

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

|                       |                                                                                                                                                                                                                                                                                                                        |
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| 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.                                                                                                                                                                                       |
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## TOPICS

domestic violence

family law procedure

evidence

appellate procedure

writ of certiorari

## PRACTICE AREAS

family law

domestic violence

evidence

appellate procedure

remedies

## 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)