

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

Decided and Entered: May 10, 2012

512823

In the Matter of JAMEL W.
YOUNG,
Appellant,

v

ALINA ESPADA et al.,
Respondents.

MEMORANDUM AND ORDER

(And Two Other Related Proceedings.)

Calendar Date: April 25, 2012

Before: Peters, P.J., Rose, Lahtinen, Malone Jr. and Garry, JJ.

Michelle E. Stone, Vestal, for appellant.

Lathinen, J.

Appeal from an order of the Family Court of Broome County (Pines, J.), entered June 3, 2011, which, among other things, dismissed petitioner's application, in a proceeding pursuant Family Ct Act article 6, for supervised visitation with his children.

While incarcerated at the Broome County Jail, petitioner commenced this proceeding seeking supervised visitation with his children at that facility. Family Court dismissed his petition without prejudice to his right to reapply once assigned to a state correctional facility. On this appeal, petitioner's counsel seeks to be relieved of her assignment on the ground that there are no nonfrivolous issues to be raised on appeal.

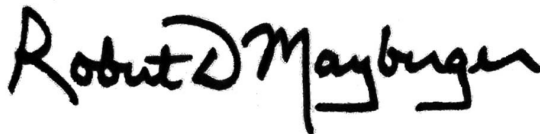
Petitioner's transfer from the Broome County Jail to a

state correctional facility, where he is now serving a 20-year sentence for second degree murder, renders this appeal moot (cf. Matter of Boore v Parks, 63 AD3d 1307, 1307 [2009]). The proper course would be for petitioner to file a new petition that would afford Family Court an opportunity to evaluate the children's best interests under petitioner's current circumstances (see id. at 1307-1308). Because the appeal is moot, we need not address counsel's application to be relieved of her assignment (see Matter of Kimberly C., 92 AD3d 985 [2012]; Matter of Alexander K. [Jennifer N.], 77 AD3d 1023, 1024 [2010]).

Peters, P.J., Rose, Malone Jr. and Garry, 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