

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

D20896
W/hu

_____AD3d_____

Argued - October 10, 2008

ANITA R. FLORIO, J.P.
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-08835

DECISION & ORDER

In the Matter of Mary Alice C. (Anonymous).
Allison Guthrie F. (Anonymous), respondent;
North C. (Anonymous), nonparty-appellant.

(Index No. 18653/05)

Vaneria & Spanos, New York, N.Y. (John Sebastian Vaneria of counsel), for nonparty-appellant.

Wilson, Bave, Conboy, Cozza & Couzens, P.C., White Plains, N.Y. (Patricia Bave-Planell of counsel), for respondent.

Mental Hygiene Legal Service, Mineola, N.Y. (Sideny Hirschfeld, Felicia B. Rosen, and Dennis B. Feld of counsel), for Mary Alice C.

In a proceeding pursuant to Mental Hygiene Law article 81, nonparty North C., the brother of Mary Alice C., an allegedly incapacitated person, appeals from an order of the Supreme Court, Westchester County (Rosato, J.), entered September 12, 2007, which granted the motion of Allison Guthrie F., the special guardian of Mary Alice C., to establish a supplemental needs trust for the benefit of Mary Alice C. with Hudson Valley Bank, as trustee, and for the award of an attorney's fee, and denied his cross motion pursuant to Mental Hygiene Law § 81.35 to remove Allison Guthrie F. as the special guardian of Mary Alice C.

ORDERED that the order is affirmed, with costs to the respondent payable by the nonparty-appellant.

November 5, 2008

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MATTER OF C. (ANONYMOUS), MARY ALICE

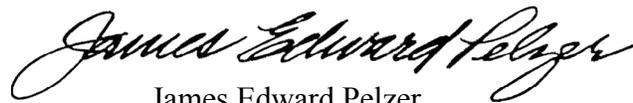
“The Supreme Court has broad discretion in determining the reasonable amount to award as an attorney’s fee in a guardianship proceeding” (*Matter of Mavis L.*, 285 AD2d 509, 510). The Supreme Court determined that the award of an attorney’s fee to the special guardian’s attorney was warranted. The Supreme Court further determined that an award in the sum of \$12,217.50 was reasonable based, inter alia, on the expertise of the special guardian’s attorney, and the customary fee charged by other attorneys for similar services (*id.* at 510; *see Matter of Freeman*, 34 NY2d 1, 9; *Matter of Potts*, 213 App Div 59, *affd* 241 NY 593). We find no basis in the record to disturb the court’s determination.

A special guardian may be removed when “the guardian fails to comply with an order, is guilty of misconduct, or for any other cause which to the court shall appear just” (Mental Hygiene Law § 81.35; *see Matter of Dunsmoor*, 24 AD3d 1218, citing *Matter of Arnold O.*, 226 AD2d 866, 869). Other than conclusory allegations, the nonparty-appellant failed to present any evidence that there was any misconduct on the part of the special guardian that would provide a basis for her removal (*see Matter of Arnold O.*, 226 AD2d at 869).

The nonparty-appellant’s remaining contention is without merit.

FLORIO, J.P., ANGIOLILLO, McCARTHY and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court