

COURT OF APPEALS NEW FILINGS

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

May 19, 2017 through May 25, 2017

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.

BURNS, &c. v GOYAL, et al.:

2ND Dept. App. Div. order of 12/28/16; reversal; leave to appeal granted by Court of Appeals, 5/9/17; Rule 500.11 review pending; Physicians and Surgeons--Malpractice--Wrongful death--Whether the Appellate Division properly granted defendants' motions for summary judgment--various physicians' duties of care regarding prescriptions, heart condition and kidney biopsy--expert affidavits used on summary judgment motions; Supreme Court, Suffolk County, denied certain defendants' separate motions for summary judgment dismissing the complaint as asserted against each of them; App. Div. reversed insofar as appealed from, and granted certain defendants' separate motions for summary judgment dismissing the complaint as asserted against each of them.

CLEMENT v DURBAN, et al.:

2ND Dept. App. Div. order of 12/21/16; affirmance; leave to appeal granted by App. Div., 5/9/17;
Constitutional Law--Privileges and Immunities Clause--Whether the requirements of CPLR 8501(a) and 8503 that nonresident plaintiffs maintaining lawsuits in New York courts post security for the costs for which they would be liable if their lawsuits were unsuccessful violate the Privileges and Immunities Clause of the United States Constitution (US Const, art IV, § 2); claimed due process and equal protection violations;
Supreme Court, Kings County, granted defendants' motion pursuant to CPLR 8501(a) and 8503 to direct plaintiff to post security for costs in the amount o \$500; App. Div. affirmed.

HAUG, MATTER OF v STATE UNIVERSITY OF NEW YORK AT POTSDAM, et al.:

3RD App. Div. order of 4/6/17; annulling a determination;
Schools--Students--Whether substantial evidence supported university's determination finding a student guilty of sexual misconduct in violation of the student code of conduct;
Proceeding against body or officer--CPLR article 78 proceeding to review the university's determination; Evidence--hearsay accounts of incident as reported by complainant to campus police officer and director of student conduct;
Supreme Court, St. Lawrence County, transferred the proceeding to the Appellate Division, Third Department; App. Div. annulled respondent university's determination finding petitioner guilty of sexual misconduct in violation of respondent's code of conduct, granted the petition and directed respondent university to expunge all references to the matter from petitioner's school record.

RUTH JOANNA O. O., MATTER OF:

1ST Dept. App. Div. order of 2/28/17; affirmance; leave to appeal granted by App. Div., 4/27/17; Rule 500.11 review pending;
Parent, Child and Family--Abused or Neglected Child--Whether a preponderance of the evidence supports the finding that the mother's untreated mental condition exposed the subject child to risk of imminent harm and that mother therefore neglected the child; Family Court Act § 1012(f)(i);
Family Court, Bronx County, determined that mother neglected the subject child; App. Div. affirmed.

WATSON v STATE OF NEW YORK:

1ST Dept. App. Div. order of 2/28/17; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right and whether any other jurisdictional basis exists for an appeal as of right;
State--Claim Against State--Dismissal of claims by Court of Claims;
Court of Claims dismissed Claim Nos. 126184 and 125779; App. Div. affirmed.