

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT**

Hrisinko v. Board of Education

101 A.D.3d 451 (N.Y. App. Div. 1st Dep't 2012) · Decided December 6, 2012

SUMMARY

The court held that a 2011 order issued in an Article 78 proceeding was not appealable as of right and declined to grant leave to appeal in the interest of justice. It further concluded that respondents did not violate a clear and unequivocal mandate by reinstating the petitioner as a tenured teacher and assigning her to an absent-teacher reserve position, and therefore properly were not held in contempt.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Tom, J.P.; Mazzairelli, J.; Moskowitz, J.; Abdus-Salaam, J.; Feinman, J.
JURISDICTION	New York
DECIDED	December 6, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought appellate review of a 2011 order entered in an Article 78 proceeding and sought leave to appeal in the interest of justice.
STANDARD OF REVIEW	The court reviewed the appealability of the order under CPLR 5701(b) (1) and stated that the motion court's contempt determination was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published
PARTIES	Hrisinko v. Board of Education

TOPICS

appellate procedure administrative procedure act contempt civil procedure

PRACTICE AREAS

administrative law employment law civil procedure

QUESTIONS PRESENTED

1. Whether the 2011 order was appealable as of right when it was entered in a proceeding against a body or officer under CPLR article 78.
2. Whether leave to appeal from the 2011 order should be granted in the interest of justice.

HOLDINGS

1. An order made in a proceeding against a body or officer pursuant to CPLR article 78 was not appealable as of right under CPLR 5701(b)(1).

FACTUAL BACKGROUND

A prior order declared that petitioner had been a tenured teacher of Commercial Art since September 2, 2005, but its mandate directed only that she be reinstated to her position as a tenured teacher. Respondents reinstated petitioner as a tenured teacher and assigned her to serve as an absent-teacher reserve. The motion court declined to hold respondents in contempt, and the Appellate Division stated that the assignment did not violate a clear and unequivocal mandate.

PROCEDURAL HISTORY

The lower court declined to hold respondents in contempt based on their reinstatement of petitioner as a tenured teacher and assignment of her as an absent-teacher reserve. The Appellate Division held that the 2011 order was not appealable as of right under CPLR 5701(b)(1) and declined to grant leave to appeal.

DISPOSITION

other

CASES CITED

- Matter of Storman v New York City Dept. of Educ., 95 A.D.3d 776, 777 (1st Dep't 2012), appeal dismissed, 19 N.Y.3d 1023 (2012)
- Richards v Estate of Kaskel, 169 A.D.2d 111, 122 (1st Dep't 1991), leave dismissed in part, denied in part, 78 N.Y.2d 1042 (1991)
- Matter of Department of Env'tl. Protection of City of N.Y. v Department of Env'tl. Conservation of State of N.Y., 70 N.Y.2d 233, 240 (1987)

OPINION

Hrisinko v. Board of Education 101 A.D.3d 451

PER CURIAM.

The 2011 order is not appealable as of right, as it was “made in a proceeding against a body or officer pursuant to [CPLR] *452article 78” (CPLR 5701 [b] [1]; see Matter of Storman v New York City Dept. of Educ., 95 AD3d 776, 777 [1st Dept 2012], appeal dismissed 19 NY3d 1023 [2012]). We decline to grant petitioner leave to appeal from that order in the interest of justice. Were we to review the 2011 order, we would find that the motion court providently exercised its

discretion in holding that respondents should not be held in contempt (see *Storman*, 95 AD3d at 777; *Richards v Estate of Kaskel*, 169 AD2d 111, 122 [1st Dept 1991], lv dismissed in part, denied in part 78 NY2d 1042 [1991]). Although the prior order declared that petitioner had “been a tenured teacher of ‘Commercial Art’ ” since September 2, 2005, it did not reference the “Commercial Art” position, or any other specific teaching assignment, in its mandate, instead directing only that petitioner be reinstated “to her position as a tenured teacher.” “Any ambiguity in the court’s mandate should be resolved in favor of the would-be contemnor” (*Kaskel*, 169 AD2d at 122). Accordingly, we find that, in reinstating petitioner to the position of tenured teacher and assigning her to serve as an absent teacher reserve, respondents did not violate any “clear and unequivocal” mandate (*Storman*, 95 AD3d at 777 [internal quotation marks omitted]; see *Matter of Department of Env’tl. Protection of City of N.Y. v Department of Env’tl. Conservation of State of N.Y.*, 70 NY2d 233, 240 [1987]). Concur — Tom, J.P., Mazzairelli, Moskowitz, Abdus-Salaam and Feinman, JJ.