

No. _____

IN THE

Supreme Court of the United States

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DEREK SINE,

Petitioner,

—v.—

KATHRYN KOSMIDES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE NEW YORK STATE COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals of the State of New York (“Court of Appeals”) erred in denying Petitioner’s motion for leave to appeal the decision of the Supreme Court of the State of New York, Appellate Division, 1st Department (the “First Department”) dated November 4, 2021 which affirmed the decision of Supreme Court of the State of New York, County of New York (Judge Tandra L. Dawson) in which Petitioner was denied his 14th Amendment right to due process by the trial court having granted Respondent an award of attorney’s fees against Petitioner where, in addition to their being no finding of willfulness, there was no evidentiary hearing to determine whether Petitioner committed the alleged acts constituting violations of the subject order of protection as alleged by Respondent in her amended petition and/or otherwise in the subject underlying action.
2. Whether Petitioner was denied his 14th Amendment right to due process by the trial court having granted Respondent an award of attorney’s fees against Petitioner where, in addition to there being no finding of willfulness, there was no evidentiary hearing to determine whether Petitioner committed the alleged acts constituting the alleged violations of the subject order of protection as alleged by Respondent in her amended petition and/or otherwise in the subject underlying action.

PARTIES TO THE PROCEEDING

The Petitioner is Derek Sine. Petitioner was the respondent in the underlying action, the appellant in the appeal before the First Department; and the appellant in the appeal before the Court of Appeals.

The Respondent is Kathryn Kosmides. Respondent was the petitioner in the underlying action, the respondent in the appeal before the First Department; and the respondent in the appeal before the Court of Appeals.

LIST OF PROCEEDINGS

- 1) Kosmides v. Sine, Family Court of the State of New York, County of New York, Docket No. O-11458-17
- 2) Kosmides v. Sine, Family Court of the State of New York, County of New York, Docket No. O-11458-17/18A
- 3) Kosmides v. Sine, Supreme Court of the State of New York, County of New York, IDV Docket No. O-00425/18
- 4) Kosmides v. Sine, Supreme Court of the State of New York, Appellate Division, First Department, Case No. 2020-00524
- 5) Kosmides v. Sine, Court of Appeals of the State of New York, Motion No. 2021-2013
- 6) Kosmides v. Sine, Court of Appeals of the State of New York, Motion No. 2022-339

CITATIONS

Kathryn K. v. Derek S., 199 A.D.3d 415, 153 N.Y.S.23d 848 (1st Dept. 2021)

Kosmides v. Sine, 195 A.D.3d 517, 145 N.Y.S.3d 795 (1st Dept. 2021)

Kathryn K. v Derek S., 38 N.Y.3d 902, 185 N.E.3d 1006, 165 N.Y.S.3d 485 (2022)

Kathryn K. v. Derek S., 38 N.Y.3d 1123, 192 N.E.3d 1156, 172 N.Y.S.3d 677 (2022)

PETITION TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING	ii
LIST OF PROCEEDINGS	ii
CITATIONS	iii
APPENDIX TABLE OF CONTENTS	v
TABLE OF AUTHORITIES.....	ix
JURISDICTIONAL STATEMENT	1
CONSTITUTIONAL PROVISION AND STATUTES INVOLVED.....	1
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE WRIT	10
CONCLUSION	17

APPENDIX TABLE OF CONTENTS

	PAGE
Appendix 1: New York State Court of Appeals Motion Decision, dated July 21, 2022	1a
Appendix 2: New York State Court of Appeals Order, dated March 22, 2022	3a
Appendix 3: Supreme Court of the State of New York Appellate Division, First Department Order, dated November 4, 2021	4a
Appendix 4: Supreme Court of the State of New York Appellate Division, First Department Order Granting Rehearing, dated November 4, 2021	6a
Appendix 5: Supreme Court of the State of New York, Appellate Division, First Department Decision and Order, dated June 17, 2021	9a
Appendix 6: Decision and Order of the Supreme Court of the State of New York, New York County: IDV Part, dated November 27, 2019	12a
Appendix 7: Excerpts of Reply Brief for Respondent-Appellant in the Supreme Court of the State of New York, Appellate Division, First Department, dated April 30, 2021	20a
Appendix 8: Excerpts of Brief for Respondent- Appellant in the Supreme Court of the State of New York, Appellate Division, First Department, dated January 4, 2021	30a

Appendix 9: Order of Protection Issued by the Criminal Court, County of New York, dated December 16, 2019	35a
Appendix 10: Supreme Court of the State of New York, New York County: Civil Term: IDV Part Excerpts of Transcript of Proceedings, dated November 13, 2019	42a
Appendix 11: Decision and Order of the Supreme Court of the State of New York, New York County: Civil Term: IDV Part, dated September 6, 2019	49a
Appendix 12: Family Court of the State of New York, County of New York: Excerpts of Aurora C. DeCarlo Affirmation in Support of Motion, dated July 30, 2019	56a
Appendix 13: Order of Protection Issued by the Family Court of the State of New York, County of New York, dated June 6, 2019	59a
Appendix 14: Supreme Court of the State of New York, New York County: Civil Term: IDV Part Excerpts of Transcript of Proceedings, dated June 6, 2019	65a
Appendix 15: Supreme Court of the State of New York, New York County: Criminal Term: IDV Part: Excerpts of Transcript of Plea Allocution, dated November 26, 2018	69a
Appendix 16: Family Court of the State of New York, County of New York, Order of Transfer of Proceedings, dated May 21, 2018	72a

Appendix 17: Criminal Court of the City of New York, County of New York, Criminal Charge Sheet, dated April 4, 2018	75a
Appendix 18: Family Court of the State of New York, County of New York, Verified Amended Petition, dated March 2, 2018.....	80a
Appendix 19: Family Court of the State of New York, County of New York, Verified Petition, dated February 12, 2018.....	91a
Appendix 20: Family Court of the State of New York, County of New York, Order of Protection, dated December 1, 2017	97a
Appendix 21: Family Court of the State of New York, County of New York, Referee's Order, dated December 1, 2017	103a
Appendix 22: Family Court of the State of New York, County of New York, Petition, dated May 15, 2017	105a
Appendix 23: U.S. Constitution, Amendment XIV	110a
Appendix 24: McKinney's Family Court Act § 832	113a
Appendix 25: McKinney's Family Court Act § 833	114a
Appendix 26: McKinney's Family Court Act § 834	115a

