

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

D32242
H/ct

_____AD3d_____

PETER B. SKELOS, J.P.
RUTH C. BALKIN
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2011-04396

DECISION, ORDER & JUDGMENT

In the Matter of Margarita T. Walter, petitioner,
v Robert Neary, et al., respondents.

Margarita T. Walter, Sleepy Hollow, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Susan Anspach of
counsel), for respondents.

Proceeding pursuant to CPLR article 78 in the nature of prohibition to prohibit “bifurcation of financial and custodial issues by the respondent [Robert] Neary without first having a full and fair hearing on custody” in an action entitled *Walter v Walter*, pending in the Supreme Court, Westchester County, under Index No. 17328/01, and in the nature of mandamus to compel the respondents to grant her requests for accommodations under the Americans with Disabilities Act (42 USC § 12101 *et seq.*). Motion by the petitioner, inter alia, to amend the article 78 petition to add Joan Lefkowitz, a Justice of the Supreme Court, as a respondent, and application by the petitioner to prosecute the proceeding as a poor person.

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,

ORDERED that the branch of the motion which is to amend the article 78 petition to add Joan Lefkowitz, a Justice of the Supreme Court, as a respondent, is granted, and the motion is otherwise denied; and it is further,

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

August 30, 2011

MATTER OF WALTER v NEARY

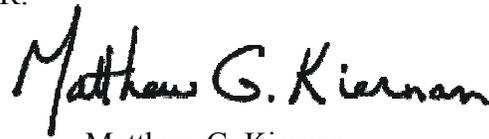
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“Because of its extraordinary nature, prohibition is available only where there is a clear legal right, and then only when a court—in cases where judicial authority is challenged—acts or threatens to act with or without jurisdiction or in excess of its authorized powers” (*Matter of Holtzman v Goldman*, 71 NY2d 564, 569; *see Matter of Rush v Mordue*, 68 NY2d 348, 352). 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 Socy. of Sullivan County v Scheinman*, 53 NY2d 12, 16).

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

SKELOS, J.P., BALKIN, AUSTIN and SGROI, 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