

January 09, 2014

CASES

No. 224

John Doe,
Appellant,
v.
Guthrie Clinic, Ltd., et al.,
Respondents.

Following certification of a question by the United States Court of Appeals for the Second Circuit and acceptance of the question by this Court pursuant to section 500.27 of this Court's Rules of Practice, and after hearing argument by counsel for the parties and consideration of the briefs and record submitted, certified question answered in the negative.

Opinion by Judge Pigott.

Chief Judge Lippman and Judges Graffeo, Read, Smith and Abdus-Salaam concur.

Judge Rivera dissents and votes to answer the certified question in the affirmative in an opinion.

3 No. 60 SSM 36

In the Matter of the Estate of Muriel M.
Nealon, Deceased.

Christopher J. Nealon, as Executor of the
Estate of Muriel M. Nealon, Deceased,
Appellant;
Peter J. Nealon,
Respondent;
Tracey McGann, Now Known as Tracey
Nealon,
Respondent.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and judgment absolute dismissing the petition granted upon petitioner's stipulation. The Appellate Division correctly determined that the issue whether a confidential relationship existed should have been submitted to the jury.

Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

MOTIONS

2 Mo. No. 2013-1081
111-38 Management Corp.,
Appellant,
v.
Diego Benitez, &c., 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 action within the meaning of the Constitution.

2 Mo. No. 2014-18
In the Matter of Gabriela A. (Anonymous),
Respondent.
Presentment Agency,
Appellant.

Motion by 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. Three copies of the brief must be served and an original and nine copies filed within seven days.

3 Mo. No. 2013-1137
In the Matter of Arianna BB., &c.

Tompkins County Department of Social
Services,
Respondent;
Tracy DD.,
Appellant.
(And Another Proceeding.)

Motion for leave to appeal denied.

3 Mo. No. 2013-1196
In the Matter of Arianna BB., &c.

Tompkins County Department of Social
Services,
Respondent;
Carver BB.,
Appellant.
(And Another Proceeding.)

Motion for leave to appeal denied.

3 Mo. No. 2013-1116
In the Matter of Wendy Clouse,
 Appellant,
 v.
Jason Clouse,
 Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2013-1103
In the Matter of Aidan Doorley,
 Appellant,
 v.
Raymond Kelly, &c., et al.,
 Respondents.

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

1 Mo. No. 2013-1092
In the Matter of Savannah Love Joy F., &c.

Andrea D.,
 Appellant,
Episcopal Social Services,
 Respondent,
The Commissioner of Social Services of the
City of New York,
 Respondent.
(And Another Proceeding.)

Motion for leave to appeal denied.

1 Mo. No. 2013-1120
The People &c.,
 Respondent,
 v.
William Fields,
 Appellant.

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

2 Mo. No. 2013-1252
The People &c.,
Appellant,
v.
Mark Garrett,
Respondent.

Motion to strike portions of appellant's brief denied.

4 Mo. No. 2014-23
Lori Hoover, et al.,
Respondents,
v.
New Holland North America, Inc., &c., et al.,
Appellants,
et al.,
Defendants.
(And a Third-Party Action.)

Motion by Product Liability Advisory Council, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

1 Mo. No. 2013-1255
K2 Investment Group, LLC, et al.,
Respondents-Appellants,
v.
American Guarantee & Liability Insurance
Company,
Appellant-Respondent.

Motion by Coltec Industries 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. Judge Abdus-Salaam took no part.

1 Mo. No. 2013-1280
The People &c.,
Respondent,
v.
Matthew Keschner,
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2013-1124
In the Matter of Desiree L.,
Respondent,
v.
Lewis N.,
Appellant.

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

1 Mo. No. 2013-1266
In the Matter of Sylvan Lawrence, Deceased.

Richard S. Lawrence, et al.,
Respondents,
v.
Graubard Miller, et al.,
Appellants.
Richard S. Lawrence, et al.,
Intervenors-Respondents.

Motion by New York State Trial Lawyers
Association for leave to appear amicus curiae on the
appeal herein granted only to the extent that the
proposed brief is accepted as filed.
Judge Smith took no part.

3 SSD 79
Xiang Li,
Appellant,
v.
Morrisville State College 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.

1 Mo. No. 2013-695
The People &c.,
Respondent,
v.
Garreth Malave,
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2013-1069
In the Matter of Vincent Malerba,
Appellant,
v.
Andrea W. Evans, &c.,
Respondent.

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

2 Mo. No. 2013-1130
In the Matter of State of New York,
Respondent,
v.
Carmelo M. (Anonymous),
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2013-1119
In the Matter of State of New York,
Respondent,
v.
Michael M.,
Appellant.

Motion for leave to appeal granted.
Motion for poor person relief granted.

4 Mo. No. 2014-12
Jannie Nesmith, &c., et al.,
Appellants,
v.
Allstate Insurance Company,
Respondent.

Motion by United Policyholders for leave to file a
brief amicus curiae on the appeal herein granted and
the proposed brief is accepted as filed.

3 SSD 76
In the Matter of Darryl P.,
Appellant,
v.
Brian Fischer, &c.,
Respondent.

Appeal dismissed without costs, by the Court sua
sponte, upon the ground that no appeal lies as of
right from the unanimous order of the Appellate
Division absent the direct involvement of a
substantial constitutional question (CPLR 5601).

3 Mo. No. 2013-1101
In the Matter of Victor A. Pulecio,
Appellant,
v.
Brian Fischer, &c., et al.,
Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2013-1289
The People &c.,
Appellant,
v.
David Rivera,
Respondent.

Motion by New York State Psychiatric Association, Inc. et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.
Judge Abdus-Salaam took no part.

1 Mo. No. 2013-1025
Hideki Sato, et al.,
Appellants,
v.
Ippudo NY, et al.,
Respondents.

Motion for reargument denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2013-1114
David Shumway et al.,
Appellants,
v.
Justin Kelley,
Respondent.

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

4 Mo. No. 2013-1127
The People &c. ex rel. Anselmo Soto, Jr.,
Appellant,
v.
Paul M. Gonyea, &c.,
Respondent.

Motion for reargument denied.

4 Mo. No. 2013-1230
The People &c.,
Respondent,
v.
Kelvin Spears,
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2013-1117
The People &c. ex rel. Kenley Stanislas,
Appellant,
v.
Warden &c., 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 proceeding within the meaning of the Constitution.
Motion for poor person relief dismissed as academic.

3 SSD 80
In the Matter of Victor K. Thomas,
Appellant,
v.
Department of Corrections and Community
Supervision, et al.,
Respondents.

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

3 Mo. No. 2013-1288
In the Matter of Mark S. Wallach, as Chapter
7 Trustee for Norse Energy Corp. USA,
Appellant,
v.
Town of Dryden et al.,
Respondents.

Motion by Office of the Manhattan Borough President for leave to appear amicus 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 and an original and nine copies filed within seven days.

3 SSD 77
In the Matter of Mahmood Yoonessi,
Appellant,
v.
John King 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 proceeding within the meaning of the Constitution.

3 SSD 78
In the Matter of Mahmood Yoonessi,
Appellant,
v.
Merryl H. Tisch, 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 proceeding within the meaning of the Constitution.