Appendix 27: McKinney's Family Court	
Act § 835	116a
Appendix 28: McKinney's Family Court	
Act § 841	117a
Appendix 29: McKinney's Family Court	
Act § 842	119a
Appendix 30: McKinney's Family Court	
Act § 846	127a

TABLE OF AUTHORITIES

	PAGE(S)
Cases	
<u>Birch v. Sayegh</u> , 9 A.D.3d 514, 779 N.Y.S.2d 310 (3 rd Dept. 2004)	12
<u>Chateau D'If Corp. v. City of New York</u> , 219 A.D.2d 205, 641 N.Y.S.2d 252 (1 st Dept. 1996)	14
<u>Linda D. v. Peter D.</u> , 577 N.Y.S.2d 354, 152 Misc.2d 564 (Family Court, Westchester County, 1991)	5, 12, 16
<u>Misicki v. Salvatore Caradonna and 430-50 Shore Road Corporation</u> , 12 N.Y.3d 511, 909 N.E.2d 1213, 882 N.Y.S.2d 375 (2009)	16
<u>Nuevo El Barrio Rehabilitacion de Vivienda y Economia, Inc. v. Moreight Realty</u> , 87 A.D.3d 465, 928 N.Y.S.2d 510 (1 st Dept. 2011)	13
<u>Matter of Rogers v. Rogers</u> , 161 A.D.2d 766, 556 N.Y.S.2d 114 (2 nd Dept. 1990)	12
Statutes	
NY Family Ct. Act §§ 831-835	12
NY Family Ct. Act § 841	12, 15
NY Family Ct. Act § 842	12
NY Family Ct. Act § 842(f)	12

NY Family Ct. Act § 846-a	6, 10, 11
NY Penal Law § 110.....	3
NY Penal Law § 240.20(1)	3
NY Penal Law § 240.30(1)(a).....	3

Constitutional Provisions

United States Constitution	
14th Amendment § 14.1	1, 10, 16, 17

Rules

Supreme Court Rule 13.1	1
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Other Authorities

NY Law of Domestic Violence § 3:78 (3d ed.)....	12, 13
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JURISDICTIONAL STATEMENT

The Court of Appeals of the State of New York (the “Court of Appeals”) decision denying leave to appeal to the Court of Appeals was entered on March 22, 2022. The Court of Appeals decision denying reargument of the motion for leave to appeal to the Court of Appeals was entered on July 21, 2022. This petition for writ of certiorari is timely pursuant to Supreme Court Rule 13.1 as it is being filed within 90 days of entry of the decision of the Court of Appeals denying reargument for leave to appeal to the Court of Appeals.

The provision which provides this Court with jurisdiction to review this matter is the 14th Amendment (in particular § 14.1) of the United States Constitution.

**CONSTITUTIONAL PROVISION
AND STATUTES INVOLVED**

The constitutional provision involved is the 14th Amendment of the United States Constitution (the “14th Amendment”), in particular §14.1 of said amendment. The text of the 14th Amendment is set out in its entirety in the Appendix.

This petition also involves the following New York state statutes to the extent that that they have been applied by the lower courts in such a manner as to deprive Petitioner due process as guaranteed by §14.1 of the 14th Amendment: Family Court Act §§ 832, 833, 834, 835, 841, 842, and 846. The text of the aforementioned statutes is respectively set forth in their entirety in the Appendix.

STATEMENT OF THE CASE

On or about May 15, 2017, Respondent Kathryn Kosmides (“Respondent”) commenced a family offense proceeding against Petitioner Derek Sine (“Petitioner”) alleging inter alia that Petitioner had committed various family offenses against her including disorderly conduct, harassment in the 1st or 2nd degree; and aggravated harassment in the 2nd degree (hereinafter, the “Initial Family Offense Proceeding”, See Appendix 22). The matter was settled without a hearing on December 1, 2017 with Petitioner consenting to an order of protection (the “Subject Order of Protection”, Appendix 20) and paying “\$8000.00 in satisfaction of all claims made by Petitioner for legal fees and all other costs related to the allegations set forth in her pleading”. See Appendix 21. The Subject Order of Protection was set to expire on November 30, 2019. See Appendix 20. Respondent purportedly commenced the Initial Family Offense Proceeding pro se but subsequently retained C.A. Goldberg, PLLC (hereinafter the “Goldberg Firm” or “Respondent’s Counsel”) to represent her with respect to same. See Appendix 21.

On or about February 12, 2018, Respondent, through the Goldberg Firm, commenced an action in the Family Court of the State of New York, County of New York alleging that Petitioner had committed various violations of the Subject Order of Protection stemming from certain alleged social media activity and certain alleged email communication between Petitioner and certain third parties (the “Original Violation Petition”, Appendix 19). The Original Violation Petition was subsequently amended on or about March 2, 2018 (the “Amended Petition”, Appendix 18). On or about May 21, 2018, the action

(hereinafter the “Subject Underlying Action”) was transferred to the New York County Supreme Court, Criminal Term - IDV (the “IDV Part”) where it proceeded in conjunction with a criminal action (the “Criminal Action¹”) which had been commenced against Respondent regarding certain alleged misconduct by Petitioner with respect to Respondent. See Appendix 17.

On or about November 26, 2018, the Criminal Action resolved without a hearing or other fact-finding with Petitioner pleading guilty to attempted aggravated harassment in the second degree, a Class B misdemeanor (PL § 110/240.30(1)(a)) and disorderly conduct, a violation (PL § 240.20(1)) and agreeing to attend court-ordered counselling (“CTS”) for a period six (6) months (the “Plea Agreement Transcript”, Appendix 15). Provided that Petitioner attended the CTS and led a law-abiding life for one year thereafter, he would be permitted to replead to disorderly conduct (PL § 240.20(1)) and a two year order of protection (the “Plea Agreement”). Id. Petitioner satisfactorily fulfilled the terms of the Plea Agreement. See Appendix 9.

As part of the Plea Agreement, the only fact which Petitioner admitted to was that on June 23, 2017—a date which preceded the issuance of the Subject Order of Protection—he attempted to send Respondent a threatening email. See, Appendix 15.

