

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

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CAF 25-00482

PRESENT: BANNISTER, J.P., MONTOUR, GREENWOOD, NOWAK, AND HANNAH, JJ.

IN THE MATTER OF TRACY L. MOSES,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

INDIA S. MCFARLAND, RESPONDENT-APPELLANT,
AND RODNEY A. RICHARDS, RESPONDENT.

CAITLIN M. CONNELLY, BUFFALO, FOR RESPONDENT-APPELLANT.

ALISON BATES, VICTOR, ATTORNEY FOR THE CHILD.

Appeal from an order of the Family Court, Monroe County (Alecia J. Mazzo, J.), entered September 26, 2023, in a proceeding pursuant to Family Court Act article 6. The order, inter alia, awarded petitioner sole custody and primary residence with respect to the subject child.

It is hereby ORDERED that said appeal is unanimously dismissed except insofar as respondent-appellant challenges the finding of extraordinary circumstances and the order is affirmed without costs.

Memorandum: On appeal from an order that, inter alia, awarded petitioner, a nonrelative, sole custody and primary residence of the child who is the subject of this proceeding, respondent mother contends that petitioner failed to establish that extraordinary circumstances existed and that it was in the child's best interests for the mother to have sole custody. The Attorney for the Child, however, submitted new information to this Court before oral argument of the appeal indicating that the child no longer resides with petitioner. After oral argument of this appeal, an order was entered upon agreement of the mother and a maternal aunt of the child of joint custody and shared residency of the child. The order on consent "renders moot the [mother's] challenge to [Family C]ourt's finding regarding the child's best interests . . . , but not [her] challenge to the court's finding of extraordinary circumstances" (*Matter of Gorski v Phalen*, 187 AD3d 1670, 1671 [4th Dept 2020]; see *Matter of Turner v Estate of Turner*, 223 AD3d 744, 745 [2d Dept 2024]; *Matter of Durgala v Batrony*, 154 AD3d 1115, 1116-1117 [3d Dept 2017]). We therefore dismiss the appeal except insofar as the mother challenges the finding of extraordinary circumstances (see *Gorski*, 187 AD3d at

1671). For the reasons stated in the decision at Family Court, we conclude that petitioner established that extraordinary circumstances existed in this case.

Entered: May 1, 2026

Ann Dillon Flynn
Clerk of the Court