

April 02, 2015

CASES

1 No. 103 SSM 6
Rosemond Barney-Yeboah,
 Respondent,
 v.
Metro-North Commuter Railroad,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, order of Supreme Court, New York County, reinstated, and certified question answered in the negative, in a memorandum.
Chief Judge Lippman and Judges Read, Rivera, Abdus-Salaam, Stein and Fahey concur.
Judge Pigott dissents and votes to affirm for reasons stated in the memorandum at the Appellate Division (120 AD3d 1023 [2014]).

1 No. 26
The People &c.,
 Respondent,
 v.
Lee Carr,
 Appellant.

Order reversed and a new trial ordered.
Opinion by Chief Judge Lippman.
Judges Read, Rivera, Abdus-Salaam and Stein concur.
Judge Fahey dissents in an opinion in which Judge Pigott concurs.

1 No. 27
The People &c.,
 Respondent,
 v.
Walter Cates, Sr.,
 Appellant.

Order reversed and a new trial ordered.
Opinion by Chief Judge Lippman.
Judges Read, Rivera, Abdus-Salaam and Stein concur.
Judge Fahey dissents in an opinion in which Judge Pigott concurs.

1 No. 29
In the Matter of Katie Kickertz,
 Respondent,
 v.
New York University,
 Appellant.

Judgment appealed from and order of the Appellate Division brought up for review modified, without costs, by vacating that portion of the Appellate Division order granting the petition and remitting to Supreme Court, New York County, for further proceedings in accordance with the memorandum herein and, as so modified, affirmed.
Chief Judge Lippman and Judges Read, Pigott, Rivera, Stein and Fahey concur.
Judge Abdus-Salaam took no part.

4 No. 31
Marc A. Nicometi,
 Appellant-Respondent,
 v.
The Vineyards of Fredonia, LLC, et al.,
 Respondents-Appellants,
et al.,
 Defendants.

Order modified, without costs, by granting defendant Winter-Pfohl, Inc.'s motion for partial summary judgment dismissing the Labor Law § 240(1) claim against it and, as so modified, affirmed, and certified question answered in the negative.
Opinion by Judge Stein.
Judges Read, Pigott, Rivera and Abdus-Salaam concur.
Chief Judge Lippman dissents in an opinion.
Judge Fahey took no part.

Scott Pfohl, et al.,
 Third-Party Plaintiffs,
 v.
Western New York Plumbing-Ellicott
Plumbing and Remodeling Co., Inc.,
Third-Party Respondent-Appellant.

Order affirmed, with costs, and certified question not answered as unnecessary.
Opinion by Judge Abdus-Salaam.
Chief Judge Lippman and Judges Read, Stein and Fahey concur.
Judge Pigott dissents in an opinion.
Judge Rivera took no part.

2 No. 28
In the Matter of David Powers,
 Appellant,
 v.
St. John's University School of Law,
 Respondent.

4 No. 35
Joseph Saint et al.,
 Appellants,
 v.
Syracuse Supply Company,
 Respondent.

Order reversed, with costs, and defendant's motion
for summary judgment denied.
Opinion by Judge Rivera.
Chief Judge Lippman and Judges Read, Pigott,
Abdus-Salaam, Stein and Fahey concur.

MOTIONS

2 Mo. No. 2015-214
In the Matter of Lucinda A. (Anonymous).

Administration for Children's Services,
Respondent;
Luba A. (Anonymous),
Appellant.
(And Another Proceeding.)

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

2 Mo. No. 2015-157
In the Matter of Matthew B.,
Appellant,
v.
Shanna S.,
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2015-251
The People &c. ex rel. James Boutte,
Appellant,
v.
Kathleen G. Gerbing, &c.,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2015-159
In the Matter of Lisa A. Bretscher,
Respondent,
v.
Darren A. Bretscher,
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2015-165
The People &c. ex rel. Edward Brown,
Appellant,
v.
Thomas Griffin, &c.,
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2015-138
In the Matter of Tyquan C., &c.,
Appellant.

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

2 Mo. No. 2015-148
Michael A. Cervini,
Respondent,
v.
Cisco General Construction, Inc.,
Appellant.

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.

4 Mo. No. 2015-150
The People &c.,
Respondent,
v.
Orlando Colon, Jr.,
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2015-162
In the Matter of Rafael Cortorreal,
Appellant,
v.
Anthony J. Annucci, &c.,
Respondent.

Motion for leave to appeal granted.
Motion for poor person relief granted.
Judge Stein took no part.

4 Mo. No. 2015-142
Noel Davidson,
 Appellant,
 v.
State of New York,
 Respondent.

On the Court's own motion, appeal transferred, without costs, to the Appellate Division, Fourth Department, upon the ground that a direct appeal does not lie when 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 dismissed upon the ground that it does not lie (see CPLR 5602[a]).

3 Mo. No. 2015-163
Fahs Construction Group, Inc.,
 Appellant,
 v.
State of New York,
 Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2015-164
In the Matter of Jovan Fludd,
 Appellant,
 v.
Dale Artus, &c., et al.,
 Respondents.

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

3 Mo. No. 2015-160
In the Matter of Scott Goldstein et al.,
 Appellants,
 v.
Tax Appeals Tribunal of the State of New
York et al.,
 Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

2 Mo. No. 2015-217
In the Matter of Jessica Graham,
 Appellant,
 v.
Charles T. Rawley,
 Respondent.

Motions for leave to appeal dismissed upon the ground that the orders sought to be appealed from do not finally determine the proceeding within the meaning of the Constitution.
Motions for poor person relief dismissed as academic.

4 Mo. No. 2015-201
In the Matter of Hornblower Yachts, LLC,
 Appellant,
 v.
Rose Harvey, &c., et al.,
 Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.
Judge Fahey took no part.

