

State of New York
Court of Appeals

Decisions

April 21, 2022

CASES

2 No. 58 SSM 3

The People &c.,
 Respondent,
 v.
Peter Carman,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, without costs, and certified question not answered as unnecessary. Chief Judge DiFiore and Judges Garcia, Singas, Cannataro and Troutman concur. Judges Rivera and Wilson dissent for reasons stated in the dissenting opinion by Justice Betsy Barros at the Appellate Division (*People v Carman*, 194 AD3d 760, 763-767 [2021, Barros, J., dissenting]).

3 No. 29
In the Matter of the Claim of Thomas
Johnson,
 Appellant,
 v.
City of New York,
 Respondent.
Workers' Compensation Board,
 Respondent.

Order affirmed, with costs.
Opinion by Judge Cannataro.
Chief Judge DiFiore and Judges Rivera, Garcia, Singas and Troutman concur.
Judge Wilson dissents in an opinion.

3 No. 30
In the Matter of the Claim of Joseph D. Liuni,
 Appellant,
 v.
Gander Mountain et al.,
 Respondents.
Workers' Compensation Board,
 Respondent.

Order reversed, with costs, and matter remitted to the Appellate Division, Third Department, with directions to remand to the Workers' Compensation Board for further proceedings in accordance with the opinion herein.
Opinion by Judge Cannataro.
Chief Judge DiFiore and Judges Rivera, Garcia, Singas and Troutman concur.
Judge Wilson dissents in an opinion.

3 No. 28
In the Matter of Mental Hygiene Legal
Service, &c.,
 Appellant,
 v.
Kerry Delaney, &c. et al.,
 Respondents,
et al.,
 Respondent.

Appeal dismissed, without costs, upon the ground
that the issues presented are moot, in a memorandum.
Chief Judge DiFiore and Judges Garcia, Wilson,
Singas, Cannataro and Troutman concur.
Judge Rivera dissents in an opinion.

MOTIONS

1 Mo. No. 2022-192
ACE Securities Corp., &c.,
Appellant,
v.
DB Structured Products, Inc.,
Respondent.

Motion by Adam Plotch for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

1 Mo. No. 2022-202
ACE Securities Corp., &c.,
Appellant,
v.
DB Structured Products, Inc.,
Respondent.

Motion by National Credit Union Administration Board et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

4 Mo. No. 2022-187
The People &c. ex rel. Marco Almonte,
Appellant,
v.
Kevin Henderson, &c.,
Respondent.

Motion for leave to appeal dismissed upon the ground that no appeal lies from an order of an individual Justice of the Appellate Division (*see* NY Const, art VI, § 3 [b]; CPLR 5602).

3 Mo. No. 2022-194
The People &c.,
Appellant,
v.
Christopher Bryant,
Respondent.

Motion for assignment of counsel granted and Paul J. Connolly, Esq., 125 Adams Street, Delmar, NY 12054 assigned as counsel to the respondent on the appeal herein.

4 Mo. No. 2022-61
In the Matter of Syncere D.

Onondaga County Department of Children
and Family Services,
Respondent;
Shaina D., &c.,
Respondent,
John D.,
Appellant.
(And Another Related Proceeding.)

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.
Judge Troutman took no part.

3 Mo. No. 2022-200
The People &c.,
Respondent,
v.
Akeem A. Daniels,
Appellant.

Motion for an extension of the time within which to
apply for permission to appeal pursuant to CPL
460.20 granted and motion papers treated as a timely
CPL 460.20 application.

2 Mo. No. 2022-212
In the Matter of DCH Auto, &c. et al.,
Appellants,
v.
Town of Mamaroneck, &c., et al.,
Respondents.

Motion by Stop & Shop Supermarket Company,
LLC for leave to file a brief amicus curiae on the
appeal herein granted and the proposed brief is
accepted as filed. The brief must be submitted in
digital format within seven days.

2 Mo. No. 2022-252
In the Matter of DCH Auto, &c. et al.,
Appellants,
v.
Town of Mamaroneck, &c., et al.,
Respondents.

Motion by New York State School Boards
Association for leave to file a brief amicus curiae on
the appeal herein granted and the proposed brief is
accepted as filed. Two copies of the brief must be
served, an original and nine copies filed, and the
brief submitted in digital format within seven days.

2 Mo. No. 2022-255
In the Matter of DCH Auto, &c. et al.,
Appellants,
v.
Town of Mamaroneck, &c., et al.,
Respondents.

Motion by International Council of Shopping Centers, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

2 Mo. No. 2022-270
In the Matter of DCH Auto, &c. et al.,
Appellants,
v.
Town of Mamaroneck, &c., et al.,
Respondents.

Motion by Wakefern Food Corporation for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

2 Mo. No. 2022-278
In the Matter of DCH Auto, &c. et al.,
Appellants,
v.
Town of Mamaroneck, &c., et al.,
Respondents.

Motion by New York State Conference of Mayors and Municipal Officials et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

4 Mo. No. 2022-86
In the Matter of Brianna E. et al.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

Jefferson County Department of Social Services,
Respondent;
Jeremiah H.,
Appellant.

