

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

1268

CAF 18-00022

PRESENT: WHALEN, P.J., PERADOTTO, NEMOYER, CURRAN, AND TROUTMAN, JJ.

IN THE MATTER OF NICKOLAS B., NEVAEH J.L.,
AND ZACHERY C.

NIAGARA COUNTY DEPARTMENT OF SOCIAL SERVICES, MEMORANDUM AND ORDER
PETITIONER-RESPONDENT;

KATHERINE F.L., RESPONDENT-APPELLANT.

DAVID J. FARRUGIA, PUBLIC DEFENDER, LOCKPORT (THERESA L. PREZIOSO OF
COUNSEL), FOR RESPONDENT-APPELLANT.

ANTHONY L. RESTAINO, LOCKPORT, FOR PETITIONER-RESPONDENT.

LAURA A. MISKELL, LOCKPORT, ATTORNEY FOR THE CHILDREN.

Appeal from an order of the Family Court, Niagara County (John F. Batt, J.), entered December 8, 2017 in a proceeding pursuant to Family Court Act article 10. The order denied respondent's application seeking the return of the subject children.

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

Memorandum: Respondent mother appeals from an order that denied her Family Court Act § 1028 application seeking the return of her children to her care and custody following their temporary removal pursuant to a prior order. We dismiss the appeal as moot because a final order of disposition was entered during the pendency of the appeal, finding that the children are neglected and placing them in petitioner's custody. "[A]n appeal from a denial of an application for return of a child removed as a result of the initiation of a proceeding pursuant to Family [Court] Act article 10 becomes moot at the point a decision is made on the charges of neglect or abuse" (*Matter of Corine G. [William G.]*, 135 AD3d 443, 444 [1st Dept 2016]; see *Matter of Bruce P.*, 138 AD3d 864, 865 [2d Dept 2016]; *Matter of Angel C. [Lynn H.]*, 103 AD3d 1246, 1247 [4th Dept 2013]; cf. *Matter of C. Children*, 249 AD2d 540, 540 [2d Dept 1998]) and, " '[i]nasmuch as a temporary order [of removal] is not a finding of wrongdoing, the exception to the mootness doctrine does not apply' " (*Matter of Faith B. [Rochelle C.]*, 158 AD3d 1282, 1282-1283 [4th Dept 2018], lv denied 31 NY3d 910 [2018]; see *Matter of Karrie-Ann ZZ. [Tammy ZZ.]*, 132 AD3d

1180, 1181 [3d Dept 2015]).

Entered: December 21, 2018

Mark W. Bennett
Clerk of the Court