

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

D32264
C/kmb

_____AD3d_____

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2011-06978

DECISION, ORDER & JUDGMENT

In the Matter of Hilary Best, petitioner, v Duane A.
Heart, etc., respondent.

Hilary Best, Forest Hills, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Anthony J. Tomari of counsel), for respondent Justice Duane A. Hart, incorrectly named here as Duane A. Heart.

Proceeding pursuant to CPLR article 78 in the nature of prohibition to prohibit the respondent, a Justice of the Supreme Court, Queens County, from, inter alia, enforcing a ruling dated August 4, 2011, precluding the petitioner from seeking poor person relief in connection with any pending case, and in the nature of mandamus compelling the respondent to sign a temporary restraining order directing the immediate release of the petitioner's motor vehicle, and application by the petitioner, in effect, for poor person relief.

ORDERED that the application, in effect, 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 as academic; and it is further,

ADJUDGED that the branch of the petition which is to prohibit the respondent, a Justice of the Supreme Court, Queens County, from enforcing the ruling dated August 4, 2011, precluding the petitioner from seeking poor person relief in connection with any pending case is denied as academic, without costs or disbursements, as that ruling was, in effect, vacated by the respondent Justice; and it is further,

ADJUDGED that the petition is otherwise denied, and the proceeding is dismissed on

September 13, 2011

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the merits, 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 where 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.

COVELLO, J.P., ANGIOLILLO, CHAMBERS and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court