

State of New York
Court of Appeals

Decisions

May 27, 2021

CASES

No. 37

The People &c.,
Appellant,
v.
Jack J. Cucceraldo,
Respondent.

Order affirmed.
Opinion by Judge Garcia.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey
and Wilson concur.

No. 36

The People &c.,
Appellant,
v.
Eric J. Iverson,
Respondent.

Order affirmed.
Opinion by Judge Garcia.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey
and Wilson concur.

2 No. 50 SSM 8

The People &c.,
Respondent,
v.
Nathaniel Mabry,
Appellant.

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

1 No. 33

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.

Order modified in accordance with the memorandum
herein, with costs to respondents, as so modified
affirmed, and certified question answered in the
negative.
Chief Judge DiFiore and Judges Rivera, Stein, Fahey,
Garcia and Wilson concur.

MOTIONS

2 Mo. No. 2021-96
In the Matter of Georgia Ascitutto,
 Appellant,
 v.
New York City Employees' Retirement
System et al.,
 Respondents.

Motion for leave to appeal denied.

4 Mo. No. 2021-169
In the Matter of April Ashe,
 Respondent,
 v.
William Watts,
 Appellant.

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

3 Mo. No. 2021-317
In the Matter of Lily BB., &c.

Ulster County Department of Social Services,
 Respondent;
Stephen BB.,
 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.

2 Mo. No. 2021-265
Ingrid Bernhardt, &c.,
 Appellant,
 v.
Edward Schneider,
 Respondent.

On the Court's own motion, appeal dismissed,
without costs, upon the ground that the order
appealed from does not finally determine the action
within the meaning of the Constitution.
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.

1 Mo. No. 2021-139
Curacao Oil N.V.,
Appellant,
v.
Trafigura Pte. Ltd.,
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. 2021-245
The People &c. ex rel. Robert S. Dean, &c.,
Appellant,
v.
Amy Lamanna, &c., et al.,
Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2021-292
Ditech Financial, LLC, &c.,
Appellant,
v.
Santhana Kumar Nataraja Naidu,
Respondent,
et al.,
Defendants.

Motion to amend remittitur granted. Return of remittitur requested and when returned it will be amended to read as follows:
Order reversed, with costs, and case remitted to the Appellate Division, Second Department, for consideration of issues raised but not determined on the appeal to that court.

4 Mo. No. 2021-129
Lauren D. Dziwulski,
Appellant,
v.
Lisa Tollini-Reichert, &c.,
Respondent,
et al.,
Defendants.

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

1 Mo. No. 2021-251
In the Matter of Stephanie E.,
Respondent,
v.
Efrain G.,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2021-235
In the Matter of Jaaliyah M.R.E.

Forestdale, Inc.,
 Respondent;
Jennifer A.,
 Appellant.

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

4 Mo. No. 2021-248
In the Matter of Bianca F.

Steuben County Department of Social
Services,
 Respondent;
Terrald F.,
 Appellant,

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

In the Matter of Briana F.

Steuben County Department of Social
Services,
 Respondent;
Terrald F.,
 Appellant.

3 Mo. No. 2021-319
In the Matter of Anthony F.,

 Respondent,
 v.
Kayla E.,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2021-316
Freedom Mortgage Corporation,
 Appellant,
 v.
Herschel Engel,
 Respondent,
et al.,
 Defendants.

Motion for reargument denied.
Motion to amend remittitur granted. Return of
remittitur requested and when returned it will be
amended to read as follows:
Order reversed, with costs, and case remitted to the
Appellate Division, Second Department, for
consideration of issues raised but not determined on
the appeal to that court.

3 SSD 28
James W. Gilliam II,
 Appellant,
 v.
Discover Bank 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. 2021-182
The People &c.,
 Respondent,
 v.
Zoltan Gorocs,
 Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2021-109
In the Matter of Hudson Valley Housing
Development Fund Company, Inc.,
 Appellant,
 v.
County of Ulster et al.,
 Respondents.

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

2 Mo. No. 2021-229
In the Matter of Leila I.

Administration for Children's Services,
Respondent;
Marie V.A.,
Respondent,
Ernest I.,
Appellant.
(And Two Other Proceedings.)

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

2 Mo. No. 2021-309
In the Matter of Leila I.

Administration for Children's Services,
Respondent;
Marie V.A.,
Appellant,
Ernest I.,
Respondent.
(And Two Other Proceedings.)

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

4 Mo. No. 2021-298
In the Matter of Beulah J., et al.

Onondaga County Department of Children
and Family Services,
Respondent;
Darlene H.,
Respondent,
Johnny J.,
Appellant.

