

State of New York
Court of Appeals

Decisions

March 25, 2021

CASES

4 No. 14
Herkimer County Industrial Development
Agency,
 Appellant,
 v.
Village of Herkimer,
 Respondent,
et al.,
 Defendant.

Order insofar as appealed from reversed, with costs, judgment granted in plaintiff's favor in accordance with the memorandum herein and certified question answered in the negative.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur.

1 No. 42 SSM 1
The People &c.,
 Appellant,
 v.
Darrin McGhee,
 Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, First Department, for further proceedings in accordance with the memorandum herein.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur.

1 No. 13
In the Matter of People Care Incorporated,
&c.,
 Respondent,
 v.
City of New York Human Resources
Administration, et al.,
 Appellants.

Order reversed, with costs, and matter remitted to the Appellate Division, First Department, for consideration of issues raised but not determined on the appeal to that Court, in a memorandum.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur.

No. 46
Plymouth Venture Partners, II, L.P. et al.,
Appellants,
v.
GTR Source, LLC et al.,
Respondents.

Plymouth Venture Partners, II, L.P. et al.,
Appellants,
v.
Capital Merchant Services, LLC,
Respondent.

1 No. 43 SSM 2
The People &c.,
Respondent,
v.
Luis Vasquez,
Appellant.

Certification of questions by the United States Court of Appeals for the Second Circuit, pursuant to section 500.27 of this Court's Rules of Practice, accepted and the issues presented are to be considered after briefing and argument.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur.

MOTIONS

SSD 7
800 Grand Concourse Owners, Inc.,
Respondent,
v.
Charlene Thompson,
Respondent,
James Pettus,
Appellant.

Appeal transferred without costs, by the Court *sua sponte*, to the Appellate Term, First Department, upon the ground that a direct appeal does not lie (*see* NY Const, art VI, §§ 3[b][2], 5[b]; CPLR 5601[b][2]).

3 Mo. No. 2020-934
In the Matter of Raheem A.,
Appellant,
v.
Judith B.,
Respondent,
Patricia C.,
Respondent.
(And Another Proceeding.)

Motion for leave to appeal denied.

3 Mo. No. 2020-824
In the Matter of State of New York,
Respondent,
v.
Robert A.,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2020-921
In the Matter of Treyvone A.

Administration for Children's Services,
Respondent;
Manuel R.,
Appellant,
et al.,
Respondent.

Motion for leave to appeal denied.

2 SSD 17
In the Matter of Salim Abdul-Malik,
Appellant,
v.
Leonard Livote, &c., et al.,
Respondents.

Appeal, insofar as taken from the September 2020 Appellate Division order, dismissed without costs, by the Court *sua sponte*, upon the ground that no appeal lies from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question; appeal, insofar as taken from the December 2020 Appellate Division order, dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution.

2 Mo. No. 2021-157
Anna Aybar, et al.,
Appellants,
v.
Jose A. Aybar, Jr., et al.,
Defendants,
Ford Motor Company et al.,
Respondents;
U.S. Tires and Wheels of Queens, LLC,
Nonparty-Respondent.

Motion by New York State Bar 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. 2021-247
Anna Aybar, et al.,
Appellants,
v.
Jose A. Aybar, Jr., et al.,
Defendants,
Ford Motor Company et al.,
Respondents;
U.S. Tires and Wheels of Queens, LLC,
Nonparty-Respondent.

Motion by Alan B. Morrison, 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. 2021-49
In the Matter of Modesty B., et al.

Monroe County Department of Human
Services,
Respondent;
Dimitri C.,
Appellant,
et al.,
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2020-835
In the Matter of Kayla C., &c.

Stephanie C.,
Appellant;
Administration for Children's Services,
Respondent.

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.

2 Mo. No. 2021-22
In the Matter of Alfonso J.C., Jr.

Suffolk County Department of Social
Services,
Respondent;
Jamie A.,
Appellant.
(And Three Other Proceedings.)

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

4 Mo. No. 2021-39
In the Matter of Steven D., Jr. et al.

Monroe County Department of Human
Services,
Respondent;
Steven D., Sr.,
Appellant,
Nicole S.,
Appellant.

Motions for leave to appeal denied.
Motion by Steven D., Sr. for poor person relief
dismissed as academic.

1 Mo. No. 2021-222
In the Matter of Pedro Endara-Caicedo,
Appellant,
v.
New York State Department of Motor
Vehicles, et al.,
Respondents.

Motion by Richard Solano for leave to file a brief
amicus curiae on the appeal herein denied.

Mo. No. 2021-262
Jesus Ferreira,
Appellant,
v.
City of Binghamton et al.,
Respondents.

Motion by New York Civil Liberties Union for leave
to appear amicus curiae on consideration of the
certified question 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. 2020-861
In the Matter of Prince G., et al., &c.

Liz C.,
Appellant,
et al.,
Respondent;
Administration for Children's Services,
Respondent.

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

2 Mo. No. 2020-869
In the Matter of Larry Hallock, &c.,
Appellant;
Grievance Committee for the Tenth Judicial
District,
Respondent.

Motion to strike portions of appellants' records on
appeal and reply briefs denied.
Judge Rivera took no part.

