

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CAF 10-02328

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, LINDLEY, AND MARTOCHE, JJ.

IN THE MATTER OF TIMOTHY D. MIHALKO,
PETITIONER-RESPONDENT,

V

ORDER

CHERI CHARLTON, RESPONDENT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR RESPONDENT-APPELLANT.

AVERY S. OLSON, ATTORNEY FOR THE CHILD, JAMESTOWN, FOR TIMOTHY J.M.

Appeal from an order of the Family Court, Chautauqua County (Paul G. Buchanan, J.), entered October 4, 2010 in a proceeding pursuant to Family Court Act article 6. The order awarded sole custody of the parties' child to petitioner.

It is hereby ORDERED that said appeal is unanimously dismissed without costs as moot (see *Matter of Graham v Thering*, 55 AD3d 1319, 1320, *lv denied* 11 NY3d 714; *Matter of Krest v Kawczynski*, 9 AD3d 907, 907-908).

Entered: February 10, 2012

Frances E. Cafarell
Clerk of the Court