

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

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Argued - May 21, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2007-10408

DECISION & ORDER

In the Matter of James A. McG. (Anonymous),
an alleged incapacitated person.
Catherine M. Robinson, petitioner-appellant; Ralph
M. Randazzo, nonparty-respondent.

(Index No. 10020/07)

Catherine M. Robinson, Cambridge, Massachusetts, appellant pro se.

Ralph M. Randazzo, Huntington, N.Y., nonparty-respondent pro se.

In a proceeding pursuant to Mental Hygiene Law article 81 to appoint a guardian for the person and property of James A. McG., an alleged incapacitated person, the petitioner appeals from a money judgment of the Supreme Court, Suffolk County (Sgroi, J.), entered January 2, 2008, which, after a hearing, and upon an order of the same court dated June 12, 2007, and an order and judgment (one paper) of the same court dated July 17, 2007, is in favor of Ralph M. Randazzo and against her in the sum of \$4,375, for legal services rendered as a Court Evaluator.

ORDERED that on the Court's own motion, the notice of appeal dated September 11, 2007, is deemed to be a premature notice of appeal from the money judgment entered January 2, 2008 (*see* CPLR 5520[c]); and it is further,

ORDERED that the money judgment entered January 2, 2008, is modified, on the facts and in the exercise of discretion, by reducing the award in favor of Ralph M. Randazzo and against the petitioner for legal services rendered as a Court Evaluator from the sum of \$4,375, to the sum of \$1,458.33, representing a one-third share of the fee for legal services rendered as a Court

December 22, 2009

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Evaluator; as so modified, the money judgment is affirmed, without costs or disbursements, the order and judgment dated July 17, 2007, is modified accordingly, and the order dated June 12, 2007, is vacated.

Under the circumstances of this case, we deem it appropriate for the petitioner to pay a one-third share of the fee for the legal services performed by the Court Evaluator in this matter, rather than the entire amount of the fee (*see* Mental Hygiene Law § 81.09[f]).

The petitioner's remaining contentions are without merit.

RIVERA, J.P., FLORIO, BELEN and AUSTIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court