

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

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**CAF 23-01708**

PRESENT: LINDLEY, J.P., MONTOUR, OGDEN, DELCONTE, AND HANNAH, JJ.

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IN THE MATTER OF JOYCE KENYON, PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

MOLLY NICOLETTA, RESPONDENT-APPELLANT.

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ERICKSON WEBB SCOLTON & HAJDU, LAKEWOOD (LYLE T. HAJDU OF COUNSEL),  
FOR RESPONDENT-APPELLANT.

DEBORAH K. JESSEY, CLARENCE, ATTORNEY FOR THE CHILD.

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Appeal from an order of the Family Court, Cattaraugus County (Moses M. Howden, J.), entered July 18, 2023, in a proceeding pursuant to Family Court Act article 6. The order, inter alia, granted sole custody of the subject child to petitioner.

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

Memorandum: In this proceeding pursuant to article 6 of the Family Court Act, respondent mother appeals from an order, entered following an evidentiary hearing, that granted sole custody of the subject child to the child's paternal grandmother. We agree with the Attorney for the Child that the appeal must be dismissed because the notice of appeal was not filed within 35 days of the date that the order from which the mother seeks to appeal was served by mail upon her, as required by Family Court Act § 1113 (*see Matter of Fraser v Fraser*, 185 AD3d 1444, 1444-1445 [4th Dept 2020]; *Matter of Arkadian S. [Crystal S.]*, 130 AD3d 1457, 1458 [4th Dept 2015], lv dismissed 26 NY3d 995 [2015]; *Matter of Liliana G. [Orena G.]*, 91 AD3d 1325, 1326 [4th Dept 2012]). "A timely notice of appeal is a jurisdictional prerequisite, and the time to take an appeal cannot be extended when the notice of appeal was neither timely filed nor served" (*Matter of Jones v Coughlin*, 207 AD2d 1037, 1037 [4th Dept 1994]).

Entered: January 31, 2025

Ann Dillon Flynn  
Clerk of the Court