

COURT OF APPEALS NEW FILINGS

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

March 5, 2021 through March 11, 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.

DEEM v DiMELLA-DEEM:

2ND Dept. App. Div. order 1/27/21; 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--Divorce--Appeal from order that, inter alia, appointed an attorney for the children; alleged constitutional violations;

Supreme Court, Westchester County, inter alia, appointed an attorney for the children and directed the parties to pay pro rata shares of the attorney for the children's fees and disbursements, subject to reallocation at trial; App. Div. affirmed.

DeWOLF v WAYNE COUNTY, NEW YORK:

Supreme Court, Wayne County, judgment of 2/26/21; dismissal of petition; sua sponte examination of whether there is any jurisdictional basis for an appeal as of right from the order of the court of original instance;

Motions and Orders--Motion to Dismiss--dismissal of petition and denial of recusal motion; alleged constitutional violations;

Supreme Court, Wayne County, denied petitioner's motion for recusal, granted respondent's motion to dismiss the petition, and denied as moot petitioner's motion for permission to seek disclosure.

FERGUSON v LeCLAIR, MATTER OF; LeCLAIR v FERGUSON, MATTER OF:

4TH Dept. App. Div. order of 2/5/21; dismissal and affirmance; sua sponte examination of whether the orders appealed from finally determine the proceedings within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Parent, Child and Family--Visitation Rights of Grandparents;

Family Court, Warren County, among other things, found respondents in contempt of court (Appeal No. 1); and, among other things, dismissed the petition to modify a prior order of visitation (Appeal No. 2); App. Div. dismissed the appeals taken by Emily Rose Whipple and otherwise affirmed the orders of Family Court, Warren County.

JIMENEZ (LUIS), PEOPLE v:

2ND Dept. App. Div. order of 12/2/20; reversal with dissents; leave to appeal granted by Hinds-Radix, J., 2/7/21; Rule 500.11 review pending;

Crimes--Justification--Whether the Appellate Division properly concluded that there was no reasonable view of the evidence warranting an instruction on the defense of justification under Penal Law 35.05(2), such that the grand jury proceeding was not defective within the meaning of CPL 210.35(5); defendant allegedly struck dog with stick during altercation;

Supreme Court, Queens County, upon reargument, adhered to so much of the original determination in a 5/3/19 order of the same court, as upon reviewing the grand jury minutes, dismissed the indictment on the ground that the grand jury proceeding was defective within the meaning of CPL 210.35(5), with leave to represent the matter to a new grand jury; App. Div. reversed insofar as appealed from, vacated so much of the original determination in the 5/3/19 order as granted that branch of defendant's omnibus motion which was to dismiss the indictment, denied that branch of defendant's omnibus motion which was to dismiss the indictment, reinstated the indictment, and remitted the matter to Supreme Court for further proceedings.

MATTER OF KOEGEL:

2ND Dept. App. Div. order of 6/17/20; affirmance; leave to appeal granted by Court of Appeals, 2/11/21;

Marriage--Prenuptial Agreement--Whether an acknowledgment accompanying a nuptial agreement, which does not comply with Domestic Relations Law 236(B)(3), may be cured by extrinsic evidence;

Surrogate's Court, Westchester County, granted petitioner's motion for summary judgment on the petition; App. Div. affirmed.

LAMB (MICHAEL), PEOPLE v:

1ST Dept. App. Div. order of 11/10/20; modification; leave to appeal granted by Wilson, J., 2/28/21;

Crimes--Jurisdiction of Offenses--Whether New York had territorial jurisdiction to prosecute sex trafficking counts; defendant advanced or profited from prostitution in New York, but coercive conduct against particular victim occurred in New Jersey;

Supreme Court, New York County, convicted defendant, after a jury trial, of two counts of sex trafficking and promoting prostitution in the third degree, and sentenced defendant to an aggregate term of 6 to 18 years; App. Div. modified to the extent of vacating the supplemental sex offender fee.

SALIS v SALIS:

2ND Dept. App. Div. order to show cause of 2/9/21; sua sponte examination of whether an appeal lies to this Court from the order of an individual Justice of the Appellate Division;

Motions and Orders;

Supreme Court, Kings County, appointed an appraiser to evaluate defendant's business interests/professional practice; appointed an appraiser to evaluate defendant's pension; and appointed appraiser to evaluate the parties real property; order to show cause signed by individual Justices of the Appellate Division.