



Extending Article 8 Family Offense Orders of Protection for Good Cause September 2024

2010 Sess. Law of N.Y. Ch. 325 (A. 6195-A): Amendment to FCA 842 states, “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.”

OCA Forms for Extensions:

<https://www.nycourts.gov/LegacyPDFS/FORMS/familycourt/pdfs/GF-10.pdf>

<https://www.nycourts.gov/LegacyPDFS/FORMS/familycourt/pdfs/GF-10-a.pdf>

Appellate Level Rulings

Molloy v. Molloy, 137 A.D.3d 47 (2nd Dept. 2016): The first appellate decision addressing good cause. This court examined the legislative history, sister state rulings, and engaged in statutory interpretation. Petitioner-wife, who had obtained a 2 yr order of protection against husband in favor of herself and their child, moved to extend order for five years but was denied relief for herself. She claimed the order had been repeatedly violated and he’d faced criminal charges as a result. His new partner even warned wife that once the order expired, he threatened he was going to kill her. Because he so terrified her, she carried a panic alarm on her during custody exchanges. She appealed the trial court’s ruling and the appellate court held the following: 1) the expiration of order of protection did not render her appeal academic; 2) the criminal court’s issuance of a 2 yr order of protection as part of its disposition of husband's guilty plea to disorderly conduct did not negate or otherwise render superfluous her request for extension of her Family Court order; 3) wife established “good cause” to extend duration of her own order; and 4) a 5 yr extension was a reasonable period of time. The trial court order was reversed, her motion granted, and the order of protection was extended.

Ironelys A. v. Jose A., 140 A.D.3d 473 (1st Dept 2016): Petitioner was denied an extension. Petitioner failed to demonstrate good cause pursuant to Family Court Act § 842 to show that an extension of the order of protection was necessary in order to prevent a recurrence of domestic violence. Respondent complied with the initial order of protection, and there have been no incidents or violations claimed by petitioner, and no specific claims of fear of continued violence. Court stated it was notable that when respondent picked up the parties' child, it was done at petitioner's residence and not at a police precinct as was the case in *Molloy*. The court also noted that petitioner failed

to cite any issues that would have required further elaboration or any additional facts that would have warranted a hearing under the circumstances.

Jacobs v. Jacobs, 167 A.D.3d 890 (2nd Dept. 2018): Adult son established by a preponderance of the evidence good cause to extend duration of two-year order of protection against father for five-years and father appealed. Citing *Molloy*, the court detailed the factors to be considered for good cause to be established. Here the father made statements to son's then-employer (the Department of Corrections), that needlessly caused a significant police response to son's home (swatting) while son's eight-year-old son was visiting. Father also commenced multiple court seemingly retaliatory or baseless actions against son-- all ultimately found to be lacking in merit. Although parent-child had no direct contact since issuance of the original order of protection, father continued to interfere with son's peaceful existence and well-being through other means.

Valenti v. Valenti, 158 A.D.3d 810 (2nd Dept. 2018): Appeals court affirmed the trial court ruling. In this family offense proceeding, the petitioner moved for a two-year extension of an order of protection, originally entered on consent, which was against the appellant and in favor of the petitioner and the parties' children. After a hearing, the Family Court granted the petitioner's motion and extended the order of protection, which was due to expire for 2 more years. Contrary to the appellant's contention, the Family Court, which had the benefit of seeing and hearing the witnesses at the hearing, properly found that, under the circumstances of this case, including the fact that the petitioner's fears of harassment by the appellant were reasonable, there was good cause to extend.

Naftali v. Naftali, 160 A.D.3d 745 (2nd Dept. 2018): Contrary to the father's contention, the Family Court, which had the benefit of seeing and hearing the witnesses at the fact-finding hearing, properly found that, under the circumstances of this case, there was "good cause" to extend the order of protection two more years.

Mejia v. Stubbs, 161 A.D.3d 1162 (2nd Dept. 2018): The original full stay away order protected the mother and the child for five years and as the expiration date approached, she moved to extend. Contrary to the appellant's contention, the Family Court, which had the benefit of seeing and hearing the sole witness at the hearing, properly found that, under the circumstances of this case, there was "good cause" to extend the order of protection originally issued upon consent.

