

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of

██████████

Petitioner,

Decision on Motion

-against-

██████████

Respondent.

Docket No. ██████████

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By Order to Show Cause dated ██████████ the Petitioner ██████████ moved this Court pursuant to F.C.A. § 842 for an Order Extending the Final Order of Protection against Respondent ██████████. After review of the Motion, supporting documents, the undated Response from the Respondent submitted to the Court on or about ██████████ and the ██████████ Affirmation of the Attorney for the Child, the Motion is granted and the Final Order of Protection is extended for two (2) years, effective ██████████.

As part of the initial Order to Show Cause, counsel for the Petitioner also asked the Court to make the necessary "good cause" findings without need for a further evidentiary hearing, given that significant information about the parties' circumstances and situation has consistently been before the Family Court on related cross reference dockets since the entry of the underlying order. (See, New York County Family Court dockets ██████████). Counsel for the Respondent did not specifically object to this application in his Response in Opposition, and it is therefore also granted.

The facts of this matter are not largely in dispute. Petitioner and respondent were involved in a romantic relation which resulted in the birth of their daughter ██████████ on ██████████. Prior to the child's birth, Respondent ██████████ was arrested following an assault on Petitioner in Queens in ██████████ and a Criminal Court Order of Protection was issued (See, ██████████). The Respondent violated that temporary Order on or about ██████████ and was again arrested. On or about the same date, the Petitioner suffered a stroke and was hospitalized. The stroke resulted in severe impairment which has required ongoing, long-term medical care and residence in a residential rehabilitation center. Initially, the Petitioner agreed for the child to stay with Respondent while she

recuperated. However, on or about [REDACTED] Respondent violated the Criminal Court Order of Protection an additional time by coming to the Petitioner's rehab facility. He was arrested again, leaving the child without a caretaker. Petitioner then voluntarily signed the child into foster care, having no other family members available to care for the child. Respondent was subsequently convicted of Aggravated Criminal Contempt and an 8 year Final Order of Protection was issued, which remains in effect until [REDACTED]

In [REDACTED] Petitioner also sought a Family Court Order of Protection to cover both herself and all three of her children. On [REDACTED] Respondent consented to the entry of a two year Final Order of protection, covering both the Petitioner and the child [REDACTED]

Unlike most litigants whom the court does not see again after the issuance of a Final Order, Petitioner and Respondent have continued to appear in Family Court, initially before Referee [REDACTED] who issued the FOP, and more recently before the undersigned Referee since [REDACTED]. Although still in physical rehab, Petitioner filed a custody petition in [REDACTED] and Respondent filed a paternity petition on [REDACTED]. In addition, the Court has routinely monitored the child's progress and the parent's engagement via permanency hearings on the Voluntary Placement docket. As part of the permanency hearings that have occurred since [REDACTED] the Court has received multiple reports from [REDACTED] and [REDACTED] detailing the Petitioner Mother's recovery, her efforts to located subsidized housing that can accommodate her wheelchair, the child's developmental milestones, the Respondent Father's involvement in restorative services (parenting skills, anger management and domestic violence counselling) and the quality of visitation between the child and each parent.

Good Cause for an Extension of the Order or Protection

Since the entry of the Family Court Order of Protection until today, the Petitioner has remained hospitalized or in a long-term physical rehabilitation program. Medical and security staff are available 24-hours a day. The facilities have all been made aware of the existence of the Order of protection. As such, the Petitioner has had a significant amount of protection. Shortly before the expiration of the 2 year Family Court Order of protection was due to expire, Petitioner's advocates from [REDACTED] successfully identified an accessible Section 8 apartment for her. She was suddenly faced with the prospect of the Order of Protection expiring at precisely the same time she was moving into her own apartment.

F.C.A § 842 authorizes the Family Court to extend a final order of protection for “good cause.” The Court finds that Petitioner has demonstrated good cause for the extension based on her imminent move to a demonstrably less secure location. Her stated fears regarding her safety given the history of the case are valid. The Respondent’s argument that he has not committed a violation of the existing order is unpersuasive. A finding of a violation is not a necessary element to a “good cause” analysis. Molloy v. Molloy, 24 NYS 3d 333 (2nd Dept., 2016); In re Ellen Z., 47 Misc. 3rd 389 (Queens Family Ct., 2015).

Because the parties share a young child and the Respondent currently has a temporary Order of Visitation, continued interaction between the parties is inevitable. In addition, the Petitioner’s physical condition and reliance on a wheelchair renders her more vulnerable than average. On balance, the Court finds that Petitioner’s fears are reasonable given the circumstances and support a finding of “good cause”.

Need for an Evidentiary Hearing

An evidentiary hearing is not necessary for the court to make the legally required finding that “good cause” exists. Molloy v. Molloy., *supra*; Juanita D. v. Mario D., 35 Misc.3d 719 (Queens Family Ct. 2012). As previously addressed, the parties have been before the Court on a continuous basis since the entry of the initial order and the Court is therefore privy to an enormous amount of information, much of it provided by the neutral third-party foster care agency. Additional testimony or evidence is unlikely to challenge the known facts and risks re-traumatizing the Petitioner. A different outcome is not warranted simply because the Respondent consented to the issuance of the underlying Order of Protection.

Moreover, Respondent did not address this issue in his Response in Opposition.

Length of Extension

Petitioner requests a 5 year extension, arguing that it is reasonable under the circumstances and that it is necessary in order to protect the child who is not covered by the Criminal Court Order of Protection. The Attorney for the Child supports an extension for 2 years given the existing court oversight and pending custody matters, under which protective orders could also be made.

The Respondent has engaged in rehabilitative services, including the completion of both anger management classes and domestic violence counselling. Although a finding that the respondent violated

the underlying Order of Protection is not an element in determining "good cause", it is notable that Respondent's respect for the various Orders in effect increased after the completion of those programs.

On the record before the Court, a 2 year extension effective [REDACTED] is appropriate. Although the parties will potentially have increased contact due to the young age of their daughter, safety provisions can be made on the pending custody and visitation matters to mitigate the risk.

This constitutes to Order of this Court.

Dated: [REDACTED]
New York, NY

