

December 13, 2012

CASES

1 No. 219
In the Matter of Karen Bitchatchi,
 Respondent,
 v.
Board of Trustees of the New York City
Police Department Pension Fund, Article II,
 Appellant.

Order affirmed, with costs.
Opinion by Judge Graffeo.
Chief Judge Lippman and Judges Ciparick, Read,
Smith and Pigott concur.

4 No. 203
Marlino Gress, et al.,
 Respondents,
 v.
Byron Brown, &c. et al.,
 Respondents,
Buffalo Fiscal Stability Authority,
 Appellant.

Order, insofar as appealed from, reversed, with costs,
the declaration that the Buffalo Fiscal Stability
Authority does not have the authority to freeze the
wages of plaintiffs vacated and plaintiffs' complaint
as against defendant Buffalo Fiscal Stability
Authority dismissed, in a memorandum.
Judges Graffeo, Read, Smith and Pigott concur.
Chief Judge Lippman dissents and votes to affirm in
an opinion in which Judge Ciparick concurs.

1 No. 221
In the Matter of Nilda Macri, &c.,
 Respondent,
 v.
Raymond W. Kelly, &c., et al.,
 Appellants.

Order affirmed, with costs.
Opinion by Judge Graffeo.
Chief Judge Lippman and Judges Ciparick, Read,
Smith and Pigott concur.

1 No. 220
In the Matter of Eddie Maldonado,
 Appellant,
 v.
Raymond Kelly, &c., et al.,
 Respondents.

Order reversed, with costs, determination of respondent Board of Trustees of the New York City Police Department Pension Fund, Article II, annulled and matter remitted to Supreme Court, New York County, with directions to remand to respondent Board of Trustees for further proceedings in accordance with the opinion herein.
Opinion by Judge Graffeo.
Chief Judge Lippman and Judges Ciparick, Read, Smith and Pigott concur.

2 No. 216
The People &c.,
 Appellant,
 v.
Brandon McFadden,
 Respondent.

Order reversed and case remitted to the Appellate Division, Second Department, for consideration of the facts and issues raised but not determined on the appeal to that court.
Opinion by Chief Judge Lippman.
Judges Ciparick, Graffeo, Read and Smith concur.
Judge Pigott dissents and votes to affirm in an opinion.

1 No. 240 SSM 41
In the Matter of Peter Principe,
 Respondent,
 v.
New York City Department of Education,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and certified question answered in the affirmative. The Appellate Division correctly determined that the penalty of termination imposed on petitioner was excessive in light of all the circumstances (see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 233 [1974]). Chief Judge Lippman and Judges Ciparick, Graffeo, Read and Pigott concur.
Judge Smith dissents and votes to reverse for the reason that it cannot be concluded, as a matter of law, that the penalty of termination shocks the judicial conscience (see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 233 [1974]).

2 No. 223
The People &c.,
 Respondent,
 v.
Andrew Spencer,
 Appellant.

Order affirmed, in a memorandum.
Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Pigott concur.

MOTIONS

3 Mo. No. 2012-1043
In the Matter of 1801 Sixth Avenue, LLC,
 Appellant,
 v.
Empire Zone Designation Board
et al.,
 Respondents.

And Five Other Proceedings against Empire
Zone Designation Board et al. as Respondents
by, respectively:

Hiawatha Associates, LLC,
 Appellant;
Erie Boulevard Hydropower, LP,
 Appellant;
Pioneer Fulton Shopping Center, LLC,
 Appellant;
Third National Associates Group,
 Appellant;
Third National Associates, LLC,
 Appellant.

2 Mo. No. 2012-1028
In the Matter of Walter Adelman,
 Appellant,
 v.
Michael A. Gary, &c.,
 Respondent.

2 Mo. No. 2012-1025
Village of Babylon,
 Appellant,
 v.
Hendrickson Bros., Inc.,
 Respondent.

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

Motion for reargument denied.

Motion for leave to appeal granted.

1 Mo. No. 2012-1061
Jennifer Cangro,
 Appellant,
 v.
Gina Marie Reitano,
 Respondent.

On the Court's own motion, appeal dismissed,
without costs, upon the ground that no substantial
constitutional question is directly involved.
Motion for leave to appeal denied.

3 Mo. No. 2012-1011
In the Matter of Hugh Charles,
 Appellant,
 v.
New York State Department of Correctional
Services,
 Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2012-1045
In the Matter of Jack Davis,
 Appellant,
 v.
Brian Fischer, &c., et al.,
 Respondents.

Motion for leave to appeal denied.

2 Mo. No. 2012-1056
In the Matter of Raphael Grossman et al.,
 Appellants,
 v.
Yaakov Aaron Ilowitz et al.,
 Respondents.
(And Another Proceeding.)