On or about June 6, 2019, Petitioner’s alleged violations of the Subject Order of Protection was settled between the parties without a hearing or other fact-finding with Petitioner agreeing to a two-

¹ The Criminal Action was identified by IDV No. 20068-18. Petitioner did not appeal the Criminal Action.

year extension of the Subject Order of Protection (the “Current Order of Protection”, Appendix 13; see also Appendix 14) The Current Order of Protection expired on June 5, 2021. See Appendix 13. As the Honorable Tandra L. Dawson made clear, by agreeing to the Current Order of Protection in settlement of Petitioner’s alleged violations of the Subject Order of Protection, Petitioner was not making an admission of wrongdoing and the Court was not making a determination that Petitioner had violated the Subject Order of Protection or had otherwise done anything wrong:

THE COURT: Very good. So, sir, as I stated, your attorney indicated at this time that you wish to consent to a two-year order of protection; that you will not have a trial; that you will not have to make any admissions that you did something wrong. I will not be making a finding that you did something wrong. Is that what you want to consent to, – a two-year order?

RESPONDENT [Petitioner herein]: That’s correct.

(See Appendix 14).

At Respondent’s request, Judge Dawson also set forth a briefing schedule so that parties could brief the issue of Respondent’s request for legal fees. See Appendix 14. Respondent, through the Goldberg Firm, made her motion to recover attorneys’ fees incurred in the Subject Underlying Action on or about July 31, 2019 (“Respondent’s Legal Fees Motion”). The sole legal basis which Respondent cited for entitlement for legal fees where, as here, there had been no hearing or other factual determination regarding Petitioner’s alleged violations of the

Subject Order of Protection was Linda D. v. Peter D., 577 N.Y.S.2d 354, 152 Misc.2d 564 (Family Court, Westchester County, 1991)². See Appendix 12. Petitioner, through his counsel, opposed the application (“Petitioner’s Opposition to Legal Fees Motion”, A141-A189)³.

By decision and order dated September 6, 2019 (the “September 6, 2019 Order”), Judge Dawson granted Respondent’s application to the extent of scheduling a hearing on the issue of counsel fees and such hearing was scheduled to commence on November 13, 2019. See Appendix 11.

² In Respondent’s Legal Fees Motion, Respondent appears to attempt to argue that because Petitioner pleaded guilty to attempted aggravated harassment and disorderly conduct, Petitioner has somehow admitted to violating the Subject Order of Protection. There is absolutely no basis in either law or fact for that conclusion. As set forth above, the only thing which Petitioner admitted to as part of the Plea Agreement was that he attempted to send Respondent an email on June 23, 2017—a date which preceded the issuance of the Subject Order of Protection. See Appendix 15. As such, it is simply not possible to correlate the Plea Agreement with an admission that Petitioner violated the Subject Order of Protection.

³ In Petitioner’s Opposition to Legal Fees Motion, Petitioner’s counsel also highlighted the fact that Respondent had also commenced an action against Petitioner in the Supreme Court of the State of New York, County of New York entitled “Kathryn Kosmides v. Derek Sine” bearing index no. 15163/2018 where Respondent asserted defamation and related claims (the “Supreme Court Action”) where the Goldberg Firm is also representing Respondent. As such, Petitioner’s counsel argued that it would be impossible to distinguish fees purportedly incurred in the Supreme Court Action and those purportedly incurred in the Underlying Action. Petitioner has also asserted counterclaims against Respondent in the Supreme Court Action.

On November 13, 2019, prior to the commencement of the hearing on counsel fees, Judge Dawson engaged in colloquy with counsel and the parties in an attempt to reach a resolution. In so doing, Judge Dawson made clear yet again that she was not “making any finding of wrongdoing [by Petitioner] in anyway” (trial transcript dated November 13, 2019, the “Trial Transcript”, Appendix 10).

At the hearing, Respondent called two witnesses: Respondent and Aurore DeCarlo, Esq. (“DeCarlo”), an attorney employed at the Goldberg Firm. Respondent’s counsel Lisa Pelosi, Esq. (“Pelosi”) cross-examined Respondent and DeCarlo to the extent permitted by the Court. In summation, Pelosi set forth, in pertinent part, that Respondent should not be awarded attorneys’ fees as no determination had been made that Petitioner had violated the Subject Order of Protection as the matter had settled prior to there being a hearing with respect to same. See Appendix 10. Pelosi further argued that the totality of the circumstances also dictated that Respondent should not be awarded attorneys’ fees. Id. In summation, DeCarlo set forth, in pertinent part, that Respondent should be awarded legal fees incurred in the Subject Underlying Action and requested that Respondent be awarded the full amount of legal fees purportedly incurred through November 12, 2019, which purportedly totaled \$28,583.96. Id.

In her decision and order dated November 27, 2019 (the November 27, 2019 Order”, Appendix 6), Judge Dawson awarded Respondent her requested amount of attorneys’ fees of \$28,583.96. In rendering her decision, Judge Dawson cited to the Family Court Act, noting, in pertinent part, that “Family Court Act §846-a provides that if a court determines after hearing that respondent willfully failed to obey an

order of protection, the court may award the petitioner reasonable and necessary counsel fees.” See A9. Despite acknowledging that no hearing had ever been held to determine the merits of Respondent’s allegation concerning the alleged violations of the Subject Order of Protect and further acknowledging that such a hearing regarding the underlying alleged violations was required before awarding any attorney fees, Judge Dawson nonetheless granted Respondent her requested attorneys’ fees, citing Linda D., 152 Misc.2d at 564-566 as the basis of her authority to award attorneys’ fees without the holding of such a hearing. See Appendix 6.

Moreover, despite repeatedly stating in the Subject Underlying Action that no finding was being made with respect to Petitioner’s alleged violations of the Subject Order of Protection (See Appendix 14, 10), Judge Dawson appears to have done precisely that, stating (erroneously) that “[t]he court notes the extended nature of these proceeding were brought on by Respondent’s violations of the underlying order of protection.” See A9. As the purported basis for her conclusion that Petitioner violated the Subject Order of Protection, Judge Dawson cites to the allegations made by Respondent in her affidavit in support of Respondent’s Legal Fees Motion. See Appendix 6.

Petitioner filed his brief with the Appellate Division, First Department (the “First Department”) on January 4, 2021 (“Petitioner’s First Department Principal Brief”); Respondent filed her opposition brief on March 24, 2021 (“Respondent’s First Department Opposition Brief”); and Petitioner filed his reply brief on April 30, 2021 (“Petitioner’s First Department Reply Brief”).

By decision dated June 4, 2021, the First Department affirmed the November 27, 2019 Order (the “First AD Order”). See Appendix 5.

On August 13, 2021, Petitioner served his motion seeking leave to re-argue the Subject AD Order or, in the alternative, leave to appeal to the Court of Appeals. On November 4, 2021, the First Department issued a decision and order i) granting re-argument and thereafter recalling and vacating the First AD Order and substituting it with an order dated November 4, 2021 (the “Second AD Order” or “Subject AD Order”) and ii) denying leave to appeal to the Court of Appeals (the “AD Denial Order”). See Appendix 3 and Appendix 4.

