

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

D33483
G/kmb

_____AD3d_____

Argued - December 9, 2011

THOMAS A. DICKERSON, J.P.
L. PRISCILLA HALL
JEFFREY A. COHEN
ROBERT J. MILLER, JJ.

2011-05317

DECISION & ORDER

In the Matter of Carmen H. (Anonymous).
Thomas H. (Anonymous), appellant; Grace H. (Anonymous),
respondent-respondent; Anthony J. Lamberti, etc.,
guardian ad litem-respondent; Mental Hygiene Legal
Service, et al., nonparty-respondents.

(Index No. 100026/04)

Seidner & Associates, P.C., Westbury, N.Y. (Matthew S. Seidner of counsel), for
appellant.

Ira K. Miller, Brooklyn, N.Y. (Arnold J. Ludwig of counsel), for respondent-
respondent.

In a proceeding pursuant to Mental Hygiene Law article 81, Thomas H., the son of
Carmen H., an incapacitated person, appeals, as limited by his brief, from so much of an order of the
Supreme Court, Kings County (King, J.), dated March 28, 2011, as denied that branch of his motion
which was pursuant to Mental Hygiene Law § 81.35 to remove Grace H. as guardian of the person
of Carmen H.

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

A guardian may be removed pursuant to Mental Hygiene Law § 81.35 when “the
guardian fails to comply with an order, is guilty of misconduct, or for any other cause which to the
court shall appear just” (*Matter of Mary Alice C.*, 56 AD3d 467, 468, quoting Mental Hygiene Law
§ 81.35; *see Matter of Joshua H.*, 62 AD3d 795, 796). “The trial court is accorded considerable
discretion in determining whether a guardian should be replaced” (*Matter of Joshua H.*, 62 AD3d

December 27, 2011

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MATTER OF H. (ANONYMOUS), CARMEN

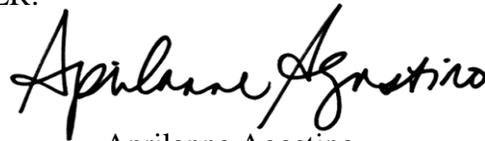
at 797, quoting *Matter of Francis M.*, 58 AD3d 937, 938; see *Matter of Carol C.*, 41 AD3d 474, 475).

Here, the Supreme Court providently exercised its discretion in denying that branch of the appellant's motion which was pursuant to Mental Hygiene Law § 81.35 to remove Grace H. as guardian of the person of Carmen H. (see Mental Hygiene Law § 81.35; *Matter of Mary Alice C.*, 56 AD3d at 468; *Matter of Dunsmoor*, 24 AD3d 1218, 1218-1219; *Matter of Arnold O.*, 226 AD2d 866, 869; cf. *Matter of Joshua H.*, 62 AD3d at 797). In support of that branch of his motion, the appellant offered only conclusory allegations of misconduct by Grace H., which were insufficient to warrant her removal as guardian (see *Matter of Mary Alice C.*, 56 AD3d at 468; *Matter of Arnold O.*, 226 AD2d at 869).

The appellant's remaining contentions are without merit.

DICKERSON, J.P., HALL, COHEN and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court