

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

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_____AD3d_____

Argued - September 14, 2009

MARK C. DILLON, J.P.
RANDALL T. ENG
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2008-06477
2008-06235

DECISION & ORDER

In the Matter of Gregory Cavallo, a/k/a Gregory M.
Cavallo, deceased; Rebecca Pytosh, appellant;
Marie Cavallo, et al., respondents.

(File No. P133/01B)

Greenfield Stein & Senior, LLP, New York, N.Y. (Harvey E. Corn and Jeffery H. Sheetz of counsel), for appellant.

Behrins & Behrins, P.C., Staten Island, N.Y. (Bruce G. Behrins and Susan R. Schneider of counsel), for respondents.

In a contested probate proceeding, the proponent of the will appeals from (1) an order of the Surrogate's Court, Richmond County (Gigante, S.), dated June 4, 2008, and (2) a resettled order of the same court dated June 25, 2008, which granted the objectants' motion for a protective order and to quash certain subpoenas.

ORDERED that the appeal from the order is dismissed, as that order was superseded by the resettled order; and it is further,

ORDERED that the resettled order is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the respondents, payable by the appellant personally.

“A party seeking discovery from a nonparty witness must show special circumstances” (*Tannenbaum v Tenenbaum*, 8 AD3d 360, 360; *see Lanzello v Lakritz*, 287 AD2d 601). Here, the appellant failed to establish special circumstances to justify her demand for nonparty disclosure, “since she failed to demonstrate that the information sought was otherwise unobtainable” (*Schwarz v Schwarz*, 227 AD2d 611, 612; *see Tannenbaum v Tenenbaum*, 8 AD3d at 360; *Matter of Validation Review Assoc. [Berkun-Schimmel]*, 237 AD2d 614, 615). Accordingly, the Surrogate’s Court properly granted the objectants’ motion for a protective order and to quash certain subpoenas.

DILLON, J.P., ENG, BELEN and HALL, 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