AD3d 441, 441 [1st Dept 2019]; *Matter of Antoinette T. v Michael J.M.*, 157 AD3d 531, 532 [1st Dept 2018]).

The court also reasonably included the parties' child in the order of protection, as the father committed violent acts and issued threats in the child's presence (see Family Ct Act § 842[a]; *Matter of Danta P.C. v Tyrell C.*, 125 AD3d 568, 568 [1st Dept 2015]; *Matter of Coumba F. v Mamdou D.*, 102 AD3d 634, 635 [1st Dept 2013]).

Moreover, the order expressly preserves the father's parenting access rights (*Matter of Tatyana M. v Mark R.*, 205 AD3d 420, 422 [1st Dept 2022]).THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.
ENTERED: December 2, 2025