

State of New York
Court of Appeals

Decisions

October 19, 2023

CASES

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| No. 99 SSM 8
The People &c.,
Respondent,
v.
Justice A.,
Appellant. | On review of submissions pursuant to section 500.11 of the Rules, order reversed, defendant's motion to dismiss pursuant to CPL 30.30 granted and accusatory instrument dismissed, in a memorandum. Chief Judge Wilson and Judges Rivera, Garcia, Singas, Cannataro, Troutman and Halligan concur. |
| 2 No. 69
The People &c.,
Respondent,
v.
Sergio Cerda,
Appellant. | Order reversed and a new trial ordered. Opinion by Judge Lynch. Chief Judge Wilson and Judges Rivera, Troutman and Halligan concur. Judge Cannataro dissents and votes to affirm in an opinion, in which Judge Garcia concurs. Judge Singas took no part. |
| 1 No. 60
In the Matter of Celinette H.H.,
Appellant,
v.
Michelle R. et al.,
Respondents. | So much of the Appellate Division order as granted respondent Michelle R.'s cross-motion to dismiss petitioner Celinette H.H.'s appeal to that Court reversed, without costs, and matter remitted to the Appellate Division, First Department, for further proceedings in accordance with the memorandum herein; appeal otherwise dismissed upon the ground that the remaining portion of the order appealed from does not finally determine a proceeding within the meaning of the Constitution. Judges Garcia, Singas, Cannataro and Halligan concur. Judge Rivera dissents in an opinion, in which Chief Judge Wilson and Judge Troutman concur. |

No. 59

Andrew Nitkewicz, &c.,
Appellant,

v.

Lincoln Life & Annuity Company of New
York,
Respondent.

Following certification of a question by the United States Court of Appeals for the Second Circuit and acceptance of the question by this Court pursuant to section 500.27 of this Court's Rules of Practice, and after hearing argument by counsel for the parties and consideration of the briefs and record submitted, certified question answered in the negative.

Opinion by Judge Singas.

Chief Judge Wilson and Judges Rivera, Garcia, Cannataro, Troutman and Halligan concur.

No. 61

In the Matter of the Hon. Robert J. Putorti, a
Justice of the Whitehall Town Court and the
Whitehall Village Court, Washington County.

Robert J. Putorti,
Petitioner;
New York State Commission on Judicial
Conduct,
Respondent.

Determined sanction accepted, without costs, and Honorable Robert J. Putorti removed from the offices of Justice of the Whitehall Town Court and Whitehall Village Court, Washington County.

Opinion Per Curiam.

Chief Judge Wilson and Judges Garcia, Cannataro, Troutman and Halligan concur.

Judges Rivera and Singas took no part.

MOTIONS

2 Mo. No. 2023-621
State of New York Mortgage Agency,
Respondent,
v.
Aberico Almonte,
Defendant,
Claudia Almonte,
Appellant,
et al.,
Defendants.

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

3 Mo. No. 2023-645
In the Matter of Appellate Advocates,
Appellant,
v.
New York State Department of Corrections
and Community Supervision,
Respondent.

Motion by New York Coalition for Open Government, 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.

3 Mo. No. 2023-665
In the Matter of Appellate Advocates,
Appellant,
v.
New York State Department of Corrections
and Community Supervision,
Respondent.

Motion by Parole Preparation Project 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.

3 Mo. No. 2023-376
In the Matter of Sarah Autz,
Appellant,
v.
New York State Justice Center for the
Protection of People with Special Needs,
Respondent.

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

Mo. No. 2023-676
The People &c.,
Respondent,
v.
Michael Bay,
Appellant.

Motion by District Attorneys Association of the State of New York, Inc. for leave to appear amicus curiae on the appeal herein granted 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.

4 Mo. No. 2023-675
In the Matter of Bowers Development, LLC
et al.,
Respondents,
v.
Oneida County Industrial Development
Agency et al.,
Appellants.

Motion by New York State Economic Development Council 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. 2023-480
In the Matter of King D.C.

Suffolk County Department of Social
Services,
Respondent;
Abigail R.,
Appellant.
(And Other Proceedings.)