Petitioner thereafter moved in the New York State Court of Appeals (the “Court of Appeals”) for leave to appeal to the Court of Appeals (the CA Motion”) and such motion was denied on March 22, 2022 (the “CA Denial Order”, Appendix 2). Petitioner thereafter moved to reargue the CA Denial Order (the “CA Rargument Motion”) and such motion was denied on July 21, 2022 (the “CA Rargument Denial Order”, Appendix 1).

The crux of the due process argument is that it was a violation of due process to award Respondent legal fees where no hearing had been held to determine whether or not Petitioner violated the Subject Order of Protection as alleged by Respondent in her Amended Petition (the “Due Process Argument”). The Due Process Argument was raised before the trial court with Petitioner’s counsel Pelosi setting forth , in pertinent part, during her summation at trial that Petitioner should not be required to pay counsel fees as there had been no finding that Petitioner had violated the Subject Order of Protection. See

Appendix 10, pp. 47-48. Nonetheless and, it is respectfully submitted, in complete violation of Petitioner's right to due process, Judge Dawson awarded Respondent's application for attorneys' fees. See Appendix 6.

The Due Process Argument was addressed in detail in Petitioner's First Department Principal Brief. See Appendix 8. The Due Process Argument was also addressed in detail in Petitioner's First Department Reply Brief. See Appendix 7. Petitioner's First Department Reply Brief also responded to Respondent's First Department Opposition Brief which set forth, in pertinent part, that the Due Process Argument had not been raised before the trial court and could not be raised for the first time before the First Department. Specifically, Petitioner cited to portions of the record (See Appendix 10, pp. 47-48) where the Due Process Argument had been raised and also set forth, with citations to legal authority, that the Due Process Argument could nonetheless be considered by the First Department even if it had not been addressed before the trial court. See Appendix 7.

In the Subject AD Order the First Department held that Due Process Argument had not been raised before the trial court and declined to consider same on appeal. See Appendix 3. In Petitioner's CA Motion for leave to appeal to the Court of Appeals, Petitioner set forth that the Due Process Argument had made before the trial court; that, even if had not been so made, the First Department erred by not considering same on appeal; and that even if the Court of Appeals found that First Department had not erred in failing to consider the Due Process Argument, it should nonetheless exercise its discretion to reverse the First Department given the extreme violation of due process that is at issue. The Court of Appeals denied

the CA Motion and the CA Reargument Motion. See Appendix 1 and Appendix 2, respectively.

REASONS FOR GRANTING THE WRIT

The petition for a writ of certiorari seeks to address a fundamental violation of due process. As set forth above in summary form, Respondent was granted an award of attorneys' fees against Petitioner even though there was no hearing to determine whether or not Petitioner even committed the violations of the Subject Order of Protection which Respondent alleged he committed in her Amended Petition. It is respectfully submitted that the awarding of legal fees to Respondent in such circumstances constitutes a fundamental violation of the right to due process guaranteed by §14.1 of 14th Amendment as, by example, it denies the person accused of committing the alleged violation the opportunity to cross-examine his accuser regarding such allegations.

In the Subject AD Order, the First Department characterized Petitioner's argument as being one "that a finding of willfulness was required prior to imposition of counsel fees under Family Ct. Act §846-a..." (Exhibit B). It is respectfully submitted that the First Department misapprehended Petitioner's argument as his argument was not simply that a finding willfulness was required but rather that there needed to be an evidentiary finding that the alleged acts constituting the alleged violations of the Subject Order of Protection had actually occurred. Indeed this is the crux of the Due Process Argument.

As set forth in Petitioner's briefs filed with the First Department, there was never any evidentiary hearing held as to whether or not Petitioner actually committed such acts. As such, it is respectfully

submitted that there was no legal basis for awarding attorneys' fees.

As set forth in the Petitioner's First Department Principal Brief, not only was there never any evidentiary hearing held to determine whether or not there was a violation of the Subject Order of Protection, but Judge Dawson also repeatedly stated that she would be making no such finding. See Appendix 8, Appendix 10, and Appendix 14. Despite the foregoing, Judge Dawson set forth (erroneously) in the November 27, 2019 Order that the "[t]he court notes the extended nature of these proceedings were brought on by Respondent's violations of the underlying order of protection" See Appendix 6. As set forth in Petitioner's Principal First Department Brief and Petitioner's First Department Reply Brief, Judge Dawson cites to the allegations made by Respondent in her affidavit in support of Respondent's Legal Fee Motion as the purported basis for her conclusion that Petitioner violated the Subject Order of Protection. See Appendix 6.

As set forth in Petitioner's Principal First Department Brief, the allegations set forth in an affidavit cannot be a basis for finding that there has been a violation of the Subject Order of Protection. Indeed, as set forth in Petitioner's Principal First Department Brief, doing so would be a fundamental violation of Petitioner's right to due process as he did not have the opportunity to cross-examine Respondent regarding those allegations, as would have taken place had a hearing regarding such alleged violations of the Subject Order of Protection occurred. See Appendix 8.

As set forth in Petitioner's First Department Reply Brief, FCA §846-a makes clear that the type of

hearing which must be held as a precursor for awarding attorneys is an evidentiary one requiring presentation of “competent proof”. See also Birch v. Sayegh, 9 A.D.3d 514, 779 N.Y.S.2d 310 (3rd Dept. 2004). Similarly, as set forth in Petitioner’s First Department Reply Brief, FCA §§841 and 842 also make clear that a fact-finding hearing is a necessary prerequisite to any award of attorneys’ fees⁴.