1 Mo. No. 2015-80
Sedina Levin,
 Appellant,
 v.
New York City Health and Hospitals
Corporation, &c.,
 Respondent.

Motion, insofar as it seeks leave to appeal from the Appellate Division order denying reargument or leave to appeal to this Court, dismissed upon the ground that such order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.

2 Mo. No. 2015-143
The People &c.,
 Respondent,
 v.
Salvatore Lobello,
 Appellant.

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

4 Mo. No. 2015-220
In the Matter of Taleeya M.

Cayuga County Department of Health and
Human Services,
 Respondent;
Ranesha S.,
 Appellant.

3 Mo. No. 2015-158
In the Matter of Dontie S. Mitchell,
 Appellant,
 v.
Brian Fischer, &c.,
 Respondent.

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

On the Court's own motion, appeal, insofar as taken from the September 2014 Appellate Division judgment, dismissed, without costs, upon the ground that it is untimely (see CPLR 5513[a]); appeal, insofar as taken from the October 2014 and December 2014 Appellate Division orders denying the motions for costs and disbursements and for reconsideration, dismissed, without costs, upon the ground that such orders do not finally determine the proceeding within the meaning of the Constitution. Motion, insofar as it seeks leave to appeal from the September 2014 Appellate Division judgment, dismissed upon the ground that it is untimely (see CPLR 5513[b]); motion, insofar as it seeks leave to appeal from the October 2014 and December 2014 Appellate Division orders denying the motions for costs and disbursements and for reconsideration, dismissed upon the ground that such orders do not finally determine the proceeding within the meaning of the Constitution.

1 Mo. No. 2015-156
Benjamin Morales,
 Appellant,
 v.
Jorge Garzon, et al.,
 Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2015-196
In the Matter of David M. Morrissey, Sr.,
 Respondent,
 v.
Debra A. Morrissey,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2015-278
In the Matter of Eric Nelson,
 Appellant,
 v.
Philip G. Minardo, &c., et al.,
 Respondents.

Motion for leave to appeal denied.

4 Mo. No. 2015-188
In the Matter of Niagara Preservation
Coalition, Inc.,
 Appellant,
 v.
New York Power Authority, et al.,
 Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.
Judge Fahey took no part.

3 Mo. No. 2015-166
In the Matter of NYC C.L.A.S.H., Inc.,
 Appellant,
 v.
New York State Office of Parks, Recreation
and Historic Preservation et al.,
 Respondents.

Motion for leave to appeal denied as unnecessary.

1 Mo. No. 2015-87
John Pickering-George, &c.,
Appellant,
v.
Mathew M. Wambua, et al.,
Respondents.

On the Court's own motion, appeal, insofar as taken from the May 2014 Appellate Division judgment, dismissed, without costs, upon the ground that it is untimely (see CPLR 5513[a]); appeal, insofar as taken from the October 2014 Supreme Court order, dismissed, without costs, upon the ground that it does not lie (CPLR 5601).

Motion, insofar as it seeks leave to appeal from the May 2014 Appellate Division judgment, dismissed upon the ground that it is untimely (see CPLR 5513[b]); motion, insofar as it seeks leave to appeal from the October 2014 Supreme Court order, dismissed upon the ground that it does not lie (CPLR 5602).

Motion for poor person relief dismissed as academic.

4 Mo. No. 2015-149
The People &c.,
Respondent,
v.
Reginald Pressey,
Appellant.

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

2 Mo. No. 2015-216
In the Matter of Charles T. Rawley,
Respondent,
v.
Jessica Graham,
Appellant.

Motions for leave to appeal dismissed upon the ground that the orders sought to be appealed from do not finally determine the proceeding within the meaning of the Constitution.

Motions for poor person relief dismissed as academic.

2 Mo. No. 2015-145

The People &c.,
Respondent,
v.
Stanley Sadler,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2015-137
In the Matter of Ebony S. (Anonymous).

Administration for Children's Services,
Respondent;
Earlind G. (Anonymous),
Appellant.
(And Other Proceedings.)

Motion for leave to appeal denied.

3 Mo. No. 2015-170
In the Matter of Tamyka R. Spaulding,
Respondent,

v.
Matthew S. Stewart,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2015-141

Deniss Tihomirovs,
Appellant,

v.
Nadejda Tihomirovs, &c.,
Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2015-147
In the Matter of Tonawanda Seneca Nation,
Appellant,

v.
Hon. Robert C. Noonan, &c., et al.,
Respondents.

Motion for leave to appeal granted.
Judge Fahey took no part.

3 Mo. No. 2015-205
Union-Endicott Central School District et al.,
 Appellants,
 v.
Joanne Peters,
 Respondent.
(And Two Related Proceedings.)

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as modified Supreme Court's order by confirming the arbitration award and, as so modified, affirmed so much of Supreme Court's order denying the petition to vacate or modify the arbitration award, denied; motion for leave to appeal otherwise dismissed upon the ground that the remainder of the Appellate Division order sought to be appealed from does not finally determine an action or proceeding within the meaning of the Constitution and is not an order of the type provided for in CPLR 5602(a)(2).
Judge Stein took no part.

3 Mo. No. 2015-172
In the Matter of Village Square of Penna, Inc.,
 Appellant,
 v.
Board of Assessment Review of the Town of
Colonie et al.,
 Respondents.
(And Another Proceeding.)

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

1 Mo. No. 2015-152
The People &c.,
 Respondent,
 v.
David Zaire,
 Appellant.

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

1 Mo. No. 2015-151
The People &c.,
 Respondent,
 v.
Luis Zambrano,
 Appellant.

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