

February 14, 2019

**CASES**

1                    No. 4  
Arrowhead Capital Finance, Ltd.,  
    Appellant,  
    v.  
Cheyne Specialty Finance Fund L.P. et al.,  
    Respondents.

Order, insofar as appealed from, reversed, with costs, and case remitted to Supreme Court, New York County, for further proceedings in accordance with the opinion herein.  
Opinion by Judge Garcia.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Wilson and Feinman concur.

3                    No. 34 SSM 26  
In the Matter of the Estate of Edward V.  
Giaquinto, Deceased.

Cynthia A. Johnson,  
    Respondent,  
Joann Farina,  
    Appellant.  
(And Another Related Proceeding.)

On review of submissions pursuant to section 500.11 of the Rules, order, insofar as appealed from, affirmed, with costs. In response to petitioner's prima facie showing of entitlement to summary judgment on the issue of testamentary capacity, respondent failed to raise a triable issue of fact.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

3                    No. 1  
In the Matter of Mental Hygiene Legal  
Service et al.,  
    Appellants,

    v.  
Anne Marie T. Sullivan, as Commissioner of  
Mental Health, et al.,  
    Respondents.

Order affirmed, without costs.  
Opinion by Judge Stein.  
Chief Judge DiFiore and Judges Rivera, Fahey, Garcia and Feinman concur.  
Judge Wilson dissents in an opinion.

1                    No. 2  
In the Matter of Mental Hygiene Legal  
Service,  
                  Respondent,  
          v.  
Anita Daniels, &c.,  
          Appellant.

Order reversed, without costs, motion to dismiss the  
petition granted and the proceeding dismissed.  
Opinion by Chief Judge DiFiore.  
Judges Stein, Garcia and Feinman concur.  
Judge Rivera dissents in an opinion in which Judges  
Fahey and Wilson concur.

**MOTIONS**

3                    Mo. No. 2019-57  
In the Matter of Adirondack Wild: Friends of  
the Forest Preserve et al.,  
                  Appellants,  
                  v.  
New York State Adirondack Park Agency, et  
al.,  
                  Respondents.

Motion by Adirondack Council, Inc. for leave to appear amicus curiae on the appeal herein granted only to the extent that 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.

3                    SSD 4  
In the Matter of Jimmie Lee Allen,  
                  Appellant,  
                  v.  
Anthony J. Annucci, &c.,  
                  Respondent.

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

2                    Mo. No. 2019-72  
Andrew Carothers, M.D., P.C., &c.,  
                  Appellant,  
                  v.  
Progressive Insurance Company,  
                  Respondent.

Motion by The Coalition Against Insurance Fraud 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.

1                    Mo. No. 2018-379  
Arrowhead Capital Finance, Ltd.,  
                  Appellant,  
                  v.  
Cheyne Specialty Finance Fund L.P. et al.,  
                  Respondents.

Motion to strike portions of appellant's brief on appeal granted.

4                    SSD 3  
In the Matter of Darnell Ballard,  
                  Appellant,  
          v.  
Susan Kickbush, &c.,  
                  Respondent.

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

1                    SSD 10  
Peter Beard et al.,  
                  Respondents,  
          v.  
Bernie Chase, et al.,  
                  Appellants.

Appeal dismissed without costs, by the Court sua  
sponte, upon the ground that the judgment appealed  
from does not finally determine the action within the  
meaning of the Constitution.

2                    Mo. No. 2019-110  
In the Matter of Jamael Bursch,  
                  Appellant,  
          v.  
Purchase College of the State University of  
New York, et al.,  
                  Respondents.

Motion for poor person relief granted.

1                    Mo. No. 2018-1211  
In the Matter of Jaraira Del Carmen C.,  
                  Appellant,  
          v.  
Junior M.,  
                  Respondent.

Motion for leave to appeal denied.

4                    Mo. No. 2018-1238  
Cayuga Nation, &c.,  
                  Respondent,  
          v.  
Samuel Campbell, et al.,  
                  Appellants,  
County of Seneca,  
                  Intervenor-Respondent.

Motion to modify statutory stay denied.

1 Mo. No. 2018-1111  
CNH Diversified Opportunities Master  
Account, L.P., et al.,  
Appellants,  
v.  
Cleveland Unlimited, Inc., et al.,  
Respondents.

Motion for leave to appeal granted.

1 Mo. No. 2018-1231  
CNH Diversified Opportunities Master  
Account, L.P., et al.,  
Appellants,  
v.  
Cleveland Unlimited, Inc., et al.,  
Respondents.

Motion by Jared Ellias, et al. for leave to appear  
amici curiae on the motion for leave to appeal herein  
granted and the brief is accepted as filed.

1 Mo. No. 2019-30  
Daniel Collazo, et al.,  
Appellants,  
v.  
Netherland Property Assets LLC et al.,  
Respondents.

Motion by Brooklyn Bar Association Volunteer  
Lawyers Project, 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.