The primary cases which the First Department relies on in support of its determination are Matter of Linda D. v. Peter D., 152 Misc. 2d 564, 577 N.Y.S.2d 354 (Westchester Family Court 1991) and Matter of Rogers v. Rogers, 161 A.D.2d 766, 556 N.Y.S.2d 114 (2nd Dept. 1990). As set forth in both Petitioner’s First Department Principal Brief and Petitioner’s First Department Reply Brief, Linda D. had not been followed or apparently even cited by any appellate court. See New York Law of Domestic Violence § 3:78 (3d ed.). As set forth in New York Law of Domestic Violence 3:78 and as addressed in Petitioner’s First Department briefs, “appellate courts have upheld assessment of counsel fees in Article 8 proceedings

⁴ As set forth in Petitioner’s First Department Reply Brief, FCA §841 provides, in pertinent part, as follows: “At the conclusion of a dispositional hearing under this article, the court may enter an order... (d) making an order of protection in accord with section eight hundred forty-two of this part...”. As set forth in Petitioner’s First Department Reply Brief, as a matter of procedure, a fact-finding hearing precedes a dispositional hearing in a family offense proceeding. See FCA §§831-835. Moreover, as set forth in Petitioner’s First Department Reply Brief, FCA §842(f) makes clear that legal fees in a violation proceeding can only be awarded when the order of protection at issue is actually “enforced”. As there is no enforcement when the proceeding settles, FCA §842(f) does not provide a basis for awarding attorneys’ fees when the violation proceeding is settled on consent. See NY Law of Domestic Violence §3:78 (3d ed.); see Appendix 7.

upon affirmed findings that the respondent willfully violated the order of protection". Id citing Birch v. Sayegh, 9 A.D.3d 514, 779 N.Y.S.2d 310 (3d Dept. 2004). As set forth in Petitioner's First Department Briefs, the reason Linda D. had been ignored by the appellate courts (at least until the issuance of the Subject AD Decision) is that it is simply not good law.

The Matter of Rogers is completely distinguishable from the present matter as there the Court found that respondent had willfully committed the family offenses at issue and, as such, the issuance of the subject order of protection was appropriate. Here, in contrast, the issue is alleged violations of an existing order of protection, where there was never any hearing held to determine whether or not Petitioner actually committed the alleged violations at issue, never mind whether or not he committed them willfully. As such, Matter of Rogers is inapposite as it does not involve the due process violation which are at issue here.

The Due Process Argument has clearly been preserved. As set forth in Petitioner's First Department Reply Brief, the Due Process Argument was expressly addressed in the Underlying Action by Petitioner's Counsel and same was even acknowledged by Judge Dawson in the November 27, 2019 Order. See Appendix 7, Appendix 10, and Appendix 6.

Regardless, as set for in Petitioner's First Department Reply Brief, even if the Due Process Argument had not been raised in the Subject Underlying Action—which it clearly was—Petitioner would still not be precluded from raising it for the first time on appeal. As set forth in Petitioner's First Department Reply Brief, it is well settled that the First Department can hear purely legal arguments for the first time on appeal. Nuevo El Barrio

Rehabilitacion de Vivienda y Economia, Inc. v. Moreight Realty, 87 A.D.3d 465, 928 N.Y.S.2d 510 (1st Dept. 2011). Here, the issue of whether an appellate court can award a petitioner legal fees where there has been no hearing as to whether the Respondent had committed the alleged violations of the order of protection—never mind whether there was a hearing to determine whether such violation was willful—is a purely legal one based on statutory interpretation. As such, as set forth in Petitioner’s First Department Reply Brief, it is respectfully submitted that even if Petitioner had not raised the Due Process Argument in the lower court, he would not be precluded from raising it for the first time on appeal.

As stated in Petitioner’s First Department Reply Brief, the standard in the First Department is set forth, for example, in Chateau D’If Corp. v. City of New York, 219 A.D.2d 205, 641 N.Y.S.2d 252 (1st Dept. 1996):

‘Where, as here, a party does not allege new facts but, rather, raises a legal argument which appeared upon the face of the record and which could not have been avoided... if brought to [the opposing party’s] attention at the proper junction, the matter is reviewable’ citing Gerdiwsky v. Crain’s New York Business, 188 A.D.2d 93, 593 N.Y.S.2d 414 (1st Dept. 1993). In such circumstances, raising such an issue for the first time on appeal does not prejudice the opposing party’s legal position in any respect. Since the record on appeal is sufficient for its resolution and the issue is determinative, it should be reviewed.

As set forth in Petitioner’s First Department Reply Brief, the situation here clearly meets the standard of

first time reviewability: the issue is a legal one rather than factual; it appears on the face of the appellate record; and its determinative of the issue on appeal.

In the Subject AD Order, the First Department set forth, in pertinent part, as follows: "Respondent acknowledged that an award of reasonable counsel fees was available under Family Ct. Act § 841, so that petitioner did not have an opportunity to oppose the argument or to choose not to proceed to agree to settle the violation." See Appendix 3.

It is respectfully submitted that the First Department misapprehended the settlement and the sequence of events which followed therefrom. Contrary to the Court's assertions, at no time did Respondent acknowledge that an award of counsel fees was available under the Family Ct. Act §841. Relating to the issue of attorney fees, the only thing which was agreed to by the parties was that they would litigate the issue of legal fees so as to determine Respondent's entitlement or lack of entitlement to same. There was never any acknowledgement by Petitioner that legal fees were available under Family Ct Act §841 or any other provision of law. It is respectfully submitted that if there had been such an acknowledgment, there would have been no need for the parties to engage in motion practice on this issue and Judge Dawson would have simply had set a hearing date on June 6, 2019 (the date the settlement was reached) so as to determine the amount of legal fees rather then set a briefing schedule so as to address the issue of entitlement to legal fees.

When Respondent agreed to the settlement, she did not know that the lower court would find that she would be entitled to legal fees. Rather, the only thing she knew was that she would have the opportunity to

set forth a legal argument for her entitlement to legal fees. As such, it is respectfully submitted that the First Department's assertion that Respondent may have chosen "not to proceed to agree to settle the violation" if Respondent knew that Petitioner would be opposing the availability of legal fees to Respondent is incorrect as Respondent knew at the time the settlement was entered into that the very issue of the availability of a legal fee award to her in this instance was going to be litigated between the parties. Indeed, Respondent specifically "opposed" such argument in respondent's Legal Fee Motion, citing the case of Linda D. supra, as the legal basis for same⁵.

In sum, the Due Process Argument has been properly preserved. Even if the Court of Appeals had concluded that the Due Process Argument had not been preserved—which it is respectfully submitted would have been a gross error—that would not have stopped the Court of Appeals from addressing the due process violations at in this matter and, upon doing so, reversing the Subject Appellate Division Order as the Court of Appeals routinely reviews unpreserved arguments when common sense and practicality necessitate such a review. e.g. Misicki v. Salvatore Caradonna and 430-50 Shore Road Corporation, 12 N.Y.3d 511, 525, 909 N.E.2d 1213, 882 N.Y.S.2d 375 (2009) ("We review unpreserved questions when common sense and practical necessity dictate that we should.")

