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ADULT SURVIVORS ACT, SEXUAL TOUCHING ALLEGATIONS SUFFICIENT TO STATE A CAUSE OF ACTION.

LAWSUIT ALLEGING NONCONSENSUAL SEXUAL TOUCHING PURSUANT TO THE ADULT SURVIVORS ACT (CPLR 214-J) NEED NOT ALLEGE PLAINTIFF'S INTIMATE PARTS WERE TOUCHED BY THE DEFENDANT TO STATE A CAUSE OF ACTION; IT IS ENOUGH THAT THE COMPLAINT ALLEGE PLAINTIFF WAS TOUCHED UNDER CIRCUMSTANCES WHICH AFFORDED THE DEFENDANT SEXUAL GRATIFICATION (SECOND DEPT).

The Second Department, reversing Supreme Court, in a full-fledged opinion by Justice Wilson, in a matter of first impression, determined that a complaint under the Adult Survivors Act (CPLR 214-j) need not allege the defendant touched plaintiff's intimate parts to state a cause of action for nonconsensual sexual

touching. Here defendant, a doctor, allegedly touched plaintiff's lower back while she was undressed and standing on a step stool facing away from the defendant to determine whether her kidneys were causing lower back pain. Although defendant did not touch plaintiff's intimate parts, it was alleged the examination was motivated by sexual gratification:

The Adult Survivors Act (ASA) (CPLR 214-j) is a statute that permits adult survivors of sexual abuse to revive otherwise time-barred civil actions against alleged abusers arising from, among other things, conduct that would constitute a sexual offense under Penal Law article 130. The offense of forcible touching under Penal Law § 130.52(1) requires that there be a nonconsensual touching of "sexual or other intimate parts" of another person for the purpose of degradation or abuse of such person or for the purpose of gratifying the actor's sexual desire. The offense of sexual abuse in the third degree under Penal Law § 130.55 requires nonconsensual "sexual contact." This appeal provides our Court with an opportunity to address an issue of first impression in this judicial department regarding how narrow, or broad, we should construe the elemental concepts of sexual touching and sexual contact under the ASA. We hold that where, as here, the alleged nonconsensual touching or sexual contact was to a part of the body other than an anatomically sexual part, in the classic sense, these Penal Law offenses may still qualify as a predicate for an action pursuant to the ASA if the broader facts, manner, and circumstances of the touching or sexual contact involve intimacy or the alleged sexual gratification of the abuser. Aguilar v Wishner, 2025 NY Slip Op 07265, Second Dept 12-24-25

Practice Point: Here the complaint alleged defendant, a doctor, touched plaintiff's lower back during a physical examination under circumstances which afforded defendant sexual gratification. That was sufficient to state a cause of action under the Adult Survivor's Act. Under the Act, a plaintiff need not allege defendant touched plaintiff's intimate parts.

December 24, 2025

APPEARANCE, FORECLOSURE, ATTENDING A MANDATORY SETTLEMENT CONFERENCE IS NOT AN APPEARANCE IN THE MATTER.

DEFENDANTS' ATTENDANCE AT A MANDATORY SETTLEMENT CONFERENCE (CPLR 3408) IN THIS FORECLOSURE CASE DID NOT CONSTITUTE AN "APPEARANCE" IN THE ACTION; THEREFORE DEFENDANTS WERE NOT ENTITLED TO FIVE DAYS NOTICE (PURSUANT TO CPLR 3215 (G)) RE: PLAINTIFF'S MOTION FOR LEAVE TO ENTER A DEFAULT JUDGMENT (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Duffy, in a matter of first impression, determined defendants' attendance at a mandatory settlement conference in this foreclosure action did not constitute an "appearance" such that defendants were entitled to five-days notice of an application for leave to enter a default judgment:

The issue on appeal, an issue of first impression for this Court, is whether a party's attendance at a mandatory settlement conference pursuant to CPLR 3408 constitutes an appearance by a party for the purpose of CPLR 3215(g), which provides, among other things, that a party who has appeared in an action is entitled to at least five days' notice of an application for leave to enter a default judgment. * * * Supreme Court properly determined that the defendants had not appeared in the action and, thus, the five-day notice provision set forth in CPLR 3215(g) was not applicable with respect to the plaintiff's motion, inter alia, for leave to enter a default judgment against the defendants. HSBC Bank USA, N.A. v Saris, 2025 NY Slip Op 07287, Second Dept 12-24-25

Practice Point: A defendant's attendance at a mandatory settlement conference (CPLR 3408) is not an "appearance" in the action and does not entitle defendant to five days notice (pursuant to CPLR 3215 (g)) re: plaintiff's motion for leave to enter a default judgment.

December 24, 2025

DEFAULT JUDGMENTS, INQUEST ON DAMAGES, INSUFFICIENT EVIDENCE.

