

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

1456

CAF 16-00088

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, CURRAN, AND WINSLOW, JJ.

IN THE MATTER OF KEON D.W.

NIAGARA COUNTY DEPARTMENT OF SOCIAL SERVICES,
PETITIONER-RESPONDENT;

MEMORANDUM AND ORDER

DESIRE E., RESPONDENT-APPELLANT.

CHARLES J. GREENBERG, AMHERST, FOR RESPONDENT-APPELLANT.

ANTHONY L. RESTAINO, LOCKPORT, FOR PETITIONER-RESPONDENT.

MELISSA A. CAVAGNARO, BUFFALO, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Niagara County (John F. Batt, J.), entered December 22, 2015 in a proceeding pursuant to Family Court Act article 10. The order placed the subject child in the temporary custody of his father.

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

Memorandum: Respondent mother appeals from an order entered in a proceeding pursuant to Family Court Act article 10, which awarded temporary custody of her son to the son's biological father while she was incarcerated. We dismiss the appeal because a finding of neglect and final dispositional order was entered during the pendency of this appeal. An appeal from a temporary order is "rendered moot by Family Court's subsequent finding of neglect" and issuance of a final dispositional order, and thus "must be dismissed" (*Matter of Makayleigh A. [Miranda A.]*, 146 AD3d 1103, 1104 [3d Dept 2017]; see *Matter of Bruce P.*, 138 AD3d 864, 865 [2d Dept 2016]; *Matter of John S.*, 26 AD3d 870, 870 [4th Dept 2006]). " 'Inasmuch as a temporary order is not a finding of wrongdoing, the exception to the mootness doctrine does not apply' " (*Matter of Faith B. [Rochelle C.]*, 158 AD3d 1282, 1282-1283 [4th Dept 2018], lv denied 31 NY3d 910 [2018]; see *Matter of Cali L.*, 61 AD3d 1131, 1133 [3d Dept 2009]).

Entered: December 21, 2018

Mark W. Bennett
Clerk of the Court