

BENCH BRIEFS

By Elaine Colavito

SUFFOLK COUNTY SUPREME COURT

Honorable Paul J. Baisley, Jr.

Application by the petitioner for an order directing the respondent, Suffolk County Department of Social Services, to return the subject infant to the petitioner, granting petitioner temporary custody pending further order of the court, and ultimately granting the petitioner full custody dismissed; petitioner did not have standing.

In *Roberta Williams v. Suffolk County Department of Social Services, Suffolk County Attorney's Office and Wanda Carter*, Index No.: 15954/2014, decided on March 30, 2015, the court denied the application by the petitioner for an order directing respondent Suffolk County Department of Social Services to return the subject infant to the petitioner, granting petitioner temporary custody pending further order of the court, and ultimately granting the petitioner full custody. In denying the application, the court con-

cluded that the petitioner did not have standing to bring the application. In rendering its decision, the court stated that social services law §383(3) grants foster parents who have had continuous care of an infant through an authorized agency for more than 12 months the right to intervene in any proceeding involving the custody of that infant. That provision, which is grounded in the principle that foster parents are essentially contract-service providers, has been held to be inapplicable to former foster parents, who have consistently been held not to have standing, either to initiate a custody proceeding, or to intervene in one. While the court acknowledges with sympathy petitioner's deeply rooted emotional attachment to the infant and the heart wrenching separation that she was enduring, the court was nevertheless constrained to conclude that neither emotional relationship, nor petitioner's status as a former foster parent was sufficient to confer legal standing for the instant application. Since the court found that the



Elaine Colavito

petitioner did not have standing to maintain the instant application, it was unable to reach the issue of what was in the best interests of the child.

Honorable Peter H. Mayer

Petition to enforce restrictive covenant denied; petitioner failed to meet burden.

In *In the Matter of the Application of Paul Gruskoff v. The County of Suffolk, Tim Laube, as the clerk of the Suffolk County Legislature, The Town of Huntington, and Anita S. Katz and Nick LaLota, as Commissioners of the Suffolk County Board of Elections*, Index No.: 6680/2015, decided on October 14, 2015, the court denied the petition to enforce a restrictive covenant. For the sake of brevity, the court noted the pertinent facts as follows: After the Suffolk County Legislature held a public hearing on establishing a sewer district for the property known as the Greens at Half Hollow, the Legislature adopted a Resolution authorizing the formation of the sewer district, subject to the "affirma-

tive vote of a majority of the qualified electors who are resident within the proposed sewer district." Thereafter, the president of the intervener-respondent circulated a letter to the residents informing them that the costs to them would increase if the vote affirmed the adoption of the resolution.

The petition here contended that the referendum could not stand because a restrictive covenant running with the land existed in which the residents of the Greens were bound to consent to the formation of the district. In denying the application, the court stated that where one seeks to enforce a restrictive covenant, the petitioner must show that three conditions have been met in order for such covenant to run with the land: (1) it must appear that the grantor and grantee intended that the covenant should run with the land; (2) it must appear that the covenant is one touching or concerning the land in which it runs; and (3) it must appear that there is privity of estate between the promisee or party claiming the benefit of the covenant and the right to enforce it and the promisor or party who rests under the burden of the

(Continued on page 27)

covenant. The court concluded that the petitioner failed to satisfy his burden of showing by clear and convincing proof the legal requisites necessary to enforce the alleged restrictive covenant.

Article 78 petition dismissed; untimely; even if timely, no prima facie case established.

In *In the Matter of the Application of Sabrina Lilienthal v. General Counsel State Division of Human Rights*, Index No.: 533/2015, decided on May 19, 2015, the court dismissed the Article 78 action filed by the petitioner. In rendering its decision, the court noted that the petition was not filed within the 60-day limitation set forth in Executive Law §298. The court further noted that the petitioner did not file her original Article 78 action challenging the order until more than 18 months after its service upon her. Accordingly, the action was dismissed as untimely. The court continued and found that even if it had been timely filed, the action would have been dismissed as she failed to establish a prima facie case of discriminatory treatment by the hospital or that the respondent's November 30, 2012 order was arbitrary or capricious.

Honorable William B. Rebolini

Motion to dismiss granted; notice of conference given to all parties; plaintiff failed to appear.

In *Recep Kocyigit v. Robert Allmen and Robert J. Allmen*, Index No.: 13361/2014, decided on October 5, 2015, the court granted the motion to dismiss the action. In rendering its decision, the court noted that this matter appeared on the compliance conference calendar on September 30, 2015 pursuant to order of this court dated July 6, 2015. The court further pointed out that proof of notice of such conference having been given to plaintiff, Recep Kocyigit, by letter sent to him by his former attorneys at his last known addresses on July 16, 2015. In granting the application, the court found that the defendant appeared at the conference and plaintiff failed to appear. Accordingly, the action was dismissed without costs or disbursements.

Motion for preclusion denied; failure to set return date in notice of motion deemed substantial defect.

In *Robert Love v. Thomas Spota,*

Suffolk County District Attorney, Paul Squire, Staff Writer-Riverhead News Review, Index No.: 2668/2014, decided on April 8, 2015, the court denied the plaintiff's motion for preclusion. In denying the motion without prejudice, the court pointed out that the notice of motion failed to set a return date for the motion. This was a substantial defect. The court reasoned that the failure to set a return date in the notice of motion frustrated the core principles of apprising the defendants with notice of the application so as to afford them an opportunity to present their objections.

Motion to compel granted; defendant entitled to information to enable her to verify credit card debt claimed to be owed.

In *New Century Financial Services, Inc. v. Sharon A. Marino*, Index No.:7859/2014, decided on August 11, 2015, the court granted the defendant's motion to compel. In granting the motion to the extent provided therein, the court noted that this action was to recover monies allegedly owed on a credit card account. The defendant denied having a credit card with Citibank or the plaintiff. During discovery, the defendant sought more particular information about the account in an effort to verify the debt. Plaintiff failed to provide the requested information about the purchases allegedly made to her account. In granting the application the court stated that since the law recognized that this court has general authority to supervise disclosure, it was appropriate that plaintiff be compelled to provide the specific account information that had been requested by the defendant.

Please send future decisions to appear in "Decisions of Interest" column to Elaine M. Colavito at elaine_colavito@live.com. There is no guarantee that decisions received will be published. Submissions are limited to decisions from Suffolk County trial courts. Submissions are accepted on a continual basis.

Note: Elaine Colavito graduated from Touro Law Center in 2007 in the top 6 percent of her class. She is an associate at Sahn Ward Coschignano, PLLC in Uniondale and concentrates her practice in matrimonial and family law, civil litigation and immigration matters.