State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: December 26, 2024 CV-24-0038

In the Matter of MONIQUE WW.,
Individually and on Behalf of
CHANCE XX., an Infant,
Respondent, MEMORANDUM AND ORDER

v

DEAN XX.,
Appellant.

Calendar Date: November 19, 2024

Before: Aarons, J.P., Reynolds Fitzgerald, Ceresia, McShan and Mackey, JJ.

Constantina Hart, Kauneonga Lake, for appellant.

Ivy M. Schildkraut, Rock Hill, for respondent.

Betty J. Potenza, Milton, attorney for the child.

Reynolds Fitzgerald, J.

Appeal from an order of the Family Court of Ulster County (Anthony McGinty, J.), entered November 29, 2023, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 8, finding respondent to have committed a family offense, and issued an order of protection.

Petitioner (hereinafter the mother) and respondent (hereinafter the father) are the parents of one child (born in 2017). In August 2023, the mother filed a family offense petition against the father, alleging that the father had committed the family offenses of

harassment, aggravated harassment in the second degree and menacing. The mother sought an order of protection requiring the father to stay away from her and the child. Following a hearing, at which the father defaulted and the mother was the sole witness, Family Court issued a bench decision finding that the mother established, by a preponderance of the evidence, that the father had committed the family offense of aggravated harassment in the second degree and issued a two-year order of protection in favor of the mother and the child. The father appeals, and we affirm.

In this family offense proceeding, the mother bore the burden of proving, by a fair preponderance of the evidence, that the father committed a family offense (*see* Family Ct Act § 832; *Matter of Pauline DD. v Dawn DD.*, 212 AD3d 1039, 1040 [3d Dept 2023], *lv denied* 39 NY3d 915 [2023]). "Whether a family offense has been committed is a factual issue for Family Court to resolve, and we accord great weight to its assessments of witness credibility" (*Matter of Carly W. v Mark V.*, 225 AD3d 984, 985 [3d Dept 2024] [citation omitted]; *see Matter of Erica II. v Jorge JJ.*, 165 AD3d 1390, 1390 [3d Dept 2018]). As relevant here, aggravated harassment in the second degree requires proof that an individual, with intent to harass another person, communicates by telephone, computer or any other electronic means, a threat to cause physical harm to, or unlawful harm to the property of, such person or a member of such person's family, and knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's physical safety or property or to the physical safety or property of a member of such person's family (*see* Penal Law § 240.30 [1]). "Whether a person possesses the requisite intent to commit a family offense may be inferred from the conduct itself or the surrounding circumstances" (*Matter of Michele OO. v Kevin PP.*, 161 AD3d 1248, 1249 [3d Dept 2018] [internal quotation marks and citation omitted]; *see Matter of Maureen H. v Bryon I.*, 140 AD3d 1408, 1410-1411 [3d Dept 2016]).

The mother testified that the father was incarcerated for four years for domestic violence that he perpetrated upon her and, as a result, she has a stay-away order of protection requiring the father to have no contact with her until 2031. While the father was incarcerated, he violated this order of protection on more than one occasion. Upon his release from prison, he repeatedly posted Facebook messages and sent texts to her for over one year. Although the father was permitted to contact her for the purposes of arranging and facilitating telephone/video contact with the child, the father addressed the text messages to the child[1] and then forwarded the texts to her. The mother further stated that the Facebook posts and text messages were disturbing and offensive to her. Although

[1] The child was three years old at the time and without the ability to read.

the texts did not state that the *father* intended to harm her or the child, the texts stated the father had heard that *people* were going to break into her house in order to rob, extort and rape both her and the child. Given the father's history of domestic violence and his mental illness, the mother testified that she felt harassed and threatened. To that end, and in response to the texts, she moved out of their apartment, installed security cameras and transferred the child to a different daycare facility. We are unpersuaded by the father's contention that Family Court erred in finding that he had the requisite intent to harass the mother, as his intent may be readily inferred from the numerous texts threatening violent conduct by others upon her and the child and from the surrounding circumstances including the father's history of domestic violence and his violation of the order of protection (*see Matter of Angelique QQ. v Thomas RR.*, 151 AD3d 1322, 1323-1324 [3d Dept 2017]; *Matter of Maureen H. v Bryon I.*, 140 AD3d at 1410-1411). Although the father claims that the texts show his love and concern for the child, thus offering an innocent intent for sending the texts, Family Court was unconvinced, as are we (*see Matter of Michele OO. v Kevin PP.*, 161 AD3d at 1249; *Matter of Jennifer G. v Benjamin H.*, 84 AD3d 1433, 1435 [3d Dept 2011]). The record supports Family Court's finding that the mother established, by a fair preponderance of the evidence, that the father committed the family offense of aggravated harassment in the second degree against the mother and the child (*see Matter of Michele OO. v Kevin PP.*, 161 AD3d at 1249; *Matter of Jeff M. v Christine N.*, 101 AD3d 1426, 1428 [3d Dept 2012]).

Aarons, J.P., Ceresia, McShan and Mackey, JJ., concur.

ORDERED that the order is affirmed, without costs.

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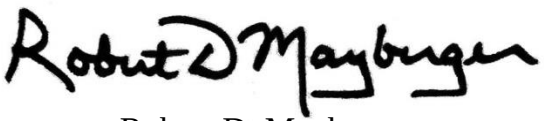

Robert D. Mayberger
Clerk of the Court