

March 26, 2013

CASES

4 No. 44
The People &c.,
 Respondent,
 v.
Stephen DeProspero,
 Appellant.

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

2 No. 52
The People &c.,
 Appellant,
 v.
Randolfo Diaz,
 Respondent.

Order affirmed.
Opinion by Judge Pigott.
Chief Judge Lippman and Judges Graffeo, Read and
Smith concur.
Judge Rivera concurs in result in an opinion.

1 No. 37
Geoffrey Gelman,
 Respondent,
 v.
Antonio Buehler,
 Appellant.

Order, insofar as appealed from, reversed, with costs,
the breach of contract cause of action of the
complaint dismissed, and the certified question
answered in the negative.
Opinion by Judge Graffeo.
Chief Judge Lippman and Judges Read, Smith and
Pigott concur.
Judge Rivera took no part.

1 No. 119 SSM 51
Kasowitz, Benson, Torres & Friedman, LLP,
 Appellant,
 v.
Duane Reade, et al.,
 Respondents.

On review of submissions pursuant to section 500.11
of the Rules, order affirmed, with costs. The courts
below did not err as a matter of law in dismissing the
complaint (see Innophos, Inc. v Rhodia, S.A., 10
NY3d 25, 30 [2008]).
Chief Judge Lippman and Judges Graffeo, Read,
Smith, Pigott and Rivera concur.

4 No. 55
M&T Real Estate Trust, &c.,
Appellant,
v.
James J. Doyle, II et al.,
Respondents.

Order reversed, with costs, and order and judgment
of County Court, Erie County, reinstated.
Opinion by Judge Read.
Chief Judge Lippman and Judges Graffeo, Smith,
Pigott and Rivera concur.

1 No. 28
The People &c.,
Respondent,
v.
Akieme Nesbitt,
Appellant.

Order reversed and a new trial ordered, in a
memorandum.
Chief Judge Lippman and Judges Graffeo, Read,
Smith and Pigott concur.
Judge Rivera took no part.

2 No. 50
Keith Orsi, &c., et al.,
Appellants,
v.
Susan Haralabatos, &c., et al.,
Respondents,
et al.,
Defendants.

Order reversed, with costs, and so much of the
motion of defendants Haralabatos and Stony Brook
Orthopaedic Associates as seeks summary judgment
dismissing the medical malpractice cause of action
against them denied, in a memorandum.
Chief Judge Lippman and Judges Graffeo, Read,
Smith, Pigott and Rivera concur.

2 No. 53
The People &c.,
Respondent,
v.
Bill Williams,
Appellant.

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

MOTIONS

4 Mo. No. 2013-121
The People &c.,
 Respondent,
 v.
Jesse Abner,
 Appellant.

Motion for leave to appeal granted.

3 Mo. No. 2013-119
In the Matter of Susan R. Barney,
 Respondent,
 v.
Dennis G. Van Auken,
 Appellant.

Motion for reargument of motion for leave to appeal
denied.
Judge Rivera took no part.

2 SSD 10
Katharine Biscone, &c.,
 Appellant,
 v.
JetBlue Airways Corporation,
 Respondent,
et al.,
 Defendants.
(AD No. 2012-00604)

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.

2 SSD 11
Katharine Biscone &c.,
 Appellant,
 v.
JetBlue Airways Corporation,
 Respondent,
et al.,
 Defendants.
(AD Nos. 2010-11745 & 2011-02683)

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.

4 Mo. No. 2013-138
Winifred K. Day,
 Appellant,
 v.
One Beacon Insurance,
 Respondent.

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

2 Mo. No. 2013-311
In the Matter of Riven Flamenbaum,
Deceased.

Motion by Archaeological Institute of America et al. for leave to file a supplemental amici curiae brief on the appeal herein denied.

Vorderasiatisches Museum,
 Respondent,
Hannah K. Flamenbaum,
 Appellant,
Israel Flamenbaum,
 Respondent.

2 Mo. No. 2013-134
Mark Gatz,
 Appellant,
 v.
Mark Layburn,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2013-137
Salvatore Guerrera,
 Respondent,
 v.
Robert J. Zysk,
 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.
Motion for a stay dismissed as academic.

1 SSD 12
In the Matter of Amy R. Gurvey (admitted as
Amy Rebecca Weissbrod), an Attorney and
Counselor-at-Law.

Departmental Disciplinary Committee for the
First Judicial Department,
Respondent,
Amy R. Gurvey,
Appellant.

