

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1229

CAF 09-02044

PRESENT: SMITH, J.P., LINDLEY, SCONIERS, PINE, AND GORSKI, JJ.

IN THE MATTER OF JAMES KOBEL,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

RITA HOLIDAY, RESPONDENT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR RESPONDENT-APPELLANT.

Appeal from an order of the Family Court, Erie County (Margaret O. Szczur, J.), entered September 11, 2009 in a proceeding pursuant to Family Court Act article 8. The order of protection directed respondent to refrain from offensive conduct against petitioner and the parties' child.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In this proceeding pursuant to article 8 of the Family Court Act, respondent mother contends that Family Court erred in determining, following a fact-finding hearing, that she committed a family offense. We reject that contention. We conclude that the court properly found that petitioner father met his burden of establishing by a preponderance of the evidence that the mother committed the family offense of reckless endangerment in the second degree (*see* Family Ct Act § 812 [1]; Penal Law § 120.20; *see generally* *Matter of Harrington v Harrington*, 63 AD3d 1618, *lv denied* 13 NY3d 705), thus warranting the issuance of an order of protection, by lurching her car forward and stopping within inches of the father and the parties' child. Contrary to the further contention of the mother, the court's assessment of the credibility of the witnesses is entitled to great weight, and the court was entitled to credit the testimony of the father over that of the mother (*see Matter of Scroger v Scroger*, 68 AD3d 1777, *lv denied* 14 NY3d 705).

Entered: November 19, 2010

Patricia L. Morgan
Clerk of the Court