

## Sabatino v. Alagona

2023 N.Y. Slip Op. 1093 (N.Y. App. Div. 2023)  
Decided Mar 1, 2023

No. 2022-02843 Docket No. O-00304-22

03-01-2023

In the Matter of Cindy Sabatino, appellant, v.  
Anthony Alagona, respondent.

Thomas J. Butler, Melville, NY, for appellant.  
Picarello & Saciolo, P.C., Islandia, NY (Nicholas  
E. Arazoza of counsel), for respondent.

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Thomas J. Butler, Melville, NY, for appellant.

Picarello & Saciolo, P.C., Islandia, NY (Nicholas  
E. Arazoza of counsel), for respondent.

BETSY BARROS, J.P. JOSEPH J. MALTESE  
JOSEPH A. ZAYAS DEBORAH A. DOWLING,  
JJ.

### DECISION & ORDER

In a proceeding pursuant to Family Court Act article 8, the petitioner appeals from an order of the Family Court, Suffolk County (James F. Quinn, J.), dated March 18, 2022. The order, in effect, granted the respondent's motion, made at the close of the petitioner's case at a fact-finding hearing, to dismiss the petition for failure to establish a prima facie case, vacated a temporary order of protection, and dismissed the petition.

ORDERED that the order is affirmed, without costs or disbursements.

The petitioner and the respondent have one child in common. The petitioner filed a petition alleging that the respondent had committed various family offenses, including harassment in the first and

second degrees. After the petitioner and the respondent testified at a fact-finding hearing, the Family Court, in effect, granted the respondent's motion to dismiss the petition for failure to establish a prima facie case, vacated a temporary order of protection, and dismissed the petition. The petitioner appeals, and we affirm.

"A family offense must be established by a fair preponderance of the evidence" (*Matter of Thomas v Thomas*, 72 A.D.3d 834, 835; see Family Ct Act § 832). "In determining a motion to dismiss for failure to establish a prima facie case, the evidence must be accepted as true and given the benefit of every reasonable inference which may be drawn therefrom" (*Matter of Straight v Schrouter*, 168 A.D.3d 954, 955, quoting *Matter of Mamantov v Mamantov*, 86 A.D.3d 540, 541).

Contrary to the petitioner's contention, accepting the evidence proffered in support of the petition as true, and giving it the benefit of every reasonable inference, it failed to establish, prima facie, that the respondent committed the family offenses of harassment in the first or second degrees (see *Matter of Straight v Schrouter*, 168 A.D.3d at 955; *Matter of Sealy v Sealy*, 134 A.D.3d 725; *Matter of Stephens v Stephens*, 106 A.D.3d 748).

The petitioner's remaining contention is without merit.

BARROS, J.P., MALTESE, ZAYAS and  
DOWLING, JJ., concur.

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