

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

D25285
O/prt

_____AD3d_____

Submitted - November 5, 2009

WILLIAM F. MASTRO, J.P.
ARIEL E. BELEN
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2008-03510
2008-04856

DECISION & ORDER

In the Matter of Jesse Lee H. (Anonymous),
an alleged incapacitated person.
Cheryl Joy H. (Anonymous), appellant;
Philip H. (Anonymous), respondent.

(Index No. 28114/05)

The Barbara Law Firm, LLP, Garden City, N.Y. (Amy Sklar of counsel), for appellant.

Leonard R. Sperber, Garden City, N.Y., for respondent.

Joseph R. Faraguna, Sag Harbor, N.Y., Law Guardian for Jesse Lee H.

In a proceeding pursuant to Mental Hygiene Law article 81 to appoint a guardian for the person and property of Jesse Lee H., an alleged incapacitated person, the petitioner, the mother of Jesse Lee H., appeals, as limited by her notice of appeal and brief, (1) from stated portions of an order and judgment (one paper) of the Supreme Court, Nassau County (Asarch, J.), dated March 13, 2008, which, after a hearing, inter alia, directed that her power to make decisions regarding the general environment and other social aspects of the life of Jesse Lee H. is subject to certain conditions concerning Jesse Lee H.'s visitation with his father, and (2) from so much of an order of the same court dated April 17, 2008, as clarified the order and judgment dated March 13, 2008, by permitting the father to have unsupervised visitation with Jesse Lee H., subject to certain exceptions.

December 8, 2009

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MATTER OF H. (ANONYMOUS), JESSE LEE

ORDERED that the order and judgment dated March 13, 2008, and the order dated April 17, 2008, are affirmed insofar as appealed from, with one bill of costs to the respondent.

Mental Hygiene Law § 81.20(a)(7) provides that “a guardian who is given authority relating to the personal needs of the incapacitated person shall afford the incapacitated person the greatest amount of independence and self-determination with respect to personal needs in light of that person’s functional level, understanding and appreciation of that person’s functional limitations, and personal wishes, preferences and desires with regard to managing the activities of daily living.” Under the circumstances of this case, upon appointing the petitioner (hereinafter the mother) as the guardian for the personal needs of Jesse Lee H. and granting her the power, inter alia, to make decisions regarding the general environment and other social aspects of his life (*see* Mental Hygiene Law § 81.22[a][2]), the court properly directed that such power is subject to certain conditions concerning Jesse Lee H.’s visitation with his father (*see Matter of Solomon T.R.*, 6 AD3d 449, 449-450).

The mother’s contention concerning that branch of her petition which was to restructure a certain trust which was established for the benefit of Jesse Lee H. is not properly before this Court since, on this record, it remains pending and undecided (*see Katz v Katz*, 68 AD2d 536, 542-543).

The mother’s remaining contentions are not properly before this Court or are without merit.

MASTRO, J.P., BELEN, HALL and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court