Motion for leave to appeal denied.

3 Mo. No. 2023-657
The People &c.,
Respondent,
v.
John G. Coler,
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. 2023-413
In the Matter of Amilianah E.

Onondaga County Department of Children
and Family Services,
Respondent;
Tiarra E.,
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2023-439
In the Matter of Shawn M. Epps,
Appellant,
v.
Erica D. Williams,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2023-451
In the Matter of Landin F.
Erie County Department of Social Services,
Respondent;
Jodi G.,
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 39
In the Matter of Sune G.,
Appellant,
v.
Michelle M.,
Respondent.
(And Other Proceedings.)

Appeals dismissed without costs, by the Court *sua
sponte*, upon the ground that they do not lie (*see*
CPLR 5601).

4 Mo. No. 2023-553
In the Matter of Chynarose H. et al.

Erie County Department of Social Services,
Respondent;
Keona O.,
Respondent,
Bashar H.,
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.

3 Mo. No. 2023-549
In the Matter of Richard JJ., et al., &c.

Albany County Department for Children,
Youth and Families,
Respondent;
Jennifer II.,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2023-668
The People &c.,
Respondent,
v.
Cleveland Lawson, a/k/a Emanuel Marks,
Appellant.

Motion for assignment of counsel granted and Twyla Carter, 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. 2023-638
The People &c.,
Respondent,
v.
Antwyne Lucas,
Appellant.

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

4 Mo. No. 2023-414
In the Matter of Jordyn P.

Genesee County Department of Social
Services,
 Respondent;
Cynthia L.,
 Appellant.
(And Other Proceedings.)

Motion for leave to appeal denied.

1 Mo. No. 2023-364
In the Matter of Anna Pezhman,
 Appellant,
 v.
Bloomingdales, Inc.,
 Respondent.

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

1 Mo. No. 2023-386
In the Matter of Police Benevolent
Association of the City of New York, Inc.,
&c. et al.,
 Appellants,
 v.
City of New York, et al.,
 Respondents.

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

3 SSD 38
Derek S. Prindle,
 Respondent,
 v.
John Guzy,
 Appellant.

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.

3 Mo. No. 2023-401
In the Matter of Joshua R., et al.

Schuyler County Department of Social
Services,
Respondent;
Kimberly R.,
Appellant.

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

4 Mo. No. 2023-578
In the Matter of Aubree R., et al.

Onondaga County Department of Children
and Family Services,
Respondent;
Natasha B.,
Appellant,
et al.,
Respondent.

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

4 Mo. No. 2023-399
In the Matter of Christopher E. Robinson,
Appellant,
v.
Board of Parole Appeals Unit,
Respondent.

Motion for leave to appeal denied.

3 SSD 40
In the Matter of Robert L. Schulz, et al.,
Appellants,
v.
State of New York, et al.,
Respondents.

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

Mo. No. 2023-689
The People &c.,
Respondent,
v.
Kevin Sullivan,
Appellant.

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

4 Mo. No. 2023-445
In the Matter of D.T.,
Respondent,
v.
C.T.,
Appellant.

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

2 Mo. No. 2023-631
Marta Urias, &c. et al.,
Appellants,
v.
Daniel P. Buttafuoco & Associates, PLLC, et
al.,
Respondents.

Motion by Andrew Lavoot Bluestone 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.

3 Mo. No. 2023-455
In the Matter of David V.,
Respondent,
v.
Roseline W.,
Appellant.
(And Another Related Proceeding.)

Motion for leave to appeal denied.

1 Mo. No. 2023-384
The People &c.,
Respondent,
v.
Kevin White,
Appellant.

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

1 Mo. No. 2023-362
State of New York for the City of New York
ex rel. Thomas C. Willcox,
 Appellant,
 v.
Credit Suisse Securities (USA) LLC, &c., et
al.,
 Respondents.

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

3 Mo. No. 2023-420
In the Matter of Bradyen ZZ., &c.

Chemung County Department of Social
Services,
 Respondent;
Robert A.,
 Appellant.

Motion for leave to appeal denied.