

MOTION NO. (175/94) KA 10-01955. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KHARYE JARVIS, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND GREEN, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (1477/99) KA 99-00267. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SHAWN GLOVER, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND GREEN, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (1550/00) KA 97-05058. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JOHN HORACE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, CARNI, AND GORSKI, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (255/03) KA 01-02132. -- THE PEOPLE OF THE STATE OF NEW YORK, APPELLANT, V EDDIE ORTIZ, DEFENDANT-RESPONDENT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, CARNI, LINDLEY, AND GREEN, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (445/06) KA 05-00193. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICHARD F. MILLS, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, GORSKI,

AND MARTOCHE, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (1125/07) KA 06-01069. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SHAWN E. AKIN, DEFENDANT-APPELLANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., SMITH, FAHEY, LINDLEY, AND GREEN, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (882/10) KA 07-01910. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SERGIO PONDER, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND GORSKI, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (899/10) KA 09-00902. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V THOMAS B. SIMCOE, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., FAHEY, LINDLEY, SCONIERS, AND GREEN, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (1077/10) CA 10-00534. -- ARLENE S. GARLAND, AS EXECUTRIX OF THE ESTATES OF RICHARD T. SHANOR AND GENELLE M. SHANOR, DECEASED, PLAINTIFF-APPELLANT-RESPONDENT, V RLI INSURANCE COMPANY, DEFENDANT-RESPONDENT-APPELLANT, ET AL., DEFENDANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, AND SCONIERS, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (1440/10) CA 10-00847. -- IN THE MATTER OF COUNTY OF NIAGARA, PETITIONER-RESPONDENT, V RICHARD F. DAINES, COMMISSIONER, NEW YORK STATE DEPARTMENT OF HEALTH AND NEW YORK STATE DEPARTMENT OF HEALTH, RESPONDENTS-APPELLANTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (1444/10) CA 10-00947. -- DONNA PRINCE LYNCH, INDIVIDUALLY AND AS THE PARENT AND NATURAL GUARDIAN OF PHILIP LAWRENCE LYNCH, AND AS THE ADMINISTRATRIX OF THE ESTATE OF TIMOTHY JOHN LYNCH, DECEASED, PLAINTIFF-RESPONDENT-APPELLANT, V MIKE WATERS AS THE FIRE CONTROL COORDINATOR OF COUNTY OF ONONDAGA AND COUNTY OF ONONDAGA, DEFENDANTS-APPELLANTS-RESPONDENTS. MIKE WATERS AS FIRE CONTROL COORDINATOR OF COUNTY OF ONONDAGA AND COUNTY OF ONONDAGA, THIRD-PARTY PLAINTIFFS-APPELLANTS, V THE POMPEY HILL FIRE DISTRICT, THE POMPEY HILL FIRE DEPARTMENT, RICHARD ABBOTT, IN HIS OFFICIAL CAPACITY AS AN ASSISTANT CHIEF OF THE POMPEY HILL FIRE DEPARTMENT, MARK KOVALEWSKI, IN HIS OFFICIAL CAPACITY AS AN ASSISTANT CHIEF OF THE POMPEY HILL FIRE DEPARTMENT, THE VILLAGE OF MANLIUS, THE MANLIUS FIRE DEPARTMENT, RAYMOND DILL, IN HIS OFFICIAL CAPACITY AS A DEPUTY CHIEF OF THE MANLIUS FIRE DEPARTMENT, THIRD-PARTY DEFENDANTS-RESPONDENTS, AND JOSEPH MESSINA, THIRD-PARTY DEFENDANT. (APPEAL NO. 2.) -- Motion insofar as it sought in the alternative leave to appeal to the Court of Appeals be and the same hereby is denied and the motion insofar as it sought reargument is granted in part and, upon reargument, the majority memorandum

and order entered December 30, 2010 (79 AD3d 1709) is vacated and the following majority memorandum and order is substituted therefor:

It is hereby ordered that the amended order so appealed from is modified on the law by denying those parts of the motion of third-party defendants the Pompey Hill Fire District, the Pompey Hill Fire Department, Richard Abbott, in his official capacity as an Assistant Chief of the Pompey Hill Fire Department, and Mark Kovalewski, in his official capacity as an Assistant Chief of the Pompey Hill Fire Department, for summary judgment dismissing the complaint against the Pompey Hill Fire District and the Pompey Hill Fire Department, denying the motion of third-party defendants the Village of Manlius and the Manlius Fire Department, reinstating the third-party complaint against third-party defendants the Pompey Hill Fire District, the Pompey Hill Fire Department, the Village of Manlius and the Manlius Fire Department and granting those parts of plaintiff's cross motion to dismiss the affirmative defenses of those third-party defendants pursuant to General Municipal Law § 205-b and as modified the amended order is affirmed without costs, and the matter is remitted to Supreme Court, Onondaga County, for further proceedings in accordance with the following Memorandum: Plaintiff commenced this action, individually and as the parent and natural guardian of her son and the administratrix of the estate of her husband (decedent), seeking damages for, inter alia, the wrongful death of decedent. Decedent, a volunteer firefighter, was killed while fighting a fire that started in the basement of a house located in the Town of Pompey. According to plaintiff, defendants-third-party plaintiffs (hereafter, defendants) are liable pursuant to General Municipal Law § 205-a. Defendants thereafter commenced

a third-party action for common-law contribution "and/or" indemnification. Supreme Court granted the motion of third-party defendants the Pompey Hill Fire District and the Pompey Hill Fire Department (collectively, Pompey Hill defendants) and third-party defendants Richard Abbott and Mark Kovalewski, in their official capacities as Assistant Chiefs of the Pompey Hill Fire Department (collectively, individual defendants), as well as the motion of third-party defendants the Village of Manlius and the Manlius Fire Department (collectively, Manlius defendants), for summary judgment dismissing the third-party complaint against them. The court also denied defendants' cross motion for leave to amend the third-party complaint to include, inter alia, allegations of willful negligence on the part of third-party defendant Raymond Dill, in his official capacity as Deputy Chief of the Manlius Fire Department, the Pompey Hill defendants and the Manlius defendants and denied as moot plaintiff's cross motion to dismiss "any [and] all affirmative defense[s] brought by any parties under Firefighters' Benefit Law [§] 19 and General Municipal Law [§] 205-b" In addition, the court sua sponte dismissed the third-party complaint against Dill.

We note at the outset that this Court improperly deemed plaintiff's cross appeal from the amended order abandoned and dismissed for failure to perfect within nine months of service of the notice of appeal (see 22 NYCRR 1000.12 [b]). The cross motion of plaintiff for permission for an extension of time to file her brief encompassed both the court's original order and the amended order, and this Court incorrectly granted that cross motion only with respect to the original order. In view of our error, we

exercise our discretion to treat the cross appeal from the amended order as properly perfected (see generally CPLR 5520 [c]; *Crane-Hogan Structural Sys., Inc. v ESLS Dev., LLC*, 77 AD3d 1302).

We agree with defendants on their appeal and with plaintiff on her cross appeal that the Pompey Hill defendants and the Manlius defendants are not immune from liability pursuant to General Municipal Law § 205-b. We thus conclude that the court erred in granting those parts of the motion of the Pompey Hill defendants and the individual defendants seeking summary judgment dismissing the complaint against the Pompey Hill defendants and in granting the motion of the Manlius defendants. For the same reasons, we conclude that the court erred in denying those parts of plaintiff's cross motion seeking to dismiss the affirmative defenses of the Pompey Hill defendants and the Manlius defendants pursuant to section 205-b. We therefore modify the amended order accordingly. "It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature" (*Patrolmen's Benevolent Assn. of City of N.Y. v City of New York*, 41 NY2d 205, 208). Inasmuch as "the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself" (*Majewski v Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 583; see *Feher Rubbish Removal, Inc. v New York State Dept. of Labor, Bur. of Pub. Works*, 28 AD3d 1, 3-4, lv denied 6 NY3d 711). "If the 'language . . . is clear and unambiguous, courts must give effect to its plain meaning' " (*Matter of M.B.*, 6 NY3d 437, 447, quoting *State of New York v Patricia II.*, 6 NY3d 160, 162).