2 Mo. No. 2018-1104  
In the Matter of D.

Motion for leave to appeal denied.

Juan P., et al.,  
Respondents;  
Darren M.,  
Appellant.

1 Mo. No. 2019-59  
The People &c.,  
Respondent,  
v.  
Jose Delorbe,  
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2019-39  
In the Matter of Jeanene June DeMarc,  
Respondent,  
v.  
Patricia Ann Goodyear,  
Appellant.

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.

Mo. No. 2019-113  
The People &c.,  
Appellant,  
v.  
Monique Esposito,  
Respondent.

Motion for assignment of counsel granted and Paul Skip Laisure, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the respondent on the appeal herein.

1 Mo. No. 2019-58  
The People &c.,  
Respondent,  
v.  
Gerald Francis,  
Appellant.

Motion for assignment of counsel granted and Janet E. Sabel, Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2018-999  
In the Matter of Craig Raymond Fritsch, an  
Attorney.  
  
Attorney Grievance Committee for the Third  
Judicial Department,  
Respondent;  
Craig Raymond Fritsch,  
Appellant.

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.

4                    Mo. No. 2018-1197  
The People &c. ex rel. Richard Gloss,  
    Appellant  
    v.  
Susan Kickbush, &c.,  
    Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2018-1124  
In the Matter of Eric P. Gonchar, a Suspended  
Attorney.

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

Attorney Grievance Committee for the First  
Judicial Department,  
    Respondent;  
Eric P. Gonchar,  
    Appellant.

4                    Mo. No. 2018-1116  
In the Matter of Patricia Ann Goodyear,  
    Appellant,  
    v.  
New York State Department of Health,  
    Respondent,  
Jeanene June DeMarc,  
    Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2019-29  
The People &c.,  
    Respondent,  
    v.  
Kendel R. Gregory,  
    Appellant.

Motion for assignment of counsel granted and Paul  
Skip Laisure, Esq., Appellate Advocates, 111 John  
Street, 9th Floor, New York, NY 10038 assigned as  
counsel to the appellant on the appeal herein.

2                    Mo. No. 2018-1199  
In the Matter of Michael Grimes,  
                          Appellant,  
                          v.  
Carmela Pignalosa-Grimes,  
                          Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2018-1162  
In the Matter of Tanika H.,  
                          Respondent,  
                          v.  
Travaris E.M., Sr.,  
                          Appellant.  
(And Another Proceeding.)

Motion for leave to appeal denied.

1                    SSD 5  
In the Matter of New York City Asbestos  
Litigation.

Appeal dismissed without costs, by the Court sua  
sponte, upon the ground that the Appellate Division  
order appealed from does not finally determine the  
action within the meaning of the Constitution.

Ann Marie Idell, &c.,  
                          Respondent,  
                          v.  
Aerco International, Inc., et al.,  
                          Defendants,  
Crane Co., et al.,  
                          Respondents,  
Jenkins Bros.,  
                          Appellant.

3                    Mo. No. 2018-1208  
The People &c. ex rel. Erwin Jackson,  
                          Appellant,  
                          v.  
Anthony J. Annucci, &c.,  
                          Respondent.

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



2                    Mo. No. 2019-87  
The People &c.,  
    Respondent,  
    v.  
Victor N. Koltun,  
    Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

2                    SSD 7  
E. Deane Leonard, et al.,  
    Appellants,  
    v.  
Planning Board of the Town of Union Vale,  
    Respondent.

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

1                    Mo. No. 2019-132  
Theresa Maddicks, et al.,  
    Respondents,  
    v.  
Big City Properties, LLC et al.,  
    Defendants,  
Big City Realty Management, LLC, et al.,  
    Appellants.

Motion by Rent Stabilization Association of NYC, Inc. et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

3                    Mo. No. 2018-1128  
In the Matter of Deborah S. Maerz,  
    Respondent,  
    v.  
Jacqueline L. Maerz,  
    Appellant,  
et al.,  
    Respondent.  
(And Three Other Related Proceedings.)

Motion for leave to appeal denied.

3 Mo. No. 2019-92  
The People &c.,  
Respondent,  
v.  
Edward Malloy, Also Known as EB,  
Appellant.

Motion for assignment of counsel granted and Paul J. Connolly, Esq., 2 Wedge Road, Delmar, NY 12054 assigned as counsel to the appellant on the appeal herein.

3 Mo. No. 2018-1027  
In the Matter of Matthew Joseph Mann, an  
Attorney.

Motion for reargument of motion for leave to appeal &c. denied.

Attorney Grievance Committee for the Third  
Judicial Department,  
Respondent;  
Matthew Joseph Mann,  
Appellant.

2 Mo. No. 2019-96  
In the Matter of Cynthia Manocherian, et al.,  
Appellants,  
v.  
Zoning Board of Appeals of the Town of New  
Castle, et al.,  
Respondents.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the hybrid proceedings within the meaning of the Constitution and is not an order of the type provided for in CPLR 5602(a)(2).