HERE SUPREME COURT CORRECTLY REFUSED TO VACATE THE DEFAULT JUDGMENT IN THIS PERSONAL INJURY CASE; BUT THE SECOND DEPARTMENT VACATED THE $385,000 INQUEST-JUDGMENT BECAUSE PLAINTIFF'S TESTIMONY DID NOT SUFFICIENTLY DEMONSTRATE THE EXTENT OF THE INJURIES (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined Supreme Court correctly denied defendant's motion to vacate a default judgment in a personal injury case because she failed to provide a reasonable excuse. Plaintiff alleged he stepped in a hole on defendant's property, twisted his foot and fell. But the $385,000 damages judgment was vacated by the Second Department because plaintiff's testimony at the inquest was deemed insufficient to demonstrate the extent of the injuries. A new inquest was ordered:

… [A]lthough this Court is not relieving the defendant of her default, "[a]n unwarranted and excessive award after inquest will not be sustained, as to do otherwise 'would be tantamount to granting the plaintiffs an open season at the expense of a defaulting defendant'" … . Here, the plaintiff's vague testimony at the inquest was insufficient to determine to what extent the plaintiff's injuries were attributable to the subject accident and, therefore, whether the amount awarded was warranted. Thus, under the circumstances of this case, the Supreme Court should have granted that branch of the defendant's motion which was to vacate the judgment, and we remit the matter to the Supreme Court, Nassau County, for a new inquest on the issue of damages, and for the entry of an appropriate amended judgment thereafter … . Albano v Roehrig, 2025 NY Slip Op 06839, Second Dept 12-10-25

Practice Point: Despite losing a motion to vacate a default judgment, a defendant may still successfully move to vacate a judgment awarded after an inquest on the ground the evidence offered at the inquest did not sufficiently demonstrate the extent of the plaintiff's injuries.

December 10, 2025

DRIVER'S LICENSE REVOCATION HEARING, LICENSE PROPERLY REVOKED EVEN THOUGH ARRESTING OFFICERS DID NOT ATTEND.

THE ADMINISTRATIVE LAW JUDGE WENT AHEAD WITH THE DRIVER'S LICENSE REVOCATION HEARING IN THE ABSENCE OF THE OFFICERS WHO ARRESTED THE DRIVER FOR DWI; THE DRIVER'S ARGUMENT HE WAS DENIED DUE PROCESS BECAUSE HE WAS UNABLE TO CROSS-EXAMINE THE OFFICERS WAS REJECTED; THE DRIVER HAD SUBPOENAED THE OFFICERS BUT CHOSE NOT TO USE THE CPLR 2308 PROCEDURE FOR ENFORCEMENT OF THE SUBPOENAS; THE AVAILABILITY OF THE ENFORCEMENT PROCEDURE WAS DEEMED "SUFFICIENT PROCESS" (CT APP).

The Court of Appeals, affirming the Appellate Division, in a full-fledged opinion by Judge Wilson, determined a driver, Monaghan, whose license was automatically suspended when he refused to submit to a chemical test at the time he was arrested for DWI, was not denied due process rights when the Department of Motor Vehicles (DMV) Administrative Law Judge (ALJ) revoked his license despite the arresting officers' failure to appear at the revocation hearing. Monaghan had subpoenaed the officers and argued he was denied his right to cross-examine them. The Court of Appeal noted that Monaghan could have sought to enforce the subpoenas but chose not to. The Court found that the procedure for enforcement of subpoenas is not unduly burdensome. Therefore requiring Monaghan to use that procedure to exercise his right to cross-examine the officers does not amount to a denial of due process:

… [W]e reject the contention that Mr. Monaghan's was deprived of his due process right to cross-examine the Troopers. His private interest in retaining his driver's license and the government's interest in public safety are both significant. The due process analysis, here, turns on the benefit and burden of requiring a motorist to seek judicial enforcement of a subpoena. Mr. Monaghan chose not to avail himself of the process set forth in CPLR 2308 (b). The process of applying to enforce a nonjudicial subpoena is not so unduly burdensome as to constitute a deprivation of

due process of law. Our holding is consistent with appellate courts' decisions rejecting due process challenges in other types of administrative proceedings where the petitioner has not attempted to enforce a subpoena … . It is undisputed that Mr. Monaghan did not seek enforcement, nor did he request an adjournment to do so. Matter of Monaghan v Schroeder, 2025 NY Slip Op 06959, CtApp 12-16-25

Practice Point: Here the officers who arrested the driver for DWI did not appear at the license revocation hearing. The driver argued his inability to cross-examine the officers deprived him of due process of law. However, the driver had subpoenaed the officers. He could have used the CPLR 2308 (b) procedure for enforcing the subpoenas but chose not to. The availability of the enforcement procedure was deemed sufficient process.

