

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

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CA 21-01619

PRESENT: WHALEN, P.J., NEMOYER, CURRAN, BANNISTER, AND MONTOUR, JJ.

IN THE MATTER OF TOWN OF OGDEN,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

JEREMY WOLF, RESPONDENT-APPELLANT.

PENBERTHY LAW GROUP LLP, BUFFALO (BRITTANY PENBERTHY OF COUNSEL), FOR
RESPONDENT-APPELLANT.

KEITH O'TOOLE, ROCHESTER, FOR PETITIONER-RESPONDENT.

Appeal from an order of the Monroe County Court (Michael L. Dollinger, J.), entered April 24, 2021. The order, inter alia, affirmed that part of an order of the Ogden Town Court determining that respondent's dog was a dangerous dog under Agriculture and Markets Law § 123.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Respondent appeals from an order of County Court that, inter alia, affirmed Town Court's determination that the dog was a dangerous dog under Agriculture and Markets Law § 123 and that the victim had sustained serious physical injury when the dog attacked her without justification. We dismiss the appeal as moot because the issues in this case no longer present a live controversy inasmuch as "the dog died during the pendency of this appeal" (*Board of Mgrs. of the Cove Club Condominium v Jacobson*, 107 AD3d 414, 414 [1st Dept 2013]). We further conclude that the exception to the mootness doctrine does not apply (see generally *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715 [1980]).

Entered: December 23, 2022

Ann Dillon Flynn
Clerk of the Court