

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

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_____AD3d_____

JOSEPH COVELLO, J.P.
HOWARD MILLER
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2009-11578

DECISION & JUDGMENT

In the Matter of Edward Chapnick, petitioner,
v Rachel Adams, etc., et al., respondents.

Larry M. Carlin, New York, N.Y., for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Monica A. Connell of counsel), for respondent Rachel Adams.

Mindy L. Blatt, Brooklyn, N.Y., attorney for the child.

Proceeding pursuant to CPLR article 78 in the nature of prohibition to prohibit the enforcement of an order of the Supreme Court, Kings County, dated August 19, 2009, which sealed a forensic evaluation in an action entitled *Chapnick v Chapnick*, pending in that court under Index No. 54681/08 and in the nature of mandamus to direct that the petitioner and his attorney be permitted to read the forensic evaluation.

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs or disbursements.

“Because of its extraordinary nature, prohibition is available only where there is a clear legal right, and then only when a court—in cases where judicial authority is challenged—acts or threatens to act either without jurisdiction or in excess of its authorized powers” (*Matter of Holtzman v Goldman*, 71 NY2d 564, 569; *see Matter of Rush v Mordue*, 68 NY2d 348, 352). Similarly, the extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought (*see Matter of Legal Aid Society of Sullivan County v Scheinman*, 53 NY2d 12, 16).

February 16, 2010

MATTER OF CHAPNICK v ADAMS

Page 1.

The petitioner has failed to demonstrate a clear legal right to the relief sought.

COVELLO, J.P., MILLER, DICKERSON and ENG, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court