In the Matter of Mary Sheila Malerba, &c.,
Appellant;
Grievance Committee for the Tenth Judicial
District,
Respondent.

2 Mo. No. 2020-915
In the Matter of Shaherah Harkless,
 Appellant,
 v.
Jorge Santos,
 Respondent.
(And Another Proceeding.)

Motion for leave to appeal denied.

3 SSD 8
In the Matter of Joseph Hayon,
 Appellant,
 v.
New York State Department of Corrections
and Community Supervision, et al.,
 Respondents.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

1 Mo. No. 2021-221
The People &c.,
 Respondent,
 v.
Anton Hill,
 Appellant.

Motion for reargument denied.

1 Mo. No. 2021-308
Himmelstein, McConnell, Gribben,
Donoghue & Joseph, LLP, et al.,
 Appellants,
 v.
Matthew Bender & Company, Inc., &c.,
 Respondent.

Motion by New York State Office of the Attorney General 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. 2021-283
Home Equity Mortgage Trust Series 2006-1,
et al.,
 Respondents,
 v.
DLJ Mortgage Capital, Inc.,
 Appellant,
et al.,
 Defendant.
(And Another Action.)

U.S. Bank National Association, &c.,
 Respondent,
 v.
DLJ Mortgage Capital, Inc.,
 Appellant.

1 Mo. No. 2021-284
Home Equity Mortgage Trust Series 2006-1,
et al.,
 Respondents,
 v.
DLJ Mortgage Capital, Inc.,
 Appellant,
et al.,
 Defendant.
(And Another Action.)

U.S. Bank National Association, &c.,
 Respondent,
 v.
DLJ Mortgage Capital, Inc.,
 Appellant.

Motion by National Credit Union Administration Board et al. for leave to file a brief amici curiae on the appeals 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. Judge Wilson took no part.

Motion by David L. Ferstendig for leave to file a brief amicus curiae on the appeals 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. Judge Wilson took no part.

1 Mo. No. 2021-285
Home Equity Mortgage Trust Series 2006-1,
et al.,
 Respondents,
 v.
DLJ Mortgage Capital, Inc.,
 Appellant,
et al.,
 Defendant.
(And Another Action.)

Motion by Securities Industry and Financial Markets Association 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.
Judge Wilson took no part.

1 Mo. No. 2021-286
U.S. Bank National Association, &c.,
 Respondent,
 v.
DLJ Mortgage Capital, Inc.,
 Appellant.

Motion by Securities Industry and Financial Markets Association 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.
Judge Wilson took no part.

4 Mo. No. 2020-922
In the Matter of Danyel J. et al.

Jefferson County Department of Social
Services,
 Respondent;
Alan J.,
 Appellant,
et al.,
 Respondent.

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

2 Mo. No. 2021-173
The People &c.,
 Respondent,
 v.
Orlando 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.
Chief Judge DiFiore took no part.

2 SSD 13
In the Matter of Daryll Boyd Jones, a
Suspended Attorney.

Daryll Boyd Jones,
Appellant;
Attorney Grievance Committee for the
Second, Eleventh and Thirteenth Judicial
Districts,
Respondent.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

1 Mo. No. 2021-41
In the Matter of Stepan K.,
Respondent,
v.
Marina M.,
Appellant.

Motion for leave to appeal denied.

 SSD 9
Shlomo Karpen,
Appellant,
v.
Manuel Castro et al.,
Respondents.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that it is untimely (*see* CPLR 5513[a]).

 SSD 10
Shlomo Karpen,
Appellant,
v.
Julio Andrade,
Respondent.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that it is untimely (*see* CPLR 5513[a]).

 SSD 11
Shlomo Karpen,
Appellant,
v.
Juan Pablo Arevalo et al.,
Respondents.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that it is untimely (*see* CPLR 5513[a]).

2 Mo. No. 2021-10
In the Matter of Kristin Keuleman,
Respondent,
v.
Michael Earp,
Appellant.
(And Another Proceeding.)

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that affirmed so much of the Family Court order as denied enforcement of a prior Family Court order, dismissed upon the ground that such portion of the order does not finally determine the proceedings within the meaning of the Constitution; motion for leave to appeal otherwise denied.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2020-887
In the Matter of Wolfgang L.

Administration for Children's Services,
Respondent;
Natalia A.,
Appellant.

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

1 Mo. No. 2021-118
In the Matter of Carlos L.,
Respondent,
v.
Eva P.,
Appellant.

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

1 Mo. No. 2021-269
The People &c.,
Respondent,
v.
Michael Lamb,
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2021-9
The People &c. ex rel. Stacy Lasher,
Appellant,
v.
Theresa Tynon, &c.,
Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2020-911
In the Matter of the Claim of Joseph D. Liuni,
 Appellant,
 v.
Gander Mountain et al.,
 Respondents.
Workers' Compensation Board,
 Respondent.

Motion for leave to appeal granted.

1 SSD 15
Nella Manko,
 Appellant,
 v.
Dr. Dana Mannor, et al.,
 Respondents,
Lenox Hill Hospital, &c. et al.,
 Defendants.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the order appealed from does not finally determine the actions within the meaning of the Constitution.
Chief Judge DiFiore took no part.