Motion for leave to appeal denied.

2 Mo. No. 2012-1055
Israel Grossman, et al.,
 Appellants,
 v.
New York Life Insurance Company,
 Respondent.
(And a Third-Party Action.)

Motion for reargument of motion for leave to appeal
denied.

1 Mo. No. 2012-1053
H Eighth Avenue Associates, LLC,
Respondent,
v.
Stessa Corp.,
Appellant.

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

1 Mo. No. 2012-1052
Stephen Herson, &c.,
Appellant,
v.
Troon Management, Inc., et al.,
Respondents.

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

3 Mo. No. 2012-1047
The People &c.,
Respondent,
v.
Tony J. Irizarry,
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2012-1049
In the Matter of Gregory A. Kairis,
Appellant,
v.
Belinda A. Smith Kairis,
Respondent.

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

2 Mo. No. 2012-1026
Village of Lindenhurst,
Appellant,
v.
Hendrickson Bros., Inc.,
Respondent.

Motion for leave to appeal granted.

2 Mo. No. 2012-1033
Village of Lindenhurst,
Appellant,
v.
J.D. Posillico, Inc.,
Respondent.

Motion for leave to appeal granted.

2 Mo. No. 2012-1027
Village of Lindenhurst,
Appellant,
v.
Lizza Industries, Inc.,
Respondent.

Motion for leave to appeal granted.

3 Mo. No. 2012-1013
In the Matter of State of New York,
Respondent,
v.
James Z.,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2012-1051
Sabrina Oliveri,
Respondent,
v.
Vassar Brothers Hospital,
Appellant.

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. 2012-1024
Town of Oyster Bay,
Appellant,
v.
Hendrickson Bros., Inc.,
Respondent.

Motion for leave to appeal granted.

2 Mo. No. 2012-1030
Town of Oyster Bay,
 Appellant,
 v.
J.D. Posillico, Inc.,
 Respondent.

Motion for leave to appeal granted.

2 Mo. No. 2012-1022
Town of Oyster Bay,
 Appellant,
 v.
Lizza Industries, Inc.,
 Respondent.

Motion for leave to appeal granted.

2 Mo. No. 2012-1032
Town of Oyster Bay,
 Appellant,
 v.
Marvec Allstate, Inc.,
 Respondent.

Motion for leave to appeal granted.

2 Mo. No. 2012-1023
Town of Oyster Bay,
 Appellant,
 v.
J.D. Posillico, Inc., et al.,
 Respondents.

Motion for leave to appeal granted.

2 Mo. No. 2012-1031
Town of Oyster Bay,
 Appellant,
 v.
S. Zara and Sons Contracting Corporation,
 Respondent.

Motion for leave to appeal granted.

2 Mo. No. 2012-1041
In the Matter of Renee R. (Anonymous).

Motion for leave to appeal denied.

Orange County Department of Social
Services,
 Respondent;
Tonya D. (Anonymous),
 Respondent;
Christian R. (Anonymous),
 Appellant.

2 Mo. No. 2012-1136
In the Matter of Renee R. (Anonymous).

Motion for leave to appeal denied.

Orange County Department of Social
Services,
 Respondent;
Tonya D. (Anonymous),
 Appellant;
Christian R. (Anonymous),
 Respondent.

1 Mo. No. 2012-1009
In the Matter of Fedie R. Redd,
 Appellant,
 v.
Edward A. Battisti, et al.,
 Respondents.

Motion, insofar as it seeks leave to appeal from the
Appellate Division order affirming the Supreme
Court judgment, denied; motion, insofar as it seeks
leave to appeal from the Appellate Division order
denying reargument or, in the alternative, leave to
appeal to this Court, dismissed upon the ground that
such order does not finally determine the proceeding
within the meaning of the Constitution.
Motion for poor person relief dismissed as academic.

1 Mo. No. 2012-854
George Bundy Smith, Sr., &c.,
Appellant,
v.
The United Church of Christ,
et al.,
Respondents.

Motion for reargument of motion for leave to appeal
denied.

3 Mo. No. 2012-1018
In the Matter of Kaytlin TT., &c.

Cortland County Department of Social
Services,
Respondent;
Betty SS.,
Appellant.
(And Two Other Related Proceedings.)

Motion for reargument of motion for leave to appeal
denied.

3 Mo. No. 2012-1021
In the Matter of David Wyche,
Appellant.
Commissioner of Labor,
Respondent.

Motion, insofar as it seeks leave to appeal from the
Appellate Division order denying reconsideration
and further relief, dismissed upon the ground that
such order does not finally determine the proceeding
within the meaning of the Constitution; motion for
leave to appeal otherwise denied.