Ermini v. Vittori, 163 A.D.3d 560 (2nd Dept. 2018): This was an international custody case and, while that was pending for years in federal court, Rockland Family Court entertained a family offense proceeding. The trial court issued a final order of protection for the mother and children and the AFC later moved to extend. The father appealed the extension, among other relief granted by the trial court. On appeal, among other holdings, the court agreed with the Family Court's determination to grant the AFC's motion to extend the order of protection. Citing *Molloy*, the court noted that Family Court Act § 842 provides, in part, that the court may, on motion, "extend the order of protection for a reasonable period of time upon a showing of good cause." "[I]n determining whether good cause has been established, courts should consider, but are not limited by, the following factors: the nature of the relationship between the parties, taking into account their former relationship, the circumstances leading up to the entry of the initial order of protection, and the state of the relationship at the time of the request for an extension; the frequency of interaction between the parties; any subsequent instances of domestic violence or violations of the existing order of protection; and whether the current circumstances are such that concern for the safety and well-being of the petitioner is reasonable". Under these facts, the court properly found that there was good cause to extend. Moreover, to the extent the father challenges the duration of the extension, the court extended the order of protection for a reasonable period of time.

Lashlee v. Lashlee 169 A.D.3d 683 (2nd Dept. 2019): Mother sought extension of her 5 year order of protection. She believed that the father stalked her through her trip to South Carolina and argued that his behavior may be escalating – he sent police to her home to retrieve mail even though he had not lived there for 4 years, he sent strange

correspondence to his former attorney causing that attorney to be relieved as counsel, and he sought mother's work records seemingly to have her fired. The appeals court held that the Family Court found credible evidence that while the mother and the father have had no direct contact since the issuance of the order of protection, the father continued to interfere with the mother's peaceful existence and well-being through other means and an additional 5 year extension was supported by the record.

Stacey T. v. Felix M., 177 A.D.3d 413 (1st Dept. 2019): Although the original order of protection had been extended by a series of temporary orders of protection during the pendency of the application for an extension, the appeals court found that under the undisputed and serious facts of the case, as determined by the court, as well as the legislative history of the statute, a five-year extension was warranted. The court affirmed that extending the order from the date of the decision was proper.

Trial Level Rulings

Juanita D. v. Mario D., 201235 Misc.3d 719 (Queens Co. Fam. Ct 2012): Mother filed against her son who abuse her and her disabled daughter and was granted a full 2 year stay away order of protection following a hearing. Mother asked to extend the order "forever" for herself and her daughter because of her fear of the respondent son. She did not allege any violations of the underlying order.

As this was a case of first impression, the trial court went through the legislative history and engaged in statutory interpretation. The court found that good cause existed for extension of order of protection for additional four years under same terms and conditions as the original order. Although petitioner did not allege respondent, her son, had committed any new family offenses since the original order was issued, the original order was based on findings that respondent had committed the family offenses of attempted assault and harassment based on evidence that he had physically and verbally abused petitioner and his sister. The lack of violation petitions since that order was issued indicates that it had achieved its purpose in preventing family violence and family disruption.

Ellen Z. v. Issac D., 47 Misc.3d 389 (Queens Co. Fam. Ct. 2015): One year order of protection issued in favor of mother warranted two-year extension based on good cause. Citing incidents during custody exchanges, with the long prior history of abuse, mother sought an extension. Although there were no physical confrontations or assaults between mother and father during existence of protection order, there were still disputes and friction over father's visitation with their young children as well as the father filing frivolous petitions. Mother continued to fear that father would commit additional acts of domestic violence against her without extension of protection order, and mother's recent interactions with father occasioned by his weekly visitation with children caused her to feel scared and intimidated. The fact that there were no new violations showed the order was achieving its goals. Notably, the court extended the order only as long as it was able given there were no aggravating circumstances.

B.T. v. D.M., 2017, 56 Misc.3d 180 (Kings Co. Fam. Ct 2017): Petitioner was granted an order of protection. Following numerous incidents in which respondent allegedly violated the order of protection, she sought a finding on the violations and extension. Addressing the extension, the trial court found it was reasonable for the wife and child to be frightened of the husband, and, therefore, good cause existed to extend order of protection for two years. There was evidence of serious violence wife suffered at hands of husband, that their child witnessed the violence, and that after original order of protection had been in effect, husband continued to harass and menace wife and child by sitting in his parked car near their home and making threatening phone calls.

Antoinette V. v. Brian J.P., 68 Misc.3d 1210(A)(Kings Co Fam. Ct. 2020)(Unreported Disposition): The court examined the precedent. Mother alleged numerous instances of abuse against her and her older child, including fracturing her

nose. Following a trial, the court issued mother a full 2 year stay away order of protection. Mother moved to extend arguing that father is a martial arts expert with many swords who lives near her and continues to use their pre-school aged child to transmit threatening messages, including that he would try to murder her. She lived in fear and always carried a camera with her. Father denied all allegations, claiming that there had been no direct contact with the mother and mother has no evidence of his threats.