December 16, 2025

JURISDICTION OF FAMILY COURT OVER A FAMILY OFFENSE PROCEEDING REQUIRES AN "INTIMATE RELATIONSHIP" BETWEEN PETITIONER AND RESPONDENT.

WHETHER FAMILY COURT HAD JURISDICTION OVER THIS FAMILY OFFENSE PROCEEDING DEPENDED ON WHETHER THERE WAS AN "INTIMATE RELATIONSHIP" BETWEEN PETITIONER AND RESPONDENT; THE EXISTENCE OF AN "INTIMATE RELATIONSHIP" IS A FACT-INTENSIVE INQUIRY WHICH, WHEN IN DISPUTE, REQUIRES A HEARING; MATTER REMITTED FOR THE HEARING (THIRD DEPT).

The Third Department, reversing Family Court, determined the judge should have ordered a hearing to determine whether the respondent had an "intimate relationship" with the petitioner such that a family offense proceeding alleging identify theft could be brought by the petitioner against the respondent. Whether an "intimate relationship" exist is a fact-intensive inquiry and when it is in dispute a hearing should be held:

Family Court's jurisdiction in family offense proceedings, as defined by Family Ct Act § 812 (1), extends to enumerated offenses occurring between members of the

same family or household, including those "persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time" … . While the statute does not define "intimate relationship," it expressly excludes casual acquaintances and ordinary social or business associations … . In determining whether an intimate relationship exists, courts consider, among other things, "the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship" … . Additionally, "the relationship should be direct [and] not one based upon a connection with a third party" … . Whether an intimate relationship exists is a fact-intensive inquiry to be resolved on a case-by-case basis … . When the existence of an intimate relationship is in dispute, or the record is insufficient to permit determination as a matter of law, Family Court should conduct a hearing before dismissing the petition for lack of jurisdiction … . Matter of McCarra v Chiaramonte, 2025 NY Slip Op 07352, Third Dept 12-31-25

Practice Point: Family Court has jurisdiction over family offense proceedings involving unrelated parties if there exists an "intimate relationship" between the parties. Determining whether there is an "intimate relationship" is a fact-intensive inquiry usually requires a hearing.

December 31, 2025

JURY NOTES, LAW CLERK'S IMPROPER COMMUNICATION WITH DELIBERATING JURORS.

WHEN THE JUDGE'S LAW CLERK SPOKE TO THE JURORS ABOUT A JURY NOTE WHILE THE JURORS WERE DELIBERATING, THE CLERK DISCUSSED CONCEPTS OF NEGLIGENCE, FAULT AND CERTAIN FACTS OF THE CASE; PLAINTIFFS' MOTION TO SET ASIDE THE VERDICT SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court and ordering a new trial after a defense verdict, determined that the law clerk's discussion with the jurors while they were deliberating, during which concepts of negligence and fault and certain

facts were discussed, constituted interference with the deliberations and usurpation of the role of the court. The motion to set aside the verdict should have been granted:

Following the verdict, the plaintiffs moved pursuant to CPLR 4404(a) to set aside the jury verdict in favor of the defendant on the issue of liability in the interest of justice and for a new trial. In an affirmation in support of the motion, the plaintiffs' counsel stated that he had learned, after the jury was discharged, that when the clerk went to speak to the jurors about writing the actual question on the form, the clerk improperly communicated with the jurors in a way that went beyond the Supreme Court's instructions. In further support of their motion, the plaintiffs submitted an affidavit from a former juror (hereinafter the first juror) who averred, among other things, that the clerk had discussed with the jurors the concepts of negligence and fault, as well as certain facts about the case. The first juror averred that the clerk was in the jury room with the jurors for approximately three to five minutes, and that following that discussion, the jurors "did not feel it [was] necessary to submit further questions to the Court." * * *

"A motion pursuant to CPLR 4404(a) to set aside a verdict and for a new trial in the interest of justice encompasses errors in the trial court's rulings on the admissibility of evidence, mistakes in the charge, misconduct, newly discovered evidence, and surprise" … . "Litigants are entitled, as a matter of law, to a fair trial free from improper comments by counsel or the trial court" … . "The interest of justice thus requires a court to order a new trial where comments [have] deprived [a] party of a fair trial or unduly influenced a jury" … .

… [T]he clerk's conduct cannot be found to be harmless. By offering opinions and/or explanations on the meaning of the legal concepts at issue in the trial, the clerk impermissibly interfered in the jury's deliberations and usurped the role of the court to, in consultation with counsel, instruct the jurors on the law applicable to the facts. Saporito-Elliott v United Skates of Am., Inc., 2025 NY Slip Op 06886, Second Dept 12-10-25

Practice Point: The law clerk's discussion with the deliberating jurors about concepts of negligence, fault and certain facts of the case interfered with the deliberations and usurped the role of the court. The verdict, therefore, must be set aside.

