

October 22, 2013

CASES

2 No. 158
The People &c.,
 Respondent,
 v.
Patrick A. Asaro,
 Appellant.

Order affirmed.
Opinion by Judge Graffeo.
Chief Judge Lippman and Judges Read, Smith,
Pigott, Rivera and Abdus-Salaam concur.

2 No. 166
The People &c.,
 Respondent,
 v.
Jocelyn Clermont,
 Appellant.

Order modified by remitting to Supreme Court,
Queens County, for further proceedings in
accordance with the memorandum herein and, as so
modified, affirmed.
Judges Graffeo, Read, Smith, Pigott and Abdus-
Salaam concur.
Judge Rivera dissents in an opinion in which Chief
Judge Lippman concurs.

4 No. 153
In the Matter of Eric J. Koch, D.O.,
 Respondent,
 v.
James G. Sheehan, &c.,
 Appellant.

Order affirmed, with costs.
Opinion by Judge Read.
Judges Graffeo, Rivera and Abdus-Salaam concur.
Judge Smith concurs in result in an opinion in which
Chief Judge Lippman and Judge Pigott concur.

4 No. 251 SSM 24
Robert K. Monette et al.,
 Appellants,
 v.
Christina L. Trummer, et al.,
 Defendants,
Jim Ball Pontiac-Buick-GMC, Inc.,
 Respondent.

On review of submissions pursuant to section 500.11
of the Rules, order affirmed, with costs, in a
memorandum.
Chief Judge Lippman and Judges Graffeo, Read,
Smith, Pigott, Rivera and Abdus-Salaam concur.

1 No. 168
In the Matter of The State of New York,
 Respondent,
 v.
Enrique D., &c.,
 Appellant.

Order reversed, without costs, and a new trial
ordered, in a memorandum.
Chief Judge Lippman and Judges Graffeo, Read,
Smith, Pigott, Rivera and Abdus-Salaam concur.

MOTIONS

Mo. No. 2013-970
149 Madison LLC,
Respondent,
v.
Paul J. Bosco,
Appellant.

Motion for leave to appeal dismissed as untimely
(see CPLR 5513[b]).

2 SSD 67
Kelly L. Ashmore,
Respondent,
v.
Benjamin Ashmore,
Appellant.

Appeal dismissed without costs, by the Court sua
sponte, upon the ground that the order appealed from
does not finally determine the action within the
meaning of the Constitution.

Mo. No. 2013-921
The People &c.,
Respondent,
v.
Hiram Beaver,
Appellant.

Motion for leave to appeal dismissed upon the
ground that the Court of Appeals does not have
jurisdiction to entertain this motion for leave to
appeal from the order of County Court entered in this
proceeding commenced in Town Court (see NY
Const, art VI, § 3[b]; CPLR 5602).

1 Mo. No. 2013-910
Wanda Y. Collins et al.,
Appellants,
v.
The City of New York, et al.,
Defendants,
Verizon New York Inc. et al.,
Respondents.

Motion for leave to appeal denied with one hundred
dollars costs and necessary reproduction
disbursements.

3 SSD 66
In the Matter of Concerned Home Care
Providers, Inc., et al.,
 Appellants,
 v.
State of New York et al.,
 Respondents.

Appeal dismissed without costs, by the Court sua
sponte, upon the ground that no substantial
constitutional question is directly involved.

2 Mo. No. 2013-815
Emigrant Mortgage Company, Inc.,
 Appellant,
 v.
Douglas Westervelt, Jr.,
 Respondent,
et al.,
 Defendants.

Motion for leave to appeal dismissed upon the
ground that the order sought to be appealed from
does not finally determine the action within the
meaning of the Constitution.

2 Mo. No. 2013-919
Wajma Farhadi,
 Respondent,
 v.
Sher Ahmad Qureshi,
 Appellant.

Motion, insofar as it seeks leave to appeal from the
September 2011 Supreme Court order, dismissed
upon the ground that it does not lie (see NY Const,
art VI, § 3; CPLR 5602); motion for leave to appeal
otherwise dismissed upon the ground that the
Appellate Division orders sought to be appealed
from do not finally determine the action within the
meaning of the Constitution.

3 Mo. No. 2013-879
In the Matter of Joseph Fayette,
 Appellant,
 v.
Brian Fischer, &c.,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2013-933
In the Matter of Catherine Flanagan,
 Respondent,
 v.
Stephen Flanagan,
 Appellant.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

3 Mo. No. 2013-947
In the Matter of Mark Ford, et al.,
 Appellants,
 v.
New York State Racing and Wagering Board,
 Respondent.

Motion for leave to appeal denied upon the ground that an appeal lies as of right.

2 SSD 65
In the Matter of Stephanie Gonnard,
 Respondent,
 v.
James Guido,
 Appellant.

Appeal, insofar as taken from that portion of the Appellate Division order affirming so much of Family Court's order as granted the petition and modified custody, dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved (see CPLR 5601[b][1]); appeal otherwise dismissed without costs, by the Court sua sponte, upon the ground that it does not lie (see CPLR 5601; NY Const, art VI, § 3).