The court noted that while the underlying allegations were serious, they were addressed by the original order. Here mother did not prove an actual event or current violation by Father of the existing Order of Protection. Nor has the Mother provided any documentary or other evidence to support her allegations or to mandate the convening of an evidentiary hearing, such as was provided in *Jacobs* and *Lashlee* Therefore, there was no sufficient “good cause” or “legitimate need to take judicial action” has been shown to extend the Order of Protection especially during given the social distancing due to the Covid-19 Pandemic.

R.C. v. A.C., 72 Misc.3d 1014 (Kings Co. Fam.Ct. 2021): Mother filed an OSC seeking extension for herself and children, as well as a temporary order. Trial court found that mother provided sufficient evidence that good cause existed to extend final order of protection on consent in favor of her and her children against father for an additional 2 years. Looking at the statute, the legislative history, and the factors laid out in *Molloy*, the court found that, regardless of the pandemic, the father stalled every opportunity to move the matrimonial case forward. Mother expressed that if the order expired, she feared she would be subject to further abuse by the father, especially as he has repeatedly disregarded the IDV court’s directions and been rearrested for DV and violating the TOP. Mother further contended that the father’s criminal case was dismissed on procedural speedy trial grounds and not due to the substance of the allegations. Mother and children were consistent in expressing their fear of the father both when initial order of protection was issued and during request for extension. The father denied his history of alleged domestic violence and argued that despite “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.” He distinguished his facts from *Molloy* because his underlying order was on consent, not after a hearing, and because that respondent had a history of serious allegations and OP violations. Mother filed additional allegations of abuse.

The trial court found that the father was seemingly emboldened by the dismissal of the criminal case and his behavior and conduct during the fact-finding belied his arguments. Mother, on the other hand, was consistent and credible. As the parties need to continue interacting due to the children, an extension was appropriate.

C.K. v. J.D., 81 Misc.3d 1229(A)(Kings Co. Fam.Ct. 2024)(Unreported Disposition): The underlying case involved allegations of cyber-sexual abuse and a two year full stay away order of protection was issued upon consent. The petitioner sought not only permanent deletion of the intimate images, but also an additional extension of the order. The court granted the motion for deletion of the images but denied the extension. There was no fact-finding on the original case because of the consent order. The parties lived on opposite sides of the country and had no contact since the original order was issued. Petitioner argued that she believed the only thing stopping the abuse was the order and as he has a substance abuse history, any relapse may cause it to begin again. She also argued that he did not take responsibility for the impact of his abuse on her. There were multiple replies and sur-replies between the parties.

The court noted that the law did not distinguish between extending orders issued only upon consent or upon fact-finding, but found good cause did not exist because there has been no continued interference with her peaceful existence. Extending the order would be an “abuse of discretion” if it was to enhance her psychological well-being or peace of mind without more. The court was troubled by the respondent’s lack of awareness and insight regarding the nature and severity of his conduct from the original order but felt that the evidence of this lack of insight did not suggest

he continues to pose a risk of harm. Even though the petitioner has not shown good cause for an extension of the final order of protection, the petitioner's affidavit and her filing for an extension make clear that the petitioner does not want any contact with the respondent. Should the respondent attempt to make unwanted contact with the petitioner in the future, such conduct may be the basis for a new family offense proceeding, and a new order of protection. In sum, the temporary order of protection

V.A. v. L.S., 81 Misc.3d 1242(A)(Kings Co. Fam.Ct. 2023)(Unreported Disposition): Petitioner sought extension of her 5 year order for an additional 5 years in the IDV Court. Respondent opposed and also sought to have the case moved to and consolidated with the matrimonial action.

The trial court noted that the 2nd Dept in *Malloy, Lashlee, et al* approved extensions both with and without a hearing. Here in 2018 the original order was granted following an inquest due to respondent's default. However, the original judge is now unavailable. Given the serious nature of the new allegations in the extension, including ones that may constitute a violation, the court held that a hearing was required to make a good cause determination. The court was, however, willing to issue a temporary order until the hearing date. A hearing date was scheduled.

While there is a pending matrimonial, the court noted that it has concurrent jurisdiction with family offense matters. Additionally, this matter is not the same cause of action as the matrimonial because it addresses extension and an order of protection is not at issue in the divorce.