

189 A.D.3d 474
Supreme Court, Appellate Division,
First Department, New York.

In re KATHARINE B.,
Petitioner–Respondent,

v.

THOMAS L., Respondent–Appellant.

12563

|
Dkt. No. O-00164/20

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Case No. 2020-02041

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ENTERED: December 8, 2020

Synopsis

Background: Former domestic partner, on behalf of herself, child in common with father, and father's child from previous relationship, brought action seeking an order of protection against father. The Family Court, New York County, [Emily M. Olshansky, J.](#), denied father's motion to dismiss. Father appealed.

[Holding:] The Supreme Court, Appellate Division, held that former domestic partner had standing to commence protection order proceeding on behalf of father's child from previous relationship.

Affirmed.

West Headnotes (2)

[1] **Infants** **Proceedings and jurisdiction**

Former domestic partner had standing to commence protection order proceeding on behalf of father's child from previous relationship against father; child resided in same household with father's former domestic partner for at least five years while father and domestic partner were in an intimate relationship, child still resided with father's former domestic partner, and child was

still under partner's care and supervision. [N.Y. Family Court Act § 821-a\(2\)\(b\)](#).

[2] **Infants** **Appeal and review**

Protection of Endangered

Persons **Preservation of grounds of review**

Father waived for appellate review his constitutional arguments in action seeking an order of protection brought by former domestic partner, on behalf of herself, child in common with father, and father's child from previous relationship; father did not raise constitutional arguments in his moving papers or during oral argument on his motion to dismiss.

Attorneys and Law Firms

****24** Burger Green & Min, LLP, New York ([Richard Min](#) of counsel), for appellant.

Rower LLC, New York ([Kara M. Bellew](#) of counsel), for respondent.

Law Office of Garline Octobre, New York (Garline Octobre of counsel), attorney for the child.

[Acosta, P.J.](#), [Gische, Oing](#), [González](#), [Kennedy, JJ.](#)

Opinion

***474** Order, Family Court, New York County (Emily M. Olshansky, J.), entered on or about March 5, 2020, which denied respondent's motion to dismiss the family offense petition to the extent it seeks relief on behalf of his son, unanimously affirmed, without costs.

[1] Petitioner and respondent, who have a child in common, lived together along with respondent's older child from a previous relationship, for about five years. After respondent moved out, both children remained in petitioner's household and under her care and supervision. Petitioner commenced this proceeding seeking an order of protection on behalf of herself and the two children. Respondent moved to dismiss the petition to the extent it seeks relief on behalf of his older son, arguing that petitioner lacks standing to commence a petition on his behalf because she is neither his parent nor his legal guardian. The Family Court properly determined

that petitioner has standing to commence a family offense proceeding on behalf of respondent's son, who resided in the same household with petitioner for at least five years, while petitioner and respondent were in an intimate relationship (see *Hamm-Jones v. Jones*, 14 A.D.3d 956, 788 N.Y.S.2d 690 [3d Dept. 2005]). The statute expressly authorizes the court to issue a temporary order of protection in favor of petitioner and any child in the household (Family Court Act § 821-a[2][b]). Such an action furthers the statutory purpose “to stop the violence, end the family disruption and obtain protection” (Family Court Act § 812[2][b]). The issue of whether petitioner has standing to obtain an order of protection on behalf of a child residing in her household is not the same issue as whether petitioner has standing to seek

custody of that child. Whether extraordinary circumstances exist to afford petitioner standing to seek *475 custody will be addressed in the context of the parties' pending custody petitions.

[2] Respondent's constitutional arguments are not properly before us since he did not raise them in his moving papers or during oral argument on the motion (see **25 *Matter of Toussaint Thoreau E. [Allen E.]*, 170 A.D.3d 551, 94 N.Y.S.3d 840 [1st Dept. 2019]).

All Citations

189 A.D.3d 474, 137 N.Y.S.3d 23, 2020 N.Y. Slip Op. 07310

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