

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

D33304
O/kmb

_____AD3d_____

Submitted - November 4, 2011

WILLIAM F. MASTRO, A.P.J.
ANITA R. FLORIO
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2011-02259

DECISION & ORDER

In the Matter of Gina-Marie Reitano, appellant, et al.,
plaintiff, v Department of Social Services, respondent.

(Index No. 109271/01)

Gina-Marie Reitano, Staten Island, N.Y., appellant pro se.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner and
Edward F.X. Hart of counsel), for respondent.

In a proceeding pursuant to Mental Hygiene Law article 81 for the appointment of a guardian for the personal needs and property management of J. (Anonymous), an incapacitated person, coguardian Gina-Marie Reitano appeals, as limited by her brief, from so much of an order of the Supreme Court, Kings County (Barros, J.), dated January 11, 2011, as denied that branch of her motion which was for an award of an attorney's fee nunc pro tunc for the preparation of accountings in 2003, 2004, 2005, and 2006.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In 2002, the appellant, an attorney, and Sydonna J. (Anonymous) were appointed to serve as co-guardians for the personal needs and property management of J. (Anonymous), an incapacitated person. In four orders dated June 24, 2010, the appellant was authorized to withdraw the sums of \$6,049.36 for 2003, \$3,774.81 for 2004, \$4,137.74 for 2005, and \$5,897.97 for 2006 from the assets of the incapacitated person as compensation for her services as coguardian. The appellant subsequently moved to be appointed as counsel to herself and Sydonna J. (Anonymous) and for an award of an attorney's fee nunc pro tunc for the preparation of accountings in 2003, 2004, 2005, and 2006.

December 20, 2011

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The Supreme Court providently exercised its discretion in denying that branch of the appellant's motion which was for an award of an attorney's fee nunc pro tunc for the preparation of accountings in 2003, 2004, 2005, and 2006. In her affidavit in support of the motion, the appellant "failed to meet the threshold burden of establishing that the services she performed were actually legal in nature rather than administrative" (*Matter of Marion B.*, 11 AD3d 222, 223, citing *Matter of Passuello*, 184 AD2d 108, 111; see *Matter of Nellie G. [Joyce G.D.]*, 74 AD3d 1065, 1066; cf. *Matter of Swingearn*, 59 AD3d 556, 557).

MASTRO, A.P.J., FLORIO, LOTT and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court