

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed
In the New York Court of Appeals from
November 29, 2002 through December 5, 2002

A list of appeals with short title, jurisdictional predicate, subject matter and key issues is prepared each week.

Some of these filed appeals may never reach decision on the merits because of dismissal on motion, sua sponte, or for time deficiencies or because of stipulated withdrawals by the parties. Also, some counsel fail to file timely jurisdictional statements and thus the list should not be treated as comprehensive for any particular week.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Court Rule 500.11 and direct any questions to the Clerk's Office.

For November 29, 2002 through December 5, 2002 the following jurisdictional statements for appeals were filed:

JANIS C., MATTER OF v CHRISTINE T.:

2ND Dept. App. Div. order of 5/20/02; reversal; motion to dismiss appeal pending;

PARENT AND CHILD - VISITATION - APPLICABILITY OF DOCTRINE OF EQUITABLE ESTOPPEL TO EXTEND VISITATION RIGHTS TO A FORMER SAME SEX DOMESTIC PARTNER CLAIMING TO BE A "PSYCHOLOGICAL PARENT"; STANDING; EQUAL PROTECTION; DUE PROCESS;

Family Court, Westchester County, denied Christine T's motion to dismiss for lack of standing and granted the petition for visitation rights on equitable estoppel grounds; App Div. reversed and granted the motion to dismiss.

DISIMONE v GOOD SAMARITAN HOSPITAL, et al.:

2nd Dept. App. Div. order of 11/13/01; reversal; leave to appeal granted by Court of Appeals, 10/24/02; Rule 500.4 review pending; TORT - MEDICAL MALPRACTICE; CIVIL PROCEDURE - PLAINTIFF'S FAILURE TO COMPLY WITH 90 DAY NOTICE PURSUANT TO CPLR 3216; SUFFICIENCY OF THE EXCUSE FOR DELAY AND AFFIDAVIT OF MERIT; Supreme Court, Suffolk County, denied Good Samaritan Hospital's and Dr. Harvey Manes' motions to dismiss the complaint against them; App. Div. reversed and dismissed the complaint against these defendants.

NEW YORK CITY COALITION TO END LEAD POISONING, INC., et al. v VALLONE, et al.:

1st Dept. App. Div. order of 3/26/02; reversal; leave to appeal granted by Court of Appeals, 11/21/02; MUNICIPAL LAW - VALIDITY OF CITY'S LEAD POISONING PREVENTION LAW (LOCAL LAW 38 [ADMINISTRATIVE CODE OF THE CITY OF NEW YORK SECTION 27-2056.1, ET SEQ]); VALIDITY UNDER STATE ENVIRONMENTAL QUALITY REVIEW ACT AND CITY ENVIRONMENTAL QUALITY REVIEW OF NEGATIVE DECLARATION; Supreme Court, New York County, granted the petition and declared respondents' negative declaration and New York City Local Law 38 of 1999 null and void; App. Div. reversed, declared the negative declaration and Local Law 38 of 1999 valid and otherwise denied the petition and dismissed the proceeding.

TERIO v FORD MOTOR COMPANY, et al.:

2nd Dept. App. Div. order of 11/12/02; motions for summary reversal of a Supreme Court order and for leave to prosecute the appeal as a poor person denied; sua sponte examination of whether the order appealed from finally determines the action; CIVIL PROCEDURE; CPLR ARTICLE 75; APPLICATION OF RES JUDICATA AND COLLATERAL ESTOPPEL; COURTS' ALLEGED FAILURE TO ADDRESS BREACH OF CONTRACT CLAIM; DUE PROCESS; EQUAL PROTECTION; Supreme Court, Dutchess County, granted defendants' motion and cross motion for summary judgment; App. Div. denied motions for summary reversal and for leave to prosecute the appeal as a poor person.

WHITEHEAD, PEOPLE ex rel., v HERBERT:

Supreme Court, Wyoming County, order of 7/15/02; sua sponte examination of whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2) and whether simultaneous appeals may be taken to the Appellate Division and to the Court of Appeals; HABEAS CORPUS; HABEAS CORPUS AS PROCEDURE TO COLLATERALLY ATTACK JUDGMENT OF CONVICTION IN ANOTHER COURT; Supreme Court, Wyoming County, denied petition for a writ of habeas corpus.