

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

D24766
H/kmg

_____AD3d_____

Argued - September 29, 2009

PETER B. SKELOS, J.P.
JOSEPH COVELLO
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2008-09848

DECISION & ORDER

In the Matter of Rose Rizzuto, deceased.
Carol Ann Rizzuto, appellant; Roseann Sims,
respondent.

(File No. 342792)

Howard M. Sklar, P.C., Carle Place, N.Y., for appellant.

Richard L. Reers, P.C., Williston Park, N.Y., for respondent.

In a probate proceeding, Carol Ann Rizzuto appeals from an order of the Surrogate's Court, Nassau County (Riordan, S.), dated September 12, 2008, which denied that branch of her petition which was to vacate a decree of the same court dated December 28, 2007, admitting the decedent's will to probate and, in effect, to vacate her default in contesting the probate of the will.

ORDERED that the order is affirmed, with costs payable by the petitioner personally.

To vacate her default in contesting the probate of the decedent's will, the petitioner was required to show (1) a valid excuse and the absence of willfulness, and (2) a meritorious claim (*see* CPLR 5015[a][1]; *Matter of Maxwell*, 13 AD3d 630, 631; *Matter of Wang*, 5 AD3d 785, 787; *see also Matter of American Comm. for Weizmann Inst. of Science v Dunn*, 10 NY3d 82). The petitioner failed to establish a reasonable excuse for her default in failing to timely file objections to probate (*see* SCPA 1410). Accordingly, the Surrogate's Court properly declined to vacate the decree of probate entered upon the petitioner's default.

October 27, 2009

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MATTER OF RIZZUTO, DECEASED

In light of our determination, we need not reach the petitioner's remaining contentions.

SKELOS, J.P., COVELLO, SANTUCCI and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court