2 Mo. No. 2013-928
In the Matter of Catherine A. Gorman,
 Appellant,
 v.
Kathleen M. Rice, &c.,
 Respondent,
et al.,
 Respondent.

Motion for leave to appeal denied as unnecessary.
Motion for a stay granted.

3 SSD 68
The People &c.,
 Respondent,
 v.
Earl Hayes,
 Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no civil appeal lies from the order of the Appellate Division entered in this criminal proceeding (see NY Const, art VI, § 3[b]; CPLR 5601; CPL 450.90).

1 Mo. No. 2013-961
Lidia Hughes,
 Respondent,
 v.
Andre Hughes,
 Appellant.

Motion for leave to appeal denied.
Motion for a stay dismissed as academic.

1 Mo. No. 2013-761
Jacobson Family Investment, Inc., et al.,
 Appellants,
 v.
National Union Fire Insurance Company of
Pittsburgh, PA, et al.,
 Respondents.

Motion, insofar as it seeks leave to appeal on behalf of MDG 1994 GRAT, LLC and BSJ Foundations, LLC, dismissed upon the ground that as to those parties the order sought to be appealed from does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.
Judge Abdus-Salaam took no part.

2 Mo. No. 2013-924
Kevin Kerveng Tung, P.C.,
 Appellant,
 v.
JP Morgan Chase & Co., et al.,
 Respondents.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

3 Mo. No. 2013-849
In the Matter of Maureen Kigin,
 Appellant,
 v.
State of New York Workers' Compensation
Board et al.,
 Respondents.
Workers' Compensation Board,
 Respondent.

Motion for leave to appeal granted.

4 Mo. No. 2013-804
In the Matter of Roseann Kilduff,
 Respondent,
 v.
Rochester City School District, et al.,
 Appellants.

Motion for leave to appeal granted.

2 Mo. No. 2013-866
Kimso Apartments, LLC, &c.,
et al.,
 Respondents,
 v.
Mahesh Gandhi,
 Appellant,
Arlington Filler, et al.,
 Respondents.

Motion for leave to appeal granted.

 SSD 63
Constantine Korelis,
 Appellant,
 v.
Conriv Realty Corp.,
 Respondent.

Appeal dismissed without costs, by the Court sua
sponte, upon the ground that it does not lie (see
CPLR 5601).

4 Mo. No. 2013-865
In the Matter of Juan C. Lara,
Respondent,
v.
Michelle B. Sullivan,
Appellant.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order as affirmed that part of Family Court's order adjudging appellant in civil contempt for violating a prior custody order, dismissed upon the ground that such portion of the order does not finally determine the proceeding within the meaning of the Constitution; motion for leave to appeal otherwise denied.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2013-896
The People &c.,
Respondent,
v.
Franklin Martinez-Guzman,
Appellant.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

2 Mo. No. 2013-909
Annemarie McAvoy,
Appellant,
v.
John Hannigan,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2013-882
In the Matter of Merry-Go-Round Playhouse,
Inc.,
Respondent,
v.
Assessor of City of Auburn, et al.,
Appellants.

Motion for leave to appeal granted.

4 Mo. No. 2013-859
Robert D. Moore, et al., &c.,
 Appellants,
 v.
Richard S. Johnson, et al.,
 Respondents.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

2 Mo. No. 2013-765
The People &c.,
 Respondent,
 v.
Tayquan Mosley,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2013-847
Elissa Motelson, &c., et al.,
 Appellants,
 v.
Ford Motor Company, et al.,
 Respondents.
(And Another Action.)

Motion for leave to appeal granted.

1 Mo. No. 2013-870
In the Matter of New York Times Company,
et al.,
 Appellants,
 v.
City of New York Police Department,
 Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2013-931
Pinnacle Charter School, et al.,
 Appellants,
 v.
Board of Regents of the University of the
State of New York, et al.,
 Respondents.

Motion for leave to appeal denied.
Motion for a stay dismissed as academic.

4 Mo. No. 2013-1006
Pinnacle Charter School, et al.,
Appellants,
v.
Board of Regents of the University of the
State of New York, et al.,
Respondents.

Motion by Community Charter School to intervene
denied.

3 Mo. No. 2013-903
Charles Quinlan et al.,
Respondents,
v.
John Doe et al., &c.,
Appellants.

Motion for leave to appeal denied with one hundred
dollars costs and necessary reproduction
disbursements.

3 Mo. No. 2013-845
In the Matter of Marilyn Ratzker,
Appellant,
v.
Office of the New York State Comptroller
(New York State and Local Retirement
System),
Respondent.

Motion for leave to appeal denied with one hundred
dollars costs and necessary reproduction
disbursements.

