

State of New York
Court of Appeals

Decisions

June 13, 2023

CASES

4 No. 73 SSM 5
The People &c.,
 Respondent,
 v.
Daniel Bradford,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and matter remitted to County Court, Steuben County, for further proceedings in accordance with the memorandum herein.
Judges Garcia, Singas, Cannataro and Halligan concur.
Judge Rivera dissents in an opinion, in which Chief Judge Wilson concurs.
Judge Troutman took no part.

1 No. 33
Lukasz Gottwald, &c., et al.,
 Respondents,
 v.
Kesha Rose Sebert, &c.,
 Appellant,
et al.,
 Defendants.

Order modified, without costs, in accordance with the opinion herein, as so modified, affirmed, and certified question answered in the negative.
Opinion by Judge Garcia.
Judges Singas, Cannataro and Troutman concur.
Chief Judge Wilson joins section II of the majority opinion herein by Judge Garcia and dissents in part for the reasons stated in section IV of the dissenting opinion herein by Judge Rivera.
Judge Rivera dissents in part in an opinion.
Judge Halligan took no part.

1 No. 32
Lukasz Gottwald, &c., et al.,
 Respondents,
 v.
Kesha Rose Sebert, &c.,
 Appellant,
et al.,
 Defendants.

Order reversed, with costs, defendant Kesha Rose Sebert's motion to amend her answer to assert a counterclaim pursuant to Civil Rights Law § 70-a granted, and certified question answered in the negative.
Opinion by Judge Garcia.
Judges Singas, Cannataro and Troutman concur and Chief Judge Wilson concurs, for the reasons stated in section IV.
Judge Rivera dissents in part in an opinion.
Judge Halligan took no part.

1 No. 71 SSM 2
The People &c.,
 Respondent,
 v.
Stanley Holmes,
 Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, and a new trial ordered, in a memorandum.
Chief Judge Wilson and Judges Rivera, Garcia, Singas, Cannataro and Troutman concur.
Judge Halligan took no part.

1 No. 52
The Moore Charitable Foundation, et al.,
 Appellants,
 v.
PJT Partners, Inc., et al.,
 Respondents,
et al.,
 Defendant.

Order insofar as appealed from reversed, with costs, and so much of defendants' motion as sought dismissal of plaintiffs' negligent supervision claim denied.
Opinion by Judge Cannataro.
Chief Judge Wilson and Judges Rivera, Troutman and Smith concur.
Judge Singas dissents and votes to affirm in an opinion, in which Judge Garcia concurs.
Judge Halligan took no part.

3 No. 45
In the Matter of Owner Operator Independent
Drivers Association, Inc., et al.,
 Appellants,
 v.
New York State Department of Transportation
et al.,
 Respondents.

Order modified, with costs to respondents, by
granting judgment to respondents in accordance with
the opinion herein and, as so modified, affirmed.
Opinion by Judge Troutman.
Chief Judge Wilson and Judges Rivera, Garcia,
Singas, Cannataro and Halligan concur.

MOTIONS

3 Mo. No. 2023-158
In the Matter of 44th Enterprises Corp., et al.,
Appellants,
v.
New York State Tax Appeals Tribunal et al.,
Respondents.

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

2 Mo. No. 2023-240
In the Matter of Cordei A.-G.,
Appellant.

Motion for leave to appeal denied.

4 SSD 28
AH Wines, Inc., et al.,
Appellants,
v.
C6 Capital Funding LLC,
Respondent.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that the issues presented have become moot.

2 Mo. No. 2023-136
The People &c.,
Respondent,
v.
David Alleyne,
Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2023-90
In the Matter of Anonymous, &c.

Grievance Committee for the Second,
Eleventh, and Thirteenth Judicial Districts,
Respondent;
Anonymous,
Appellant.
(App. Div. Nos. 2021-05514 and 2021-08435)

Motion for reconsideration of this Court's December 13, 2022 dismissal orders denied.
Judge Halligan took no part.

