

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

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CA 21-01132

PRESENT: SMITH, J.P., PERADOTTO, CURRAN, MONTOUR, AND OGDEN, JJ.

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DEBRA D. SMITH, PLAINTIFF-APPELLANT,

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MEMORANDUM AND ORDER

THOMAS P. AZZARELLA, DEFENDANT-RESPONDENT.

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DEBRA D. SMITH, PLAINTIFF-APPELLANT PRO SE.

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Appeal from an order of the Supreme Court, Erie County (Frank A. Sedita, III, J.), entered January 11, 2021. The order, inter alia, referred the matter to a referee to oversee and determine the distribution of personal property.

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

Memorandum: To the extent that the appeal has not been rendered moot, the order is not appealable as of right (*see Valiotis v Bekas*, 191 AD3d 1038, 1040 [2d Dept 2021]; *Selinger v Selinger*, 232 AD2d 471, 471 [2d Dept 1996], *lv dismissed* 89 NY2d 981 [1997], *lv dismissed* 90 NY2d 842 [1997], *rearg denied* 90 NY2d 937 [1997]; *Crowley v Hazen*, 85 AD2d 928, 928 [4th Dept 1981]; *see generally* CPLR 5701 [a]), and we decline to treat the notice of appeal as an application for leave to appeal (*see* CPLR 5701 [c]).

Entered: July 28, 2023

Ann Dillon Flynn  
Clerk of the Court