

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

D28648
H/ct

_____AD3d_____

Argued - September 13, 2010

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2009-06058
2009-06059

DECISION & ORDER

In the Matter of Carole Robinson, also known as
Carol Robinson, deceased.
Carolyn Lutecia Taylor, appellant; Lisa Davis,
respondent.

(File No. 445/04)

Paul Fink, Brooklyn, N.Y., for appellant.

In a probate proceeding in which the administrator, in effect, petitioned pursuant to SCPA 1809 to determine the validity of certain claims against the estate of Carole Robinson, also known as Carol Robinson, the petitioner appeals from (1) an order of the Surrogate's Court, Kings County (Torres, S.), dated April 27, 2009, which, in effect, denied that branch of the petition which was to invalidate the claim of Lisa Davis, and directed that Lisa Davis be reimbursed in the sum of \$4,474 for payment of the decedent's funeral expenses, and (2) an order of the same court dated May 13, 2009, which denied her motion to vacate the order dated April 27, 2009.

ORDERED that the orders are affirmed, without costs or disbursements.

The Surrogate's Court properly determined that the claim against the estate by Lisa Davis (hereinafter the claimant) for reimbursement of the decedent's funeral expenses, which expenses the petitioner conceded were paid by the claimant, was valid (*see* SCPA 1809, 1811). Contrary to the petitioner's contention, the Surrogate's Court did not err in declining to consider, in the instant proceeding, the petitioner's allegation that the claimant, who had been appointed the decedent's guardian pursuant to Mental Hygiene Law article 81 prior to the decedent's death, had

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failed to file certain required reports and accountings, and otherwise breached her fiduciary duty as the decedent's guardian (*see* Mental Hygiene Law § 81.44[g]; *see also* SCPA 2103).

The Surrogate's Court properly denied the petitioner's motion to vacate the order dated April 27, 2009, as the petitioner failed to demonstrate the existence of any valid grounds for vacatur (*see* CPLR 5015[a]).

SKELOS, J.P., ANGIOLILLO, HALL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court