Pursuant to General Municipal Law § 205-b, “[m]embers of duly organized volunteer fire companies . . . shall not be liable civilly for any act or acts done by them in the performance of their duty as volunteer firefighters, except for wilful negligence or malfeasance” (emphasis added). Thus, under the plain language of the statute, the immunity conferred by section 205-b applies only to individual volunteer firefighters, not their municipal employers (see *Rosenberg v Fuller Rd. Fire Dept.*, 34 AD2d 653, 654, *affd* 28 NY2d 816; *Sawyer v Town of Lewis*, 6 Misc 3d 1024[A], 2003 NY Slip Op 51751[U], *6, *mod on other grounds* 11 AD3d 938; see *Tobacco v North Babylon Volunteer Fire Dept.*, 182 Misc 2d 480, 483-484, *affd* 276 AD2d 551; *Ryan v Town of Riverhead*, ___ Misc 3d ___ [Mar. 23, 2010], 2010 NY Slip Op 30661[U]). The court thus properly granted those parts of the motion of the Pompey Hill and individual defendants for summary judgment dismissing the complaint against the individual defendants. There is nothing in the statute, however, that similarly confers immunity upon fire districts or other municipal entities. To the contrary, the second sentence of section 205-b provides that “fire districts created pursuant to law shall be liable for the negligence of volunteer firefighters duly appointed to serve therein in the operation of vehicles owned by the fire district upon the public streets and highways of the fire district” (emphasis added). Indeed, General Municipal Law § 205-b is entitled “Relief of volunteer firefighters engaged in the performance of duty as such firefighters from civil liability and liability of fire districts for the acts of volunteer firefighters.” The plain language of the statute thus reflects the Legislature’s dual purposes in enacting section 205-b: first, to immunize volunteer firefighters from civil

liability for ordinary negligence and, second, to shift liability for such negligence to the fire districts that employ them (see *Sikora v Keillor*, 17 AD2d 6, 8, *affd* 13 NY2d 610).

The Pompey Hill defendants and the Manlius defendants contend that the Legislature intended that fire departments and municipalities be subject to vicarious liability only for firefighters' negligent operation of vehicles. Their reliance on the second sentence of General Municipal Law § 205-b in support of that contention is misplaced. In *Thomas v Consolidated Fire Dist. No. 1 of Town of Niskayuna* (50 NY2d 143), the Court of Appeals rejected a similar contention, namely, that section 205-b impliedly exempts fire districts from liability except as specifically provided by that section. The Court explained the historical context of section 205-b: "Although the State waived its immunity from liability in 1929 with the enactment of section 8 of the Court of Claims Act, this waiver of immunity was not found to be applicable to the local subdivisions of the State until 1945, when [the Court of Appeals] issued its decision in *Bernardine v City of New York* (294 NY 361). It thus appears that in 1934, the year [General Municipal Law §] 205-b was enacted, the Legislature had intended to expand, not restrict, the liability of fire districts . . . In other words, the Legislature sought to assure that there would be some liability on the part of the fire districts where previously there had been some doubt. To now read section 205-b as restricting liability--as exempting a fire district from liability in all situations other than that prescribed in the section--would be error" (*id.* at 146 [emphasis added]).

