

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

D25730  
Y/hu

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Argued - December 10, 2009

REINALDO E. RIVERA, J.P.  
JOHN M. LEVENTHAL  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

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2009-00016

DECISION & ORDER

In the Matter of Joseph J. L. (Anonymous), a person  
alleged to be incapacitated.  
Claire H. (Anonymous), appellant; Frank L.  
(Anonymous), respondent.

(Index No. 25921/07)

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Ballon Stoll Bader & Nadler, P.C., New York, N.Y. (Marshall B. Bellovin and Joseph  
Tristano of counsel), for appellant.

In a guardianship proceeding pursuant to Mental Hygiene Law article 81, Claire H. appeals, as limited by her brief, from so much of a judgment of the Supreme Court, Westchester County (Rosato, J.), entered June 9, 2008, as failed to accurately incorporate various provisions of the parties' stipulation of settlement entered on the record in open court on April 15, 2008.

ORDERED that the judgment is reversed insofar as appealed from, on the law, without costs or disbursements, and the matter is remitted to the Supreme Court, Westchester County, for the issuance of a new judgment which shall accurately reflect the provisions of the stipulation dated April 15, 2008.

When a party alleges that a judgment does not accurately incorporate the provisions of a stipulation of settlement, the preferred remedy is to move in the trial court to resettle or vacate the judgment, rather than to appeal (*see Charos v Charos*, 3 AD3d 467; *Fitzgerald v Fitzgerald*, 302 AD2d 356; *Matter of Gesvantner v Dominguez*, 273 AD2d 383). Nevertheless, we have examined the stipulation and the judgment appealed from in this matter and find that the latter does not conform to the former in several key respects regarding the appellant's future receipt of tax planning gifts, the

propriety of her past expenditures and receipt of past payments in connection with her father's care, and her ability to seek appointment as a co-guardian of her father's property in the future. Accordingly, the matter must be remitted to the Supreme Court, Westchester County, to issue a new judgment which accurately reflects the terms of the parties' stipulation dated April 15, 2008 (*see Page v Page*, 31 AD3d 1172, 1173; *Charos v Charos*, 3 AD3d at 468; *Matter of Gesvantner v Dominguez*, 273 AD2d 383; *Pizzuto v Pizzuto*, 162 AD2d 443).

RIVERA, J.P., LEVENTHAL, 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