At a term of the Family Court of the
State of New York, held in and for the City
of New York, County of Queens, 151-20
Jamaica Avenue, Jamaica, New York on the 19th
day of June, 2018

P R E S E N T:

HON. JOHN M. HUNT, J.F.C.

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In the Matter of a Family Offense Proceeding

Maliha A.,

Petitioner,

Docket No.: O-09536-18
File No.: 181941

- against -

DECISION AND ORDER AFTER FAMILY OFFENSE TRIAL

Onu M.,

Respondent.

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HUNT, J.:

PROCEDURAL HISTORY

Petitioner, Maliha A. (hereinafter "Ms. A."), filed a family offense petition against Onu M. (hereinafter "Mr. M.") on May 11, 2018. The parties had a romantic relationship which has since ended. The petition alleges that the parties had a "bitter breakup" and Mr. M. failed to leave Ms. A. alone. On June 6, 2018, both parties appeared in court and issue was joined. At the Court's direction, the Court's Attorney held a conference with the parties. During that

conference, both parties told the Court's Attorney that they each had new romantic interests and had moved on with their lives. Ms. A. told the Court's attorney that she was not afraid of Mr. M. and that she wished to withdraw her petition. She further told the Court's Attorney that she was not forced or coerced to withdraw, and that no one had made promises to her in exchange for her withdrawal. When the parties came before this Court that same day, Ms. A. denied making those statements to the Court's Attorney. Only after the Court inquired of the Court's Attorney on the record did Ms. A. admit that she had made those statements to her. Ms. A. nevertheless told the Court that she wished to proceed on her petition, and the Court set the matter down for trial on the next day. On June 7, 2018, the parties appeared for a trial. Both parties waived counsel and the Court heard testimony.

The petitioner in a family offense proceeding has the burden of proving the allegations by a fair preponderance of the evidence. *See Acevedo v. Acevedo*, 145 A.D.3d 773, 774 (2d Dep't 2016); *see also Frimer v. Frimer*, 143 A.D.3d 895, 896 (2d Dep't 2016). Ms. A. testified that she and Mr. M. had been dating on and off for approximately 5 years. She told the Court that in Fall of 2017, they had a difficult separation and there remained unresolved issues between them. She stated that when the parties ended their relationship, they agreed that they would no longer communicate with each other. Thereafter, Ms. A. posted a series of tweets on her Twitter account indicating that the two were never compatible and her life had improved since their breakup. Ms. A. testified that she never mentioned Mr. M.'s name in the Tweets, but acknowledged that it would have been obvious to anyone that knew them that she had been referring to Mr. M.. Ms. A. told the Court that after the texts were posted, Mr. M. texted her three times asking her to stop speaking about him on social media. She stated that she was

puzzled as to why he would contact her if they had agreed not to communicate, and she deleted his texts immediately. Ms. A. testified that Mr. M.'s fiancé then contacted her to tell her that she was trying to calm Mr. M. because he was upset about the Tweets. Ms. A. stated that Mr. M.'s fiancé told her that she had been speaking with Mr. M. in an effort to keep the peace between him and Ms. A.. Ms. A. told the Court that during that time period, her uncle sent her a screenshot of a text that Mr. M. had sent to him in which Mr. M. said, "it's a wrap." Ms. A. testified that she received that message poorly, believing that it was a threat, even though the text was not sent directly to her.

Ms. A. conceded that during the course of the parties' several years long relationship, Mr. M. never threatened her and the two had engaged in verbal disputes in which both of them called each other names. She also conceded that Mr. M. had never been violent with her and that she is not afraid of him. Ms. A. testified that she wanted an order of protection against Mr. M. because "there is no telling what he might say or do." At the close of Ms. A.'s case, the Court dismissed her petition since Ms. A. did not meet her burden of proving conduct that rose to the level of a family offense.[1] *See Matter of Little v. Renz*, 137 A.D.3d 916, 916-17 (2d Dep't 2016) (*prima facie* dismissal of family offense petition); *see also Matter of Khan-Soleil v. Rashad*, 108 A.D.3d 544, 545-46 (2d Dep't 2013) (same).