3 Mo. No. 2022-205
In the Matter of Desiree FF. et al.,
Respondents,
v.
Jeanette GG. et al.,
Appellants.

Motion for reargument of motion for leave to appeal denied.

4 Mo. No. 2022-32
In the Matter of Valoree A. Frumusa,
Respondent,
v.
Lawrence Frumusa,
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2022-224
In the Matter of the Claim of Kanye Khalid
Green,
Respondent,
v.
Dutchess County BOCES et al.,
Appellants.
Workers' Compensation Board,
Appellant.

Motion by New York State Insurance Fund for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and the brief submitted in digital format within seven days.

1 Mo. No. 2022-88
In the Matter of Alexander R.H.

Renzo N.H.,
Appellant;
Sheltering Arms Children & Family Services,
Respondent;
et al.,
Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2022-91
In the Matter of Makayla I., et al., &c.

Schenectady County Department of Social
Services,
Respondent;
Sheena K.,
Appellant.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

1 Mo. No. 2022-221
The People &c.,
Respondent,
v.
Cephus Johnson,
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

2 Mo. No. 2022-207
In the Matter of D.L.,
Appellant,
v.
S.B. et al.,
Respondents.

Motion by Lawyers for Children, Inc., et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2022-198
The People &c.,
Respondent,
v.
Trevell London,
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

3 Mo. No. 2021-996
In the Matter of Edward Andrew Long, an
Attorney.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

Edward Andrew Long,
Appellant;
Attorney Grievance Committee for the Third
Judicial Department,
Respondent.

2 Mo. No. 2022-8
In the Matter of State of New York,
Respondent,
v.
Benjamin M.,
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2021-1007
The People &c. ex rel.
Richard Mills,
 Appellant,
 v.
Superintendent Stight, &c. et al.,
 Respondents.

 SSD 9
In the Matter of Susan D. Mongielo,
 Respondent,
 v.
David J. Mongielo,
 Appellant.

2 Mo. No. 2021-1004
In the Matter of Dustin D. Mooney, et al.,
 Respondents,
 v.
Monique N. Mooney,
 Respondent,
Prince Ashie,
 Appellant.
(And Another Proceeding.)

4 Mo. No. 2022-272
The People &c.,
 Respondent,
 v.
Michael Myers,
 Appellant.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

Appeal transferred without costs, by the Court *sua sponte*, to the Appellate Division, Fourth Department, upon the ground that a direct appeal does not lie where questions other than the constitutional validity of a statutory provision are involved (*see* NY Const art VI, §§ 3 [b] [2], [5] [b]; CPLR 5601 [b] [2]).

Motion for leave to appeal denied.

Motion for assignment of counsel granted and Philip Rothschild, Esq., Hiscock Legal Aid Society, 351 South Warren Street, Syracuse, NY 13202 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2022-57
In the Matter of City of Newburgh,
Appellant,
v.
Peter A. Leach,
Respondent.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that dismissed the appeal from the November 2018 Supreme Court order, dismissed upon the ground that such portion of the Appellate Division order does not finally determine the proceeding within the meaning of the Constitution; motion for leave to appeal otherwise denied.
Motion for a stay dismissed as academic.

1 Mo. No. 2022-239
In the Matter of Nonhuman Rights Project,
Inc., &c.,
Appellant,
v.
James J. Breheny, &c., et al.,
Respondents.

Motion by Randall S. Abate, et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

1 Mo. No. 2022-271
In the Matter of Nonhuman Rights Project,
Inc., &c.,
Appellant,
v.
James J. Breheny, &c., et al.,
Respondents.

Motion by Carol Bakhos, et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2022-275
In the Matter of Nonhuman Rights Project,
Inc., &c.,
Appellant,
v.
James J. Breheny, &c., et al.,
Respondents.

Motion by Christina Nellist, et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2022-279
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by Peter Singer, et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2022-280
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by Shannon Minter et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

1 Mo. No. 2022-281
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by Richard L. Cupp, Jr. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2022-283
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by Maneesha Deckha for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2022-284
In the Matter of Nonhuman Rights Project,
Inc., &c.,
 Appellant,
 v.
James J. Breheny, &c., et al.,
 Respondents.

Motion by K.S. Panicker Radhakrishnan for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

1 Mo. No. 2022-294
In the Matter of Nonhuman Rights Project,
Inc., &c.,
Appellant,
v.
James J. Breheny, &c., et al.,
Respondents.