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

3 Mo. No. 2021-183
The People &c. ex rel. Johnathan Johnson,
Appellant,
v.
Donald Uhler, &c.,
Respondent.

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

2 Mo. No. 2021-460
The People &c.,
Respondent,
v.
Carl 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. 2021-55
In the Matter of D.L.,
Appellant,
v.
S.B. et al.,
Respondents.

Motion for leave to appeal granted.

2 Mo. No. 2021-77
In the Matter of D.L.,
Appellant,
v.
S.B. et al.,
Respondents.

Motion by Lawyers for Children, Inc., et al. for leave to appear amici curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.

4 SSD 31
In the Matter of Lacey Jo Ferguson,
Respondent,
v.
Nicholas Joseph LeClair et al,
Appellants,

In the Matter of Nicholas Joseph LeClair,
Appellant,
v.
Lacey Jo Ferguson,
Respondent,
Emily Rose Whipple,
Appellant.

Appeal, insofar as taken from that portion of the February 2021 Appellate Division order that affirmed that portion of the June 2019 Family Court order dismissing the petition to modify a visitation 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 otherwise dismissed without costs, by the Court *sua sponte*, upon the ground that the remaining portion of the order appealed from does not finally determine the proceedings within the meaning of the Constitution.

2 Mo. No. 2021-53
The People &c.,
Respondent,
v.
Jose Llaca,
Appellant,
Norma Rosello, &c.,
Nonparty.

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.

4 Mo. No. 2021-440
The People &c.,
Respondent,
v.
Ruth M. Lora,
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.

4 Mo. No. 2021-213
The People &c. ex rel. Richard B. Lyon,
Appellant,
v.
Matthew Thoms, &c. et al.,
Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2021-231
In the Matter of Grace M.

Suffolk County Department of Social
Services,
Appellant;
Denise C.,
Respondent.

Motion for leave to appeal dismissed upon the ground that the issue presented has become moot.

3 Mo. No. 2021-188
In the Matter of Jase M., &c.

Cortland County Department of Social
Services,
Respondent;
Holly N.,
Appellant.

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

3 Mo. No. 2021-290
In the Matter of Jase M., &c.

Cortland County Department of Social
Services,
Respondent;
Timothy M.,
Appellant.

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

2 Mo. No. 2021-212
Kevin Martin,
Appellant,
et al.,
Plaintiff,
v.
Total Realty Associate, Inc.,
Respondent.

On the Court's own motion, appeal dismissed,
without costs, upon the ground that the order
appealed from does not finally determine the action
within the meaning of the Constitution.
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.
Motion for poor person relief dismissed as academic.
Motion for a stay dismissed as academic.

2 Mo. No. 2021-425
Kevin Martin,
Appellant,
et al.,
Plaintiff,
v.
Total Realty Associate, Inc.,
Respondent.

On the Court's own motion, appeal dismissed,
without costs, upon the ground that it does not lie.
Motion for leave to appeal dismissed upon the
ground that it does not lie.
Motion for poor person relief dismissed as
academic.
Motion for a stay dismissed as academic.

2 Mo. No. 2021-432
The People &c.,
Respondent,
v.
Eugene Mendoza,
Appellant.

Motion for assignment of counsel granted and Paul
Skip Laisure, Esq., Appellate Advocates, 111 John
Street, 9th Floor, New York, NY 10038 assigned as
counsel to the appellant on the appeal herein.

2 Mo. No. 2021-117
MJK Building Corp., et al.,
 Appellants,
 v.
Fayland Realty, Inc., et al.,
 Respondents,
et al.,
 Defendants.

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. 2021-282
In the Matter of Diane Mountzouros,
 Respondent,
 v.
Kenneth Mountzouros,
 Appellant.

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

3 Mo. No. 2021-264
In the Matter of Michael P.,
 Appellant,
 v.
Joyce Q.,
 Respondent,
et al.,
 Respondents.
(And Another Proceeding.)

Motion for leave to appeal denied.

3 Mo. No. 2021-483
The People &c.,
 Respondent,
 v.
Willie Pace,
 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.

Mo. No. 2021-272
David G. Peltan,
Respondent,
v.
Karen M. Cisler, &c.,
Appellant.

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 &c. dismissed upon the ground that this Court does not have jurisdiction to entertain it (*see* NY Const, art VI, § 3; CPLR 5602).

