

*State of New York*  
*Supreme Court, Appellate Division*  
*Third Judicial Department*

Decided and Entered: December 3, 2015

516946

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In the Matter of TINA X.,  
Appellant,

v

MEMORANDUM AND ORDER

JOHN X.,  
Respondent.

(And Two Other Related Proceedings.)

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Calendar Date: October 20, 2015

Before: Peters, P.J., Lahtinen, Rose and Clark, JJ.

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John J. Raspante, Utica, for appellant.

Scott T. Bielicki, Sherrill, attorney for the children.

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Peters, P.J.

Appeal from an order of the Family Court of Madison County (McDermott, J.), entered May 17, 2013, which, in three proceedings pursuant to Family Ct Act article 6, partially granted respondent's motion for immediate custody of the parties' children.

Petitioner (hereinafter the mother) and respondent (hereinafter the father) are the parents of three children (born in 1997, 2000 and 2007). Pursuant to a June 2007 stipulated order, the parties shared joint legal custody of the children, with the mother having primary physical custody and the father receiving parenting time. In 2012, the mother commenced proceedings seeking to enforce and modify the visitation provisions of that order, and the father petitioned for sole

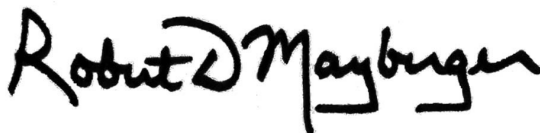
legal and primary physical custody of the children. Upon the father's application for an immediate transfer of custody, Family Court issued a temporary order awarding him sole legal and primary physical custody of the children. The mother now appeals.

The temporary order granting the father custody of the children pending a final disposition was not a final order and, as such, it is not appealable as of right (see Family Ct Act § 1112 [a]; Matter of Rosario WW. v Ellen WW., 309 AD2d 984, 985 [2003]; Matter of Crooks v Smith, 260 AD2d 804, 804 [1999]; Matter of Bridges v Hertica, 234 AD2d 862, 864 [1996]). No application for leave to appeal has been made and, in light of the fact that a final order of custody has been entered that supersedes the temporary order at issue (see Matter of Loukopoulos v Loukopoulos, 68 AD3d 1470, 1471 [2009]; Matter of Rosario WW. v Ellen WW., 309 AD2d at 985), we decline to treat the notice of appeal as a request for permission to appeal.

Lahtinen, Rose and Clark, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court