

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

D37034
T/kmb

_____AD3d_____

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2011-11138

DECISION & JUDGMENT

In the Matter of Norman D. (Anonymous), petitioner,
v Charles D. Wood, etc., et al., respondents.

Mental Hygiene Legal Service, Mineola, N.Y. (Lesley De Lia and Dennis B. Feld of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Rachel C. Anello of counsel), for respondent Michael F. Hogan.

Proceeding pursuant to CPLR article 78 in the nature of a writ of prohibition, in effect, to prohibit enforcement of a provision of an amended order of conditions dated August 2, 2011, issued by the respondent Charles D. Wood, a Justice of the Supreme Court, Dutchess County, which directed that, should the petitioner fail to comply with any of the other conditions imposed in that amended order of conditions “and refuse to appear for or comply with a psychiatric examination,” the Commissioner of the New York State Office of Mental Health “shall apply to the court for a Temporary Confinement Order for the purpose of conducting an effective psychiatric examination in a secure facility.”

ADJUDGED that the petition is granted, on the law, without costs or disbursements, and the respondents are prohibited from enforcing the provision of the amended order of conditions dated August 2, 2011, which directed that, should the petitioner fail to comply with any of the other conditions imposed in that order “and refuse to appear for or comply with a psychiatric examination,” the Commissioner of the New York State Office of Mental Health “shall apply to the court for a Temporary Confinement Order for the purpose of conducting an effective psychiatric examination in a secure facility.”

For the reasons stated in *Matter of Robert T. (Anonymous) v Sproat* (_____ AD3d

December 26, 2012

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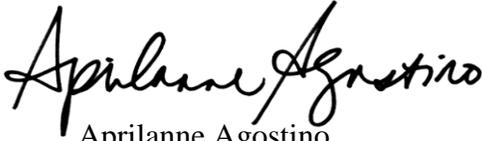
MATTER OF D. (ANONYMOUS) v WOOD

_____, 2012 NY Slip Op 08137 [2nd Dept 2012]), the CPLR article 78 petition seeking to prohibit the respondents from enforcing the provision of the order of conditions which directed that, should the petitioner fail to comply with any of the other conditions imposed in that order “and refuse to appear for or comply with a psychiatric examination,” the Commissioner of the New York State Office of Mental Health “shall apply to the court for a Temporary Confinement Order for the purpose of conducting an effective psychiatric examination in a secure facility” must be granted.

FLORIO, AUSTIN and SGROI, JJ., concur.

RIVERA, J.P., concurs in the result on constraint of *Matter of Robert T. (Anonymous) v Sproat* (____ AD3d _____, 2012 NY Slip Op 08137 [2nd Dept 2012]).

ENTER:


Aprilanne Agostino
Clerk of the Court