

COURT OF APPEALS NEW FILINGS

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

**September 16 through September 22, 2011**

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.**

HAILEY ZZ, MATTER OF v TOMPKINS COUNTY DEPARTMENT OF SOCIAL SERVICES (RICKY ZZ):

3<sup>RD</sup> Dept. App. Div. order of 6/2/11; affirmance; leave to appeal granted by Court of Appeals, 9/15/11;

PARENT AND CHILD - TERMINATION OF PARENTAL RIGHTS - PERMANENT NEGLECT - WHETHER SUPREME COURT ERRED IN DETERMINING THAT PETITIONER MADE DILIGENT EFFORTS TO STRENGTHEN THE PARENT-CHILD RELATIONSHIP AND THAT FATHER FAILED TO PLAN FOR THE FUTURE OF THE CHILD - WHETHER SUPREME COURT PROPERLY DENIED FATHER'S REQUEST FOR A SUSPENDED JUDGMENT OR POST-TERMINATION VISITATION;

Supreme Court, Tompkins County determined that respondent father permanently neglected his child and thereafter terminated his parental rights; App. Div. affirmed.

HARRIS (CALVIN), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 7/28/11; affirmance; leave to appeal granted by Malone, J., 9/7/11;

CRIMES - MURDER IN THE SECOND DEGREE - SUFFICIENCY OF THE EVIDENCE - CONVICTION BASED ON CIRCUMSTANTIAL EVIDENCE; JURORS - SELECTION OF JURY - WHETHER TRIAL COURT ERRED IN DENYING DEFENDANT'S CHALLENGE FOR CAUSE OF PROSPECTIVE JUROR WHO ACKNOWLEDGED SHE HAD EXPRESSED A PREEXISTING OPINION REGARDING DEFENDANT'S GUILT OR INNOCENCE; EVIDENCE - PRECLUSION OF EXCULPATORY STATEMENTS BY UNAVAILABLE WITNESS - ADMISSION OF VICTIM'S HEARSAY STATEMENTS WITHOUT INSTRUCTING THE JURY THAT STATEMENTS WERE NOT ADMITTED FOR THEIR TRUTH; ALLEGED PROSECUTORIAL MISCONDUCT; ALLEGED DENIAL OF FAIR TRIAL DUE TO PRETRIAL PUBLICITY;

Tioga County Court convicted defendant of murder in the second degree; App. Div. affirmed.

PC GROUP, LLC, MATTER OF v GRANNIS, &c., et al.:

2<sup>ND</sup> Dept. App. Div. order of 4/12/11; reversal; leave to appeal granted by Court of Appeals, 9/13/11;

PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - WHETHER MANDAMUS LIES TO COMPEL RESPONDENTS TO HOLD AN IMMEDIATE ADMINISTRATIVE HEARING TO REVIEW THEIR DENIAL OF PETITIONER'S PERMIT APPLICATION FOR DEVELOPMENT OF A TIDAL WETLANDS AREA; ENVIRONMENTAL CONSERVATION;

Supreme Court, Richmond County denied respondents' motion to dismiss the petition, granted the petition and directed respondents to immediately conduct an adjudicatory hearing and issue a determination on the merits of the denial of petitioner's permit application; App. Div. reversed, granted the motion to dismiss the petition and dismissed the proceeding.

STRAY FROM THE HEART, INC., MATTER OF v DEPARTMENT OF HEALTH and MENTAL HYGIENE OF THE CITY OF NEW YORK, et al.:

1<sup>ST</sup> Dept. App. Div. order of 4/19/11; reversal; leave to appeal granted by Court of Appeals, 9/13/11;

PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - STANDING - WHETHER PETITIONER ANIMAL WELFARE ORGANIZATION HAS STANDING TO CHALLENGE THE ALLEGED FAILURE OF CITY RESPONDENTS TO PROVIDE FULL-SERVICE ANIMAL SHELTERS IN ALL FIVE BOROUGH AS REQUIRED BY THE CITY ANIMAL SHELTERS AND STERILIZATION ACT (ADMINISTRATIVE CODE OF CITY OF NY § 17-801, et seq.);

Supreme Court, New York County granted the petition to compel respondents to comply with their obligation under the City Animal Shelters and Sterilization Act to provide full-service animal shelters in all five boroughs; App. Div. reversed, denied the petition and dismissed the article 78 proceeding for lack of standing.