December 10, 2025

LIEN LAW, DISTRIBUTION OF SETTLEMENT FUNDS TO SUBCONTRACTORS.

UNDER THE LIEN LAW, THE GENERAL CONTRACTOR IN A FAILED SOLAR ENERGY PROJECT, AS TRUSTEE OF THE SETTLEMENT FUNDS, WAS PROPERLY PRECLUDED FROM USING THE FUNDS TO PAY ITSELF FIRST; THE S. MUST BE PAID FIRST; THERE WAS A TWO JUSTICE DISSENT (THIRD DEPT).

The Third Department, affirming Supreme Court, over a two-justice dissent, in a matter of first impression, determined the subcontractors' motion to enjoin the general contractor from using settlement funds to pay itself for expenditures in a failed solar-energy project was properly granted. The Lien Law created a trust for the settlement funds and required the general contractor, as trustee, to pay the subcontractors before paying itself:

"Article 3-A of the Lien Law impresses with a trust any funds paid or payable to a contractor 'under or in connection with a contract for an improvement of real property' " (… Lien Law § 70 [1]). Given this statutory definition, we readily conclude that the settlement funds at issue constitute trust funds under Lien Law article 3-A … . The Court of Appeals has "repeatedly recognized that the primary purpose of [Lien Law] article 3-A . . . is to ensure that those who have directly expended labor and materials to improve real property . . . at the direction of the owner or a general contractor receive payment for the work actually performed" … . With respect to a contractor's trust, the parties entitled to a beneficial status are expressly enumerated in Lien Law § 71 (2) (a)-(f) … Pursuant to Lien Law § 71 (2) (a), "[t]he trust assets of which a contractor . . . is trustee shall be held and applied for [enumerated] expenditures arising out of the improvement of real property," including "payment of claims of subcontractors, architects, engineers, surveyors, laborers and materialmen" (Lien Law § 71 [2] [a] …). The language is mandatory and does not include the "cost[s] of improvement," which is a term specifically defined to address an owner's costs (Lien Law § 2 [5]; see Lien §§ 70

[5]; 71 [1] …). L.C. Whitford Co., Inc. v Babcock & Wilcox Solar Energy, Inc., 2025 NY Slip Op 07063, Third Dept 12-18-25

Practice Point: Under the Lien Law the general contractor here is the trustee of the settlement funds and must use the funds to pay the subcontractors before paying itself.

December 18, 2025

POWER OF ATTORNEY, HUSBAND'S POWER OF ATTORNEY DID NOT PROVIDE HIM WITH AUTHORITY TO REPRESENT HIS WIFE IN FORECLOSURE PROCEEDINGS.

HERE DEFENDANT'S NON-LAWYER HUSBAND REPRESENTED HER AT THE FORECLOSURE TRIAL; THE FACT THAT THE HUSBAND HAD A POWER OF ATTORNEY AUTHORIZING HIM TO ACT ON HIS WIFE'S BEHALF DID NOT AUTHORIZE HIM TO PRACTICE LAW; ALTHOUGH REPRESENTATION BY A NON-LAWYER DOES NOT RENDER THE PROCEEDINGS A "NULLITY," HERE THE DEFENDANT WAS PREJUDICED BY HER HUSBAND'S REPRESENTATION AND THE JUDGE ERRED BY NOT ALLOWING THE HUSBAND TO TESTIFY; NEW TRIAL ORDERED (SECOND DEPT).

The Second Department, reversing the judgment of foreclosure and ordering a new trial, determined defendant was prejudiced by her non-attorney husband's representation of her in the trial. Although the husband, John Chae, had a power of attorney authorizing him to act on his wife's behalf, the power of attorney did not authorize him to practice law. In addition, Supreme Court erred by not allowing the husband to testify:

"'New York law prohibits the practice of law in this State on behalf of anyone other than himself or herself by a person who is not an admitted member of the Bar, regardless of the authority purportedly conferred by execution of a power of attorney'" … . "The designation as an attorney-in-fact under General Obligations

Law §§ 5-1502A-N does not confer upon a designated agent the right to provide representation as an attorney-at-law, and 'cannot be read to displace the provisions of Judiciary Law § 478'" … .

In this case, none of the exceptions to Judiciary Law § 478 apply. Moreover, John Chae's marriage to the defendant did not permit him to appear pro se on her behalf … . "As a general rule, the fact that a party has been represented by a person who was not authorized or admitted to practice law under the Judiciary Law—whether a disbarred attorney or a person practicing law without a license—does not create a 'nullity' or render all prior proceedings void per se" … . Here, however, the record demonstrates that the defendant was prejudiced as a result of being represented by an unauthorized attorney at the trial … . Further, the Supreme Court erred in precluding the defendant from testifying at the trial (see CPLR 321[a]). Ventus Props., LLC v Mo Chae, 2025 NY Slip Op 07429, Second Dept 12-31-25

December 31, 2025

RELEASES, CONTRACT LAW.

