

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D23802
W/kmg

_____AD3d_____

Argued - May 26, 2009

ROBERT A. SPOLZINO, J.P.
MARK C. DILLON
HOWARD MILLER
THOMAS A. DICKERSON, JJ.

2006-07490

DECISION & ORDER

M. S. (Anonymous), etc., et al., respondents, v County of Orange, et al., appellants, et al., defendants.

(Index No. 6063/02)

David L. Darwin, County Attorney, Goshen, N.Y. (Laura Wong-Pan of counsel), for appellants.

Patrick S. Owen, Goshen, N.Y., for respondents.

In an action to recover damages for personal injuries, etc., the defendants County of Orange and Margaret Kirchner, Commissioner of Orange County Department of Social Services, appeal, as limited by their brief, from so much of an order of the Supreme Court, Orange County (Alessandro, J.), dated July 13, 2006, as denied that branch of their motion which was for summary judgment dismissing so much of the complaint as alleged negligent supervision insofar as asserted against them.

Motion by the plaintiffs to dismiss the appeal on the ground that the right of direct appeal terminated with entry of a final judgment in the action. By decision and order on motion of this Court dated January 23, 2009, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is,

ORDERED that the motion is granted; and it is further,

July 7, 2009

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ORDERED that the appeal is dismissed, without costs or disbursements.

The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of final judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (*see CPLR 5501[a][1]*; *M.S. v County of Orange*, _____AD3d_____ [Appellate Division Docket No. 2007-09165; decided herewith]).

SPOLZINO, J.P., DILLON, MILLER and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court