

Decisions of Interest

SEPTEMBER 4, 2024

CRIMINAL

SECOND DEPARTMENT

People v Benoit | August 28, 2024

IAC | FAILURE TO FILE NOTICE OF APPEAL | CORAM NOBIS GRANTED

Benoit's application for a writ of error coram nobis was granted, and the Second Department gave him permission to file a late notice of appeal, where trial counsel was ineffective for failing to file a notice of appeal.

[People v Benoit \(2024 NY Slip Op 04331\)](#)

TRIAL COURTS

People v Quimbaya | 2024 WL 3959272

UNLAWFUL STOP | GUN SUPPRESSED | REVERSED AND SUPPRESSION GRANTED

Quimbaya filed a *Dunaway/Mapp* motion challenging the lawfulness of his initial detention and seeking suppression of a gun recovered during a street encounter with police. After a hearing at which two NYPD detectives testified and the defense presented no evidence, the court suppressed the gun and held there was no probable cause for the arrest. The court determined that observations of a group of young men yelling loudly on the street at 11:00 p.m., standing alone, gave the police only a Level One right to inquire, not reasonable suspicion to stop Quimbaya. The young men were exhibiting no threatening behavior and were not damaging property or attempting physical contact with each other or anyone else. When one detective approached the group from the front, while another approached from behind, they employed a "military-esq pincer movement" that constituted a "constructive detention, as a reasonable person in that position would have found the detectives' conduct a significant limitation on their freedom." When Quimbaya then fled, his subsequent abandonment of the gun during the police pursuit was a direct consequence of the improper detention and not sufficiently attenuated. Accordingly, there was no probable cause for the arrest. Craig Newman, Esq. represented Quimbaya.

[People v Quimbaya \(2024 NY Slip Op 51103\(U\)\)](#)

FAMILY

SECOND DEPARTMENT

Matter of Alexi P. (Ruben P.) | August 28, 2024

DEFICIENT ANDERS BRIEF

Assigned counsel filed a motion for leave to withdraw pursuant to *Anders v. California*. The Second Department granted the motion but assigned new counsel. The *Anders* brief submitted was deficient in that it did not contain an adequate statement of facts and failed to analyze potential appellate issues or highlight facts in the record that might arguably support the appeal.

[Matter of Alexi P. \(Ruben P.\) \(2024 NY Slip Op 04325\)](#)

THIRD DEPARTMENT

Matter of Alexander K. v. Jaheria L. | August 29, 2024

INITIAL CUSTODY DETERMINATION | ERROR TO STRICTLY ADHERE TO *TROPEA* | REVERSED AND REMITTED

The mother appealed from a Chemung County Family Court order finding that she failed to carry her burden on her “relocation petition.” The Third Department reversed and remitted for an expedited hearing, finding that it was error to strictly apply the factors and burden set forth in *Matter of Tropea v. Tropea*, given that this case involved an initial custody determination. The strict adherence to the *Tropea* factors, coupled with the very brief fact-finding hearing, did not give the Family Court sufficient information to render an informed determination consistent with the child’s best interests. Lisa K. Miller represented the mother.

[Matter of Alexander K. v Jaheria L. \(2024 NY Slip Op 04352\)](#)

Matter of Carol Q. v. Charlie R. | August 29, 2024

SUPERVISED PARENTING TIME BASED ON UNDIAGNOSED MENTAL HELATH CONDITION | REMITTED FOR HEARING

The mother, who has an undiagnosed mental health condition, appealed from a Tompkins County Family Court order allowing the father to relocate to Florida and directing that her parenting time with the child be supervised. The Third Department remitted for a hearing as to whether supervised visitation is necessary. The supervisory condition creates a significant restriction on the mother’s ability to exercise her parenting time and unfairly places the burden on the mother to obtain a diagnosis and treatment without any guidance and assistance. It was an abuse of discretion to restrict the mother’s parenting time without an evaluation of the mother’s mental condition. Lisa K. Miller represented the mother.

[Matter of Carol Q. v Charlie R. \(2024 NY Slip Op 04351\)](#)

TRIAL COURTS

Matter of D.A. (Y.A.) | 2024 WL 3944960

TEMPORARY CUSTODY TO OUT-OF-STATE RELATIVE DURING PENDENCY OF ARTICLE 10 | GRANTED

The AFC moved for the release of D.A. to his maternal grandparents in Indiana during an Article 10 proceeding. The maternal grandmother subsequently filed a petition for custody under Article 6, supported by the mother and AFC. New York Supreme Court

granted a temporary order of custody during the pendency of the neglect case but found that a final order may not be entered until the neglect case is adjudicated. The court also found that the Interstate Compact on the Placement of Children (“ICPC”) does not apply in this case and that the best interests of the child would be served by granting a temporary order of custody to the maternal grandmother. Since the maternal grandmother was not seeking foster care placement or adoption for D.A., the ICPC did not apply despite the maternal grandmother living out of state. The ICPC was also not applicable because the grandmother would be “sending” the child to Indiana, not the state agency, which is an exception to the ICPC.

[Matter of D.A. \(Y.A.\) \(2024 NY Slip Op 24225\)](#)

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