



*State of New York  
Court of Appeals*

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3/22/24

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COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office

**March 15, 2024 through March 21, 2024**

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

**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 Rule 500.23 and direct any questions to the Clerk's Office.**

CALABRESE v CITY OF ALBANY:

3rd Dept. App. Div. order of 11/9/23; affirmance; leave granted by the Appellate Division with certified question 3/7/24;

**Municipal Corporations—Notice of Street Defect—Whether an electronic communication sent through the City of Albany's online public communication portal may serve as prior written notice of a road defect for the purpose of the prior written notice rule; whether expert testimony that a road defect came about due to pavement settling which occurred in the months following an emergency road excavation created a triable issue of fact as to the affirmative creation exception to the prior written notice rule; whether the City's response to a subterranean water main break was in furtherance of a governmental function entitled to governmental tort immunity;**

Supreme Court, Albany County, denied plaintiff's motion for summary judgment on the

issue of liability and denied defendant's cross-motion for summary judgment dismissing the complaint; App. Div. affirmed.

MATTER OF ANGEL P.H. & OTHERS:

2nd Dept. App. Div. order of 1/24/24; affirmance; sua sponte examination of whether the order appealed from finally determines the proceeding and whether a substantial constitutional question is directly involved to support an appeal as of right;

**Parent, Child and Family—Order of Protection—Whether a noncitizen charged with a violation of an order of protection in family court is entitled to a jury trial where family court is informed of the noncitizen status and that the noncitizen would be deportable under 8 USC § 1227(a)(2)(E)(ii) if they were found to have violated the order of protection;**

Family Court, Queens County, in related proceedings pursuant to Family Court Act article 10, finding that Angel P.Q. willfully violated a temporary order of protection, dated July 27, 2022, and directing that he be committed to the custody of the New York City Department of Correction for a period of 10 months; Family Court, Queens County, committed Angel P.Q. to the custody of the New York City Department of Correction for a period of 10 months; App. Div. dismissed the appeal from so much of the order of fact-finding and disposition as committed Angel P.Q. and the appeal from the order of commitment as academic and, insofar as reviewed, affirmed the order of fact-finding and disposition.

WRIGHT v STATE OF NY:

3rd Dept. App. Div. order of 11/22/23; reversal; leave to appeal granted by the Appellate Division with certified question 2/15/24;

**State—Claim Against the State—Whether the courts may hold that in enacting the Child Victims Act of 2019 (CVA), the legislature implicitly amended Court of Claims Act § 11(b) to expand the State's waiver of sovereign immunity for purposes of CVA claims; what degree of particularity is required to sufficiently plead the "time when" claims asserted pursuant to the CVA arose; what degree of particularity is required to sufficiently plead the "nature of" claims asserting negligence causes of action;**

Court of Claims, granted defendant's motion to dismiss claim; App. Div. reversed, denied motion, and remitted for further proceedings.