



*State of New York
Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

June 2, 2023 through June 8, 2023

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.

COUNTY OF BROOME v CADORE:

3rd Dept App. Div. order of 4/28/23; dismissal; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Motions and Orders;

App. Div. granted motion to strike record on appeal and brief and to dismiss appeal for failure of prosecution.

MATTER OF CLARKE v BOARD OF EDUCATION:

1st Dept. App. Div. order of 2/21/23; affirmance; leave to appeal granted by the Appellate Division, 5/23/23;

Arbitration—Award in Excess of Arbitrator's Power—Whether petitioners,

unvaccinated teachers placed on leave without pay, had standing to challenge Impact Arbitration Award; whether Impact Award violates public policy; whether petitioners were denied due process; Parties—Necessary Parties—Whether union representing petitioners was necessary party to the proceeding;

Supreme Court, New York County, granted respondents' motion to dismiss the petitions to annul the October 2, 2021 determinations to place petitioners on leave without pay and to vacate a September 10, 2021 arbitration award, and dismissed the hybrid CPLR article 75 and 78 proceedings; App. Div. affirmed.

GOLOBE v ALTCHER:

1st Dept. App. Div. order of 1/5/23; affirmance; leave to appeal granted by the Court of Appeals, 4/27/23;

Adverse Possession—Tenants in Common—Whether plaintiff established, by clear and convincing evidence, that he actually, exclusively possessed the property under a claim of right, openly and notoriously, for the statutory period; plaintiff was not aware he owned property as tenant-in-common until after statutory period passed; whether Supreme Court properly dismissed fraud and breach of fiduciary duty counterclaims;

Supreme Court, New York County, granted plaintiff's motion for summary judgment for a declaration that plaintiff is the sole and exclusive owner of the premises in fee simple absolute and that defendant has no proper or valid claim thereto and dismissed defendant's counterclaims; App. Div. affirmed.

PEOPLE ex. rel. NEVILLE v TOULON:

2nd Dept. App. Div. order of 4/19/23; modification;

Habeas Corpus—When Remedy Available—Whether provision of Mental Hygiene Law § 10.11(d)(4) that directed Supreme Court to determine whether there was probable cause to believe that respondent was a dangerous sex offender requiring confinement based only upon the allegations of the petition for confinement and any accompanying papers, with no opportunity for him to be heard, was unconstitutional on its face and as applied to him;

Supreme Court, Suffolk County, denied the petition for a writ of habeas corpus and dismissed the proceeding; App. Div. modified, by deleting the provision thereof denying the petition and, in effect, dismissing the proceeding, and adding thereto a provision converting the proceeding into an action for a declaratory judgment, deeming the order to show cause to be the summons and the petition to be the complaint (see CPLR 103[c]), and declaring that the provision of Mental Hygiene Law § 10.11(d)(4) that directs the court to determine whether there is probable cause to believe that a respondent in a proceeding pursuant to Mental Hygiene Law article 10 is a dangerous sex offender requiring confinement based upon a review of the allegations in a petition for confinement and any accompanying papers does not violate that respondent's federal or state rights to due process; and, as so modified, affirmed the judgment.

MATTER OF O'REILLY v THE BOARD OF EDUCATION:

1st Dept. App. Div. order of 2/21/23; affirmance; leave to appeal granted by the Appellate Division on 5/23/23;

Arbitration—Award in Excess of Arbitrator's Power—Whether petitioners, unvaccinated teachers placed on leave without pay, had standing to challenge Impact Arbitration Award; whether Impact Award violates public policy; whether petitioners were denied due process; Parties—Necessary Parties—Whether union representing petitioners was necessary party to the proceeding;

Supreme Court, New York County, granted respondents' motion to dismiss petitioner Christine O'Reilly's petition to annul the determination to place her on leave without pay and to vacate a September 10, 2021 arbitration award (Impact Award); order and judgment (one paper), same court (2/2/22), denied petitioner Lucia Jennifer Lanzer's petition seeking the same relief; order and judgment (one paper), same court (2/2/22), denied petitioner Ingrid Romero's petition seeking the same relief; and judgment (denominated an order), same court (4/13/22), denied petitioner Elizabeth Loiacono's petition seeking the same relief, and which dismissed these hybrid proceedings brought pursuant to CPLR articles 75 and 78; App. Div. with one Justice dissenting, affirmed.

MATTER OF RAWLINS v TEACHERS' RETIREMENT SYSTEM:

1st Dept. App. Div. order of 5/26/22; leave to appeal granted by the Court of Appeals, 5/23/23;

Civil Service—Retirement and Pension Benefits—Whether harassing and stalking behavior of a former employee toward a school principal constitutes an accident for purposes of disability retirement benefits;

Supreme Court, New York County, denied the petition to annul respondent's determination dated July 22, 2020, denying petitioner's application for accidental disability retirement benefits, and dismissed the proceeding brought under CPLR article 78; App. Div. affirmed.

MATTER OF SELL v YEHL:

4th Dept. App. Div. order of 11/18/22; leave to appeal granted by the Court of Appeals, 5/18/23;

Prisons and Prisoners—Discipline of Inmates—Whether a petitioner in a prison disciplinary proceeding has a right to a copy of the operation manual of a relevant drug testing device; whether the determination was supported by substantial evidence; whether petitioner's requests for certain witnesses were properly denied; whether chain of custody for a urine sample was properly established;

App. Div., in a proceeding pursuant to CPLR article 78 (transferred to the Appellate Division by order of Supreme Court, Erie County) to review a determination of

respondent finding after a tier II hearing that petition violated a disciplinary rule, confirmed the determination and dismissed the petition.