



Here's what has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

FOIL, ARTICLE 78, ATTORNEYS' FEES

Matter of NYP Holdings, Inc. v New York City Police Dept., 2023 NY Slip Op 05193 (1st Dept Oct. 12, 2023)

Issue: Do the Legislature's 2020 amendments to Civil Rights Law § 50-a to remove confidentiality protection from police personnel records apply retroactively to require disclosure of records created before the amendments under FOIL?

Facts: The petitioner sought disclosure of substantiated and unsubstantiated disciplinary records of certain police officers under FOIL. The NYPD denied the request, and the petitioner brought this FOIL proceeding to compel disclosure of the records and for an award of attorneys' fees.

Holding: The First Department held, in an apparent issue of first impression in that Court, that the 2020 amendments that repealed Civil Rights Law § 50-a's confidentiality protections for police personnel records "applies retroactively to records created prior to June 12, 2020," when the amendments became effective. The Court reasoned that "the repeal went into effect immediately and, by its plain reading and intent, applies to records then existing and not simply to records created at a time subsequent to the enactment of the legislation." Since the legislative history disclosed that the repeal's purpose was remedial, the Court held that the amendments should be given retroactive application to police personnel records existing before their adoption. Because, therefore, the petitioner substantially prevailed on its FOIL claim, the First Department remanded for an award of attorneys' fees under the FOIL statute.

DEFAMATION

Carey v Carey, 2023 NY Slip Op 05183 (1st Dept Oct. 12, 2023)

Issue: Can Mariah Carey's brother maintain a defamation lawsuit against the singer for her depictions of him in her memoir?

Facts: Mariah Carey's brother, Morgan, sued her and her publisher for allegedly defamatory statements made about him in her memoir, "The Meaning of Mariah Carey." Supreme Court dismissed all of the claims against the publisher, and 14 of the 16 claims asserted against Ms. Carey. The two remaining claims that survived the motion to dismiss were over passages in the book where Ms. Carey suggested that her brother distributed cocaine and implied he might have been in prison for a serious crime.

Holding: The First Department affirmed, holding that Mr. Carey's attempts to simply regurgitate summary attempts to fault the publisher "for inadequate investigation, without offering facts to show that they entertained serious doubts about the statements' veracity," failed to show the actual malice required for defamation, and the allegations of Ms. Carey's supposed personal animus toward him were not enough, without other evidence, to allege actual malice by the publisher. His claims against his sister fared no better. The First Department rejected Mr. Carey's arguments that the trial court failed to read the allegedly defamatory statements in context, because the court actually used context in Mr. Carey's favor and still held the claims were inadequate.

TORTS, NOTICE OF CLAIM

Matter of Benavides v New York City Health & Hosps. Corp., 2023 NY Slip Op 05092 (1st Dept Oct. 10, 2023)

Issue: In what circumstances should a court permit a petitioner leave to serve a late notice of claim under General Municipal Law § 50-e?

Facts: In September 2020, the petitioner was admitted to the hospital for severe injuries, including an ischemic stroke. "Petitioner suffered traumatic brain injury, the loss of use in his right arm, hand, and leg, and spent the next 15 months recovering from his injuries while receiving inpatient treatment and treatment at two rehabilitative facilities. Following his discharge, he was confined to a wheelchair in his parents' apartment."

Holding: The First Department noted that "[t]he purpose of subdivision 5 of section 50-e of the General Municipal Law, as amended, is to allow the judiciary to be flexible, to consider all relevant factors, and to exercise considerable judicial discretion in determining whether to permit service of a late notice of claim." Evaluating the facts of the petitioner's disabling injuries, the Court held that the trial court did not

abuse its discretion in allowing the petitioner to serve a late notice of claim against the hospital because the disabling physical “injuries provide a reasonable excuse for his late filing.” The Court held that the hospital failed, in opposition, to demonstrate substantial prejudice.

SECOND DEPARTMENT

FAMILY LAW

Matter of Chloe. P.-M. (Martinique P.), 2023 NY Slip Op 05138 (1st Dept Oct. 11, 2023)

Issue: What must a child services agency prove to establish parental neglect under Family Court Act article 10?