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In the Matter of Laura Houston Whitlinger, et  
al.,  
Appellants,  
v.  
Zoning Board of Appeals of the Town of New  
Castle, et al.,  
Respondents.

3 Mo. No. 2018-988  
Donald H. McCormack,  
Appellant,  
v.  
Kevin P. Maloney,  
Respondent.

Motion for leave to appeal dismissed upon the ground that the orders sought to be appealed from do not finally determine the action within the meaning of the Constitution.

2                    SSD 6  
In the Matter of Salvatore Mistretta,  
                          Appellant,  
                          v.  
Donald F. Kane, &c., et al.,  
                          Respondents.

Appeal dismissed without costs, by the Court sua sponte, as untimely taken (see CPLR 5513[a]).

2                    Mo. No. 2019-80  
In the Matter of Salvatore Mistretta,  
                          Appellant,  
                          v.  
Donald F. Kane, &c., et al.,  
                          Respondents.

Motion by Vincent J. Grande III for leave to file a brief amicus curiae on the appeal herein denied.

3                    Mo. No. 2018-1127  
In the Matter of Brandon N. et al., &c.

Motion for leave to appeal denied.

Albany County Department for Children,  
Youth and Families,  
                          Respondent;  
Renee N.,  
                          Appellant.

3                    Mo. No. 2019-138  
In the Matter of National Energy Marketers  
Association, et al.,  
                          Appellants,  
                          v.  
New York State Public Service Commission,  
                          Respondent.  
(And Two Other Related Proceedings.)

Motion by New York State Office of the Attorney General et al. for leave to appear amici curiae on the appeal herein granted only to the extent that 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.

1                    SSD 9  
NYCTL 1998-2 Trust, et al.,  
                    Respondent,  
                    v.  
Frederick Siemon,  
                    Appellant,  
et al.,  
                    Defendants.

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

2                    Mo. No. 2018-1181  
In the Matter of Aliyah S.P.

Motion for leave to appeal denied.

Dutchess County Department of Community  
and Family Services,  
                    Respondent;  
Sabrina S.P.,  
                    Appellant.

2                    SSD 8  
Preferred Group of Manhattan, Inc.,  
                    Appellant,  
                    v.  
City of Poughkeepsie, 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. 2018-1063  
In the Matter of Genesis R., &c.

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

Marcelino C.,  
                    Appellant;  
Graham Windham Services to Families and  
Children,  
                    Respondent.

3 Mo. No. 2019-139  
In the Matter of Retail Energy Supply  
Association, et al.,  
Appellants,  
v.  
Public Service Commission of the State of  
New York, et al.,  
Respondents.  
(And Two Other Related Proceedings.)

Motion by New York State Office of the Attorney  
General et al. for leave to appear amici curiae on the  
appeal herein granted only to the extent that 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.

4 Mo. No. 2018-1126  
In the Matter of Michael S., Jr.  
  
Erie County Department of Social Services,  
Respondent;  
Rebecca S.,  
Appellant.  
(And Two Other Proceedings)

Motion for leave to appeal denied.

2 SSD 2  
Church of Jesus Christ of Latter Day Saints  
Servant Xiu Jian Sun, &c.,  
Appellant,  
v.  
Philip O. Ohene, &c.,  
Respondent.

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

4 Mo. No. 2018-1132  
In the Matter of Norah T. et al.  
  
Cayuga County Department of Social  
Services,  
Respondent;  
Norman T.,  
Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2019-114  
The People &c.,  
    Respondent,  
    v.  
Victor Thomas,  
    Appellant.

Motion by Criminal Appeals Bureau of the Legal Aid Society 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.

3                    Mo. No. 2018-1156  
In the Matter of Keadden W. et al., &c.

Motion for leave to appeal denied.

Albany County Department for Children,  
Youth and Families,  
    Respondent;  
Hope Y.,  
    Appellant.

2                    Mo. No. 2019-67  
The People &c.,  
    Respondent,  
    v.  
Earl Watson,  
    Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

                    Mo. No. 2019-90  
The People &c.,  
    Respondent,  
    v.  
Damon Wheeler,  
    Appellant.

Motion for assignment of counsel granted and Richard L. Herzfeld, Esq., c/o Richard L. Herzfeld, P.C., 112 Madison Avenue, 8th Floor, New York, NY 10016 assigned as counsel to the appellant on the appeal herein.

4                    Mo. No. 2019-127  
Daniel Williams et al.,  
    Appellants,  
    v.  
Beemiller, Inc. &c, et al.,  
    Defendants,  
Charles Brown,  
    Respondent.

Motion by American Association for Justice 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.

1                    Mo. No. 2018-964  
In the Matter of Anthony Jacob Zappin, an  
Attorney.

Motion for leave to appeal denied.

Attorney Grievance Committee for the First  
Judicial Department,  
    Respondent;  
Anthony Jacob Zappin,  
    Appellant.