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

3 Mo. No. 2013-97
In the Matter of Alysheionna HH., &c.

Cortland County Department of Social
Services,
Respondent;
Tara II.,
Appellant.
(And Another Related Proceeding.)

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

4 Mo. No. 2013-117
The People &c. ex rel. James Keyes,
Appellant,
v.
Sibatu Khahaifa, &c.,
Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2013-126
In the Matter of Melvin Lee,
Appellant,
v.
Erie County District Attorney's Office,
Respondent.

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.

2 Mo. No. 2013-114
Board of Managers of Marbury Club
Condominium,
 Respondent,
 v.
Marbury Corners, LLC, et al.,
 Appellants.

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

2 Mo. No. 2013-101
In the Matter of David Maxwell,
 Appellant,
 v.
Mary H. Smith, &c.,
 Respondent.

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

3 Mo. No. 2013-107
Joseph Murray,
 Appellant,
 v.
Suzanne Murray,
 Respondent.

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.

1 Mo. No. 2013-104
Nemon Corp.,
 Appellant,
 v.
45-51 Avenue B, LLC,
 Respondent.

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

1 Mo. No. 2013-321
The People &c.,
 Appellant,
 v.
George Oliveras,
 Respondent.

Motion by Innocence Network for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

2 Mo. No. 2013-130
In the Matter of Orange County Department
of Social Services, on behalf of Misty F.-R.
(Anonymous),
 Respondent,
 v.
Germel Y. (Anonymous),
 Appellant.
(And Another Proceeding.)

Motion 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.

3 Mo. No. 2013-115
Daniel Palo,
 Appellant,
 v.
Town of Fallsburg,
 Respondent.

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

2 Mo. No. 2013-103
In the Matter of State of New York,
 Respondent,
 v.
Geoffrey P. (Anonymous),
 Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2013-120
In the Matter of Colin R. &c.

Chemung County Department of Social
Services,
 Respondent;
Marsha R.,
 Appellant.
(And Another Related Proceeding.)

Motion for leave to appeal denied.

4 Mo. No. 2013-148
In the Matter of Elsa R. et al.

Monroe County Department of Human
Services,
Respondent;
Gloria R.,
Appellant.

1 Mo. No. 2012-1296
In the Matter of Keisha Gabriel S.,
Respondent,
v.
Alphonso S.,
Appellant.
(And An Action.)

3 Mo. No. 2013-133
The People &c. ex rel. Michael Aziz Zarif
Shabazz &c.,
Appellant,
v.
Jerome J. Richards &c. et al.,
Respondents.

1 Mo. No. 2013-4
The People &c.,
Respondent,
v.
Mikal Smith,
Appellant.

Motion for leave to appeal denied.

Motion, insofar as it seeks leave to appeal from that
part of the Appellate Division order that affirmed the
order of Supreme Court, dismissed upon the ground
that such portion of the order does not finally
determine the action within the meaning of the
Constitution; motion for leave to appeal otherwise
denied.

Motion for reargument of motion for leave to appeal
denied.
Judge Rivera took no part.

Motion to strike appellant's appendix denied without
prejudice to the serving and filing of a supplemental
appendix by respondent on or before May 10, 2013.

3 Mo. No. 2013-109
In the Matter of Bernard Sorrentino,
 Appellant,
 v.
Brian Fischer, &c.,
 Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2013-110
In the Matter of Howard Spikes,
 Appellant,
 v.
Brian Fischer, &c.,
 Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2013-111
The People &c. ex rel. Jules Stanley,
 Appellant,
 v.
Carl E. DuBois, &c.,
 Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2013-94
In the Matter of Scott T.S.,
 Respondent,
 v.
Star D.,
 Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2013-149
D. T., Also Known as D. T.-R., Individually
and by Roberto Rodriguez, as Commissioner
of Social Services of Ulster County,
 Appellant,
 v.
Irwin Rich,
 Defendant,
Saint Cabrini Home, Inc.,
 Respondent.

Motion to dismiss appeal denied.

2 Mo. No. 2013-93
The People &c.,
Respondent,
v.
Charles Whidbee,
Appellant.

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

2 Mo. No. 2013-161
In the Matter of W.O.R.C. Realty Corp.,
Respondent,
v.
Board of Assessors, et al.,
Appellants.

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