Nella Manko,
 Appellant,
 v.
Dana Mannor, et al.,
 Respondents,
"Anesthesiologist" (a fictitious name), et al.,
 Defendants.

 Mo. No. 2021-195
The People &c.,
 Respondent,
 v.
Marc Mitchell,
 Appellant.

Motion for assignment of counsel granted and Janet E. Sabel, Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2021-239
Mtag Cust for Mtag Caz Creek NY, LLC,
 Respondent,
 v.
County of Nassau,
 Respondent,
et al.,
 Defendants;
Blake Stone, LLC et al.,
 Nonparty-Appellants.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.
Motion for a stay dismissed as academic.

1 Mo. No. 2021-196
The People &c.,
 Respondent,
 v.
Hasahn D. Murray,
 Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2021-15
In the Matter of Kendall N.

Herkimer County Department of Social
Services,
 Respondent;
Angela M.,
 Appellant.

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

3 Mo. No. 2021-6
In the Matter of Jason O., &c.

Washington County Department of Social
Services,
 Respondent;
Stephanie O.,
 Appellant.
(And Another Related Proceeding.)

Motion for leave to appeal denied.

Mo. No. 2021-243
The People &c.,
Respondent,
v.
Henry Obando,
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. 2020-899
In the Matter of Amirah P., &c.

Motion for leave to appeal denied.

Schenectady County Department of Social Services,
Respondent;
Aisha P.,
Appellant.

1 Mo. No. 2020-900
In the Matter of Ashley P.,
Appellant,
v.
Johnathan G., Sr.,
Respondent.

Motion for leave to appeal denied.

Mo. No. 2021-14
In the Matter of Marvin P., &c.,
Appellant.

Motion for leave to appeal dismissed upon the ground that the Court of Appeals does not have jurisdiction to entertain it (*see* NY Const, art VI, § 3; CPLR 5602).

3 Mo. No. 2021-51
In the Matter of Sandra R.,
Appellant,
v.
Matthew R.,
Respondent.
(And Three Other Proceedings.)

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that affirmed so much of the Family Court order as dismissed the petition for enforcement, dismissed upon the ground that such portion of the order does not finally determine a proceeding within the meaning of the Constitution; motion for leave to appeal otherwise denied.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2021-279
The People &c.,
Respondent,
v.
Joseph Schneider,
Appellant.

Motion by District Attorneys Association of the State of New York 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.

2 Mo. No. 2021-38
In the Matter of Rashaine S.,
Appellant,
v.
Debra R.,
Respondent.

Motion for leave to appeal denied.

1 SSD 18
In the Matter of David Segal, &c.,
Appellant,
v.
Attorney Grievance Committee for the First
Judicial Department,
Respondent.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no appeal lies to this Court from an order of an individual Justice of the Appellate Division (*see* NY Const, art VI, § 3[b]; CPLR 5601).
Chief Judge DiFiore took no part.

In the Matter of David Segal, &c.,
Appellant,
v.
Office of Court Administration, Unified Court
System,
Respondent.

1 Mo. No. 2020-882
In the Matter of David Segal,
Appellant,
v.
Office of Court Administration, et al.,
Respondents.

On the Court's own motion, appeal dismissed, without costs, upon the ground that the order appealed from does not finally determine an action or proceeding within the meaning of the Constitution.
Motion to disqualify counsel denied.
Chief Judge DiFiore took no part.

1 Mo. No. 2021-5
In the Matter of Amanda M.T., &c. et al.

Charles Franklin T., &c.,
Appellant;
New York Foundling Hospital,
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2021-58
In the Matter of Jesiel C.V. et al.

Rosalie V.,
Appellant;
Administration for Children's Services,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2021-20
In the Matter of Jayda W.

Onondaga County Department of Children
and Family Services,
Respondent;
Christina W.,
Respondent.
Sandy S.,
Appellant.
Bethanie H. et al.,
Intervenors-Respondents.
(And Another Proceeding.)

Motion, insofar as it seeks leave to appeal from the Appellate Division order that dismissed the appeal from the March 2019 Family Court order terminating the mother's parental rights, dismissed upon the ground that appellant is not a party aggrieved (*see* CPLR 5511); motion for leave to appeal otherwise denied.

4 Mo. No. 2021-270
The People &c.,
Respondent,

v.
John W. Walls,
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2021-293
In the Matter of West 58th Street Coalition,
Inc., et al.,
 Respondents-Appellants,
 v.
City of New York, et al.,
 Appellants-Respondents,
New Hampton LLC, et al.,
 Appellants-Respondents.

Motion by Coalition for the Homeless, Inc. 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.

3 Mo. No. 2020-945
The People &c. ex rel. Jeffrey Wilson,
 Appellant,
 v.
M. Rockwood, &c.,
 Respondent.

Motion for leave to appeal denied.

1 SSD 16
In the Matter of Irma Zelig,
 Respondent,
 v.
State of New York Division of Housing and
Community Renewal, et al.,
 Respondents.
Aspenly Company LLC,
 Intervenor-Appellant.

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