

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

D18011
O/prt

_____AD3d_____

Submitted - November 28, 2007

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
ROBERT A. LIFSON
WILLIAM E. McCARTHY, JJ.

2007-04584

DECISION & ORDER

In the Matter of Cathy Michiel, deceased.
Mark Jackson, appellant; Jordan Michiel,
respondent (and related proceedings).

(File No. 527/05)

McQuade & Sculley, Long Beach, N.Y. (Francis X. McQuade of counsel), for
appellant.

John T. Catterson, Hauppauge, N.Y., for respondent.

In a proceeding pursuant to SCPA 2103, the petitioner appeals from an order of the
Surrogate's Court, Suffolk County (Braslow, S.), dated March 12, 2007, which denied that branch
of his motion which was for a change of venue pursuant to CPLR 510(2).

ORDERED that the order is affirmed, with costs.

A motion to change venue pursuant to CPLR 510(2) is addressed to the sound
discretion of the trial court (*see Milazzo v Long Island Lighting Co.*, 106 AD2d 495), and its
determination will not be disturbed absent an improvident exercise of discretion (*see Behrins &*
Behrins, P.C. v Chan, 40 AD3d 560). The movant is required to produce admissible factual evidence
demonstrating a strong possibility that an impartial trial cannot be obtained (*see Albanese v West*
Nassau Mental Health Center, 208 AD2d 665). Here, the petitioner failed to meet his burden by
offering only conclusory allegations, beliefs, suspicions, and feelings of possible bias or the
appearance of impropriety (*see Cohen v Bernstein*, 9 AD3d 573; *Warm v State of New York*, 265
AD2d 546; *Jablonski v Trost*, 245 AD2d 338). Accordingly, the Surrogate's Court properly denied

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the motion for a change of venue (*see Behrins & Behrins, P.C. v Chan*, 40 AD3d 560).

SPOLZINO, J.P., SKELOS, LIFSON and McCARTHY, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court