



ABSENCE OF A SEXUAL RELATIONSHIP IS NOT NECESSARILY DETERMINATIVE IN AN ASSESSMENT OF WHETHER A PARTY IS A MEMBER OF A HOUSEHOLD FOR PURPOSES OF JURISDICTION OVER A FAMILY OFFENSE PROCEEDING, FAMILY COURT SHOULD NOT HAVE MADE A FINDING RESPONDENT WAS NOT A MEMBER OF THE HOUSEHOLD WITHOUT HOLDING A HEARING (SECOND DEPT).

The Second Department, reversing Family Court, determined that Family Court should not have found that respondent and petitioner did not have an intimate relationship without holding a hearing. Petitioner sought an order of protection against respondent. Under the Family Court Act the court has jurisdiction in a family offense proceeding only if the parties are deemed to have an intimate relationship. Family Court found that, because the relationship was not sexual, it did not constitute an intimate relationship. The Second Department noted that the existence of a sexual relationship is not necessarily determinative and sent the matter back for a hearing:

The Family Court is a court of limited subject matter jurisdiction and “cannot exercise powers beyond those granted to it by statute”... . Pursuant to Family Court Act § 812(1), the Family Court’s jurisdiction in family offense proceedings is limited to certain prescribed acts that occur “between spouses or former spouses, or between parent and child or between members of the same family or household”

Effective July 21, 2008 ... , the Legislature expanded the definition of “members of the same family or household” to include, among others, “persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time” (Family Ct Act § 812[1][e] ...). The Legislature also expressly excluded from the definition of “intimate relationship” a “casual acquaintance” and “ordinary fraternization between two individuals in business or social contexts”... . Beyond those delineated exclusions, the Legislature left it to the courts to determine on a case-by-case basis whether a particular relationship constitutes an “intimate relationship” within the meaning of Family Court Act § 812(1)(e). The Legislature provided that “[f]actors the court may consider in determining whether a relationship is an intimate relationship’ include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship”... . The determination of whether persons are or have been in an “intimate relationship” within the meaning of the statute may require a hearing [Matter of Raigosa v Zafirakopoulos, 2018 NY Slip Op 08485, Second Dept 12-12-18](#)