

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

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Submitted - June 5, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2008-00484
2008-06352

DECISION & ORDER

In the Matter of Roopnarine Guptar, deceased.
Darien Neyra, respondent; Gopaul Guptar, appellant.

(Index No. 2537/06)

K.C. Okoli, New York, N.Y., for appellant.

Anthony M. Bramante, Brooklyn, N.Y., for respondent.

In a proceeding, inter alia, to revoke letters of administration issued to Gopaul Guptar for the estate of Roopnarine Guptar, Gopaul Guptar appeals from (1) a decision of the Surrogate's Court, Kings County (Lopez-Torres, S.), dated December 10, 2007, and (2) a decree of the same court dated January 8, 2008, which, after a hearing, and upon the decision, determined, inter alia, that the petitioner established, by clear and convincing evidence, that the decedent was her father and, in effect, granted the petition, revoked the letters of administration issued to Gopaul Guptar, and directed that successor letters of administration be issued to the petitioner.

ORDERED that the appeal from the decision is dismissed, as no appeal lies from a decision (*see Schicchi v J.A. Green Constr. Corp.*, 100 AD2d 509); and it is further,

ORDERED that the decree is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the petitioner.

September 2, 2008

MATTER OF GUPTAR, DECEASED

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Contrary to the appellant's contention, the unobjected-to hearsay testimony of the petitioner's aunt and grandmother as to the statement of the petitioner's now-deceased mother regarding paternity was sufficient to establish, by clear and convincing evidence, that the decedent was the petitioner's father. This conclusion is warranted under the unique circumstances of this case, including the failure of the appellant or his mother to object to this testimony, offer any proof at the hearing, request genetic testing of the petitioner, or offer any explanation for their failure to do so, as well as the appellant's abandonment of any claim that the decedent did not openly and notoriously acknowledge the petitioner as his daughter (see *Matter of Jane PP v Paul Q.Q.*, 65 NY2d 994, 996; *Matter of Commissioner of Social Servs. v Philip De G*, 59 NY2d 137, 141; *Matter of Poldrugovaz*, 50 AD3d 117, 126-128; *Brooklyn Union Gas Co. v Arrao*, 100 AD2d 949; see also *Matter of Nassau County Dept. of Social Servs. v Denise J.*, 87 NY2d 73; PJI 1:64).

The appellant's remaining contentions are without merit.

MASTRO, J.P., FLORIO, DICKERSON and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court