ALTHOUGH PLAINTIFF MAY NOT HAVE INTENDED THE RELEASE TO APPLY TO A PENDING FALSE ARREST ACTION, THE PENDING ACTION WAS NOT LISTED IN THE RELEASE AS AN EXCLUSION AND IS THEREFORE PRECLUDED (CT APP).

The Court of Appeals determined that, even if plaintiff did not intend to release the city from the second false arrest action when he signed a release for the first false arrest action, the release must be enforced according to its plain language. The release had a section where any actions not intended to be encompassed by the release must be specifically identified and listed. Plaintiff, with counsel present, signed the release without listing the second false arrest action as an exclusion, so the release precluded the second action:

This Court has repeatedly made clear that "[i]f 'the language of a release is clear and unambiguous, the signing of a release is a "jural act" binding on the parties' " … . "As with contracts generally, the courts must look to the language of a release—the words used by the parties—to determine their intent, resorting to

extrinsic evidence only when the court concludes as a matter of law that the contract is ambiguous" … , or where such evidence establishes one of the " 'traditional bases for setting aside written agreements, namely, duress, illegality, fraud, or mutual mistake' " … . With respect to mutual mistake, a "high order of evidence is required" to overcome the " 'heavy presumption that a deliberately prepared and executed written instrument [manifests] the true intention of the parties' " … .

Here, the City established its prima facie entitlement to summary judgment based on the clear language of the release, and plaintiff failed to raise any triable question of fact in opposition. The City's intent to secure a release from plaintiff of "any and all" claims is evidenced by the plain text of the document it transmitted for plaintiff's signature. As the Appellate Division correctly held, there was nothing "surreptitious" about the way the release was drafted or transmitted … . Although plaintiff, who was represented by counsel, could have excluded this action from the release by the simple act of listing it in the space provided for that purpose, he signed the release without doing so, an objective manifestation of assent that is binding upon him notwithstanding any unilateral mistake or subsequent regret on his part … . Smith v City of New York, 2025 NY Slip Op 07081, CtApp 12-18-24

Practice Point: A release is strictly enforced according to its plain language. If a release includes a section where any exclusions from its reach must be listed, and that section is left blank, the release will preclude any other pending action, even where the failure to list a pending action was unintentional.

December 18, 2025

REMITTAL AFTER APPEAL, JUDGE CANNOT EXCEED PARAMETERS BY ACCEPTING NEW ARGUMENTS.

SUPREME COURT WENT BEYOND THE PARAMETERS OF THE REMITTAL BY ACCEPTING SUPPLEMENTAL ARGUMENTS ON NEW CASE LAW AND BY RENDERING A DECISION ON GROUNDS NOT INCLUDED IN THE REMITTAL; DISMISSAL OF THE COMPLAINT REVERSED, DEFAMATION CAUSES OF ACTION REINSTATED (FOURTH DEPT).

The Fourth Department, reversing (modifying) Supreme Court, determined Supreme Court went beyond the parameters of the remittal. Supreme Court had dismissed the complaint. The Fourth Department reinstated several defamation causes of action:

We agree with plaintiff that the court impermissibly expanded the scope of the remittal. "[A] trial court, upon a remand or remittitur, is without power to do anything except to obey the mandate of the higher court, and render judgment in conformity therewith" … . This Court expressed our remittal directive in our order, and Supreme Court impermissibly expanded the scope of that remittal by accepting supplemental arguments on, inter alia, the effect of new case law relating to the retroactivity of the amended anti-SLAPP statute, and by basing its decision on grounds that were not included within the remittal .. . Trinh v Nguyen, 2025 NY Slip Op 07136, Fourth Dept 12-23-25

Practice Point: Here Supreme Court did not follow the mandate of the remittal by accepting new legal arguments and deciding the case on grounds not included in the remittal. Supreme Court's dismissal of the complaint was reversed.

December 23, 2025

SERVICE OF PROCESS BY EMAIL, FAMILY LAW, JUDGES.

FAMILY COURT ERRONEOUSLY DIRECTED SERVICE UPON MOTHER IN THIS MODIFICATION OF CUSTODY PROCEEDING "BY EMAIL" WHICH DOES NOT COMPLY WITH DOMESTIC RELATIONS LAW 75-G; ALLEGATIONS THAT MOTHER DESTROYED EVIDENCE OF SERVICE AND WAS AWARE OF THE PROCEEDINGS ARE IRRELEVANT; THE COURT NEVER ACQUIRED JURISDICTION OVER MOTHER (FIRST DEPT).