In sum, it is respectfully submitted the trial court violated Petitioner's right to due process guaranteed by §14.1 of the 14th Amendment by granting an award of attorneys' fees against Respondent without

⁵ The Court did not allow for reply papers on the legal fees motion. See Appendix 14.

first holding a hearing to determine whether or Petitioner actually committed the alleged violations of the Subject Order of Protection. Thereafter, it is respectfully submitted that the First Department erred by not reversing the November 27, 2019 Order. Thereafter, it is respectfully submitted that the Court of Appeals erred by not granting Petitioner's leave to appeal to said court.

The right to procedural due process in court proceedings is a fundamental right guaranteed by §14.1 of the 14th Amendment. Given the severe violations of due process which occurred in this matter, it is respectfully submitted that this Court should grant Petitioner's writ of certiorari.

CONCLUSION

As a result of the foregoing, it is respectfully submitted that this Court should grant Petitioner's petition for writ of certiorari.

Dated: New York, New York
October 18, 2022

Respectfully submitted,

/s/ Daniel A. Singer

DANIEL A. SINGER

Counsel of Record

LAW OFFICES OF

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Attorneys for Petitioner

APPENDIX

1a

Appendix 1

State of New York
Court of Appeals

Matter of Kathryn K., etc. v Derek S.

Motion No: 2022-339

Slip Opinion No: 2022 NY Slip Op 68869

Decided on July 21, 2022

Court of Appeals Motion Decision

Published by New York State Law Reporting Bureau
pursuant to Judiciary Law § 431.

This motion is uncorrected and subject to revision
before publication in the Official Reports.

In the Matter of Kathryn K., etc.,
Respondent,

v

Derek S.,
Appellant.

Motion for reargument of motion for leave to appeal
denied.

Appendix 2

**State of New York
Court of Appeals**

*Decided and Entered on the
twenty-second day of March, 2022*

Present, Hon. Janet DiFiore, Chief Judge, **presiding**.

Mo. No. 2021-2013

In the Matter of Kathryn K., &c.,

Respondent,

v.

Derek S.,

Appellant.

Appellant having moved for leave to appeal to the
Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is
ORDERED, that the motion is denied.

/s/ John P. Asiello
John P. Asiello
Clerk of the Court

Appendix 3

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT

Manzanet-Daniels, J.P.,
Kapnick, González, Shulman, JJ.

14086

IDV Dkt. Nos. 00425/18
00426/18

Case No. 2020-00524

June 17, 2021

In the Matter of KATHRYN K. also known as KATRHYN K.,
Petitioner-Respondent,
-against-
DEREK S.,
Respondent-Appellant.

Law Offices of Daniel A. Singer, New York
(Daniel A. Singer of counsel), for appellant.
Freshfields Bruckhaus Deringer US LLP, New York
(Elena Hadjimichael of counsel), for respondent.

Order, Supreme Court, New York County (Tandra L. Dawson, J.), entered on or about November 27, 2019, which, after a hearing, granted petitioner's motion for reasonable counsel fees in the amount of \$28,583.96 in connection with a petition alleging violation of an order of protection, unanimously affirmed, without costs.

Following respondent's agreement to settle the violation petition by consenting to a two-year extension of the order of protection with certain modifications, the court providently exercised its discretion in granting petitioner's application for an award of counsel fees (*see Mastrandrea v Mastrandrea*, 268 AD2d 293, 294 [1st Dept 2000]; Family Ct Act §§ 841, 842[f]). We perceive no basis upon which to disturb the court's findings following a hearing at which petitioner's counsel testified concerning her experience, billing rate and the work performed, and petitioner testified concerning her sources of income.

Respondent's argument that a hearing and a finding of willfulness was required prior to the imposition of counsel fees under Family Ct Act § 846-a is unpreserved, as it is raised for the first time on appeal (*see Matter of Nakia C. v Johnny F.R.*, 132 AD3d 531, 532 [1st Dept 2015]), and we decline to review it in the interests of justice. Respondent acknowledged that an award of reasonable counsel fees was available under Family Ct Act § 841, so that petitioner did not have an opportunity to oppose the argument or to choose not to proceed to agree to settle the violation petition. In any event, the court properly concluded that Family Ct Act §§ 841 and 842(f) allow for imposition of counsel fees under these circumstances, which included that the court extended and modified the order of protection (*see*

Matter of Linda D. v Peter D., 152 Misc 2d 564 [Fam Ct, Westchester County 1991]; *see generally Matter of Rogers v Rogers*, 161 AD2d 766, 767 [2d Dept 1990]).

The Decision and Order of this Court entered herein on June 17, 2021 is hereby recalled and vacated (see M-2750 decided simultaneously herewith).

THIS CONSTITUTES THE DECISION
AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: November 4, 2021

/s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

Appendix 4

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT

Motion No. 201-02750
IDV Dkt. Nos. O-00425/18
00426/18
Case No. 2020-00524

In the Matter of Kathryn K.,
Petitioner-Respondent,
-against-
Derek S.,
Respondent-Appellant.

CONFIDENTIAL

Respondent-appellant having moved for reargument of, or in the alternative, for leave to

appeal to the Court of Appeals, from the decision and order of this Court, entered on June 17, 2021 (Appeal No. 14086),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that that branch of the motion seeking reargument is granted and, upon reargument, the decision and order of this Court, entered on June 17, 2021 (Appeal No. 14086), is hereby recalled and vacated and a new decision and order substituted therefor. (See Appeal No. 14086 decided simultaneously herewith.) That branch of the motion seeking leave to appeal to the Court of Appeals is denied.

ENTERED: November 04, 2021

/s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

Appendix 5

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT

Manzanet-Daniels, J.P.,
Kapnick, González, Shulman, JJ.

14086

IDV Dkt. Nos. 00425/18
00426/18

Case No. 2020-00524

June 17, 2021

In the Matter of KATHRYN KOSMIDES,
Petitioner-Respondent,
-against-
DEREK SINE,
Respondent-Appellant.

Law Offices of Daniel A. Singer, PLLC, New York
(Daniel A. Singer of counsel), for appellant.

Freshfields Bruckhaus Deringer US LLP, New York
(Elena Hadjimichael of counsel), for respondent.

Order, Supreme Court, New York County (Tandra L. Dawson, J.), entered on or about November 27, 2019, which, after a hearing, granted petitioner's motion for reasonable counsel fees in the amount of \$28,583.96 in connection with a petition alleging violation of an order of protection, unanimously affirmed, without costs.