2 Mo. No. 2023-141
The People &c.,
 Respondent,
 v.
Alfred Balcerak,
 Appellant.

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

2 SSD 27
Bank of New York Mellon Trust Company,
N.A., &c.,
 Respondent,
 v.
Daniel Gambino, &c.,
et al.,
 Defendants.
Armand Retamozzo,
 Nonparty-Appellant.

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

 Mo. No. 2023-393
The People &c.,
 Respondent,
 v.
Michael Bay,
 Appellant.

Motion by Albany County Office of the Public Defender et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

 Mo. No. 2023-394
The People &c.,
 Respondent,
 v.
Michael Bay,
 Appellant.

Motion by New York State Association of Criminal Defense Lawyers 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, an original and nine copies filed, and the brief submitted in digital format within seven days.

2 Mo. No. 2023-289
In the Matter of Urainia Bendter,
Appellant,
v.
Ifechukwude Elikwu,
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 SSD 32
In the Matter of Hilary Best,
Appellant,
v.
State of New York, et al.,
Respondents.

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

1 Mo. No. 2023-287
In the Matter of Frank C.,
Appellant,
v.
Sheila Poole, &c., et al.,
Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2023-269
In the Matter of Angelica CC.,
Respondent,
v.
Ronald DD.,
Appellant.
(And Related Proceedings.)

Motion for leave to appeal denied.

1 Mo. No. 2023-179
The People &c.,
Respondent,
v.
Cairon Charles,
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2023-250
Cheswold (TL), LLC,
 Respondent,
 v.
James Wynn,
 Appellant,
et al.,
 Defendants.

On the Court's own motion, appeal dismissed, without costs, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution. 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 the imposition of sanctions denied.

3 Mo. No. 2023-160
In the Matter of Pauline DD.,
 Respondent,
 v.
Dawn DD.,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2023-171
In the Matter of Harold Falkowsky, &c.

Alice Sobel,
 Appellant;
Jeffrey Falkowsky,
 Respondent.

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

4 Mo. No. 2023-184
In the Matter of Ryan Feltz,
 Appellant,
 v.
Amy Yanucil,
 Respondent.
(And Related Proceedings.)

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. 2023-260
In the Matter of Aniyah H. et al., &c.

Rensselaer County Department of Social
Services,
 Respondent;
Dewanna I.,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2023-389
The People &c. ex rel. Matthew J. Hereth, on
behalf of Shanti Felton,
 Appellant,
 v.
Michael Franchi, &c.,
 Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2023-155
Steven Horn,
 Respondent,
 v.
Marianne Nestor,
 Appellant,
et al.,
 Defendants.

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.

4 Mo. No. 2023-219
In the Matter of Peter Lang et al.,
 Respondents,
 v.
Brittaney Lang et al.,
 Respondents.
Michael Anthony Deem,
 Appellant.

In the Matter of Peter Lang et al.,
 Respondents,
 v.
Brittaney M. Lang et al.,
 Respondents.
Michael Anthony Deem,
 Appellant.

 SSD 25
Gary J. Lavine,
 Appellant,
 v.
State of New York, et al.,
 Respondents.

2 Mo. No. 2023-170
In the Matter of Long Island Power Authority
Hurricane Sandy Litigation.

John Coyle, et al.,
 Appellants,
 v.
Long Island Power Authority,
 Respondent,
et al.,
 Defendant.

On the Court's own motion, appeal dismissed,
without costs, upon the ground that the order
appealed from does not finally determine the
proceedings within the meaning of the Constitution.
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.
Motion for poor person relief dismissed as academic.

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

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 and is not an order of
the type provided for in CPLR 5602 (a) (2).

1 Mo. No. 2023-164
The People &c.,
 Respondent,
 v.
Gregory Luck,
 Appellant.

Motion for leave to appeal denied.

