

COURT OF APPEALS NEW FILINGS

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

February 10, 2012 through February 16, 2012

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.

BRIDGET Y., MATTER OF et al.(AND OTHER PROCEEDINGS):

4TH Dept. App. Div. orders of 12/30/11; affirmances; sua sponte examination whether the App. Div. order that affirms the corrected order of the Family Court, Chautauqua County, entered 8/12/10, finally determines the proceedings within the meaning of the Constitution and whether the two-justice dissent at the App. Div. is on a question of law;

PARENT AND CHILD - CHILD CUSTODY - UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT - TEMPORARY EMERGENCY JURISDICTION; DENIAL OF MOTION TO VACATE ORDER OF FACT-FINDING AND DISPOSITION;

Family Court, Chautauqua County, among other things, determined the subject children to be neglected and thereafter dismissed the motion by Rita S. and Kenneth Y. to vacate the order of fact-finding and disposition; App. Div. affirmed both orders.

GURYEV v TOMCHINSKY, et al.:

2ND Dept. App. Div. order of 8/16/11; reversal in part and affirmance in part; leave to appeal granted by Court of Appeals, 12/15/11;

LABOR - SAFE PLACE TO WORK - SUPERVISION OR CONTROL OF WORK - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING AS A MATTER OF LAW THAT CERTAIN DEFENDANTS WERE NOT OWNERS OR THE AGENTS OF OWNER ON THE PROJECT AND DID NOT CONTROL OR SUPERVISE THE WORK; INDUSTRIAL CODE VIOLATION - FURNISHING OF EYE PROTECTION EQUIPMENT - PLAINTIFF'S ENTITLEMENT TO SUMMARY JUDGMENT ON LIABILITY;

Supreme Court, Kings County denied the cross motions by defendants 200 Riverside Boulevard at Trump Place, Board of Managers of 200 Riverside Boulevard at Trump Place, and The Trump Corporation (the Trump defendants) for summary judgment dismissing the complaint and all cross claims insofar as asserted against them; and denied plaintiff's cross motion for summary judgment on the issue of liability on the Labor Law § 241(6) cause of action; App. Div. (1) reversed the order insofar as cross-appealed from by the Trump defendants and granted the Trump defendants' cross motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against them; and (2) affirmed the order insofar as appealed from by plaintiff.

JORDAN (OSWALD), MATTER OF:

2ND Dept. App. Div. order of 11/29/11; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

EXECUTORS AND ADMINISTRATORS - LETTERS OF ADMINISTRATION - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING DECREE THAT, AMONG OTHER THINGS, GRANTED CROSS PETITION FOR ISSUANCE OF PERMANENT LETTERS OF ADMINISTRATION TO A PERSON, AS THE DECEDENT'S SURVIVING SPOUSE;

Surrogate's Court, Kings County, ordered and decreed that letters of administration be issued to Lenna Susannah Jordan; App. Div. affirmed.

LINEBERGER, MATTER OF v BEZIO:

3RD Dept. App. Div. judgment of 11/17/11; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE DETERMINATION OF GUILT WITH RESPECT TO CHARGES ARISING FROM PETITIONER'S PHYSICAL ALTERCATION WITH ANOTHER INMATE;

App. Div. confirmed determination of Commissioner of Corrections and Community Supervision which found petitioner guilty of violating certain prison disciplinary rules, and dismissed the petition.

MARINACCIO v TOWN OF CLARENCE, et al.:

4TH Dept. App. Div. order of 12/30/11; affirmance with dissents; sua sponte examination whether the two-justice dissent at the App. Div. is on a question of law;

DAMAGES - PUNITIVE DAMAGES - ACTION FOR TRESPASS AND PRIVATE NUISANCE SEEKING DAMAGES FOR FLOODING ON PLAINTIFF'S PROPERTY CAUSED BY ALLEGEDLY INTENTIONAL FLOW OF WATER FROM A SUBDIVISION DEVELOPED BY DEFENDANT BUILDER - WHETHER PUNITIVE DAMAGES AWARD IS SUPPORTED BY SUFFICIENT EVIDENCE; EASEMENT; PRECLUSION OF DEFENDANT'S DAMAGES EXPERT; JURY INSTRUCTIONS;

Supreme Court, Erie County, upon a jury verdict, awarded plaintiff money damages against defendant Kieffer Enterprises, Inc.; App. Div. affirmed.

RODRIGUEZ (VINCENT), PEOPLE v:

1ST Dept. App. Div. order of 10/20/11; affirmance; leave to appeal granted by Pigott, J., 1/20/12; Rule 500.11 review pending;

CRIMES - SENTENCE - RESENTENCE - POSTRELEASE SUPERVISION - EFFECT OF COURT'S FAILURE TO RESENTENCE DEFENDANT TO INCLUDE POSTRELEASE SUPERVISION WITHIN 40-DAY TIME LIMIT CONTAINED IN CORRECTION LAW § 601-d(4)(c) AND (d);

Supreme Court, New York County judgment, as amended, resentenced defendant to an aggregate term of 10 years, with 5 years' postrelease supervision; App. Div. affirmed.