Motion by Andrew Linzey et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. An original and nine copies of the brief must be filed and the brief submitted in digital format within seven days.

1 Mo. No. 2022-304
In the Matter of Nonhuman Rights Project,
Inc., &c.,
Appellant,
v.
James J. Breheny, &c., et al.,
Respondents.

Motion by Animal Legal Defense Fund for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

4 Mo. No. 2022-6
In the Matter of Tyrone O.

Onondaga County Department of Children
and Family Services,
Respondent;
Lillian G.,
Appellant,
et al.,
Respondent.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.
Judge Troutman took no part.

4 Mo. No. 2022-58
In the Matter of Joseph M. Park,
Appellant,
v.
Deborah L. Miller,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2022-14
The People &c. ex rel. Tasheen Robinson,
Appellant,
v.
Anthony J. Annucci, &c.,
Respondent,
et al.,
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2022-276
The People &c.,
Appellant,
v.
Luis A. Rodriguez,
Respondent.

Motion by The Legal Aid Society for leave to appear
amicus curiae on the appeal herein granted only to
the extent that the proposed brief is accepted as filed.
Two copies of the brief must be served, an original
and nine copies filed, and the brief submitted in
digital format within seven days.

1 Mo. No. 2022-39
In the Matter of T.S. et al., &c.

K.A.,
Respondent,
F.A.,
Appellant,
et al.,
Respondent;
Administration for Children's Services,
Respondent.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

3 Mo. No. 2022-206
Kim E. Schoch,
Respondent,
v.
Lake Champlain OB-GYN, P.C.,
Appellant.

Columbia Memorial Hospital,
Appellant,
v.
Marcel E. Hinds,
Respondent.

Maple Medical, LLP,
Appellant,
v.
Joseph Scott, &c.,
Respondent,
et al.,
Defendant.

3 Mo. No. 2022-233
Kim E. Schoch,
Respondent,
v.
Lake Champlain OB-GYN, P.C.,
Appellant.

Columbia Memorial Hospital,
Appellant,
v.
Marcel E. Hinds,
Respondent.

Maple Medical, LLP,
Appellant,
v.
Joseph Scott, &c.,
Respondent,
et al.,
Defendant.

(And Five Other Appeals.)

Motion by Brooklyn Hospital Center, et al. for leave to appear amici curiae on the appeals herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

Motion by Regional Medical Practice, P.C., et al. for leave to appear amici curiae on the appeals herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

3 Mo. No. 2022-193
In the Matter of Town of Southampton et al.,
Respondents,
et al.,
Petitioner,
v.
New York State Department of
Environmental Conservation et al.,
Respondents,
Sand Land Corporation et al.,
Appellants.

Motion to vacate or modify the stay denied.

3 Mo. No. 2021-1002
Martha Southard et al., &c.,
Respondents,
v.
Peter Harris, &c.,
Appellant,
Debra Gross,
Respondent.

Motion for leave to appeal dismissed upon the
ground that the order sought to be appealed from
does not finally determine the action within the
meaning of the Constitution.

2 Mo. No. 2022-180
In the Matter of Irina Spickina,
Respondent,
v.
Marcello L. Roque,
Appellant.

Motion for leave to appeal dismissed upon the
ground that the order sought to be appealed from
does not finally determine the proceeding within the
meaning of the Constitution.

1 SSD 10
The Church of Jesus Christ of Latter-Day
Saints, Servant: Xiu Jian Sun, &c.,
Appellant,
v.
Michael P. Kelly, &c., et al.,
Respondents.

Appeal dismissed without costs, by the Court *sua
sponte*, upon the ground that the order appealed from
does not finally determine the action within the
meaning of the Constitution.

4 Mo. No. 2022-24
In the Matter of Mayci W.

Erie County Department of Social Services,
Respondent;
Daniel W.,
Appellant.
(And Another Proceeding.)

Motion for leave to appeal denied.
Judge Troutman took no part.

1 Mo. No. 2022-109
In the Matter of Muhamad Omar W., &c.

Jessica W.,
Appellant;
Little Flower Children and Family Services et
al.,
Respondents.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

1 Mo. No. 2022-265
Worthy Lending LLC,
Appellant,
v.
New Style Contractors, Inc.,
Respondent.

Motion by The Secured Finance Network, Inc. for
leave to appear amicus curiae on the appeal herein
granted only to the extent that the proposed brief is
accepted as filed. Two copies of the brief must be
served, an original and nine copies filed, and the
brief submitted in digital format within seven days.

3 SSD 11
Michael R. Wright,
Appellant,
v.
Marcus O'Leary, et al.,
Respondents.

Appeal dismissed without costs, by the Court *sua
sponte*, upon the ground that the two-Justice dissent
at the Appellate Division is not on a question of law
(*see* CPLR 5601 [a]).