Facts: The Administration for Children’s Services commenced a proceeding against the mother under Family Court Act article 10, alleging that the mother neglected the subject child by having an untreated mental illness that placed the child at imminent risk of harm. After a fact-finding hearing, the Family Court found that ACS established that the mother neglected the child by having an untreated mental illness and by knowingly permitting the child to reside in the maternal grandparents’ home, which was in an unsafe and unsanitary condition.

Holding: The Second Department held that the Family Court finding of parental neglect by allowing the child to live in the grandparents’ unsafe home was substantiated by the preponderance of the evidence at the hearing, but reversed the finding of neglect based upon the mother’s allegedly untreated mental illness. The Court cautioned that although untreated mental illness may support a finding of neglect where it places the child in imminent danger, “the evidence at the hearing was insufficient to establish either that the mother had an untreated mental illness or condition, or that said illness or condition placed the child at imminent risk of harm to her physical, mental, or emotional condition.” Thus, only the first finding of neglect was supported.

SORA, CONSTITUTIONAL RIGHTS, PRESERVATION

People v Perez, 2023 NY Slip Op 05161 (2d Dept Oct. 11, 2023)

Issue: What must be shown to establish that a defendant has waived his constitutional due process right to be present at his Sex Offender Registration Act hearing?

Facts: Although the defendant was not present for his SORA hearing, Supreme Court designated him a level two sex offender in his absence.

Holding: Even though the defendant failed to preserve his argument that he had a due process right to be present at his SORA hearing, the Second Department decided to address it in the interests of justice anyway. On the merits, the Court held that “[a] sex offender facing risk level classification under SORA has a due process right to be present at the SORA hearing. To establish whether a defendant, by failing to appear at a SORA hearing, has waived the right to be present, evidence must be shown that the defendant was advised of the hearing date, of the right to be present at the hearing, and that the hearing would be conducted in his or her absence.” Because, however, “the record is silent as to whether the defendant received notice of the SORA hearing and there was no evidence, hearsay or otherwise, that the defendant expressed a desire to forego his presence at the hearing,” it could not be established that the defendant had waived his right to be present, and thus the defendant was entitled to a new SORA hearing.

THIRD DEPARTMENT

WORKERS’ COMPENSATION

Matter of Espinoza v City Safety Compliance Corp., 2023 NY Slip Op 05172 (3d Dept Oct. 12, 2023)

Issue: Do injuries occurring off the worksite, but during an employee’s travel to and from the worksite, qualify for Workers’ Compensation benefits?

Facts: In July 2020, claimant, a safety manager and fire safety manager in charge of monitoring a construction site, was injured while pulling a gate in a parking area, sustaining an injury to his left bicep muscle and a torn rotator cuff in his left shoulder. He filed for workers’ compensation benefits, and the employer and carrier contested the claim, arguing that his injuries did not arise on the work site or within the scope of his employment. A Workers’ Compensation Law Judge denied the claim, and the Workers’ Compensation Board affirmed.

Holding: The Third Department held that although injuries occurring outside of work hours and off the worksite generally are not compensable, “[a]n employer, by making arrangements for employee parking, may be found to have extended its premises to the area of the approved parking facility so that an accident that occurs therein may be found to have arisen within the precincts of the claimant’s employment, rendering it compensable. This is particularly true where the claimant is injured on the way to or from work and in such physical proximity to his or her worksite as to establish a relationship between the accident and the employment.” Here, the Court held that “although the parking area where claimant was injured was not part of the construction site,” and his shift for the day had ended, “claimant’s uncontradicted testimony demonstrates that he was instructed to park in that area” and that area was where job materials

were stored for the work. There was, therefore, “a sufficient nexus in time and place between the construction site and the parking area such that claimant’s place of employment — i.e. the construction site — extended to the parking area where claimant’s injury occurred.” The Court thus annulled the Workers’ Compensation Board’s determination, and remanded for an award of benefits.

FOURTH DEPARTMENT

None.

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