

May 12, 2009

CASES

No. 121 SSM 10
Arts4All, Ltd.,
Appellant,
et al.,
Plaintiff,
v.
Judith L. Hancock,
Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order, insofar as appealed from, affirmed, with costs, and certified question not answered as unnecessary, in a memorandum.
Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.
Chief Judge Lippman took no part.

Judith L. Hancock,
Third-Party Respondent,
v.
Daniel Y.C. Ng, et al.,
Third-Party Defendants.

No. 66
Morris I. Gletzer, &c.,
Plaintiff,
v.
Amos Harris,
Defendant.

Order, insofar as appealed from, affirmed, with costs.
Opinion by Judge Ciparick.
Judges Graffeo, Read, Smith, Pigott and Jones concur.
Chief Judge Lippman took no part.

Greenpoint Mortgage Funding,
Inc., et al.,
Respondents,
v.
Morris I. Gletzer, &c.,
Appellant,
Amos Harris, et al.,
Respondents.

No. 52

Boris Khrapunskiy, et al.,
Respondents,

v.

Robert Doar, as Commissioner of
the New York State Office of
Temporary and Disability
Assistance,
Appellant.

Order reversed, without costs, judgment
granted declaring in accordance with
the opinion herein and certified
question answered in the negative.

Opinion by Judge Jones.

Judges Graffeo, Read, Smith and Pigott
concur.

Judge Ciparick dissents and votes to
affirm in an opinion in which Chief
Judge Lippman concurs.

No. 68

Igor Misicki,
Appellant,

v.

Salvatore Caradonna,
Defendant,
430-50 Shore Road Corporation,
Respondent.
(And a Third-Party Action.)

Order reversed, with costs, and that
branch of defendant 430-50 Shore Road
Corporation's motion for summary
judgment seeking dismissal of
plaintiff's Labor Law § 241(6) cause of
action against it denied.

Opinion by Judge Read.

Chief Judge Lippman and Judges Ciparick
and Jones concur.

Judge Graffeo dissents and votes to
affirm in an opinion.

Judge Smith dissents in an opinion in
which Judge Pigott concurs.

No. 122 SSM 9

In the Matter of RSM West Lake
Road LLC, et al.,
Respondents,

v.

Town of Canandaigua Zoning Board
of Appeals, et al.,
Respondents,
East Shore Association of
Canandaigua Lake, Inc., et al.,
Appellants.

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

No. 53

The People &c.,
Respondent,
v.
Scott C. Weaver,
Appellant.

Order reversed, defendant's motion to suppress the evidence obtained from the GPS tracking device granted and a new trial ordered.

Opinion by Chief Judge Lippman.
Judges Ciparick, Pigott and Jones concur.

Judge Smith dissents in an opinion in which Judges Graffeo and Read concur.
Judge Read dissents in an opinion in which Judge Graffeo concurs.

MOTIONS

Mo. No. 2009-357
The People &c.,
Respondent,
v.
Juan Aboy,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-354
Awards.com, LLC et al.,
Appellants,
v.
Kinko's, Inc. et al.,
Respondents,
Gary Kusin,
Defendant.

On the Court's own motion, appeal dismissed, without costs, upon the ground that no appeal lies as of right pursuant to CPLR 5601(d) from the Supreme Court judgment to bring up for review the prior nonfinal order of the Appellate Division, where the Appellate Division order was unanimous and did not directly involve a substantial constitutional question. Motion for leave to appeal granted.

Mo. No. 2009-364
In the Matter of Arthur Blake,
Also Known as Robert Johnson,
Appellant,
v.
Robert Dennison, &c., et al.,
Respondents.

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

Mo. No. 2009-295
In the Matter of Chasm Hydro,
Inc., et al.,
Appellants,
v.
New York State Department of
Environmental Conservation,
Respondent.

Motion for leave to appeal granted.

Mo. No. 2009-363
Paulina Creinis,
Appellant,
v.
Hanover Insurance Company,
Respondent.

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

Mo. No. 2009-365
Thomas J. DeRosa,
Appellant,
v.
Josephine DeRosa,
Respondent.

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

Mo. No. 2009-329
In the Matter of Alaina E.
et al., &c.

Motion for leave to appeal denied.

Broome County Department of
Social Services,
Respondent;
Melinda E.,
Respondent;
Gary D.,
Appellant.

Mo. No. 2009-356
East Best Food Corp.,
Respondent,
v.
NY 46th LLC,
Appellant.

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

SSD 26
Colin Fraser, et al.,
Appellants,
v.
301-52 Townhouse Corp., et al.,
Respondents.

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.

SSD 27
In the Matter of Richard E.
Gordon et al.
 Appellants,
 v.
Town of Esopus et al.,
 Respondents.
(And Three Other Related
Proceedings.)