The First Department, reversing Family Court, determined the court never acquired jurisdiction over mother in this modification of custody proceeding. Father was directed to serve mother by email and by Initiating international service through the US Central Authority, a method not compliant with Domestic Relations Law 75-g:

That statute requires that notice be given by personal delivery or by any form of mail requesting a receipt and that the court may only direct an alternative form of service upon a finding that "service is impracticable" by personal delivery or by mail. However, the father's motion papers contained no indication that personal service or service by any form of mail requesting a receipt was "impracticable" (Domestic Relations Law § 75-g[1][c]). Therefore, the Family Court erred in directing service by email and the court never acquired personal jurisdiction over the mother by the email service that was effectuated.

The father claims that the mother was personally served … . However, the record contains no affidavit of service on the mother. The father's assertion in his brief that the mother destroyed evidence of service does not establish that lawful service was made, as it was his responsibility to prove that service was properly carried out in the first place … . Moreover, the fact that the mother became aware of the proceeding at some point … does not confer jurisdiction if there has not been compliance with the statutorily prescribed methods of service of process … . Matter of John F.B. v Maria U., 2025 NY Slip Op 06905, First Dept 12-11-25

Practice Point: Here father was directed by the court to serve mother by "email" which does not comply with Domestic Relations Law 75-g. The court never acquired jurisdiction over mother, despite her awareness of the proceedings.

December 11, 2025

SET ASIDE $3.5 MILLION VERDICT (SUCCESSFUL MOTION TO), FALSE IMPRISONMENT.

HOSPITAL SECURITY PERSONNEL WENT TO PLAINTIFF'S APARTMENT AND ESCORTED HER TO DEFENDANT HOSPITAL (THE UNDERLYING CIRCUMSTANCES WERE NOT DESCRIBED); PLAINTIFF WON A "FALSE IMPRISONMENT" SUIT AND WAS AWARDED $3.5 MILLION; THE MOTION TO SET ASIDE THE VERDICT SHOULD HAVE BEEN GRANTED; PLAINTIFF'S SUBJECTIVE BELIEF SHE COULD NOT LEAVE THE APARTMENT OR THE VEHICLE TRANSPORTING HER TO THE HOSPITAL WAS INSUFFICIENT (SECOND DEPT).

The Second Department, setting aside the $3.5 million verdict, determined the evidence did not support the "false imprisonment" theory of liability. Plaintiff was escorted from her apartment to defendant hospital by hospital security personnel (the underlying circumstances are not explained in the decision). Plaintiff alleged she was confined in her apartment and in the vehicle in which she was taken to the hospital:

"'A motion pursuant to CPLR 4404(a) to set aside a jury verdict and for judgment as a matter of law will be granted where there is simply no valid line of reasoning and permissible inferences which could possibly lead rational [persons] to the conclusion reached by the jury on the basis of the evidence presented at trial'" … . "[T]he question of whether a verdict was utterly irrational, entitling a movant to a directed verdict, involves a pure question of law" … . "'In considering such a motion, the facts must be considered in a light most favorable to the nonmovant'" … .

"To prevail on a cause of action to recover damages for false arrest or false imprisonment, the plaintiff must demonstrate that the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement, that the plaintiff did not consent to the confinement, and that the confinement was not privileged" … . * * *

The decedent's subjective belief that she was confined in her apartment and that the security officers would not leave if asked is insufficient, without more, to establish an intent to confine … . Moreover, a threat to call the police does not constitute "detaining force necessary to establish the tort of false imprisonment" … . In addition, the fact that the decedent testified that the security officers parked their vehicle so as to block the decedent's driveway is insufficient to establish confinement, absent other evidence that the decedent was incapable of departing by foot … .

… The decedent's testimony as to her own subjective belief that, once she was in the vehicle, she felt that she "no longer had any rights and that [she] was in custody and . . . imagined what would happen if [she] tried to get out of the car," is insufficient, without more, to establish an intent to confine … . Dender v North Shore Manhasset Hosp., 2025 NY Slip Op 07378, Second Dept 12-31-25

Practice Point: Consult this decision for an explanation of the criteria for setting aside a verdict awarding damages.

Practice Point: Consult this decision for insight into the proof required to support an allegation of "false imprisonment."

December 31, 2025

STANDING TO CHALLENGE LOCAL LAW, ENVIRONMENTAL LAW.

HERE THE TOWN PASSED A LOCAL LAW REQUIRING THE CLOSURE OF A LANDFILL OWNED AND OPERATED BY SMI; BECAUSE SMI'S PROPERTY IS THE VERY SUBJECT OF THE LOCAL LAW, SMI NEED NOT DEMONSTRATE "ENVIRONMENTAL HARM" AS AN ELEMENT OF STANDING TO CHALLENGE THE TOWN'S STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) DECLARATION THAT THE CLOSURE OF THE LANDFILL WILL NOT HAVE A SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT; SMI HAS STANDING TO CHALLENGE THE TOWN'S NEGATIVE SEQRA DECLARATION ON THE GROUND THAT THE TOWN DID NOT TAKE THE REQUIRED "HARD LOOK" AT THE EVIDENCE BEFORE ISSUING THE NEGATIVE DECLARATION (CT APP).

