

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

D27371
C/kmg

_____AD3d_____

Argued - February 22, 2010

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
ARIEL E. BELEN, JJ.

2009-04753

DECISION & ORDER

In the Matter of Adele Blaukopf, deceased.
Daria Gavat, appellant; Jacqueline Austin (Levine),
et al., respondents.

(File No. 348307)

Seltzer Sussman Habermann & Heitner, LLP, Jericho, N.Y. (Brian R. Heitner of counsel), for appellant.

Edward K. Blodnick & Associates, P.C., Garden City, N.Y. (Thomas R. Fazio of counsel), for respondents.

In a probate proceeding, the petitioner appeals from an order of the Surrogate's Court, Nassau County (Riordan, S.), dated March 31, 2009, which, inter alia, vacated a decree dated October 31, 2008, admitting to probate the decedent's will dated November 8, 2006, and vacated the letters testamentary issued to her.

ORDERED that the order is affirmed, with costs payable by the petitioner personally to the respondents.

A court may exercise its inherent powers to "vacate its own [decree] for sufficient reason and in the interests of substantial justice" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68; see *Ladd v Stevenson*, 112 NY 325, 332; *Matter of Culberson*, 11 AD3d 859, 861; *Goldman v Cotter*, 10 AD3d 289, 293). Under the particular facts of this case, including, inter alia, the fact that the petitioner filed a total of three different petitions for probate and letters testamentary wherein she made several conflicting statements, the Surrogate's Court properly vacated the subject decree and letters testamentary issued to the petitioner.

May 18, 2010

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MATTER OF BLAUKOPF, DECEASED

The parties' remaining contentions either are without merit or need not be reached in light of our determination.

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

ENTER:

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

James Edward Pelzer
Clerk of the Court