

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

1180

CAF 12-00203

PRESENT: SMITH, J.P., FAHEY, SCONIERS, VALENTINO, AND WHALEN, JJ.

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IN THE MATTER OF MICHAEL S., JR.,  
RESPONDENT-APPELLANT.

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MONROE COUNTY ATTORNEY,  
PETITIONER-RESPONDENT.

MEMORANDUM AND ORDER

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TANYA J. CONLEY, ATTORNEY FOR THE CHILD, ROCHESTER, FOR  
RESPONDENT-APPELLANT.

WILLIAM K. TAYLOR, COUNTY ATTORNEY, ROCHESTER (SCOTT WILLIAM  
WESTERVELT OF COUNSEL), FOR PETITIONER-RESPONDENT.

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Appeal from an order of the Family Court, Monroe County (Joan S. Kohout, J.), entered December 29, 2011 in a proceeding pursuant to Family Court Act article 7. The order, among other things, placed respondent in the custody of the Commissioner of Health and Human Services of Monroe County for a period of 12 months.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the motion is granted and the petition is dismissed.

Memorandum: Respondent appeals from a dispositional order entered in a violation of probation proceeding pursuant to Family Court Act § 779. The order revoked respondent's probation and imposed a placement outside of his home for a period of 12 months. Respondent's appeal from the dispositional order brings up for review the denial of respondent's motion to dismiss the violation petition (see CPLR 5501 [a] [1]; *Matter of James L.* [appeal No. 2], 74 AD3d 1775, 1775). We conclude that Family Court erred in denying that motion. In the absence of the filing of a declaration of delinquency pursuant to Family Court Act § 779-a, which tolls a disposition of probation pending a final determination on the violation petition, the court's authority to enter a dispositional order expired on the date on which the order of probation expired (see §§ 779, 779-a).

Entered: November 16, 2012

Frances E. Cafarell  
Clerk of the Court