

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

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CAF 14-00012

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, SCONIERS, AND VALENTINO, JJ.

IN THE MATTER OF APRIL A. BURLEY,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

BERNARD D. BURLEY, RESPONDENT-APPELLANT.

CHARLES T. NOCE, CONFLICT DEFENDER, ROCHESTER (KATHLEEN P. REARDON OF COUNSEL), FOR RESPONDENT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES A. HOBBS OF COUNSEL), FOR PETITIONER-RESPONDENT.

MARGARET M. RESTON, ATTORNEY FOR THE CHILD, ROCHESTER.

Appeal from an order of the Family Court, Monroe County (John J. Rivoli, J.H.O.), entered November 19, 2013 in a proceeding pursuant to Family Court Act article 8. The order, among other things, directed respondent to stay away from petitioner.

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

Memorandum: In this proceeding pursuant to Family Court Act article 8, respondent appeals from an order of protection issued upon a finding that he willfully violated a prior order of protection issued in favor of petitioner directing him, inter alia, to refrain from forcible touching. Contrary to respondent's contention, petitioner met her burden of establishing that he was aware of the terms of that prior order of protection (*cf. Matter of Er-Mei Y.*, 29 AD3d 1013, 1016), and that he willfully violated it (*see Matter of Ferrusi v James*, 119 AD3d 1379, 1380). Respondent failed to preserve for our review his further contention that Family Court improperly considered testimony regarding an incident not alleged in the petition (*see generally Matter of Haley M.T.*, 96 AD3d 1549, 1550), and the record does not support that contention in any event (*see Matter of Chilbert v Soler*, 77 AD3d 1405, 1406, *lv denied* 16 NY3d 701). Finally, we reject respondent's contention that the court abused its discretion in issuing a stay away order of protection (*see Matter of Beck v Butler*, 87 AD3d 1410, 1411, *lv denied* 18 NY3d 801).

Entered: May 1, 2015

Frances E. Cafarell
Clerk of the Court