

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

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RUTH C. BALKIN, J.P.  
LEONARD B. AUSTIN  
VALERIE BRATHWAITE NELSON  
LINDA CHRISTOPHER, JJ.

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2017-10772

DECISION, ORDER & JUDGMENT

In the Matter of Gary Butler, petitioner, v Barbara  
Zambelli, etc., respondent.

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Gary Butler, Ossining, NY, petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, NY (Charles F. Sanders of  
counsel), for respondent.

Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the  
respondent, Barbara Zambelli, a Judge of the County Court, Westchester County, and an Acting  
Justice of the Supreme Court, Westchester County, to determine, on the merits, the petitioner's  
motion dated December 27, 2016, and application by the petitioner for poor person relief.

ORDERED that the application 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 petition is denied and the proceeding is dismissed on the merits,  
without costs or disbursements.

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.

BALKIN, J.P., AUSTIN, BRATHWAITE NELSON and CHRISTOPHER, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court

January 31, 2018

MATTER OF BUTLER v ZAMBELLI