

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

D26773
W/kmg

_____AD3d_____

MARK C. DILLON, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
SANDRA L. SGROI, JJ.

2009-11763

DECISION, ORDER & JUDGMENT

In the Matter of Edwin Madden, petitioner, v
Lawrence Knipel, etc., respondent.

Edwin Madden, Fallsburg, N.Y., petitioner pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Charles F. Sanders of
counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent, Lawrence Knipel, a Justice of the Supreme Court, Kings County, to determine the petition in an underlying proceeding pursuant to CPLR article 78 entitled *Matter of Madden v Hynes*, pending in the Supreme Court, Kings County, under Index No. 9058/09, and application by the petitioner for poor person relief.

ORDERED that the application for poor person relief is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied; and it is further,

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

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). Here, the Supreme Court scheduled March 19, 2010, as the return date for its consideration of the petition in the underlying proceeding

March 30, 2010

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pursuant to CPLR article 78. Since less than 60 days have elapsed since the underlying proceeding pursuant to CPLR article 78 was submitted for determination (*see* CPLR 2219[a]; *Slavuter v Slavuter*, 304 AD2d 820, 821), the petitioner has failed to demonstrate a clear legal right to the relief sought.

DILLON, J.P., SANTUCCI, BALKIN and SGROI, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court