

48 A.D.2d 665

Supreme Court, Appellate Division,
Second Department, New York.

STATE of New York in relation of
Patricia A. WALLACE, etc., Respondent,
v.

George LHOTAN et al., Appellants, and James M.
Shuart as Commissioner of the Department of Social
Services of the County of Nassau, Respondent.

May 5, 1975.

In a natural mother's habeas corpus proceeding against foster parents, an order of the Supreme Court, Nassau County, Bernard F. McCaffrey, J., 80 Misc.2d 464, 363 N.Y.S.2d 423 denied a motion to dismiss or, in the alternative, for a stay. The foster parents appealed. The Supreme Court, Appellate Division, held that no appeal lies from an intermediate order in a habeas corpus proceeding.

Appeal dismissed.

Attorneys and Law Firms

****529** Marcia Robinson Lowry and Peter A. Bienstock,
New York City (Peter Bienstock, New York City, of counsel),
for appellants.

John C. Schaeffer Jr., Mineola (Seth P. Stein, Mineola, of counsel), for respondent Wallace.

John F. O'Shaughnessy, County Atty. (no brief submitted),
for respondent Shuart.

Before MARTUSCELLO, Acting P.J., and LATHAM,
COHALAN, CHRIST and SHAPIRO, JJ.

MEMORANDUM BY THE COURT.

***665** In a habeas corpus proceeding, the appeal is from an order of the Supreme Court, Nassau County, dated December 23, 1974, which denied a motion to dismiss the proceeding or, in the alternative, for a stay.

Appeal dismissed, without costs. No appeal lies from an intermediate order in a habeas corpus proceeding (CPLR 7011; People ex rel. Tatra v. McNeill, 19 A.D.2d 845, 24 N.Y.S.2d 463).

If the ***666** issues were before us on the merits, we would affirm.

Parallel Citations

48 A.D.2d 665, 367 N.Y.S.2d 529