

COURT OF APPEALS NEW FILINGS

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

February 19, 2021 through February 25, 2021

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.

ADAMS v ADAMS:

2ND Dept. App. Div. order of 11/25/20; affirmance; 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;

Husband and Wife and Other Domestic Relationships--Whether Family Court properly dismissed the father's petition seeking to, among other things, modify or vacate an order of support, as well as default judgments, claiming that certain Support Collection Unit accounts were duplicative of each other;

Family Court, Nassau County, in a proceeding pursuant to Family Court Act article 4, denied the father's motion to amend his petition, among other things, to modify or vacate a prior order of support and default judgments, and granted the mother's cross motion to dismiss the petition; and thereafter, denied the father's objections to the 7/16/19 order; App. Div. affirmed.

DeWOLF v SYRETT:

4th Dept. App. Div. order of 2/5/21; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer--Dismissal of petition challenging determination placing petitioner on a patient care restriction; alleged constitutional violations; Supreme Court, Wayne County dismissed the CPLR article 78 petition; App. Div. affirmed.

JOLLEY v LANDO:

4TH Dept. App. Div. order of 10/2/20; modification; 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;

Husband and Wife and Other Domestic Relationships--Equitable Distribution--Whether the Appellate Division erred in construing and applying the Full Faith and Credit Clause by concluding that defendant waived the contention that plaintiff's claim to equitable distribution was barred by the Pennsylvania divorce decree by failing to raise that defense in either a pre-answer motion to dismiss or her answer; whether the trial court lacked jurisdiction to entertain plaintiff's equitable distribution action following the Pennsylvania divorce;

Supreme Court, Steuben County, among other things, equitably distributed the marital property; App. Div. modified, by striking from the second ordering paragraph the sum of \$238,670 and substituting therefore the sum of \$104,350, and vacating the third and fourth ordering paragraphs and substituting therefor the provision that plaintiff is entitled to recover from defendant one-half the value of the Lindley property and the Country Walk Estates property, and as modified, affirmed and remitted to Supreme court, for further proceedings in accordance with the court's memorandum.

MATTER OF ESTATE OF KOTSONES:

4TH Dept. App. Div. order of 7/17/20; reversal; leave to appeal granted by Court of Appeals, 12/17/20; Rule 500.11 review pending;

Executors and Administrators--Breach of Fiduciary Duty--Whether the Appellate Division properly reversed the order of Surrogate's Court, holding that the subject will, trust, and real estate transactions had been procured by undue influence;

Surrogate's Court, Steuben County, among other things, denied the application to admit to probate the 12/5/12 will of deceased and invalidated various transactions; App. Div. reversed, dismissed the petition and granted the application.

POLICARPIO, MATTER OF v RALLY RESTORATION CORP., et al.: WORKERS' COMPENSATION BOARD:

3RD Dept. App. Div. order of 12/10/20; reversal with two-Justice dissent; Rule 500.11 review pending;

Workers' Compensation--Disability Benefits--Whether substantial evidence supports the Board's determination that claimant failed to demonstrate labor market attachment after July 31, 2018;

Determination, Workers' Compensation Board ruling (5/9/19), among other things that claimant failed to demonstrate attachment to the labor market, and rescinding his prior award of workers' compensation benefits. App. Div. reversed and remitted the matter to the Workers' Compensation Board for further proceedings not inconsistent with the Court's decision.

SEGAL v OFFICE OF COURT ADMINISTRATION, et al.:

1ST Dept. App. Div. order of 1/29/21; denial of application for permission to file motion; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

Motions and Orders;

App. Div. denied application for permission to file motion and denied interim relief.