3 Mo. No. 2013-948
In the Matter of Richmondville Volunteer
Emergency Squad, Inc.,
Appellant,
v.
New York State Department of Health, et al.,
Respondents.

Motion for leave to appeal denied with one hundred
dollars costs and necessary reproduction
disbursements.

3 SSD 64
The People &c. ex rel. David J. Safran,
Appellant,
v.
Elizabeth A. O'Meara, &c.,
Respondent.

Appeal dismissed without costs, by the Court sua
sponte, upon the ground that no substantial
constitutional question is directly involved.

4 Mo. No. 2013-867
In the Matter of Jerry Sanders,
 Appellant,
 v.
Brian Fischer, &c.,
 Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2013-940
In the Matter of Nicholas S.
et al. &c.

Motion for leave to appeal denied.

St. Lawrence County Department of Social
Services,
 Respondent;
John T.,
 Appellant.
(And Another Related Proceeding.)

2 Mo. No. 2013-864
Carolyn Mary Schenk,
 Appellant,
 v.
Staten Island University Hospital, et al.,
 Respondents,
et al.,
 Defendant.

On the Court's own motion, appeal dismissed,
without costs, upon the ground that the order
appealed from does not finally determine the action
within the meaning of the Constitution.
Motion for leave to appeal dismissed upon the
ground that the order sought to be appealed from
does not finally determine the action within the
meaning of the Constitution.
Motion for poor person relief dismissed as academic.

3 Mo. No. 2013-841
In the Matter of William A. Schiavo,
 Appellant.
Commissioner of Labor,
 Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2013-775
Renee Sciara and Matthew Sciara,
 Respondents,
 v.
Surgical Associates of Western New York,
P.C. and George Blessios, M.D.,
 Appellants.
Usha Chopra, M.D.,
 Non-Party Appellant.

Motion to dismiss defendants' appeal granted and the appeal dismissed, with four hundred dollars costs and one hundred dollars costs of motion, upon the ground that defendants are not parties aggrieved. Defendants remain respondents on the appeal by Usha Chopra, M.D., and may submit a brief and present argument on that appeal.

2 Mo. No. 2013-754
Christopher Selletti,
 Defendant,
 v.
Thomas F. Liotti,
 Appellant;
Jeffrey Levitt,
 Nonparty-Appellant.

Motion by Thomas F. Liotti, insofar as it seeks leave to appeal from the Appellate Division order denying reargument or leave to appeal, dismissed upon the ground that such order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied. Motion by Jeffrey Levitt for leave to appeal denied.

2 Mo. No. 2013-605
Juan Sierra,
 Plaintiff,
 v.
4401 Sunset Park, LLC, et al.,
 Defendants.

4401 Sunset Park, LLC, et al.,
 Third-Party Respondents,
 v.
LM Interiors Contracting, LLC,
 Third-Party Respondent,
Scottsdale Insurance Company,
 Third-Party Appellant.
(And A Second Third-Party Action.)

Motion for leave to appeal granted.

3 Mo. No. 2013-959
In the Matter of Aurel Smith,
 Appellant,
 v.
David Rock, &c.,
 Respondent.

Motion for leave to appeal denied.
Motion for poor person relief dismissed as academic.

3 Mo. No. 2013-703
In the Matter of Mark A. Sterne,
 Appellant.
Commissioner of Labor,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2013-949
Kelvin Then, &c., et al.,
 Appellants,
 v.
New York City Transit Authority,
 Respondent,
et al.,
 Defendant.

Motion for leave to appeal dismissed upon the
ground that the order sought to be appealed from
does not finally determine the action within the
meaning of the Constitution.

2 Mo. No. 2013-926
In the Matter of Jenna U. (Anonymous).

Administration for Children's Services,
 Respondent;
Derrick U. (Anonymous),
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2013-938
Alexandre Van Damme,
 Respondent,
 v.
Nahum Gelber,
 Appellant,
Arij Gasiunasen Fine Art of Palm Beach, Inc.,
&c.,
 Defendant.
(And a Third-Party Action.)

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.
Judge Abdus-Salaam took no part.

3 Mo. No. 2013-925
In the Matter of William Vega,
 Appellant,
 v.
Brian Fischer, &c., et al.,
 Respondents.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.
Motion for poor person relief dismissed as academic.

3 Mo. No. 2013-913
The People &c. ex rel. George Warwick,
 Appellant,
 v.
Kevin Mulverhill, &c.,
 Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2013-950
In the Matter of Jomo Williams,
 Appellant,
 v.
Hon. R.A.W., et al.,
 Respondents.

Motion for a stay dismissed as academic.

1 Mo. No. 2013-932
Barbara Witchard,
 Appellant,
 v.
Montefiore Medical Center,
 Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.
Judge Abdus-Salaam took no part.

1 Mo. No. 2013-810
In the Matter of William Wood,
 Respondent,
 v.
Andrea Wood,
 Appellant.

Motion for leave to appeal denied.