

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

January 17, 2014 through January 23, 2014

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

FRONT, INC. v KHALIL:

1ST Dept. App. Div. order of 2/14/13; modification; leave to appeal granted by Court of Appeals, 1/14/14;
LIBEL AND SLANDER - PRIVILEGE - ALLEGEDLY DEFAMATORY STATEMENTS MADE BY COUNSEL IN CONTEXT OF PROSPECTIVE LITIGATION - WHETHER, AND UNDER WHAT CIRCUMSTANCES, SUCH STATEMENTS ARE ENTITLED TO AN ABSOLUTE PRIVILEGE; TORTS - INTERFERENCE WITH BUSINESS RELATIONS - SUFFICIENCY OF PLEADING;
Supreme Court, New York County, granted third-party defendants' motion to dismiss the third-party complaint; App. Div. modified to deny defendants' motion to dismiss the complaint as against certain defendants for lack of personal jurisdiction, and to grant the motion to dismiss certain causes of action as against those defendants, and otherwise affirmed.

MATTER OF TRENASIA J. (AND THREE OTHER PROCEEDINGS):

2ND Dept. App. Div. order of 6/26/13; affirmance; leave to appeal granted by Court of Appeals, 1/14/14;
 PARENT, CHILD AND FAMILY - ABUSED OR NEGLECTED CHILD - SEXUAL ABUSE - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT APPELLANT WAS A PERSON LEGALLY RESPONSIBLE FOR HIS NIECE WITHIN THE MEANING OF THE FAMILY COURT ACT - SUFFICIENCY OF THE EVIDENCE OF ABUSE AND DERIVATIVE NEGLECT - BURDEN OF PROOF - ADMISSIBILITY OF CHILDREN'S STATEMENTS UNDER FAMILY COURT ACT § 1046(a)(vi);
 App. Div. affirmed so much of a Family court order of disposition dated 11/26/12, which, among other things, found that appellant was legally responsible for his niece within the meaning of the Family Court Act, abused his niece and derivatively neglected his three children.

VERONICA P., MATTER OF v RADCLIFF A.:

1ST Dept. App. Div. order of 10/10/13; dismissal; leave to appeal granted by Court of Appeals, 1/14/14;
 PARENT, CHILD AND FAMILY - ORDER OF PROTECTION - WHETHER THE APPELLATE DIVISION ERRED IN DISMISSING APPEAL IN A FAMILY OFFENSE PROCEEDING AS MOOT UPON THE GROUND THAT THE ORDER OF PROTECTION AT ISSUE HAD EXPIRED, WHERE FAMILY COURT DETERMINED THAT RESPONDENT COMMITTED ACTS THAT CONSTITUTED HARASSMENT IN THE SECOND DEGREE (PENAL LAW § 240.26) - STIGMA;
 Family Court, New York County, determined that respondent had committed acts that constituted harassment in the second degree, and granted petitioner a two-year order of protection directing respondent to, among other things, stay away from petitioner's house; App. Div. dismissed the appeal as moot.

ROBERTS (STEPHEN), PEOPLE v:

2ND Dept. App. Div. order of 1/9/14; denial of motion; sua sponte examination whether a civil appeal lies from the order of the App. Div. entered in this criminal action, whether the order appealed from finally determines the action within the meaning of the Constitution, and whether a substantial constitutional question is directly involved to support an appeal as of right;
 MOTIONS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING APPELLANT'S MOTION FOR AN INJUNCTION AND TO IMPOSE SANCTIONS UPON THE DISTRICT ATTORNEY FOR FAILURE TO COMPLY WITH A PRIOR ORDER OF THAT COURT;
 App. Div. denied appellant's pro se motion for an injunction and to impose a sanction upon the Queens County District Attorney for failure to comply with an App. Div. order on motion dated 7/30/13.

STATE OF NEW YORK, MATTER OF v MICHAEL M.:

4TH Dept. App. Div. order of 9/27/13; affirmance; leave to appeal granted by Court of Appeals, 1/9/14;

CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - WHETHER THE IMPLEMENTATION AND REVOCATION OF STRICT AND INTENSIVE SUPERVISION AND TREATMENT (SIST) VIOLATED APPELLANT'S DUE PROCESS RIGHTS - LEAST RESTRICTIVE PLACEMENT;

Supreme Court, Niagara County, determined that respondent is a dangerous sex offender requiring confinement and committed respondent to a secure treatment facility; App. Div. affirmed.

TKACHYSHYN, MATTER OF v COMMISSIONER OF LABOR (A.D. NO. 516210):

3RD Dept. App. Div. order of 9/26/13; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

UNEMPLOYMENT INSURANCE - BENEFITS - ELIGIBILITY - INSUFFICIENT COVERED EARNINGS - CHALLENGE TO DETERMINATION THAT CLAIMANT'S EARNINGS AS A TUTOR WITH TESTQUEST, INC. COULD NOT BE USED AS COVERED EMPLOYMENT BECAUSE SUCH TUTORS ARE INDEPENDENT CONTRACTORS - ALLEGED RETALIATION;

App. Div. affirmed a decision of the Unemployment Insurance Appeal Board, filed 4/30/12, which ruled, among other things, that claimant was ineligible to receive unemployment insurance benefits because he was unable to file a valid original claim.

TKACHYSHYN, MATTER OF v COMMISSIONER OF LABOR (A.D. NO. 516398):

3RD Dept. App. Div. order of 10/3/13; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

UNEMPLOYMENT INSURANCE - BENEFITS - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING ADMINISTRATIVE DECISION UPON THE GROUNDS THAT SUBSTANTIAL EVIDENCE SUPPORTED THE FINDINGS THAT CLAIMANT DID NOT HAVE SUFFICIENT REMUNERATION IN HIS BASE PERIODS OR ALTERNATE BASE PERIODS TO ESTABLISH VALID ORIGINAL CLAIMS AND FAILED TO ESTABLISH ECONOMIC HARDSHIP MILITATING IN FAVOR OF A WAIVER OF HIS OBLIGATION TO REPAY FEDERALLY FUNDED EMERGENCY UNEMPLOYMENT COMPENSATION BENEFITS;

App. Div. affirmed a decision of the Unemployment Insurance Appeal Board, filed 7/26/12, which, among other things, charged claimant with a recoverable overpayment of emergency unemployment compensation benefits.

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WILLIAMS (TERRANCE), PEOPLE v:

4TH Dept. App. Div. order of 11/15/13; affirmance; leave to appeal granted by Graffeo, J., 1/22/14;

CRIMES - RECKLESS ENDANGERMENT - DEPRAVED INDIFFERENCE - ENGAGING
IN UNPROTECTED SEX WITHOUT DISCLOSING HIV POSITIVE STATUS -
SUFFICIENCY OF THE EVIDENCE BEFORE THE GRAND JURY AS TO WHETHER
DEFENDANT'S CONDUCT CONSTITUTED DEPRAVED INDIFFERENCE AND POSED A
GRAVE OR "VERY SUBSTANTIAL" RISK OF DEATH TO THE VICTIM;
Supreme Court, Onondaga County, granted in part defendant's
motion to dismiss the indictment based on the legal insufficiency
of the evidence before the grand jury by reducing the first count
of the indictment, which charged reckless endangerment in the
first degree, to reckless endangerment in the second degree; App.
Div. affirmed.