4 Mo. No. 2021-193
In the Matter of Richard R., &c.,
Appellant,
v.
State of New York, et al.,
Respondents.

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

4 Mo. No. 2021-223
In the Matter of State of New York,
Respondent,
v.
Joseph R., &c.,
Appellant.

On the Court's own motion, appeal dismissed, without costs, upon the ground that no substantial constitutional question is directly involved.
Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

1 Mo. No. 2021-122
Charles Rochester,
Appellant,
v.
City of New York, et al.,
Respondents.

Motion for leave to appeal dismissed upon the ground that it does not lie (*see* CPLR 5602[a]).
Motion for poor person relief dismissed as academic.
Motion for a stay dismissed as academic.

1 Mo. No. 2021-175
Evelyn Rodriguez,
Respondent,
v.
Joseph Kalata et al.,
Appellants.

Motion for leave to appeal dismissed upon the ground that the orders sought to be appealed from do not finally determine the action within the meaning of the Constitution (*see Burke v Crosson*, 85 NY2d 10, 18 n 5 [1995]).

4 Mo. No. 2021-189
In the Matter of Dante S.

Chautauqua County Department of Health
and Human Services,
Respondent;
Kathryne T.,
Appellant,
et al.,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2021-42
S&T Bank,
Respondent,
v.
Top Capital of New York Brockport, LLC,
&c., et al.,
Defendants,
Swan Tile and Marble, Inc., et al.,
Appellants.

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. 2021-105
S&T Bank,
Respondent,
v.
Top Capital of New York Brockport, LLC,
&c., et al.,
Defendants,
Swan Tile and Marble, Inc., et al.,
Appellants.

Motion by Empire State Chapter of the Associated
Builders and Contractors, Inc. for leave to appear
amicus curiae on the motion for leave to appeal
herein granted and the brief is accepted as filed.

4 Mo. No. 2021-108
S&T Bank,
Respondent,
v.
Top Capital of New York Brockport, LLC,
&c., et al.,
Defendants,
Swan Tile and Marble, Inc., et al.,
Appellants.

Motion by Northeastern Subcontractors Association,
Inc. for leave to appear amicus curiae on the motion
for leave to appeal herein granted and the brief is
accepted as filed.

4 Mo. No. 2021-198
S&T Bank,
 Respondent,
 v.
Top Capital of New York Brockport, LLC,
&c., et al.,
 Defendants,
Swan Tile and Marble, Inc., et al.,
 Appellants.

Motion by Associated General Contractors of New York State, LLC for leave to appear amicus curiae on the motion for leave to appeal herein granted and the brief is accepted as filed.

4 Mo. No. 2021-225
In the Matter of John Santoro,
 Appellant,
 v.
Amber Guggi,
 Respondent.
(And Another Proceeding.)

Motion for leave to appeal denied.

1 Mo. No. 2021-163
Starr Indemnity & Liability Company,
 Appellant,
 v.
Monte Carlo, LLC, et al.,
 Respondents,
et al.,
 Defendant.

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. 2021-165
Begam Sufia,
 Respondent,
 v.
Abdul Khalique,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2021-240
In the Matter of Frederick T. et al., &c.

Maria T.,
Appellant;
Sheltering Arms Children and Family
Services,
Respondent.

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

1 Mo. No. 2021-306
In the Matter of Tenants United Fighting for
the Lower East Side, et al.,

Appellants,
v.
City of New York Department of City
Planning, et al.,
Respondents.

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. 2021-315
In the Matter of Lower East Side Organized
Neighbors, et al.,

Appellants,
v.
New York City Planning Commission, et al.,
Respondents.

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

1 Mo. No. 2021-376
In the Matter of Lower East Side Organized
Neighbors, et al.,

Appellants,
v.
New York City Planning Commission, et al.,
Respondents.

Motion by Natural Resources Defense Council for
leave to appear amicus curiae on the motion for leave
to appeal herein granted and the proposed brief is
accepted as filed.

1 SSD 32
U.S. Bank National Association, &c.,
 Respondent,
 v.
Sherry Kim, et al.,
 Defendants,
Robert L. Gordons LLC,
 Appellant.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that no appeal lies from the Appellate Division order pursuant to stipulation for judgment absolute under CPLR 5601 (c) where the Appellate Division did not order a new trial or hearing within the meaning of CPLR 5601 (c).

4 SSD 29
Joseph Vendetti,
 Appellant,
 v.
Stephen Zywiak, et al.,
 Respondents,
et al.,
 Defendants.

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

3 Mo. No. 2021-123
In the Matter of Isiah Williams,
 Appellant,
 v.
Donald Venetozzi, &c.,
 Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2021-131
Lisa M. Young,
 Appellant,
 v.
Khalid Sethi, et al.,
 Respondents.

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