

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

D16207
E/kmg

_____AD3d_____

Argued - August 21, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
MARK C. DILLON
THOMAS A. DICKERSON, JJ.

2007-07690

DECISION & ORDER

In the Matter of Diana A. Johnson, appellant, v
Shawndya L. Simpson, respondent-respondent,
et al., respondent.

(Index No. 19944/07)

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition designating Shawndya L. Simpson as a candidate in a primary election to be held on September 18, 2007, for the nomination of the Democratic Party as its candidate for the public office of Surrogate, County of Kings, the petitioner appeals from so much of a final order of the Supreme Court, Queens County (O'Donoghue, J.), dated August 17, 2007, as, after a hearing, denied the petition and dismissed the proceeding.

ORDERED that the final order is affirmed insofar as appealed from, without costs or disbursements.

The petitioner contends that the petition designating Shawndya L. Simpson as a candidate in the primary election to be held on September 18, 2007, for the nomination of the Democratic Party as its candidate for the public office of Surrogate, County of Kings, should be invalidated on the ground that Simpson does not reside in that county (*see* NY Const, art VI, § 12[b]; Public Officers Law § 3[1]). In particular, the petitioner contends that Simpson resides in the State of New Jersey, and not in Kings County.

The petitioner did not sustain her evidentiary burden of establishing by clear and convincing evidence that Simpson is not a resident of Kings County (*see Matter of Hosley v Curry*, 85 NY2d 447; *Matter of Rosenthal v Kelly*, 275 AD2d 429). Accordingly, the Supreme Court

August 22, 2007

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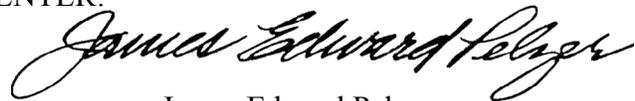
MATTER OF JOHNSON v SIMPSON

properly denied the petition and dismissed the proceeding (*see Matter of Thompson v Karben*, 295 AD2d 438; *Matter of Rosenthal v Kelly*, *supra*).

The petitioner's remaining contentions are without merit or need not be reached in light of our determination.

MILLER, J.P., SPOLZINO, RITTER, DILLON and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court