

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

D54490
M/hu

_____AD3d_____

Argued - December 5, 2017

CHERYL E. CHAMBERS, J.P.
L. PRISCILLA HALL
COLLEEN D. DUFFY
BETSY BARROS, JJ.

2016-09081

DECISION & ORDER

Eluzer Ausch, respondent, v Etty Ausch, appellant.

(Index No. 55379/15)

Beth E. Goldman, New York, NY (Alexandra Lewis-Reisen of counsel), for appellant.

Kanfer & Holtzer, LLP, New York, NY (Mark Holtzer of counsel), for respondent.

Cheryl S. Solomon, Brooklyn, NY, attorney for the children.

Appeal from an order of the Supreme Court, Kings County (Eric I. Prus, J.), dated August 15, 2016. The order, insofar as appealed from, in effect, denied that branch of the defendant's motion which was, in effect, to vacate an order of that court dated June 30, 2016, granting the plaintiff's application to direct that the subject children temporarily reside with nonparty relatives during a trial on the issue of custody, and directed that the defendant's visitation with the subject children be supervised.

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

The plaintiff commenced this action for a divorce and ancillary relief. During a trial on the issue of custody, the plaintiff made an application for temporary custody of the subject children or, in the alternative, to direct that the subject children temporarily reside with nonparty relatives. In an order dated June 30, 2016, the Supreme Court directed that the subject children temporarily reside with nonparty relatives. The defendant subsequently moved, inter alia, in effect, to vacate the order dated June 30, 2016. In an order dated August 15, 2016, the court, in effect, denied that branch of the defendant's motion which was, in effect, to vacate the order dated June 30, 2016, and directed that, until further order of the court, the subject children would continue to

temporarily reside with the nonparty relatives and that the plaintiff and the defendant were permitted only supervised visitation. The defendant appeals from the order dated August 15, 2016.

The appeal from so much of the order dated August 15, 2016, as, in effect, denied that branch of the defendant's motion which was, in effect, to vacate the order dated June 30, 2016, granting the plaintiff's application to direct that the subject children temporarily reside with nonparty relatives must be dismissed as academic, as the order dated June 30, 2016, was superseded by a subsequent order dated December 13, 2017, directing that the plaintiff shall have residential custody of the subject children (*see Matter of Julian S. [Patricia L.]*, 121 AD3d 796, 798; *Matter of Michael F. [Fausat O.]*, 100 AD3d 752; *Matter of Araynah B. [Moshammatt R.]*, 71 AD3d 881). The appeal from so much of the order dated August 15, 2016, as directed that the defendant's visitation be supervised must be dismissed because this portion of the order did not decide a motion made on notice (*see CPLR 5701[a][2]*), and leave to appeal from that portion of the order has not been granted (*see CPLR 5701[c]*; *Gawrych v Astoria Fed. Sav. & Loan*, 148 AD3d 681).

CHAMBERS, J.P., HALL, DUFFY and BARROS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court