

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]

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