

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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A. GAIL PRUDENTI, P.J.
STEVEN W. FISHER
MARK C. DILLON
THOMAS A. DICKERSON, JJ.

2007-03140

DECISION, ORDER & JUDGMENT

In the Matter of Hilary A. Best, petitioner,
v Charles A. Thomas, etc., respondent; Esther E.
Best, nonparty-respondent.

Hilary A. Best, Forest Hills, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Anthony J. Tomari of counsel), for respondent.

Mental Hygiene Legal Service, Mineola, N.Y. (Sidney Hirschfeld and Felicia B. Rosen of counsel), for nonparty-respondent Esther E. Best.

Proceeding pursuant to CPLR article 78 in the nature of mandamus, inter alia, to compel the respondent Charles A. Thomas, a Justice of the Supreme Court, Queens County, to grant the petitioner a writ of habeas corpus in a proceeding entitled *People ex rel. Best, o/b/o Best v Thomas*, pending under Queens County Index No. 22490/97, and application by the petitioner for poor person relief.

ORDERED that the application for poor person relief is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied; and it is further,

May 15, 2007

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ADJUDGED that the petition is denied and the proceeding is dismissed, without costs or disbursements.

The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought (*see Matter of Legal Aid Society of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought.

PRUDENTI, P.J., FISHER, DILLON and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court