

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

D21720  
Y/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - December 15, 2008

HOWARD MILLER, J.P.  
DANIEL D. ANGIOLILLO  
ARIEL E. BELEN  
CHERYL E. CHAMBERS, JJ.

2008-04186

DECISION & ORDER

In the Matter of Melvin S. (Anonymous), appellant;  
Brookdale Hospital, respondent.

(Index No. 12489/08)

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Mental Hygiene Legal Service, Mineola, N.Y. (Sidney Hirschfeld, Laura Rothschild,  
Dennis B. Feld, and Arthur Baer of counsel), for appellant.

Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP, Lake  
Success, N.Y. (Eric Broutman of counsel), for respondent.

In a proceeding pursuant to Mental Hygiene Law § 9.33 to retain a patient in a mental health care facility for involuntary psychiatric care for a period not to exceed six months, the patient appeals from an order of the Supreme Court, Kings County (Cutrona, J.), dated March 6, 2008, which, after a hearing, granted the petition and directed his retention involuntarily for a period of six months.

ORDERED that the order is reversed, on the law, without costs or disbursements, the petition is denied, and the proceeding is dismissed.

Although the period of retention directed by the order appealed from has expired, under the circumstances, the matter qualifies as an exception to the mootness doctrine, in that, inter alia, the issue presented is likely to recur and may in the future evade review (*see Matter of Harry M.*, 96 AD2d 201, 202).

It was incumbent upon the petitioner to prove, by clear and convincing evidence, that

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the patient at issue was mentally ill, in need of further treatment, and posed a substantial threat of physical harm to himself or others, such that his retention is warranted (*see Matter of John N.*, 52 AD3d 834, 835). In this case, the petitioner failed to show by clear and convincing evidence that the patient's mental illness posed a substantial threat of physical harm to himself or others (*see Matter of Julio R.*, 16 AD3d 423, 424; *Matter of Francine T.*, 302 AD2d 533, 533-534; *Matter of Gilliard v Sanchez*, 219 AD2d 500, 501).

MILLER, J.P., ANGIOLILLO, BELEN and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court