

May 07, 2009

CASES

No. 120 SSM 7

In the Matter of Lavountae A.,
Yacier A., and Sabraejuna M.

Monroe County Department of Human
Services,

Respondent,

Laticia A.,

Appellant.

On review of submissions pursuant to
section 500.11 of the Rules, order
affirmed, without costs, in a
memorandum.

Chief Judge Lippman and Judges
Ciparick, Graffeo, Read, Smith, Pigott
and Jones concur.

No. 60

The People &c.,
Appellant,

v.

Paul Boyd,

Respondent.

Order modified by remitting to Supreme
Court, New York County, for further
proceedings in accordance with the
opinion herein and, as so modified,
affirmed.

Opinion by Judge Ciparick.
Judges Graffeo, Read and Jones concur.
Judge Smith dissents in an opinion.
Judge Pigott dissents separately in an
opinion.

Chief Judge Lippman took no part.

No. 57

In the Matter of Elvin G., a
Person Alleged to be a Juvenile
Delinquent,

Appellant.

Order reversed, without costs, and
matter remitted to Family Court, Bronx
County, for further proceedings in
accordance with the memorandum herein.
Judges Ciparick, Graffeo, Read, Smith
and Jones concur.

Judge Pigott dissents and votes to
affirm in an opinion.

Chief Judge Lippman took no part.

No. 65
Janet M. Johnson,
Respondent-Appellant,
v.
Allan M. Chapin,
Appellant-Respondent.

Order modified, without costs, by
remitting to Supreme Court, New York
County, for further proceedings in
accordance with the opinion herein and,
as so modified, affirmed. Certified
question not answered upon the ground
that it is unnecessary.
Opinion by Judge Pigott.
Judges Ciparick, Graffeo, Read, Smith
and Jones concur.
Chief Judge Lippman took no part.

No. 64
Patricia A. Mahoney-Buntzman,
Respondent,
v.
Arol I. Buntzman,
Appellant.

Order modified, without costs, by
remitting to Supreme Court, Westchester
County, for further proceedings in
accordance with the opinion herein and,
as so modified, affirmed.
Opinion by Judge Pigott.
Judges Ciparick, Graffeo, Read, Smith
and Jones concur.
Chief Judge Lippman took no part.

No. 62
Sam Wylly,
Appellant,
v.
Milberg Weiss Bershad & Schulman,
LLP, et al.,
Respondents.

Order affirmed, with costs.
Opinion by Judge Read.
Judges Ciparick, Graffeo, Pigott and
Jones concur.
Judge Smith dissents in an opinion.
Chief Judge Lippman took no part.

MOTIONS

Mo. No. 2009-342
In the Matter of Janet Arnold,
et al.,
 Respondents,
 v.
Erie County Medical Center
Corporation, et al.,
 Respondents,
County of Erie,
 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.

Mo. No. 2009-509
Buffalo Crushed Stone Inc.,
 Appellant,
 v.
Town of Cheektowaga,
 Respondent.

Motion by New York State Construction Materials Association, Inc. for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and 24 copies filed within seven days.

Mo. No. 2009-306
In the Matter of Mary E.
Carriero, et al.,
 Appellants,
 v.
Town Board of the Town of
Stillwater et al.,
 Respondents.

Motion for leave to appeal, insofar as made by Mary E. Carriero and Olympia D'Amico, dismissed upon the ground that it does not lie (see CPLR 5602; 5611). As to them, the February 13, 2009 judgment of Supreme Court did not dispose of any issues beyond those resolved by the June 14, 2007 Appellate Division order, which was final as to them and from which they previously sought leave to appeal in a motion this Court denied on November 20, 2007 (9 NY3d 980 [2007]). Motion for leave to appeal otherwise dismissed upon the ground that the remaining movants are not parties aggrieved (see CPLR 5511).

Mo. No. 2009-506
In the Matter of Central Mutual
Insurance Company,
Respondent,
v.
Beverly Bemiss,
Appellant.

Motion by Defense Association of New
York, Inc. for leave to file a brief
amicus curiae on the appeal herein
granted and the proposed brief is
accepted as filed.

Mo. No. 2009-355
Beverly Choice et al.,
Appellants,
v.
Jagdev Gill et al.,
Defendants,
Kurt Barnes,
Respondent.

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

Mo. No. 2009-287
Jennifer Cook, &c., et al.,
Appellants,
v.
Elaine Schapiro, et al.,
Defendants,
Mt. Kisco Chevrolet Cadillac,
Inc.,
Respondent.

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

SSD 11
In the Matter of Damien P.C.,
Respondent,
v.
Jennifer H.S.,
Appellant.

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

Mo. No. 2009-334
Patrick Danieu et al.,
Appellants,
v.
109 South Union St., LLC et al.,
Respondents.

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

Mo. No. 2009-305
Warren S. Dank, &c.,
Appellant,
v.
Sears Holding Management
Corporation, 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.

Mo. No. 2009-359
Naima Dayan,
Appellant,
v.
Joseph York 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.
Motion for poor person relief
dismissed as academic.

Mo. No. 2009-474
The People &c.,
Respondent,
v.
Gregory M. Drayton,
Appellant.

