

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

778

CAF 15-01624

PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, TROUTMAN, AND SCUDDER, JJ.

IN THE MATTER OF LAHNI THOMAS,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

GEOFFREY THOMAS, RESPONDENT-RESPONDENT.
(APPEAL NO. 1.)

CHAFFEE & LINDER, PLLC, BATH (RUTH A. CHAFFEE OF COUNSEL), FOR
PETITIONER-APPELLANT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (ELIZABETH deV. MOELLER OF
COUNSEL), FOR RESPONDENT-RESPONDENT.

JOAN MERRY, ATTORNEY FOR THE CHILDREN, HORNELL.

Appeal from an order of the Family Court, Steuben County (J.C. Argetsinger, J.H.O.), entered August 27, 2015 in a proceeding pursuant to Family Court Act article 8. The order dismissed the petition.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In appeal No. 1, petitioner-respondent mother appeals from an order that dismissed her petition brought pursuant to Family Court Act article 8 alleging that respondent-petitioner father violated an order of protection. We reject the mother's contention that Family Court erred in dismissing the petition. According the requisite deference to the court's credibility determinations with respect to the parties' witnesses at the hearing (*see Matter of Schoenl v Schoenl*, 136 AD3d 1361, 1362), we conclude that the court properly determined that the mother failed to establish by clear and convincing evidence that the father violated the terms of the order of protection (*see Matter of Lanzafame v Jones*, 121 AD3d 1598, 1598, *lv denied* 24 NY3d 913).

In appeal No. 2, the mother appeals from an order that, among other things, denied her petition seeking permission to relocate with the parties' children from Hornell to Buffalo. While these consolidated appeals were pending, the parties filed additional modification petitions and, after a hearing, the court issued an order that newly resolved the custody and visitation issues with respect to the children. We conclude that the superseding order renders appeal No. 2 moot, and the exception to the mootness doctrine does not apply

(see *Matter of Pugh v Richardson*, 138 AD3d 1423, 1423-1424; *Matter of Trombley v Payne*, 133 AD3d 1252, 1252).

Entered: June 30, 2017

Frances E. Cafarell
Clerk of the Court