

COURT OF APPEALS NEW FILINGS

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

April 20, 2018 through April 26, 2018

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.

MATTER OF ASSIMAKOPOULOS, DECEASED (LANA v ASSIMAKOPOULOS-PANUTHOS):

1ST Dept. App. Div. order of 3/6/18; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; **Wills--Probate--Letters of administration c.t.a--will probated in Florida--whether New York Surrogate's Court may make independent inquiry into domicile of decedent, revoke ancillary letters of administration and grant nonancillary letters of administration to the Public Administrator; claimed violation of the Full Faith and Credit Clause of the U. S. Constitution; res judicata; motion to renew;** Surrogate's Court, New York County, denied petitioner Lana's motion to renew (6/26/13 order); and, among other things, granted limited ancillary letters of administration c.t.a to cross petitioner Assimakopoulos-Panuthos (9/25/13 decree); App. Div. reversed, vacated the decree, revoked the letters, and issued letters of administration c.t.a. to the Public Administrator of New York County.

MATTER OF DENNIS E. (ANONYMOUS) v D'EMIC, &c., et al.:

2ND Dept. App. Div. judgment of 3/7/18; dismissal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; **Proceeding Against Body or Officer--Prohibition--Whether petitioner established a clear legal right to the relief sought; CPLR article 78 proceeding seeking to prohibit a Justice of Supreme Court, Kings County, from enforcing an order, in an underlying criminal action, that denied petitioner's motion to dismiss a proceeding brought by Commissioner of the New York State Office of Mental Health to convert petitioner from criminal to civil status pursuant to Jackson v Indiana (406 US 715 [1972]);**

App. Div. granted respondent's cross motion to dismiss the proceeding, denied the petition, and dismissed the CPLR article 78 proceeding.

GALEA, MATTER OF v KROL:

2ND Dept. App. Div. order of 3/12/18; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Parent, Child and Family--Custody--Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)--mother's application, by order to show cause to a Family Court judge, for temporary emergency jurisdiction in New York over custody matter litigated extensively in Florida;

Family Court, Suffolk County, rejected proposed order to show cause and petition for temporary emergency jurisdiction over the child pursuant to UCCJEA and Domestic Relations Law § 76-c; App. Div. denied that branch of appellant's motion which was for leave to appeal to the App. Div., and denied as academic appellant's motion to direct that the subject child remain in New York pending hearing and determination of the appeal.

RODRIGUEZ (MANUEL), PEOPLE v:

1ST Dept. App. Div. order of 10/24/17; affirmance; leave to appeal granted by Rivera, J., 4/10/18;

Crimes--Larceny--Whether evidence was legally sufficient to establish grand larceny in the third degree where defendant exercised dominion and control over proceeds of stolen check, but not over the stolen check itself;

Supreme Court, New York County, convicted defendant, after a jury trial, of grand larceny in the third degree, and imposed sentence; App. Div. affirmed.

SAYLOR, MATTER OF v BUKOWSKI:

Family Court, Suffolk County order of 3/23/18; grant of petition; sua sponte examination whether an appeal as of right lies under CPLR 5601(b)(2);

Parent, Child and Family--Custody--Whether Family Court erred in awarding sole custody of the subject child to the father; alleged constitutional violations;

Family Court granted the father's petition for custody of the subject child.

WELLS, MATTER OF v PRESSLEY, et al.:

1ST Dept. App. Div. order of 3/29/18; dismissal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer--Prohibition--Whether petitioner established a clear legal right to the relief sought; alleged constitutional violations;

App. Div. denied petitioner's application pursuant to CPLR article 78 and dismissed the petition.