

COURT OF APPEALS NEW FILINGS

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

May 24 through May 30, 2019

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.

SAMUEL D., MATTER OF v MID-HUDSON FORENSIC PSYCHIATRIC CENTER:

2ND Dept. App. Div. order of 4/24/19; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; **Incapacitated and Mentally Disabled Persons--Involuntary Administration of Drug--Whether nondurational order authorizing the involuntary administration of medication to patient at secure psychiatric facility violates the due process clause;** Supreme Court, Orange County, granted the petition seeking authorization to administer a course of medication to a patient without his consent; App. Div. modified, by deleting the provisions of the 12/6/17 order authorizing the administration of Valproic Acid and Benzotropine, and as so modified, affirmed.

PENA (ROBIN), PEOPLE v:

1st Dept. App. Term order of 10/29/18; affirmance; leave to appeal granted by Garcia, J., 5/14/19;

Crimes--Unlawful Search and Seizure--Whether police officer made objectively reasonable mistake of law in stopping defendant's vehicle, which had working brake lights on right and left sides as required by Vehicle and Traffic Law § 375(40)(b), but defective center brake light, which is not a traffic violation;

Criminal Court of the City of New York, Bronx County, granted defendant's motion to suppress physical evidence and statements (order 2/23/17); and thereafter dismissed the accusatory instrument (order 8/21/17); App. Term inter alia, affirmed the 2/23/17 order and dismissed as academic the appeal from the 8/21/17 order.

POOLER v STATE OF NEW YORK:

Court of Claims order of 2/21/19; dismissal; sua sponte examination whether (1) appellant is a party aggrieved within the meaning of the CPLR 5511 and (2) any jurisdictional basis exists for an appeal as of right;

State--Claim Against State--Dismissal of claim for failure to appear; alleged constitutional violations;

Court of Claims dismissed plaintiff's claims.

SUGAMELE, &c. v THE TOWN OF HEMPSTEAD:

2ND Dept. App. Div. order of 2/13/19; reversal; sua sponte examination 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;

Admiralty--Maritime Action--Whether triable issues of fact exist regarding defendant Town's comparative fault; plaintiffs, passengers on a boat who were injured when boat collided with island, alleged that defendant Town was negligent in the placement and maintenance of buoys marking a channel around the island; claimed governmental immunity;

Supreme Court, Nassau County, granted defendant's motion for summary judgment dismissing the complaints; and thereafter, dismissed the complaints; App. Div. reversed, denied defendant's motion for summary judgment dismissing the complaints, and reinstated the complaints.

MATTER OF MICAH T.:

Family Court order of 3/16/18; denial of parental rights; sua sponte examination whether any jurisdictional basis exists for an appeal as of right;

Parent, Child and Family--Termination of Parental Rights--alleged constitutional violations;

Family Court, New York County, denied mother's petition for custody of child Micah T.; granted father's petition for custody of the child Micah T., granted agency's petition to revoke a suspended judgment with respect to mother's three other children, terminated mother's parental rights with respect to those children, and transferred the care and custody of the subject children to petitioning agency for the purpose of adoption.

WAHAB, MATTER OF v MAPLE CREST GARDEN APARTMENTS, et al.:

2ND Dept. App. Div. order of 4/24/19; affirmance; sua sponte examination whether any jurisdictional basis exists for an appeal as of right;

Parties--Necessary Parties--In proceeding challenging determination of New York State Division of Human Rights (DHR), whether Supreme Court properly dismissed proceeding based on petitioner's failure to name DHR as a necessary party;

Supreme Court, Suffolk County, granted respondents' motion to dismiss the petition, dismissed the proceeding, in effect, pursuant to 'CPLR article 78 to review a determination of the New York State Division of Human Rights, and denied petitioner's cross motions, inter alia, for leave to amend the petition to add the New York State Division of Human Rights as a party; App. Div. affirmed.