Appeal dismissed without costs, by the
Court sua sponte, upon the ground that
the two-justice dissent at the
Appellate Division is not on a
question of law (CPLR 5601[a]).

Mo. No. 2009-317
The People &c. ex rel. Franklin
Joel Thomas Hampton, Jr.,
 Appellant,
 v.
Robert Dennison, &c.,
 Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-389
In the Matter of Ronald Hansen
et al.,
 Appellants;
New York State Department of
Correctional Services, et al.,
 Respondents.

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

Mo. No. 2009-362
Dana Juhasz,
 Appellant,
 v.
Stephen Juhasz,
 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.

Mo. No. 2009-340
Leeds, Morelli & Brown, P.C.,
Respondent,
v.
Connie Hernandez et al.,
Appellants.
(And a Third-Party Action.)

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

Mo. No. 2009-374
In the Matter of Aliyanna M.
(Anonymous).

Motion for leave to appeal denied.

Orange County Department of
Social Services,
Respondent;
Kelly K. (Anonymous),
Appellant.

SSD 24
R. Bruce McLean,
Appellant,
v.
City of Kingston et al.,
Respondents.

Appeal, insofar as taken from that
part of the Appellate Division order
that affirmed Supreme Court's order
denying appellant's motion to renew,
dismissed without costs, by the Court
sua sponte, upon the ground that such
portion of the order does not finally
determine the action within the
meaning of the Constitution; appeal
otherwise dismissed without costs, by
the Court sua sponte, upon the ground
that no substantial constitutional
question is directly involved.

Mo. No. 2009-375

In the Matter of Casey N.
(Anonymous).

In the Matter of Keryn D.
(Anonymous).

In the Matter of Tyler S.
(Anonymous).
Orange County Department of
Social Services,
Respondent;
Terry S.,
Appellant,
et al.,
Respondent.
Attorney for Child,
Appellant.

Motions for leave to appeal denied.

Mo. No. 2009-440

In the Matter of Jamaal NN.
et al., &c.

Chemung County Department of
Social Services,
Respondent;
Avery NN.,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-387

166 Archer Ave. Co., LLC,
Appellant,
v.
New York City Health and
Hospitals Corporation,
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 (see Burke
v Crosson, 85 NY2d 10, 18 n5 [1995]).

Mo. No. 2009-325
In the Matter of James E.
Pennington,
Appellant,
v.
James Woytash, &c.,
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.
Motion for poor person relief
dismissed as academic.

Mo. No. 2009-283
Portfolio Recovery Associates,
LLC,
Respondent,
v.
Jared King,
Appellant.

Motion for leave to appeal granted.

Mo. No. 2009-290
Portfolio Recovery Associates,
LLC,
Respondent,
v.
Jared King,
Appellant.

Motion by Lincoln Square Legal
Services, Inc. for leave to file a
brief amicus curiae on the motion for
leave to appeal herein granted and the
brief is accepted as filed.

SSD 23
In the Matter of Montgomery Blair
Sibley, an Attorney,
Appellant.

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

Grievance Committee of the
Seventh Judicial District,
Respondent.

Mo. No. 2009-352
The People &c.,
Respondent,
v.
Antwon Smith,
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-347
Cecilia Teodorescu,
Appellant,
v.
Resnick & Binder, P.C.,
Respondent.

Motion for leave to appeal granted.

Mo. No. 2009-344
In the Matter of Grabiell V.
Chautauqua County Department of
Social Services,
Respondent;
Noemi D.,
Appellant;
et al.,
Respondent.
(And Three Other Proceedings.)

Motion for leave to appeal denied.

Mo. No. 2009-382
The People &c.,
Respondent,
v.
Matthew J. Wheeler,
Appellant.

Motion for leave to appeal denied.

SSD 21

The People &c. ex rel. Lee
Williams,

Appellant,

v.

D. E. LaClair, as Superintendent
of Franklin Correctional
Facility,

Respondent.

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

SSD 22

In the Matter of Diane Word,
Appellant,

v.

Superintendent of Bedford Hills
Correctional Facility, et al.

Respondents.

Appeal transferred without costs, by
the Court sua sponte, to the Appellate
Division, Second Department, upon the
ground that a direct appeal does not
lie when questions other than the
constitutional validity of a statutory
provision are involved (NY Const, art
VI, §§ 3[b][2], 5[b]; CPLR
5601[b][2]).

Mo. No. 2009-361

The People &c. ex rel. Dennis
Wurthmann,

Appellant,

v.

Robert A. Kirkpatrick, &c.,

Respondent.

Motion for leave to appeal denied.
Judge Pigott took no part.