4 SSD 29
In the Matter of Vashti M.

Erie County Department of Social Services,
 Respondent;
Carolette M.,
 Appellant.

Appeal, insofar as taken from so much of the Appellate Division order as dismissed the appeal to that Court from so much of the Family Court order as was entered on consent, dismissed without costs, by the Court *sua sponte*, upon the ground that appellant is not a party aggrieved (*see* CPLR 5511); appeal otherwise dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

4 Mo. No. 2023-268
In the Matter of Amarion M.

Erie County Department of Social Services,
 Respondent;
Faith W.,
 Appellant.

Motion for leave to appeal denied.

2 SSD 30
Nella Manko,
 Appellant,
 v.
State of New York,
 Respondent.

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.
Chief Judge Wilson took no part.

2 SSD 31
Nella Manko,
 Appellant,
 v.
Shorefront Apartments, LLC,
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.
Chief Judge Wilson took no part.

2 Mo. No. 2023-183
In the Matter of Ronald Morgan,
Respondent,
v.
Mirtha Baerga Morgan,
Appellant.

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

1 Mo. No. 2023-255
Jessica Murray,
Respondent,
v.
Hamidur Rashid,
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.

4 Mo. No. 2022-905
In the Matter of New York Civil Liberties
Union,
Respondent,
v.
City of Rochester et al.,
Appellants.

Motion for leave to appeal granted.
Judge Halligan took no part.

1 Mo. No. 2023-80
In the Matter of NYC Organization of Public
Service Retirees, Inc., et al.,
Respondents,
v.
Renee Campion, et al.,
Appellants.

Motion for leave to appeal granted.

2 Mo. No. 2023-139
The People &c.,
Respondent,
v.
Sergio Paz Guzman,
Appellant.

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

4 Mo. No. 2023-295
In the Matter of Maria R.

Herkimer County Department of Social
Services,
Respondent;
Daniel R.,
Appellant.

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

2 Mo. No. 2023-177
In the Matter of Erik Rios,
Appellant,
v.
County of Nassau,
Respondent.

Motion for leave to appeal denied.

3 SSD 26
In the Matter of Erwin Rosenberg, &c.

Attorney Grievance Committee for the Third
Judicial Department,
Respondent;
Erwin Rosenberg,
Appellant.

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

4 Mo. No. 2023-245
In the Matter of Cameron J.S., et al.

Erie County Department of Social Services,
Respondent;
Zacharias C.,
Respondent,
Elizabeth F.,
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2023-146

Scott Shevlin,
Respondent,

v.

Wonder Works Construction Corp.,
Appellant,
421 Kent Development, LLC et al.,
Defendants.

Motion for leave to appeal denied.

3 Mo. No. 2023-180

In the Matter of the Claim of Robert
Strohschein,

Appellant,

v.

Safespan Platform Systems Inc. et al.,
Respondents,
Workers' Compensation Board,
Respondent.

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

4 Mo. No. 2023-211

In the Matter of Mea V.

Orleans County Department of Social
Services,

Respondent;

Jessica F.,

Appellant.

(And Related Proceedings.)

Motion for leave to appeal denied.

1 Mo. No. 2023-253

In the Matter of B.W. et al., &c.

N.W.,

Appellant;

Rising Ground,

Respondent.

Motion for leave to appeal denied.

Motion for poor person relief dismissed as academic.

2 Mo. No. 2023-152
Wells Fargo Bank, National Association, &c.,
Respondent,
v.
Christopher Licurse,
Appellant,
et al.,
Defendants.

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

4 Mo. No. 2023-251
James I. Wynn, Sr.,
Appellant,
v.
John F. Speranza et al.,
Respondents.

On the Court's own motion, appeal dismissed, without costs, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.
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 ancillary relief dismissed upon the ground that this Court does not have jurisdiction to entertain it (*see* NY Const, art VI, § 3).