

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

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CA 13-01390

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, CARNI, AND SCONIERS, JJ.

SHARELLE REYNOLDS, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

RICHARD KELLY, BETTE KELLY AND MARK KELLY,
DEFENDANTS-RESPONDENTS.

ATHARI & ASSOCIATES, LLC, UTICA (MO ATHARI OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

BOEGGEMAN, GEORGE & CORDE, P.C., ALBANY (PAUL A. HURLEY OF COUNSEL),
FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Oneida County (David A. Murad, J.), entered November 29, 2012 in a personal injury action. The order, among other things, denied plaintiff's cross motion for a protective order disqualifying the designated defense examiner.

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

Memorandum: Plaintiff commenced this action seeking damages for injuries she allegedly sustained as the result of her exposure to lead paint as a child while residing in an apartment owned by defendants. Plaintiff contends on appeal that Supreme Court erred in denying her cross motion for a protective order seeking disqualification of the designated defense examiner, a neuropsychologist, or, in the alternative, directing that the examination be recorded. While this appeal was pending, the challenged examination was conducted and the examiner has since issued a report. We conclude that plaintiff's appeal is moot as a result of those intervening circumstances, and this case does not fall within any exception to the mootness doctrine (*see Cuevas v 1738 Assoc., L.L.C.*, 111 AD3d 416, 416; *see also Hughes v Farrey*, 39 AD3d 431, 431; *see generally Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715). We therefore dismiss the appeal.

Entered: March 21, 2014

Frances E. Cafarell
Clerk of the Court