The Pompey Hill defendants and the Manlius defendants further contend that, because individual firefighters are immune from liability pursuant to

General Municipal Law § 205-b, they cannot be held vicariously liable for the alleged negligence of those firefighters. We reject that contention. The Court of Appeals rejected a similar argument in *Tikhonova v Ford Motor Co.* (4 NY3d 621, 623), concluding that a vehicle owner may be held vicariously liable pursuant to Vehicle and Traffic Law § 388 for the negligence of a diplomat driver who is immune from suit under 22 USC § 254d. The Court distinguished *Sikora* (13 NY2d 610, *affg* 17 AD2d 6), in which it “affirmed, without opinion, the Appellate Division’s determination that no liability attaches to a vehicle owner where the negligent driver (a volunteer firefighter) was immune from suit under General Municipal Law § 205-b” (*Tikhonova*, 4 NY3d at 625). The Court noted that a contrary result in *Sikora* “would have discouraged volunteers from responding to emergencies by reducing the number of people willing to lend vehicles to those volunteers” (*id.*). Here, the policy reasons underlying the immunity afforded to volunteer firefighters individually, i.e., to encourage individuals to volunteer for public service and to protect their personal assets from liability for ordinary negligence do not apply to the entities that employ them (*see id.*; *Sikora*, 17 AD2d at 7-8; *see also* Sponsor’s Mem, Bill Jacket, L 1934, ch 489; Letter from Firemen’s Assn of State of NY, April 28, 1934, at 1, Bill Jacket, L 1934, ch 489).

With respect to the contention of plaintiff that the court erred in denying that part of her cross motion to dismiss the Pompey Hill defendants’ affirmative defense based upon Volunteer Firefighters’ Benefit Law § 19, we note that the court did not address the merits of that issue because it denied plaintiff’s cross motion as moot. In view of our determination, we conclude that plaintiff’s cross motion with respect that

issue is no longer moot, and we therefore remit the matter to Supreme Court to determine that part of plaintiff's cross motion. Finally, we note that neither defendants on their appeal nor plaintiff on her cross appeal raised any issue concerning the court's sua sponte dismissal of the third-party complaint against Dill, and they therefore have abandoned any issues with respect thereto (*see Ciesinski v Town of Aurora*, 202 AD2d 984).

All concur except FAHEY, J., who dissents in part and votes to grant the motion for reargument in part but in addition votes to grant leave to appeal to the Court of Appeals, the alternative relief sought in the motion. PRESENT: SMITH, J.P., CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (1463/10) CA 10-01412. -- ALEXANDRA BENSHOFF,
PLAINTIFF-APPELLANT, V ADAM R. RAKOCZY, ET AL., DEFENDANTS, AND NIAGARA
MOHAWK POWER CORPORATION, DEFENDANT-RESPONDENT. -- Motion for reargument or leave to appeal to the Court of Appeals and to amend the record denied.
PRESENT: SCUDDER, P.J., CARNI, LINDLEY, AND GORSKI, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (1485/10) CA 10-01624. -- VICTOR DEMJANENKO,
PLAINTIFF-RESPONDENT, V VIRGINIA L. DEMJANENKO, DEFENDANT-APPELLANT. --
Motion for reargument or leave to appeal to the Court of Appeals denied.
PRESENT: SMITH, J.P., PERADOTTO, GREEN, AND MARTOCHE, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (1547/10) KA 09-00200. -- THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT, V HILLERY M. DUPLEASIS, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., SMITH, GREEN, AND GORSKI, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (1580/10) CA 10-01340. -- **C. BRUCE LAWRENCE, ESQ., TRUSTEE IN BANKRUPTCY FOR ROGER JACKSON, PLAINTIFF-RESPONDENT-APPELLANT, V GUARDSMARK, LLC, DEFENDANT-APPELLANT-RESPONDENT.** -- Motion for leave to appeal to the Court of Appeals and to stay the pending trial in Supreme Court denied. PRESENT: CENTRA, J.P., FAHEY, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Mar. 25, 2011.)

MOTION NO. (1615/10) CA 10-00897. -- **VALERIE SHANE, PLAINTIFF-APPELLANT, V CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY, CENTRO OF ONEIDA, INC. AND STEPHEN PIZUR, DEFENDANTS-RESPONDENTS.** -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: FAHEY, J.P., CARNI, LINDLEY, SCONIERS, AND MARTOCHE, JJ. (Filed Mar. 25, 2011.)

