

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

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CA 16-02233

PRESENT: SMITH, J.P., CENTRA, PERADOTTO, LINDLEY, AND NEMOYER, JJ.

IN THE MATTER OF DARLENE SIKORSKI-PETRITZ,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

COUNTY OF ERIE, RESPONDENT-RESPONDENT.

JASON R. DIPASQUALE, BUFFALO, FOR PETITIONER-APPELLANT.

HURWITZ & FINE, P.C., BUFFALO (ANN E. EVANKO OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court, Erie County (Joseph R. Glownia, J.), entered April 7, 2016 in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to vacate the decision of respondent, County of Erie (County), to demote her from a position as Counsel-Social Services to a position of Medical Caseworker. Petitioner contends that she was appointed to a permanent or contingent permanent position as Counsel-Social Services and was therefore entitled to the procedural protections of Civil Service Law § 75 prior to her demotion. Supreme Court properly dismissed the petition. The record establishes that the County appointed petitioner to a temporary Counsel-Social Services position, and therefore the protections of Civil Service Law § 75 do not apply (*see Matter of Jones v Westchester County Dept. of Social Servs.*, 228 AD2d 601, 601; *Matter of Ause v Regan*, 59 AD2d 317, 323). Contrary to petitioner's contention, the temporary appointment could exceed three months because the appointment was made for a position that was encumbered by an employee on leave of absence (*see* § 64 [1] [a]). Inasmuch as the Counsel-Social Services position did not become vacant before petitioner's demotion, her temporary appointment to that position could not have ripened into a permanent one (*see generally Matter of Albany Permanent Professional Firefighters Assn., Local 2007, IAFF, AFL-CIO v City of Albany*, 303 AD2d 819, 819-820; *Matter of Wadsworth v Garnsey*, 62 AD2d 1141, 1141, *lv denied* 45 NY2d 706). We have considered petitioner's remaining contentions and conclude that

they are without merit.

Entered: June 9, 2017

Frances E. Cafarell
Clerk of the Court