Following respondent's agreement to settle the violation petition by consenting to a two-year extension of the order of protection with certain modifications, the court providently exercised its discretion in granting petitioner's application for an award of counsel fees (see *Mastrandrea v Mastrandrea*, 268 AD2d 293, 294 [1st Dept 2000]; Family Ct Act §§ 841, 842[f]). We perceive no basis upon which to disturb the court's findings following a hearing at which petitioner's counsel testified concerning her experience, billing rate and the work performed, and petitioner testified concerning her sources of income.

Respondent's argument that a finding of willfulness was required prior to the imposition of counsel fees under Family Ct Act § 846-a is unpreserved, as it is raised for the first time on appeal (see *Matter of Nakia C. v Johnny F.R.*, 132 AD3d 531, 532 [1st Dept 2015]), and we decline to review it in the interests of justice. Respondent acknowledged that an award of reasonable counsel fees was available under Family Ct Act § 841, so that petitioner did not have an opportunity to oppose the argument or to choose not to proceed to agree to settle the violation petition. In any event, the court properly concluded that Family Ct Act §§ 841 and 842(f) allow for imposition of counsel fees under these circumstances, which included that the court extended and modified the order of protection (see

Matter of Linda D. v Peter D., 152 Misc 2d 564 [Fam Ct, Westchester County 1991]; see generally *Matter of Rogers v Rogers*, 161 AD2d 766, 767 [2d Dept 1990]).

THIS CONSTITUTES THE DECISION
AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: June 17, 2021

/s/ Susanna Molina Rojas
Susanna Molina Rojas

Clerk of the Court

**12a to 19a
APPENDIX 6
[SEALED]**

**20a to 29a
APPENDIX 7
[SEALED]**

**30a to 34a
APPENDIX 8
[SEALED]**

**35a to 41a
APPENDIX 9
[SEALED]**

**42a to 48a
APPENDIX 10
[SEALED]**

**49a to 55a
APPENDIX 11
[SEALED]**

**56a to 58a
APPENDIX 12
[SEALED]**

**59a to 64a
APPENDIX 13
[SEALED]**

**65a to 68a
APPENDIX 14
[SEALED]**

**69a to 71a
APPENDIX 15
[SEALED]**

**72a to 74a
APPENDIX 16
[SEALED]**

**75a to 79a
APPENDIX 17
[SEALED]**

**80a to 90a
APPENDIX 18
[SEALED]**

**91a to 96a
APPENDIX 19
[SEALED]**

**97a to 102a
APPENDIX 20
[SEALED]**

**103a to 104a
APPENDIX 21
[SEALED]**

**105a to 109a
APPENDIX 22
[SEALED]**

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES
AND IMMUNITIES; DUE PROCESS; EQUAL
PROTECTION; APPOINTMENT OF
REPRESENTATION; DISQUALIFICATION OF
OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole

number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

112a

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

Appendix 24

McKinney's Family Court Act § 832

§ 832. Definition of “fact-finding hearing”

When used in this article, “fact-finding hearing” means a hearing to determine whether the allegations of a petition under section eight hundred twenty-one are supported by a fair preponderance of the evidence.

Credits

(L.1962, c. 686. Amended L.1963, c. 529, § 18.)

§ 833. Definition of “dispositional hearing”

When used in this article, “dispositional hearing” means in the case of a petition under this article a hearing to determine what order of disposition should be made.

Credits

(L.1962, c. 686.)

§ 834. Evidence

Only competent, material and relevant evidence may be admitted in a fact-finding hearing; only material and relevant evidence may be admitted in a dispositional hearing.

Credits

(L.1962, c. 686. Amended L.1963, c. 529, § 19.)

§ 835. Sequence of hearings

Effective: April 14, 2010

- (a) Upon completion of the fact-finding hearing, the dispositional hearing may commence immediately after the required findings are made.
- (b) Reports prepared by the probation service for use by the court at any time prior to the making of an order of disposition shall be deemed confidential information furnished to the court which the court in a proper case may, in its discretion, withhold from or disclose in whole or in part to the child's attorney, counsel, party in interest, or other appropriate person. Such reports may not be furnished to the court prior to the completion of a fact-finding hearing, but may be used in a dispositional hearing.

Credits

(L.1962, c. 686. Amended L.1963, c. 529, § 20; L.2010, c. 41, § 49, eff. April 14, 2010.)

Appendix 28

McKinney's Family Court Act § 841

§ 841. Orders of disposition

Effective: July 21, 2008

At the conclusion of a dispositional hearing under this article, the court may enter an order:

- (a) dismissing the petition, if the allegations of the petition are not established; or
- (b) suspending judgment for a period not in excess of six months; or
- (c) placing the respondent on probation for a period not exceeding one year, and requiring respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counseling, and to pay the costs thereof if respondent has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; or
- (d) making an order of protection in accord with section eight hundred forty-two of this part; or
- (e) directing payment of restitution in an amount not to exceed ten thousand dollars. An order of restitution may be made in conjunction with any order of disposition authorized under subdivisions (b), (c), or (d) of this section. In no case shall an order of restitution be issued where the court determines that the respondent has already paid such restitution as part of the disposition or settlement of another

proceeding arising from the same act or acts alleged in the petition before the court.

No order of protection may direct any party to observe conditions of behavior unless the party requesting the order of protection has served and filed a petition or counter-claim in accordance with section one hundred fifty-four-b of this act. Nothing in this section shall preclude the issuance of a temporary order of protection *ex parte*, pursuant to section eight hundred twenty-eight of this article.

Nothing in this section shall preclude the issuance of both an order of probation and an order of protection as part of the order of disposition.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this article.

Credits

(L.1962, c. 686. Amended L.1977, c. 449, § 7; L.1980, c. 531, § 1; L.1981, c. 416, § 16; L.1984, c. 948, § 10; L.1988, c. 706, § 8; L.1994, c. 222, §§ 20, 21; L.2008, c. 326, § 8, eff. July 21, 2008.)

