

COURT OF APPEALS NEW FILINGS

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

February 27, 2015 through March 5, 2015

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.

COLUMBIA COUNTY SUPPORT COLLECTION UNIT, &c., MATTER OF v RISLEY:
3RD Dept. App. Div. order of 11/20/14; affirmance; leave to appeal granted by Court of Appeals, 2/17/15;
PARENT, CHILD AND FAMILY - SUPPORT - WILLFUL VIOLATION OF ORDERS OF SUPPORT - REVOCATION OF SUSPENDED SENTENCES OF INCARCERATION AND IMPOSITION OF CONSECUTIVE TERMS OF INCARCERATION - WHETHER FAMILY COURT ACT § 454(3)(a) PERMITS CONSECUTIVE COMMITMENTS FOR VIOLATIONS OF PRIOR CHILD SUPPORT ORDERS;

Family Court, Ulster County, granted applications by petitioner County Support Collection Unit on behalf of mother, in three proceedings pursuant to Family Court Act article 4, to hold respondent father in willful violation of a prior order of support, and that committed respondent to three consecutive six month terms of imprisonment; App. Div. affirmed.

GLICK, MATTER OF v HARVEY:

1ST Dept. App. Div. order of 10/14/14; modification; leave to appeal granted by Court of Appeals, 2/24/15;

MUNICIPAL CORPORATIONS - PUBLIC TRUST DOCTRINE - IMPLIED DEDICATION OF LAND FOR PUBLIC USE - USE OF PARTS OF PARCELS FOR PARK-LIKE PURPOSES - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT PETITIONERS FAILED TO MEET THEIR BURDEN OF SHOWING THAT MUNICIPALITY'S ACTS AND DECLARATIONS MANIFESTED A PRESENT, FIXED AND UNEQUIVOCAL INTENT TO DEDICATE PARCELS AT ISSUE AS PUBLIC PARKLAND;

Supreme Court, New York County, granted the amended petition's first cause of action to the extent of declaring that the City respondents had alienated public parkland without approval by the New York State Legislature in violation of the Public Trust Doctrine and enjoining respondent New York University from beginning any construction, in connection with the expansion project at issue, that will result in any alienation of the three parcels found by the court to be public parkland, unless and until the State Legislature authorizes the alienation of any parkland to be impacted by the project; App. Div. modified to grant the cross motions to dismiss the first cause of action, vacate the declaratory and injunctive relief, deny the petition, and dismiss the CPLR article 78 proceeding, otherwise affirmed, and directed the clerk to enter judgment accordingly.

FRIENDS OF THAYER LAKE LLC v BROWN:

3RD Dept. App. Div. order of 1/15/15; affirmance with two-Justice dissent;

NAVIGABLE WATERS - PUBLIC RIGHT OF USE - NAVIGABILITY - CAPACITY FOR TRANSPORT - SUMMARY JUDGMENT - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE MUD POND WATERWAY IS NAVIGABLE-IN-FACT;

Supreme Court, Hamilton County, among other things, denied plaintiffs' cross motion for summary judgment, dismissed plaintiffs' first and second causes of action, denied plaintiffs' third cause of action for a declaratory judgment, granted the motions by the State and Brown defendants for a declaration that the Mud Pond Waterway is navigable-in-fact, declared the Mud Pond Waterway to be navigable-in-fact, granted the State's motion for summary judgment seeking a declaration that plaintiffs' interference with the right of public navigation constitutes a public nuisance, declared that plaintiffs' interference with the right of public navigation constitutes a public nuisance, and enjoined plaintiffs from directly or indirectly interfering in any way with the right of public navigation on the Mud Pond

SINCERBEAUX (DENNIS J.), PEOPLE v:

4TH Dept. App. Div. order of 10/3/14; affirmance; leave to appeal granted by Court of Appeals, 2/17/15;

CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) -

WHETHER POINTS WERE IMPROPERLY ASSESSED UNDER RISK FACTOR 9

BECAUSE DEFENDANT'S CONVICTION FOR ENDANGERING THE WELFARE OF A

CHILD WAS NOT SEXUAL IN NATURE, AND WHETHER THERE IS SUFFICIENT

EVIDENCE TO SUPPORT THE IMPOSITION OF POINTS UNDER RISK FACTORS 1

AND 5;

County Court, Wayne County, determined that defendant is a level three risk pursuant to SORA; App. Div. affirmed.