The Court of Appeals, reversing the Appellate Division, in a full-fledged opinion by Judge Rivera, determined the petitioner-plaintiff Seneca Meadows, Inc. (SMI), the owner and operator of a landfill, had standing to challenge the town's State Environmental Quality Review Act (SEQRA) finding that the closure of the landfill pursuant to a Local Law would not have a significant adverse environmental impact. SMI argued the town did not take the required "hard look" at the evidence before issuing its negative SEQRA declaration:

"SEQRA is designed to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources . . . by injecting environmental considerations directly into governmental decision making; thus the statute mandates that social, economic and environmental factors shall be considered together in reaching decisions on proposed activities" … . Standing to sue under SEQRA, as with other statutory causes of action, requires that the plaintiff establish an injury-in-fact and that the in-fact injury fall within the zone of interest that the statute protects … . Thus, to sue under SEQRA, a plaintiff must ordinarily show that their injury falls within the statute's environmental zone of interest by "demonstrat[ing] that it will suffer an injury that is environmental and not solely economic in nature" … .

However, [Matter of Har Enters. v Town of Brookhaven (74 NY2d 524 [1989])] established that "no such specific allegation [of environmental harm] is necessary" when the petitioner's property is "the very subject" of the government's action … . That case involved a rezoning of the petitioner's property from commercial to residential use … . As the Court explained, "[i]t seems evident that if any party should be held to have a sufficient interest to object—without having to allege some specific harm—it is an owner of property which is the subject of a contemplated rezoning" … . Following that ruling, a few years later, the Court held in [Gernatt Asphalt Prods. v Town of Sardinia (87 NY2d 668 [1996])] that a landowner whose potential mining operations would be eliminated by rezoning was directly impacted by the governmental land use regulation and thus had standing under Har to challenge the government's lack of compliance with SEQRA … . Matter of Seneca Meadows, Inc. v Town of Seneca Falls, 2025 NY Slip Op 06961, CtApp 12-16-25

Practice Point: When the petitioner's property is the subject of the government's action, the petitioner need not demonstrate "environmental harm" to have standing to challenge the government's SEQRA declaration. Here the town passed a local law requiring closure of petitioner's landfill. Petitioner need not demonstrate "environmental harm" to have standing to challenge the town's SEQRA negative declaration on the ground the town did not take the required "hard look" at the evidence before finding that the landfill closure would not have a significant adverse environmental impact.

December 16, 2025

STANDING, FAMILY LAW, GRANDMOTHER'S STANDING TO SEEK CUSTODY.

THE FACT THAT THE CHILD LIVED WITH THE GRANDMOTHER FOR FOUR YEARS WAS AN "EXTRAORDINARY CIRCUMSTANCE" WHICH AFFORDED GRANDMOTHER STANDING TO SEEK CUSTODY (FOURTH DEPT).

The Fourth Department, reversing Family Court, determined grandmother had demonstrated "extraordinary circumstances" such that she had standing to seek custody:

… [T]he grandmother met her burden of demonstrating other extraordinary circumstances with respect to both the mother and the father. The Court of Appeals has explained that "[i]n the absence of 'surrender, abandonment, persisting neglect, unfitness or other like extraordinary circumstances', a parent may not be denied custody" … . Consistent with that principle of law, we have determined that "an extended disruption of custody as defined in [the statute] is merely 'a specific example of extraordinary circumstances' . . . and the statute was 'not intended to overrule existing case law relating to third parties obtaining standing in custody cases' " … .

In determining whether extraordinary circumstances exist, "[n]o one factor should be viewed in isolation . . . , but rather the 'analysis must consider the cumulative effect of all issues present in a given case . . . , including, among others, the length of time the child has lived with the nonparent, the quality of that relationship and the length of time the . . . parent allowed such custody to continue without trying to assume the primary parental role' " … .

Here, we conclude that there are " 'other like extraordinary circumstances' " that give the grandmother standing to seek custody of the child … . Extraordinary circumstances arise from the fact that the now-six-year-old child has resided exclusively with the grandmother since she was two years old, the mother was incapable of caring for the child due to mental illness, and the father has not been significantly involved in the child's life since birth. The father has had limited and sporadic visitation with the child and has never had the child with him overnight.

He has not attended school events or medical appointments. Nor has he paid child support to either the mother or the grandmother. Finally, the child is emotionally attached to the grandmother and her half-brother, who has also been raised by the grandmother … . Matter of Morris v Smith, 2025 NY Slip Op 07133, Fourth Dept 12-23-25

Practice Point: Consult this decision for insight into the "extraordinary circumstances" which will afford a nonparent standing to seek custody. Here the fact that the child had resided with grandmother for four years was deemed such an "extraordinary circumstance."

