

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

D36212
C/hu

_____AD3d_____

Argued - September 13, 2012

MARK C. DILLON, J.P.
RUTH C. BALKIN
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2011-05690

DECISION & ORDER

In the Matter of Lisa D. (Anonymous).
Peter Smergut, etc., respondent; Consumer Advisory
Board, et al., appellants.

(Index No. 29901/10)

Eric T. Schneiderman, Attorney General, New York, N.Y. (Richard Dearing and
Leslie B. Dubeck of counsel), for appellants.

Robert Rosenthal, New York, N.Y., and Clifford Mierowitz, New York, N.Y., for
respondent (one brief filed).

In a proceeding pursuant to Mental Hygiene Law article 81, inter alia, to appoint a guardian for the property of Lisa D., an alleged incapacitated person, the nonparty New York State Office for People with Developmental Disabilities, and the cross petitioner, Consumer Advisory Board, appeal from an order and judgment (one paper) of the Supreme Court, Nassau County (Diamond, J.), dated April 7, 2011, which, upon a decision of the same court dated March 1, 2011, made after a hearing, among other things, appointed a guardian for the property management of Lisa D., authorized the guardian, as directed by the court, to transfer certain funds belonging to Lisa D. to a trust account to be established for the benefit of Lisa D., and directed the trustee of the subject trust to pay from the funds of Lisa D. a sum certain to the petitioner's counsel for legal services rendered as the attorney for the petitioner.

ORDERED that the order and judgment is affirmed, without costs or disbursements.

Contrary to the appellants' contentions, the Supreme Court providently exercised its

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discretion, in the best interests of the subject alleged incapacitated person, Lisa D. (*see Matter of Nimon*, 15 AD3d 978, 979; *Matter of Rudick*, 278 AD2d 328, 329; *see also* Mental Hygiene Law § 81.01), by appointing one of her siblings as guardian for her property management and by authorizing that guardian to transfer certain of Lisa D.'s funds to a trust account to be established for Lisa D.'s benefit in a certain pooled trust established by her residential services provider (*see* Mental Hygiene Law § 81.02[a][1], [2]; § 81.19[d]; *see also Matter of Margaret K.*, 17 AD3d 466, 466; *cf. DiGennaro v Community Hosp. of Glen Cove*, 204 AD2d 259, 260). Also contrary to the appellants' contention, the foregoing arrangement does not violate Mental Hygiene Law § 81.19(e)(1) or (2) (*cf. Matter of Patrick BB.*, 284 AD2d 636, 638-639).

The Supreme Court providently exercised its discretion in awarding a sum certain to the petitioner's counsel for legal services rendered as the attorney for the petitioner, to be paid from Lisa D.'s funds (*see* Mental Hygiene Law § 81.16[f]; *Matter of Grace PP.*, 245 AD2d 824, 825).

DILLON, J.P., BALKIN, AUSTIN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court