

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Matter of Phillip M. (Phillip M.)

2025 NY Slip Op 07150 · No. 849 CAF 24-01421 · Decided December 23, 2025

SUMMARY

The Appellate Division, Fourth Department dismissed as moot a father's appeal from a temporary order removing a child from his care in a Family Court neglect proceeding. The appeal became moot after Family Court entered a superseding permanency order, and the exception to the mootness doctrine did not apply because the temporary order was not a finding of wrongdoing.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Bannister, J.P.; Montour, J.; Smith, J.; Greenwood, J.; Hannah, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
DECIDED	December 23, 2025
DOCKET	849 CAF 24-01421
DISPOSITION	dismissed
PROCEDURAL POSTURE	Respondent father appealed from a Family Court order that temporarily removed the subject child from his care and placed the child with a relative during the pendency of a neglect proceeding under Family Court Act article 10.
PRECEDENTIAL VALUE	Published
PARTIES	Phillip M. v. Erie County Department of Social Services

TOPICS

- mootness
- appellate procedure
- family law procedure
- parental rights

PRACTICE AREAS

- Family law
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the father's appeal from the temporary removal order was rendered moot by the entry of a superseding permanency order.
2. Whether the exception to the mootness doctrine applied because the temporary order allegedly involved a finding of wrongdoing.

HOLDINGS

1. The appeal was moot because Family Court entered a superseding permanency order while the appeal was pending.
2. The exception to the mootness doctrine did not apply because a temporary order is not a finding of wrongdoing.

KEY QUOTATIONS

“inasmuch as a temporary order is not a finding of wrongdoing, the exception to the mootness doctrine does not apply” ([*1])

FACTUAL BACKGROUND

The respondent father was subject to a neglect proceeding under Family Court Act article 10. Family Court temporarily removed the subject child from the father's care and placed the child in the custody of a relative. While the father's appeal from that temporary order was pending, Family Court entered a superseding permanency order.

PROCEDURAL HISTORY

The Erie County Family Court entered the temporary removal order on June 25, 2024. While the appeal was pending, Family Court entered a superseding permanency order. The Appellate Division dismissed the appeal as moot.

DISPOSITION

dismissed

CASES CITED

- Matter of Zyion B. [Fredisha B.], 224 AD3d 1285, 1285-1286 [4th Dept 2024]
- Matter of Nyjeem D. [John D.], 174 AD3d 1424, 1425 [4th Dept 2019], lv denied 34 NY3d 911 [2020]
- Matter of Breyanna S., 45 AD3d 498, 498 [1st Dept 2007], lv denied 10 NY3d 706 [2008]
- Matter of Faith B. [Rochelle C.], 158 AD3d 1282, 1282-1283 [4th Dept 2018], lv denied 31 NY3d 910 [2018]
- Matter of Destiny F. [Takara E.], 210 AD3d 1399, 1400 [4th Dept 2022]
- Matter of Nickolas B. [Katherine F.L.], 167 AD3d 1538, 1539 [4th Dept 2018]

OPINION

PER CURIAM.

Matter of Phillip M. (Phillip M.) (2025 NY Slip Op 07150) Matter of Phillip M. (Phillip M.) 2025 NY Slip Op 07150 Decided on December 23, 2025 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 23, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: BANNISTER, J.P., MONTOUR, SMITH, GREENWOOD, AND HANNAH, JJ. 849 CAF 24-01421 [*1]IN THE MATTER OF PHILLIP M. ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES, PETITIONER-RESPONDENT; and PHILLIP M., RESPONDENT-APPELLANT.

MINDY L. MARRANCA, BUFFALO, FOR RESPONDENT-APPELLANT. AMY INZINA, BUFFALO, FOR PETITIONER-RESPONDENT. DAVID C. SCHOPP, THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ASHLEY JINDRA OF COUNSEL), ATTORNEY FOR THE CHILD. Appeal from an order of the Family Court, Erie County (Shannon E. Filbert, J.), entered June 25, 2024, in a proceeding pursuant to Family Court Act article 10.

The order, among other things, temporarily removed the subject child from respondent's care. It is hereby ORDERED that said appeal is unanimously dismissed without costs. Memorandum: In this proceeding pursuant to Family Court Act article 10, respondent father appeals from an order that, inter alia, temporarily removed the subject child and placed the child in the custody of a relative during the pendency of the neglect proceeding against the father.

While this appeal was pending, Family Court entered a superseding permanency order, and the father's appeal from the temporary order must therefore be dismissed as moot (see Matter of Zyion B. [Fredisha B.], 224 AD3d 1285, 1285-1286 [4th Dept 2024]; Matter of Nyjeem D. [John D.], 174 AD3d 1424, 1425 [4th Dept 2019], lv denied 34 NY3d 911 [2020]; see also Matter of Breyanna S., 45 AD3d 498, 498 [1st Dept 2007], lv denied 10 NY3d 706 [2008]).

We note that, "[i]nasmuch as a temporary order 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] [internal quotation marks omitted]; see Matter of Destiny F. [Takara E.], 210 AD3d 1399, 1400 [4th Dept 2022]; Matter of Nickolas B. [Katherine F.L.], 167 AD3d 1538, 1539 [4th Dept 2018]).

Entered: December 23, 2025 Ann Dillon Flynn Clerk of the Court

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