December 23, 2025

SUBPOENAS, DISCOVERY SOUGHT FROM NONPARTY.

HERE THE SUBPOENAS SEEKING DISCOVERY FROM A NONPARTY WERE DEFECTIVE IN THAT THEY DID NOT EXPLAIN THE CIRCUMSTANCES OR REASONS FOR THE REQUESTED DISCLOSURE; THEREFORE THE MOTION TO QUASH THE SUBPOENAS SHOULD HAVE BEEN GRANTED WITHOUT ANY NEED ON THE PART OF THE MOVANT TO DEMONSTRATE THE SOUGHT DISCLOSURE IS IRRELEVANT OR FUTILE (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the subpoenas seeking discovery from a nonparty were defective, therefore the motion to quash the subpoenas should have been granted:

Pursuant to CPLR 3101(a)(4), a party may obtain discovery from a nonparty of "matter material and necessary in the prosecution or defense of an action" in possession of a nonparty, providing the nonparty is apprised of the "circumstances or reasons such disclosure is sought or required" … . "The notice requirement of CPLR 3101(a)(4) 'obligates the subpoenaing party to state, either on the face of the subpoena or in a notice accompanying it, the circumstances or reasons such disclosure is sought or required'" … . "Once that is satisfied, it is then the burden of the person moving to quash a subpoena to establish either that the requested

disclosure 'is utterly irrelevant to the action or that the futility of the process to uncover anything legitimate is inevitable or obvious'" … .

Here, the subpoenas were defective, since neither the subpoenas nor any accompanying documents set forth "the circumstances or reasons [the] disclosure is sought or required" (CPLR 3101[a][4] … . Ruppert v Ruppert, 2025 NY Slip Op 06884, Second Dept 12-10-25

Practice Point: A subpoena seeking disclosure from a nonparty must meet the requirements of CPLR 3101(a)(4) by including an explanation of the circumstances or reasons for the disclosure. If that information is not provided, the subpoena is defective and must be quashed on that ground.

December 10, 2025

TOXIC TORTS, EXPERT EVIDENCE, FRYE AND PARKER HEARINGS SHOULD NOT HAVE BEEN ORDERED.

IT WAS AN ABUSE OF DISCRETION TO ORDER AN EVIDENTIARY HEARING IN THIS TOXIC TORT CASE; NO FRYE HEARING WAS NECESSARY BECAUSE THE EXPERTS DID NOT USE NOVEL OR EXPERIMENTAL METHODS; NO PARKER HEARING WAS NECESSARY BECAUSE G ENERAL AND SPECIFIC CAUSATION WERE ADEQUATELY ADDRESSED IN THE EXPERTS' SUBMISSIONS AND GENERALLY ACCEPTED METHODS WERE USED (THIRD DEPT).

The Third Department, reversing Supreme Court, In a full-fledged opinion by Justice Ceresa, determined there was no need for a Frye hearing in this toxic tort case because none of the three experts used methods that were novel or experimental. In addition, there was no need for a Parker hearing because the expert's used generally accepted methods to determine general and specific causation. Therefore ordering the evidentiary hearing was an abuse of discretion:

"The singular purpose of a Frye hearing is to ascertain the reliability of novel scientific evidence by determining whether the methods used to generate such

evidence will, when properly performed, produce results accepted as reliable within the scientific community generally" … . " 'A court need not hold a Frye hearing where it can rely upon previous rulings in other court proceedings as an aid in determining the admissibility of the proffered testimony' " … . "Absent a novel or experimental scientific theory, a Frye hearing is generally unwarranted" … . * * *

… [U]nder Parker, " '[t]he focus moves from the general reliability concerns of Frye to the specific reliability of the procedures followed to generate the evidence proffered and whether they establish a foundation for the reception of the evidence at trial.' . . . [In toxic tort cases,] [i]t is well-established that an opinion on causation should set forth a plaintiff's exposure to a toxin, that the toxin is capable of causing the particular illness (general causation) and that plaintiff was exposed to sufficient levels of the toxin to cause the illness (specific causation)" (Parker v Mobil Oil Corp., 7 NY3d at 447-448 …). … [A] s plaintiffs' [experts'] written submissions … offered the requisite causal links, there was no need for a hearing to determine whether these foundational standards were met. Marpe v Tonoga, Inc., 2025 NY Slip Op 07053, Third Dept 12-18-25

Practice Point: Consult this opinion for insight into when a Frye/Parker hearing is necessary to determine the admissibility of expert evidence in a toxic tort case. The evidentiary hearing had been ordered by the trial judge, but the Third Department held ordering the hearing was an abuse of discretion.

December 18, 2025