COURT OF APPEALS NEW FILINGS

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

September 25, 2015 through October 1, 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.

CORRIGAN, et al., MATTER OF v NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, et al.:
2ND Dept. App. Div. order of 6/24/15; affirmance; leave to appeal granted by Court of Appeals, 9/17/15;
SOCIAL SERVICES - REGISTER OF CHILD ABUSE AND MALTREATMENT - EXPUNGEMENT HEARING - SOCIAL SERVICES LAW § 427-a - WHETHER THE OFFICE OF CHILDREN AND FAMILY SERVICES MAY EXPUNGE A REPORT MADE TO THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT WHICH HAS BEEN ASSIGNED BY A LOCAL SOCIAL SERVICES TO THE FAMILY ASSESSMENT RESPONSE (FAR) TRACK RATHER THAN TO THE TRADITIONAL INVESTIGATION TRACK - CONSTITUTIONALITY OF SOCIAL SERVICES LAW § 427-a;
Supreme Court, Westchester County, denied the petition and dismissed the proceeding; App. Div. affirmed.

FINKELSTEIN (STEVEN), PEOPLE v:
1ST Dept. App. Div. order of 10/30/14; affirmance; leave to appeal granted by Rivera, J., 9/9/15;
CRIMES - COERCION - WHETHER DEFENDANT'S CONVICTION OF COERCION IN THE FIRST DEGREE VIOLATES HIS RIGHTS TO TRIAL BY JURY, EQUAL PROTECTION AND DUE PROCESS - DISTINCTION BETWEEN COERCION IN THE FIRST AND SECOND DEGREES AS ARTICULATED IN PEOPLE v EBOLI (34 NY2d 281 [1974]) AND PEOPLE v DISCALA (45 NY2d 38 [1978]) - HEINOUSNESS; LESSER INCLUDED OFFENSE - CHARGE TO THE JURY - WHETHER DEFENDANT WAS ENTITLED TO HAVE COERCION IN THE SECOND DEGREE SUBMITTED TO THE JURY AS A LESSER INCLUDED OFFENSE OF COERCION IN THE FIRST DEGREE; PROOF OF OTHER CRIMES - WHETHER THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING EVIDENCE ESTABLISHING VICTIM'S KNOWLEDGE OF DEFENDANT'S COERCION OF A FORMER GIRLFRIEND; SUFFICIENCY OF THE EVIDENCE SUPPORTING CONVICTION OF COERCION IN THE FIRST DEGREE; RIGHT TO REPRESENTATION PRO SE - WHETHER COURT PROPERLY REVOKED DEFENDANT'S PRO SE STATUS DURING PORTIONS OF THE PROCEEDINGS ON THE GROUND THAT HE FORFEITED HIS RIGHT OF SELF-REPRESENTATION BY HIS CONDUCT;
Supreme Court, New York County, convicted defendant of two counts of coercion in the first degree, and sentenced him, as a second felony offender, to consecutive terms of 3 1/2 to 7 years; App. Div. affirmed.

NEWCOMB, et al., MATTER OF v MIDDLE COUNTRY CENTRAL SCHOOL DISTRICT:
2ND Dept. App. Div. order of 5/6/15; affirmance; leave to appeal granted by Court of Appeals, 9/17/15;
MUNICIPAL CORPORATIONS - NOTICE OF CLAIM - LATE NOTICE - PROCEEDING FOR LEAVE TO SERVE A LATE NOTICE OF CLAIM OR TO DEEM A LATE NOTICE OF CLAIM TIMELY SERVED - BURDEN OF ESTABLISHING PREJUDICE UNDER GENERAL MUNICIPAL LAW § 50-e - WHETHER COURTS BELOW ABUSED THEIR DISCRETION IN DENYING PETITIONERS' APPLICATION;
Supreme Court, Suffolk County, denied the petition and dismissed the proceeding; App. Div. affirmed.

THOMPSON, MATTER OF v FAWCETT:
2ND Dept. App. Div. order of 8/19/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PARENT, CHILD AND FAMILY - FAMILY OFFENSE PROCEEDING - HARASSMENT IN THE SECOND DEGREE (PENAL LAW § 240.26[3]) - ALLEGED CONSTITUTIONALLY PROTECTED SPEECH THAT, IN ANY EVENT, ALLEGEDLY FAILS TO ESTABLISH A VIOLATION OF HARASSMENT STATUTE;
Family Court, Kings County, issued an order of protection directing respondent in the proceeding, among other things, to stay away from the petitioner until and including May 22, 2015; App. Div. affirmed.