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Summarizing recent significant New York appellate cases

The First Department this week emphasized just how important it is for Family Courts to hear and determine expeditiously parents' applications to have their children returned to their care in Family Court Act article 10 proceedings. Family Court Act § 1028 requires the court to hold a hearing within three days of the parents' application, and it should be decided, the First Department explained, within hours or days, not weeks or months later. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

FAMILY LAW

Matter of Emmanuel C.F. (Patrice M. D. F.), 2024 NY Slip Op 04482 (1st Dept Sept. 19, 2024)

Issue: **How quickly must an expedited hearing be held under Family Court Act § 1028 to determine whether a child who has been temporarily removed from a parent's care and custody should be reunited with that parent pending the ultimate determination of the child protective proceeding?**

Facts: After the mother's children were temporarily removed from her care in a Family Court Act article 10 child protective proceeding, the mother filed an application to have the children returned or, alternatively, for a hearing under Family Court Act § 1028. Although Family Court began the fact-finding hearing within three days of the mother's application, as the statute requires, the hearing was adjourned numerous times and two months later had only heard one hour of testimony from a witness. The mother then moved for "an order (1) scheduling the 1028 hearing to proceed expeditiously with at least 5 hours per week of hearing time, or (2) scheduling the 1028 hearing expeditiously such that it concludes by May 1, 2024. Family Court denied the application and held that the court complied with Family Court Act § 1028 by commencing the 1028 hearing with a combined fact-finding hearing within three court days of the mother's application," citing the court's general authority under CPLR 4011 to "otherwise regulate the conduct of the trial in order to achieve a speedy and unprejudiced disposition of the matters at issue, in a setting of proper decorum."

Holding: The First Department reversed, granted the mother's application, and directed that a truly expedited hearing be held. The Court emphasized that merely beginning the hearing within three days after the mother's Family Court Act § 1028 application did not satisfy the statute's command that the hearing be held expediently. The Court held, "[a]lthough Family Court has discretion to regulate proceedings and streamline hearings, it does not have unfettered authority to adjourn a 1028 hearing in piecemeal fashion over the course of months as happened here. The plain language of the statute requires expediency. Family Court Act § 1028 is distinguishable from other sections of article 10 wherein those sections call for hearings to be conducted within the Family Court's discretion. No such discretion is provided by the plain language of Family Court Act § 1028. Under the specific time constraints detailed by the plain language of Family Court Act § 1028 and given the potential and persistent harms of family separation, the mother is entitled to prompt judicial review of the children's removal measured in hours and days, not weeks and months. Conducting this 1028 hearing over a period of 30 minutes of hearing time scheduled in March, four hours scheduled in April, three hours in May, and four hours in June cannot be deemed prompt or expeditious judicial review."

CRIMINAL LAW, SENTENCING

People v Sparks, 2024 NY Slip Op 04488 (1st Dept Sept. 19, 2024)

Issue: **What is the extent of the Court's power to modify a sentence for a criminal conviction?**

Facts: "Mr. Sparks is now 30 years old. In his brief life, he has been diagnosed with 14 psychiatric disorders, most of which fall within the psychotic spectrum; prescribed at least 10 psychotropic medicines; and shuffled between more than 21 psychiatric and prison facilities. He has spent all but two months of his adult life incarcerated and a total of three and a half years in solitary confinement. His prison records show that he has been injured in multiple altercations with other inmates and prison staff and he has initiated numerous suicide attempts." After being released from prison in 2019, Sparks sought help for his mental illness, but three different hospitals refused to admit him. Following the last denial, and in "the midst of a psychotic delusion," Sparks followed a stranger into an apartment building and took the necklace from the stranger's neck. Sparks was arrested, but two doctors and a forensic psychologist opined that he was not competent to stand trial. He was thus put in pretrial confinement for more than two years. Ultimately, Sparks pled to third degree robbery, and appeared for sentencing. He told the Judge about his recent suicide attempt and that he didn't know who he was, but the

Judge proceeded with sentencing nevertheless. Sparks then experienced "enormous amount of anxiety that was so severe, in the words of his defense attorney, that Mr. Sparks left the courtroom." The Judge then sentenced Sparks to 3- to 6-years imprisonment in absentia.

Holding: The First Department modified Mr. Sparks' sentence to the minimum of 2- to 4-years imprisonment, reasoning that "continued incarceration of Mr. Sparks serves none of the objectives of criminal punishment. In order to best protect the public, Mr. Sparks must get appropriate mental health treatment to rehabilitate him to a healthier mental state. His 12 years of imprisonment has only served to exacerbate his mental difficulties. There is no reason to believe that further incarceration will rehabilitate him, and the record clearly demonstrates that Mr. Sparks needs rehabilitation, not punitive incarceration." Citing Chief Justice Wilson's concurring opinion in ***People v Greene* (41 NY3d 950, 954 [2024] [Wilson, J. concurring])**, the Court explained, "default incarceration for crimes caused by mental illness is antithetical to the interests of our penal system. Deterrence cannot be accomplished for a person who was delusional at the time of a crime; and punishment for a person operating under delusions is not just."

SECOND DEPARTMENT

CONTRACT LAW, ASSIGNMENTS

***Whitson's Food Serv., LLC v A.R.E.B.A.-Casriel, Inc.*, 2024 NY Slip Op 04480 (2d Dept Sept. 18, 2024)**

Issue: **Can a corporate merger violate an anti-assignment clause of a contract and deprive the merged entity of standing to exercising its predecessor's contract rights?**

Facts: "In January 2021, Whitson's Food Service Corp. entered into a contract with the defendant to provide food service and food service management for the defendant. Paragraph 19 of the contract provided as follows: 'This Agreement and the rights granted hereunder may not be assigned by either Party, whether by operation of law, merger, change of ownership or otherwise, without the prior written consent of the other Party, and any unauthorized assignment shall be void *ab initio*.'" Thereafter, "Whitson Corp merged with the plaintiff, Whitson's Food Service, LLC, with the plaintiff being the surviving entity. The plaintiff characterized the merger as a change in 'corporate form,' with no change 'in management, ownership or day-to-day operations.'" The plaintiff then filed this suit against defendant for breach of contract and unjust enrichment, alleging that although plaintiff performed, the defendant failed to pay a balance of $402,291.68. Defendant moved to dismiss for lack of standing, because the plaintiff was not a party to the contract and the defendant had not consented to any assignment of the contract. Supreme Court denied the motion.

Holding: The Second Department affirmed, holding that although the defendant established prima facie that the plaintiff was not a party to the contract and had not consented to an assignment of rights, the plaintiff raised a triable issue of fact whether the merger was an assignment at all. The Court explained that the "submission of an affidavit of [plaintiff's] chief financial officer, who attested that the merger was a mere change in corporate form that had no effect on the beneficial ownership, possession, control, or daily operations of the business" raised a "question of fact as to whether the merger constituted an assignment that violated the nonassignment provision of the contract." Moreover, the Court held, since the unjust enrichment claim stood in the absence of an agreement, the contract itself was not a defense to the plaintiff's potential recovery in unjust enrichment. Supreme Court, therefore, properly denied the motion to dismiss.

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