

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

D32921
C/kmb

_____AD3d_____

Argued - October 31, 2011

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
SHERI S. ROMAN, JJ.

2010-03470

DECISION & ORDER

In the Matter of Don Weiner, appellant, v State of
New York, et al., respondents/defendants-respondents,
et al., respondent/defendant.

(Index No. 33612/09)

Robert J. Del Col, Smithtown, N.Y., for appellant.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Benjamin N. Gutman,
Monica Wagner, and Claude S. Platten of counsel), for respondents/defendants-
respondents.

In a hybrid proceeding, inter alia, pursuant to CPLR article 78 in the nature of prohibition to prohibit enforcement of a temporary order of protection issued against the petitioner on April 3, 2009, and extended on April 8, 2009, and for a declaratory judgment, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Suffolk County (Whelan, J.), dated March 26, 2010, which granted that branch of the motion of the respondents/defendants State of New York, David Patterson, and G. Ann Spelman which was to dismiss the petition insofar as asserted against them as time-barred, and dismissed the proceeding in its entirety, and, in effect, granted that branch of the motion of those respondents/defendants which was pursuant to CPLR 3211(a)(7) to dismiss the complaint for failure to state a cause of action, and dismissed the action.

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

As the temporary order of protection at issue in this case has been vacated, any determination by this Court will not directly affect the rights of the parties (*see Festa v Festa*, 76

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AD3d 1047, 1047-1048; *Matter of Bucaro v Morales*, 62 AD3d 994, 995). Since the matter does not warrant the invocation of the exception to the mootness doctrine (*see Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714), the appeal must be dismissed as academic (*see Matter of Bucaro v Morales*, 62 AD3d at 995).

RIVERA, J.P., DICKERSON, ENG and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court