Family Court has concurrent jurisdiction with criminal court in family offense

[1] New York Civil Practice Law and Rules (hereinafter "CPLR") § 4401 governs motions to dismiss made at the close of a petitioner's direct case. *See* N.Y. C.P.L.R. § 4401 (McKinney's 2018); *see also* N.Y. FAM. CT. ACT § 165(a) (McKinney's 2018) (C.P.L.R. applies where family court proceeding procedure is not prescribed). A court must decide whether the petitioner has met his or her burden of presenting a *prima facie* case, viewing the evidence in a light most favorable to the petitioner and affording him or her the benefit of every inference which could be reasonably drawn from the proof presented. *See e.g. Szczerbaik v. Pilat*, 90 N.Y.2d 553, 556 (1997); *Matter of Khan-Soleil v. Rashad*, 108 A.D.3d 544, 545 (2d Dep't 2013); *Matter of Stephens v. Stephens*, 106 A.D.3d 748, 748 (2d Dep't 2013).

proceedings for certain enumerated crimes. *See* FAM. CT. ACT § 812 (McKinney's 2018). To that end, New York State Family Court Act Article 8 establishes a civil proceeding to protect persons within intimate relationships from violence. *See* N.Y. FAM. CT. ACT Art. 8 (McKinney's 2018). Intimate relationships include "persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time." N.Y. FAM. CT. ACT § 812(1)(e) (McKinney's 2018); N.Y. SOC. SERV. L. §459-a(2)(f) (McKinney's 2017); *People v. Ortega*, 15 N.Y.3d 610, 618-19 (2010) ("Neither cohabitation nor a current romantic relationship is necessary for one individual to subject another to acts that will be considered domestic violence."). Family Offense cases charging criminal acts, particularly those involving actual physical violence or alleged violations of existing orders of protection, deserve the attention of both the criminal court, where most are prosecuted, as well as the family court, where many petitioners avail themselves of the family court's concurrent jurisdiction. However, it does not appear to this Court that a non-violent, bad break-up was ever intended by the framers of the Family Court Act to be the basis for invoking the family court's authority to issue orders of protection where none are necessary.

It is this Court's experience that petitioners generally default to family court to litigate the circumstances surrounding their failed "intimate" relationship either because they did not prevail in criminal court or because their complaint to the police failed to justify an arrest. In either case, the Family Court Act actually encourages the filing of a family offense petition in family court where, since there is no filing fee, all grievances can be aired at no cost, regardless of spiteful motivation, pettiness or legal merit.

The Court notes that New York State Family Court Act § 812(3) provides that no court

official or law enforcement official "shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose." N.Y. FAM. CT. ACT § 812(3) (McKinney's 2018); FAM. CT. ACT § 216-c(b) (McKinney's 2018) ("[n]o clerk of the court ... may prevent any person who wishes to file a petition from having such petition filed with the court immediately."). The application of this forty-five year old remedial statute nowadays allows individuals claiming to have some kind of "intimate" relationship to freely file, without vetting, family offense petitions on any set of alleged facts they wish, regardless of whether those facts, if actually proven, would ultimately make out a family offense. The unintended consequence forty-five years later is that family offense petitions can be filed on factual allegations by ex-girlfriends and ex-boyfriends that amount to nothing more than name-calling that results in hurt feelings, and disrespectful behavior manifested by ill-advised posts on social media or extreme test messages. It is time for the statute to be revisited in light of modern technology and the expansion of family court jurisdiction to "intimate relationships."

This Court does not seek to minimize the serious societal issues raised by domestic violence and the need to protect those victimized by it. However, based on over twenty-two years of judicial experience, this Court can say two things with absolute certainty: (1) not all family offense petitions are created equal; and, (2) domestic violence is not what a significant number of these "intimate" relationship cases are about. To the contrary, all too often in these types of cases, the family court does not act as a legal authority but as an informal mediator, an unofficial "minister of bitter breakups," whose judicial function is to preside over the dissolution

of a dating relationship that ends poorly, perhaps artlessly, but not criminally. Sometimes the apparent goal of the petitioner is not protection from, but rather a continued connection with, the respondent through repeated court proceedings that continue a temporary order of protection in their favor, thereby imposing a power dynamic placing the petitioner in control. At other times, the court is asked to mend the relationship so that the parties can start anew, or failing that, to bring some type of closure to a broken relationship. None of these functions are judicial in nature.

These types of petitions have become a distraction from the more serious matters on the Court's calendar and conflict with the purpose of the statute - to provide domestic violence victims with a remedy. *See* N.Y. FAM. CT. ACT § 812(2)(b) (McKinney's 2018) (statute created "for the purpose of attempting to stop the violence, end the family disruption and obtain protection."); *see also Walker v. Walker*, 86 N.Y.2d 624 (1995) (statute amended "to provide new focus and direction for more aggressive measures that would protect victims of domestic violence."); *see also Bruno v. Codd*, 47 N.Y.2d 582, 591 (1979) (statute amended "to prohibit officials from discouraging or preventing any person who wishes to file a petition from having access to the court for that purpose."). The overburdened family court could certainly benefit from the Legislature's closer look at revising the statute to balance the root of its intent with what has become its perverted application.

This constitutes the decision, opinion, and order of the Court.

E N T E R:

/JMH/

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JOHN M. HUNT, JUDGE
FAMILY COURT - QUEENS COUNTY

Dated: Queens, New York
June 19, 2018