KA 09-00739. -- **THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V WILLIE COOPER, DEFENDANT-APPELLANT.** -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Monroe County Court, John R. Schwartz, A.J. - Absconding from Temporary Release, 1st Degree). PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Mar. 25, 2011.)

KA 08-00889. -- **THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V LAMAR J.**

COOPER, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Monroe County Court, Frank P. Geraci, Jr., J. - Sexual Abuse, 1st Degree). PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Mar. 25, 2011.)

KA 09-00737. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DALE EAVES, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Yates County Court, W. Patrick Falvey, J. - Failure to Register Change of Address). PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Mar. 25, 2011.)

KA 08-02130. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DONALD D. HARRIS, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Monroe County Court, Stephen T. Miller, A.J. - Attempted Criminal Possession of a Controlled Substance, 5th Degree). PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Mar. 25, 2011.)

KA 09-01886. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DUSTIN S. HARRIS, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Ontario County Court, William F. Kocher, J. - Violation of Probation). PRESENT: SCUDDER,

P.J., CENTRA, SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Mar. 25, 2011.)

KA 11-00274. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DUSTIN S. HARRIS, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed.

Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Ontario County Court, William F. Kocher, J. - Criminal Contempt, 1st Degree). PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Mar. 25, 2011.)

KA 11-00464. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KIMBERLY A. LEARN, DEFENDANT-APPELLANT. -- Motion to dismiss granted. Memorandum:

Appeal unanimously dismissed and matter remitted to Cattaraugus County Court to vacate the judgment of conviction and dismiss the indictment either sua sponte or on application of either the District Attorney or counsel for defendant (*see People v Matteson*, 75 NY2d 745). PRESENT: SCUDDER, P.J., SMITH, CENTRA, FAHEY, AND PERADOTTO, JJ. (Filed Mar. 25, 2011.)

KA 08-01261. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL PATTERSON, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed.

Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Monroe County Court, Stephen T. Miller, A.J. - Criminal Mischief, 4th Degree). PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed Mar. 25, 2011.)

KA 08-01799. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ALINA PHELPS, DEFENDANT-APPELLANT. -- The case is held, the decision is reserved, the motion to relieve counsel of assignment is granted and new counsel is to be assigned. Memorandum: Defendant was convicted upon a guilty plea of attempted burglary in the second degree (Penal Law §§ 110.00, 140.25 [2]), and was sentenced to a determinate term of imprisonment of four years and five years postrelease supervision, to be served concurrently with a determinate sentence imposed on the same date for a separate felony conviction. Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to *People v Crawford* (71 AD2d 38). However, because the record reflects that defendant committed the instant violent felony offense while awaiting sentence on the prior offense, we find that a nonfrivolous issue exists as to whether concurrent sentences were illegally imposed (see Penal Law § 70.25 [2-b]). Therefore, we relieve counsel of his assignment and assign new counsel to brief this issue, as well as any other issues that counsel's review of the record may disclose. (Appeal from Judgment of Steuben County Court, Joseph William Latham, J. - Attempted Burglary, 2nd Degree). PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, GORSKI, AND MARTOCHE, JJ. (Filed March 25, 2011.)

CAF 10-00911. -- IN THE MATTER OF CATTARAUGUS COUNTY DEPARTMENT OF SOCIAL SERVICES, ON BEHALF OF TAMMY L. SOSA, PETITIONER-RESPONDENT, V MARCUS D. VEASLEY, RESPONDENT-APPELLANT. -- Appeal dismissed without costs as moot. Counsel's motion to be relieved of assignment granted. (Appeal from Order of Family Court, Cattaraugus County, Michael L. Nenno, J. - Wilful Violation). PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, GORSKI, AND

MARTOCHE, JJ. (Filed Mar. 25, 2011.)