

State of New York

Court of Appeals

*Decided and Entered on the
fourteenth day of June, 2022*

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

SSD 19

In the Matter of Bernice Curry-Malcolm,
Appellant,

v.

New York State Division of Human Rights et
al.,

Respondents.

Appellant having appealed to the Court of Appeals in the above title;

Upon the papers filed and due deliberation, it is

ORDERED, that the appeal is dismissed without costs, by the Court *sua sponte*,
upon the ground that no appeal lies as of right from the unanimous judgment of the
Appellate Division absent direct involvement of a substantial constitutional question (*see*
CPLR 5601).

Judge Troutman took no part.



Lisa LeCours
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

MOTION NO. 932/21

TP 21-00785

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, AND CURRAN, JJ.

IN THE MATTER OF BERNICE CURRY-MALCOLM, PETITIONER,

V

NEW YORK STATE DIVISION OF HUMAN RIGHTS AND ROCHESTER CITY
SCHOOL DISTRICT, RESPONDENTS.

Petitioner having moved for leave to appeal to the Court of Appeals from the order of this Court entered November 12, 2021,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is hereby ORDERED that the motion is denied.

Entered: March 11, 2022

Ann Dillon Flynn
Clerk of the Court

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y.



I, ANN DILLON FLYNN, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original document, now on file in this office.



IN WITNESS HEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this **MAR 11 2022**

Ann Dillon Flynn
Clerk

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

932

TP 21-00785

PRESENT: CENTRA, J.P., LINDLEY, CURRAN, TROUTMAN, AND DEJOSEPH, JJ.

IN THE MATTER OF BERNICE CURRY-MALCOLM,
PETITIONER,

V

ORDER

NEW YORK STATE DIVISION OF HUMAN RIGHTS AND
ROCHESTER CITY SCHOOL DISTRICT, RESPONDENTS.

BERNICE CURRY-MALCOLM, PETITIONER PRO SE.

CAROLINE J. DOWNEY, GENERAL COUNSEL, BRONX (AARON M. WOSKOFF OF
COUNSEL), FOR RESPONDENT NEW YORK STATE DIVISION OF HUMAN RIGHTS.

STEVEN G. CARLING, ACTING GENERAL COUNSEL, ROCHESTER CITY SCHOOL
DISTRICT, ROCHESTER (ALISON K.L. MOYER OF COUNSEL), FOR RESPONDENT
ROCHESTER CITY SCHOOL DISTRICT.

Proceeding pursuant to CPLR article 78 and Executive Law § 298
(transferred to the Appellate Division of the Supreme Court in the
Fourth Judicial Department by order of the Supreme Court, Monroe
County [Ann Marie Taddeo, J.], entered October 27, 2020) to review a
determination of respondent New York State Division of Human Rights.
The determination dismissed the complaints of petitioner.

It is hereby ORDERED that the determination is unanimously
confirmed without costs and the petition is dismissed.

Entered: November 12, 2021

Ann Dillon Flynn
Clerk of the Court

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y. }

I, Ann Dillon Flynn, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this November 12, 2021.

Ann Dillon Flynn

Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

In the Matter of the Application of

BERNICE CURRY-MALCOLM,
Petitioner-Plaintiff,

Index No. I2019004925
ORDER

For Judgment Pursuant to Article 78 of the New York
Civil Practice Law and Rules, and Judgment in the matter

v.

NEW YORK STATE DIVISION OF HUMAN RIGHTS
and ROCHESTER CITY SCHOOL DISTRICT,
Respondents-Defendants.

Hon. Ann Marie Taddeo, JSC,

Petitioner brought the instant action seeking review of a final determination of the New York Division of Human Rights. Upon consideration of the papers submitted, this Court finds that, consistent with Executive Law §298, CPLR §7804 (g) and 22 NYCRR §202.57, this Court lacks jurisdiction over the Petition.

In so ruling, the Court relies on the language of the relevant statutes:

“[W]here the order sought to be reviewed was made as a result of a public hearing held pursuant to paragraph a of subdivision four of section two hundred ninety-seven of this article, the court shall make an order directing that the proceeding be transferred for disposition to the appellate division of the supreme court in the judicial department embracing the county in which the proceeding was commenced.” N.Y. Exec. Law § 298.

“Where the petition seeks review of an order issued after a public hearing held pursuant to section 297(4)(a) of the Executive Law...the Supreme Court, upon the filing of the petition, shall make an order directing that the proceeding be transferred for disposition to the Appellate Division in the judicial department embracing the county in which the proceeding was commenced...” 22 NYCRR § 202.57

“Where [a substantial evidence] issue is raised, the court shall first dispose of such other objections as could terminate the proceeding, including but not limited to lack of jurisdiction, statute of limitations and res judicata, without reaching the substantial

evidence issue. If the determination of the other objections does not terminate the proceeding, the court shall make an order directing that it be transferred for disposition to a term of the appellate division held within the judicial department embracing the county in which the proceeding was commenced. CPLR §7804.

Accordingly, it is

ORDERED, that this matter is hereby transferred to the Appellate Division, Fourth Department for a determination of all issues.

Dated: 0027 2020
Rochester, New York


Hon. Ann Marie Taddeo, JSC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

In the Matter of the Application of

BERNICE CURRY-MALCOLM,
Petitioner-Plaintiff,

Index No. I2019004925
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evidence issue. If the determination of the other objections does not terminate the proceeding, the court shall make an order directing that it be transferred for disposition to a term of the appellate division held within the judicial department embracing the county in which the proceeding was commenced. CPLR §7804.

Accordingly, it is

ORDERED, that this matter is hereby transferred to the Appellate Division, Fourth Department for a determination of all issues.

Dated: 10/27/2020
Rochester, New York


Hon. Ann Marie Taddeo, JSC