Motion for assignment of counsel
granted and Timothy P. Donaher, Esq.,
Monroe County Public Defender, 10 N.
Fitzhugh Street, Rochester, NY 14614
assigned as counsel to the appellant
on the appeal herein.

Mo. No. 2009-345
In the Matter of Anthony E.
et al.

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

Herkimer County Department of
Social Services,
Respondent;
Sharon E.,
Appellant;
et al.,
Respondent.

Mo. No. 2009-370
First Presbyterian Church of
Oakfield,
Appellant,
v.
Presbytery of Genesee Valley of
the Presbyterian Church (USA),
&c.,
Respondent.

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

Mo. No. 2009-349
546-552 West 146th Street LLC,
et al.,
Appellants,
2000 Davidson Avenue LLC,
Plaintiff,
v.
Rachel L. Arfa, et al.,
Respondents,
Harlem Acquisition LLC, et al.,
Defendants.

Motion, insofar as it seeks leave to
appeal from that portion of the
Appellate Division order that affirmed
the denial of appellants' motion for
leave to amend the complaint,
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.

Mo. No. 2009-336
In the Matter of Timothy Foster,
Appellant,
v.
Barbara Bartlett, Rose L. Foster
and Cattaraugus County Department
of Social Services,
Respondents.

Motion for leave to appeal denied.

Mo. No. 2009-501
The People &c.,
Respondent,
v.
Efrain Hernandez,
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

Mo. No. 2009-271
In the Matter of Fayiz Hilal and Cetek, Inc.,
Appellants,
v.
New York State Division of Human Rights et al.,
Respondents.

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

Mo. No. 2009-301
In the Matter of Alex LL., &c.,
Appellant,
v.
Department of Social Services of Albany County et al.,
Respondents.

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

Mo. No. 2009-251
In the Matter of Marianne Lowery,
Respondent,
v.
Oni Cole,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-299
The People &c. ex rel. Keith Maguire,
Appellant,
v.
Michael Corcoran, &c.,
Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-324
The People &c.,
Respondent,
v.
Joseph K. Mallaber,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-327
Joseph P. Maxon,
Appellant,
v.
Woods Oviatt Gilman LLP et al.,
Respondents.

Motion, insofar as it seeks leave to appeal from the Appellate Division order affirming the denial of appellant's disqualification motion, 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.

Mo. No. 2009-499
The People &c.,
Respondent,
v.
Raheem Mayo,
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

Mo. No. 2009-309
Dixie Mehl,
Appellant,
v.
Leon Mehl, Sr.,
Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-494
In the Matter of New York Charter
Schools Association, Inc., et al.
Appellants,
v.
Thomas P. DiNapoli, as
Comptroller of the State of New
York, et al.,
Respondent.

Motion by New York State United
Teachers for leave to file a brief
amicus curiae on the appeal herein
granted and the proposed brief is
accepted as filed. Three copies of
the brief must be served and an
original and 24 copies filed within
seven days.

Mo. No. 2009-341
In the Matter of David O'Kane,
Appellant,
v.
Robert S. Kirkpatrick &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.

Mo. No. 2009-518
In the Matter of Virginia
Parkhouse,
Appellant,
v.
Scott M. Stringer, Borough
President of Manhattan, et al.,
Respondents.

Motion by New York Civil Liberties
Union 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 24 copies filed within
seven days.
Chief Judge Lippman took no part.

Mo. No. 2009-238
In the Matter of Pharmacists
Society of the State of New York,
Inc.,
Appellant,
v.
George E. Pataki, &c., et al.,
Respondents.

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

Mo. No. 2009-267
Riverside Capital Advisors, Inc.,
&c.,
Plaintiff,
Winchester Global Trust Company
Limited, &c.,
Respondent,
v.
First Secured Capital Corp., et
al.,
Defendants,
Thomas B. Donovan Family Trust,
Appellant;
Thomas B. Donovan et al.,
Nonparty-Appellants.

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.

Mo. No. 2009-339
Sam Pilato and Son, Inc. et al.,
Respondents,
v.
Leo D. Starowitz, Sr., et al.,
Defendants,
Frank Starowitz,
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.

Mo. No. 2009-288
In the Matter of Jennifer H.S.,
Appellant,
v.
Damien P.C.,
Respondent.
(And Another Proceeding.)

Motion for leave to appeal denied.

Mo. No. 2009-322
In the Matter of Todd Terrance,
Appellant,
v.
David Rock, &c.,
Respondent.

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

Mo. No. 2009-372
In the Matter of Brenda
Washington,
Appellant,
v.
Brian Scott Bender,
Respondent.

Motion for leave to appeal denied.

SSD 20
In the Matter of Diane Word,
Appellant,
v.
Barbara G. Zambelli, &c., et al.,
Respondents.

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

Mo. No. 2009-314
In the Matter of Randy J. Wright,
Respondent.
Central Transport, Inc.,
Appellant.
Commissioner of Labor,
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.

CRIMINAL LEAVE APPLICATION

The People &c.,
Respondent,
v.
Salih Sevencan,
Appellant.

Application pursuant to CPL 460.20 for a certificate granting leave to appeal dismissed by Judge Smith in a memorandum. Publication authorized by the Court.