

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

Decided and Entered: October 27, 2016

521432

In the Matter of DIANA L.
LAMPHERE,
Appellant,

v

EDWARD S. LAMPHERE,
Respondent.

MEMORANDUM AND ORDER

(And Two Other Related Proceedings.)

Calendar Date: September 6, 2016

Before: Peters, P.J., McCarthy, Lynch, Rose and Clark, JJ.

Sarah E. Cowen, Sidney, for appellant.

Steven G. Natoli, Norwich, attorney for the child.

Lynch, J.

Appeal from an order of the Family Court of Chenango County (Revoir, J.), entered May 22, 2015, which, among other things, dismissed petitioner's applications, in two proceedings pursuant to Family Ct Act article 6, to modify a prior order of custody.

Petitioner (hereinafter the mother) and respondent (hereinafter the father) are the divorced parents of four children, including the subject child (born in 2006). When the parties initially separated, they agreed to a joint custody arrangement, with the mother having primary physical custody. Shortly thereafter, in September 2010, after the mother relocated to Connecticut, the parties stipulated to continued joint custody, with the father assuming primary physical custody of the

subject child and the older child, who turned 18 in 2014 and moved out of the father's home. In July 2014, Family Court, on consent, continued this custody arrangement and further ordered the father to obtain Medicaid insurance for the subject child "as soon as practicable" and then enroll the child in counseling and schedule appropriate dental care. In August 2014, the mother filed a violation petition contending that the father failed to comply with the court's health care directives. In September 2014, the mother filed a further petition to obtain primary physical custody of the child. She filed a second modification petition in February 2015, seeking sole legal and primary physical custody, contending, among other things that the father's home was unsanitary. After a fact-finding hearing in March 2015, Family Court dismissed both modification petitions but granted the violation petition and imposed a \$300 sanction against the father. The mother appeals.¹


With his brief, the attorney for the child has provided this Court with Family Court's March 24, 2016 "Final Custody Order," issued on consent, by which the court granted primary physical custody of the subject child to the mother, with the proviso that the order would be held in abeyance until August 2016 and set aside if the father complied with the directive, once again, to obtain Medicaid insurance, counseling and dental care for the child. The court specified that "[t]his custody order shall replace all other custody [o]rders of this Court." It follows that this appeal is moot and, since the exception to the mootness doctrine does not apply, the appeal must be dismissed (see Matter of Charles EE. v Hanna FF., 141 AD3d 754, 755 [2016]; Matter of Attorney for the Child v Cole, 140 AD3d 1335, 1336 [2016]).

Peters, P.J., McCarthy, Rose and Clark, JJ., concur.

¹ The father failed to file a brief on this appeal.

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