Appendix 29

McKinney's Family Court Act § 842

§ 842. Order of protection

Effective: November 11, 2020

An order of protection under section eight hundred forty-one of this part shall set forth reasonable conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or for a period not in excess of five years upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article; or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection. Any finding of aggravating circumstances pursuant to this section shall be stated on the record and upon the order of protection. The court may also, upon motion, extend the order of protection for a reasonable period of time upon a showing of good cause or consent of the parties. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order. The court must articulate a basis for its decision on the record. The duration of any temporary order shall not by itself be a factor in determining the length or issuance of any final order. Any order of protection issued pursuant to this section shall specify if an order of probation is in effect. Any order of protection issued pursuant to this section may require the petitioner or the respondent:

120a

- (a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;
- (b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;
- (c) to refrain from committing a family offense, as defined in subdivision one of section eight hundred twelve of this article, or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;
- (d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this act or the domestic relations law;

- (e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;
- (f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;
- (g) to require the respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counselling, and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof;
- (h) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order;
- (i) 1. to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.
2. "Companion animal", as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law;
- (j) 1. to promptly return specified identification documents to the protected party, in whose favor the order of protection or temporary order of protection is issued; provided, however, that such order may:

(A) include any appropriate provision designed to ensure that any such document is available for use as evidence in this proceeding, and available if necessary for legitimate use by the party against whom such order is issued; and (B) specify the manner in which such return shall be accomplished.

2. For purposes of this subdivision, “identification document” shall mean any of the following: (A) exclusively in the name of the protected party: birth certificate, passport, social security card, health insurance or other benefits card, a card or document used to access bank, credit or other financial accounts or records, tax returns, any driver’s license, and immigration documents including but not limited to a United States permanent resident card and employment authorization document; and (B) upon motion and after notice and an opportunity to be heard, any of the following, including those that may reflect joint use or ownership, that the court determines are necessary and are appropriately transferred to the protected party: any card or document used to access bank, credit or other financial accounts or records, tax returns, and any other identifying cards and documents;

(k) 1. to refrain from remotely controlling any connected devices affecting the home, vehicle or property of the person protected by the order.

2. For purposes of this subdivision, “connected device” shall mean any device, or other physical object that is capable of connecting to the internet, directly or indirectly, and that is assigned an internet protocol address or bluetooth address; and

(l) to observe such other conditions as are necessary to further the purposes of protection.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency.

Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of child support has not already been issued, the court may in addition to the issuance of an order of protection pursuant to this section, issue an order for temporary child support in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. Temporary orders of support issued pursuant to this article shall be deemed to have been issued pursuant to section four hundred thirteen of this act.

Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may

further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of spousal support has not already been issued, the court may, in addition to the issuance of an order of protection pursuant to this section, issue an order directing the parties to appear within seven business days of the issuance of the order in the family court, in the same action, for consideration of an order for temporary spousal support in accordance with article four of this act. If the court directs the parties to so appear, the court shall direct the parties to appear with information with respect to income and assets, but a temporary order for spousal support may be issued pursuant to article four of this act on the return date notwithstanding the respondent's default upon notice and notwithstanding that information with respect to income and assets of the petitioner or respondent may be unavailable.

In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the petitioner and respondent and his or her counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection is transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation

department or the department of corrections and community supervision where the individual is under probation or parole supervision.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this article.

In addition to the foregoing provisions, the court may issue an order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.

The protected party in whose favor the order of protection or temporary order of protection is issued may not be held to violate an order issued in his or her favor nor may such protected party be arrested for violating such order.

Credits

(L.1962, c. 686. Amended L.1972, c. 761, § 1; L.1980, c. 532, § 1; L.1981, c. 416, § 17; L.1981, c. 965, § 4; L.1984, c. 948, § 11; L.1988. c. 702, § 3; L.1988, c. 706, § 9; L.1994, c. 222, § 22; L.1994, c. 224, § 3; L.1995, c. 483, §§ 11, 12; L.2003, c. 579, § 1, eff. Oct. 22, 2003; L.2006, c. 253, § 6, eff. July 26, 2006; L.2007, c. 73, § 5, eff. Oct. 1, 2007; L.2008, c. 56, pt. D, § 8, eff. April 23, 2008; L.2008, c. 326, § 9, eff. July 21, 2008; L.2010, c. 325, §§ 1, 2, eff. Aug. 13, 2010; L.2010, c. 341, § 6, eff. Aug. 13, 2010; L.2011, c. 62, pt. C,

126a

subpt. B, § 114, eff. March 31, 2011; L.2013, c. 480, § 9, eff. Nov. 13, 2013; L.2013, c. 526, § 6, eff. Dec. 18, 2013; L.2019, c. 335, § 3, eff. Oct. 3, 2019; L.2020, c. 261, § 6, eff. Nov. 11, 2020.)

McKinney's Family Court Act § 846

§ 846. Petition; violation of court order

Effective: November 13, 2013

Proceedings under this part shall be originated by the filing of a petition containing an allegation that the respondent has failed to obey a lawful order of this court or an order of protection issued by a court of competent jurisdiction of another state, territorial or tribal jurisdiction.

(a) Persons who may originate proceedings. The original petitioner, or any person who may originate proceedings under section eight hundred twenty-two of this article, may originate a proceeding under this part.

(a-1) The protected party in whose favor the order of protection or temporary order of protection is issued may not be held to violate an order issued in his or her favor nor may such protected party be arrested for violating such order.

(b) Issuance of summons. (i) Upon the filing of a petition under this part, the court may cause a copy of the petition and summons to be issued requiring the respondent to show cause why respondent should not be dealt with in accordance with section eight hundred forty-six-a of this part. The summons shall include on its face, printed or typewritten in a size equal to at least eight point bold type, a notice warning the respondent that a failure to appear in court may result in immediate arrest, and that, after an appearance in court, a finding that the respondent

willfully failed to obey the order may result in commitment to jail for a term not to exceed six months, for contempt of court. The notice shall also advise the respondent of the right to counsel, and the right to assigned counsel, if indigent.

(ii) Upon the filing of a petition under this part alleging a violation of a lawful order of this or any other court, as provided in this section, the court may, on its own motion, or on motion of the petitioner:

(A) hear the violation petition and take such action as is authorized under this article; or

(B) retain jurisdiction to hear and determine whether such violation constitutes contempt of court, and transfer the allegations of criminal conduct constituting such violation to the district attorney for prosecution pursuant to section eight hundred thirteen of this article; or

(C) transfer the entire proceeding to the criminal court pursuant to section eight hundred thirteen of this article.

(c) Service of summons. Upon issuance of a summons, the provisions of section eight hundred twenty-six of this article shall apply, except that no order of commitment may be entered upon default in appearance by the respondent if service has been made pursuant to subdivision (b) of such section.

(d) Issuance of warrant. The court may issue a warrant, directing that the respondent be arrested and brought before the court, pursuant to section eight hundred twenty-seven of this article.

129a

Credits

(Added L.1980, c. 530, § 10. Amended L.1994, c. 222, § 23; L.1998, c. 597, § 8, eff. Dec. 22, 1998; L.2013, c. 480, § 10, eff. Nov. 13, 2013.)