

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

Decided and Entered: November 23, 2016

521675

In the Matter of NEVAEH
A., Alleged to be a
Neglected Child.

CORTLAND COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Respondent;

MEMORANDUM AND ORDER

SHANNON D.,
Appellant.

Calendar Date: October 14, 2016

Before: McCarthy, J.P., Garry, Lynch, Devine and Clark, JJ.

Lisa K. Miller, McGraw, for appellant.

Kathleen A. Sullivan, Cortland County Department of Social
Services, Cortland, for respondent.

Randolph V. Kruman, Cortland, attorney for the child.

McCarthy, J.P.

Appeal from an order of the Family Court of Cortland County
(Ames, J.), entered August 24, 2015, which granted petitioner's
application, in a proceeding pursuant to Family Ct Act article
10, to temporarily remove the subject child from respondent's
custody.

Nevaeh A. was born in 2013. Respondent is the child's
mother who, along with the child's father, consented to a Family
Ct Act article 6 custody order granting sole custody to a
maternal relative (hereinafter the cousin). This arrangement

persisted until early 2015 when disputes arose over visitation and respondent's alleged harassment of the cousin. Eventually, the cousin voluntarily relinquished legal custody of the child. That same day, petitioner filed a neglect petition against respondent. Thereafter, Family Court granted petitioner's application for temporary removal of the child, and this appeal ensued.

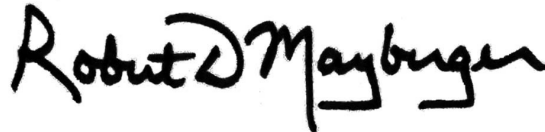
During the pendency of this appeal, respondent executed an unconditional surrender of her parental rights to the child. We agree with petitioner that this development renders respondent's appeal from the temporary removal order moot. Respondent's contention that a temporary removal order carries a stigma similar to a finding of neglect is contrary to the precedent of this Court; we have repeatedly held that a temporary order of removal is not a finding of wrongdoing, and, as a result, have rejected the argument that such an order carries a stigma that would prevent appeals such as this one from being moot (see Matter of Karrie-Ann ZZ. [Tammy ZZ.], 132 AD3d 1180, 1181 [2015]; Matter of Brandon WW. [Kimberly WW.], 116 AD3d 1108, 1109 [2014]; Matter of Cali L., 61 AD3d 1131, 1133 [2009]; Matter of Senator NN., 305 AD2d 819, 820 [2003]). Moreover, the First Department and the Fourth Department have reached the same conclusion when addressing this issue (see Matter of Joseph E.K. [Lithia K.], 118 AD3d 1324, 1324 [2014]; Matter of Angel C. [Lynn H.], 103 AD3d 1246, 1247 [2013]; Matter of Javier R. [Robert R.], 43 AD3d 1, 3 [2007], appeal dismissed 10 NY3d 754 [2008]).¹ As we find no reason to depart from our established precedent, we find that respondent's appeal from the temporary removal order is moot and does not fall into the exception to that doctrine.

Garry, Lynch, Devine and Clark, JJ., concur.

¹ The Second Department's position on the issue is less clear (compare Matter of C. Children, 249 AD2d 540, 540 [1998], with Matter of Anthony C. [Juan C.], 99 AD3d 798, 799 [2012]).

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