

COURT OF APPEALS NEW FILINGS

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

July 26 through August 1, 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.

MANKO v GABAY:

2ND Dept. App. Div. orders of 7/13/18, 10/1/18, 1/30/19 and 6/6/19; sua sponte examination of whether the orders appealed from finally determine the action within the meaning of the Constitution, whether any jurisdictional basis exists for an appeal as of right and whether appellant is an aggrieved party with respect to the 1/30/19 order;

Appeal--Appealable paper;

Supreme Court, Kings County, among other things, (1) denied appellant's motion for an order vacating a judgment of that Court, (2) granted cross-motion for a litigation injunction (order 10/7/16) and thereafter, (1) denied appellant's motion for an order granting leave to renew opposition to motion of respondent Broome dismissing complaint as against him, and (2) denied appellant's motion to amend the complaint (order 5/31/17);

App. Div., among other things, granted motion to dismiss appeal (order 7/13/18), denied leave to appeal (order 10/1/18), denied motion to dismiss appeal (order 1/30/19), and granted motion to dismiss appeal (order 6/6/19).

SHIFER v SHIFER:

2ND Dept. App. Div. order of 10/3/18; reversal and 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;

Judgments--Collateral Estoppel--Whether the Appellate Division's ruling that appellant was in privity with her brother and therefore bound by his divorce action with respondent violates appellant's right to due process under the state and federal Constitutions; Whether the Appellate Division erred by awarding 100% of certain of appellant's real properties to respondent based on a decision in a divorce action which held that the 50% ownership share of appellant's brother in those properties was marital and subject to equitable distribution to respondent;

Supreme Court, Kings County, directed, among other things, that appellant deliver to respondent deeds to two properties; App. Div. (1) reversed judgment insofar as appealed from, reinstated causes of action to set aside transfer of two parcels of real property as fraudulent conveyances, awarded respondent judgment on those cause of actions, and remitted the matter for entry of an appropriate amended judgment; (2) affirmed the judgment insofar as cross-appealed from; and (3) awarded one bill of costs to respondent.

MATTER OF A.V.:

1ST Dept. App. Div. order of 6/20/19; affirmance; sua sponte examination of whether the Appellate Division dissent is on a question of law; Rule 500.11 review pending;

Infants--Juvenile Delinquents--Whether Family Court abused its discretion in adjudicating appellant a juvenile delinquent and placing her on probation for a period of one year rather than granting an adjournment in contemplation of dismissal;

Family Court, Bronx County, adjudicated appellant a juvenile delinquent upon a fact-finding determination that she committed an act that, if committed by an adult, would constitute the crime of assault in the third degree, and placed her on probation for a period of 12 months; App. Div. affirmed.

