

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

D18010
G/kmg

_____AD3d_____

Argued - January 8, 2008

ROBERT A. LIFSON, J.P.
DAVID S. RITTER
DANIEL D. ANGIOLILLO
EDWARD D. CARNI, JJ.

2006-10571

DECISION & ORDER

In the Matter of Allen Stancil Culbreth,
a/k/a Allen Culbert, deceased.
Malissie J. Culbreth, et al., respondents;
Alice B. Geddie, appellant.

(File No. 1974/04)

Lee M. Nigen & Associates, P.C., Brooklyn, N.Y., for appellant.

Donald Novick, Huntington, N.Y., for respondents.

In a proceeding, inter alia, to set aside two deeds for three properties, the appeal is from a decree of the Surrogate's Court, Kings County (Lopez-Torres, S.), dated October 20, 2006, which, after a hearing, granted the petition and declared the subject deeds null and void.

ORDERED that the decree is affirmed, with costs.

The power of attorney executed by the decedent did not authorize the attorney-in-fact to make gifts. Accordingly, the gratuitous conveyances of the decedent's properties by the attorney-in-fact to her mother were in violation of the fiduciary duty she owed to the decedent, and were therefore invalid (*see Matter of Agrest*, 279 AD2d 471). Moreover, we agree with the Surrogate that the evidence wholly failed to establish that the decedent intended to gift the properties in question to the mother of the attorney-in-fact (*see Salonen v Salonen*, 8 AD3d 255).

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MATTER OF CULBRETH, a/k/a CULBERT, DECEASED

The appellant's remaining contentions are without merit.

LIFSON, J.P., RITTER, ANGIOLILLO and CARNI, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court