

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

Decided and Entered: December 17, 2015

518671

---

In the Matter of RODERICK  
DALMIDA,

Appellant,

v

MEMORANDUM AND ORDER

SARAH LIVERMORE,

Respondent.

---

Calendar Date: October 21, 2015

Before: Lahtinen, J.P., Egan Jr., Lynch and Devine, JJ.

---

Sandra J. Garufy, Binghamton, for appellant.

Sandra M. Colatosti, Albany, for respondent.

Donna Chin, Ithaca, attorney for the children.

---

Devine, J.

Appeal from an order of the Family Court of Broome County (Charnetsky, J.), entered February 14, 2014, which partially dismissed petitioner's application, in a proceeding pursuant to Family Ct Act article 6, for custody of the parties' children.

Petitioner (hereinafter the father) and respondent (hereinafter the mother) are the parents of two children, born in 2009 and 2010.<sup>1</sup> The father commenced the present proceeding in

---

<sup>1</sup> Different birth years are given elsewhere in the record, but the parties do not dispute that 2009 and 2010 are the correct years.


July 2013, seeking sole custody of the children. Family Court granted the father sole custody of the children on a temporary basis, although the mother was eventually permitted telephonic contact and supervised visitation. After a hearing on the petition, Family Court granted the parties joint custody, with the father continuing to have physical placement and the mother entitled to specified telephonic contact and at least six hours of supervised visitation with the children a week. The father appeals and solely challenges the award of joint custody.

The attorney for the children advised this Court that, during the pendency of this appeal, the mother filed a petition seeking modification of the appealed-from order. We take judicial notice that the mother's modification petition has been dismissed, but further note the existence of a modification petition filed by the father. As a result of the father's petition, Family Court (Young, J.) issued an order, entered November 18, 2015, that expressly superseded all previous custody and visitation orders and awarded the father sole legal and physical custody of the children. Inasmuch as the present appeal was taken from an earlier order and an award of joint legal custody that has since been superseded, it must be dismissed as moot (see Matter of Mosier v Cole, 129 AD3d 1346, 1347-1348 [2015]; Matter of Giovanni K., 62 AD3d 1242, 1242 [2009], lv denied 12 NY3d 715 [2009]; compare Matter of Blagg v Downey, 132 AD3d 1078, 1079 [2015]).

Lahtinen, J.P., Egan Jr. and Lynch, JJ., concur.

ORDERED that the appeal is dismissed, as moot, 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