

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

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CAF 08-00426

PRESENT: HURLBUTT, J.P., PERADOTTO, CARNI, GREEN, AND PINE, JJ.

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IN THE MATTER OF LEAH S., GABRIEL S., SAMI S.,  
AND BABY T.

----- MEMORANDUM AND ORDER  
ORLEANS COUNTY DEPARTMENT OF SOCIAL SERVICES,  
PETITIONER-RESPONDENT;

JESSICA T., RESPONDENT-APPELLANT.

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THOMAS N. MARTIN, ROCHESTER, FOR RESPONDENT-APPELLANT.

DAVID C. SCHUBEL, COUNTY ATTORNEY, ALBION (JAMES D. BELL OF COUNSEL),  
FOR PETITIONER-RESPONDENT.

KATHLEEN M. CONTRINO, LAW GUARDIAN, NORTH TONAWANDA, FOR LEAH S.,  
GABRIEL S., SAMI S., AND BABY T.

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Appeal from an order of the Family Court, Orleans County (James P. Punch, J.), entered February 6, 2008 in a proceeding pursuant to Family Court Act article 10. The order, insofar as appealed from, ordered that visitation shall occur only if petitioner deemed it appropriate.

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

Memorandum: On appeal from an order of fact-finding and disposition finding that respondent mother abused her children and ordering, inter alia, that visitation between the mother and three of her children "shall occur only if the [petitioner] deems it appropriate and as outlined in the companion Article 6 Custody Order," the mother's sole contention is that Family Court improperly delegated to petitioner its authority to determine whether visitation was appropriate. While we agree with the mother with respect to the merits of her contention (see *Matter of Hameed v Alatawaneh*, 19 AD3d 1135; *Matter of Battista v Battista*, 294 AD2d 941; *Wills v Wills*, 283 AD2d 1023), we conclude that, because the order on appeal has expired, this appeal is moot (see e.g. *Matter of Julia R.*, 52 AD3d 1310, lv denied 11 NY3d 709; *Matter of Abbi M.*, 37 AD3d 1084; *Matter of Michael G.*, 300 AD2d 1144).

Entered: April 24, 2009

Patricia L. Morgan  
Deputy Clerk of the Court