

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

D56225
C/htr

_____AD3d_____

Argued - April 16, 2018

LEONARD B. AUSTIN, J.P.
SHERI S. ROMAN
JEFFREY A. COHEN
BETSY BARROS, JJ.

2016-01045

DECISION & ORDER

In the Matter of Vera B. (Anonymous).
Deborah Chadow, respondent;
Gerald M. Hertz, appellant.

(Index No. 30248/11)

Sim & Record, LLP, Bayside, NY (Sang J. Sim of counsel), for appellant.

John Newman, Huntington, NY, for respondent.

In a proceeding pursuant to Mental Hygiene Law article 81, Gerald M. Hertz appeals from an order of the Supreme Court, Nassau County (Arthur M. Diamond, J.), dated November 18, 2015. The order denied the motion of Gerald M. Hertz to vacate a judgment of the same court dated August 14, 2015, and for leave to amend his answer to the petition.

ORDERED that the appeal is dismissed, with costs.

As a general rule, this Court does not consider any issue raised on a subsequent appeal that could have been raised in an earlier appeal that was dismissed for lack of prosecution, although this Court has the inherent jurisdiction to do so (*see Rubeo v National Grange Mut. Ins. Co.*, 93 NY2d 750, 754; *Bray v Cox*, 38 NY2d 350, 353; *Citimortgage, Inc. v Kidd*, 148 AD3d 767, 768; *Directional Lending, LLC v Guerrera*, 147 AD3d 909; *Green Tree Credit, LLC v Jelks*, 120 AD3d 1299, 1300; *Matter of Curtis & Assoc., P.C. v Callaghan*, 119 AD3d 782, 783). Here, the appellant, Gerald M. Hertz, failed to perfect an appeal from a judgment dated August 14, 2015, which was in favor of the petitioner guardian and against him in the principal sum of \$135,000. That appeal was dismissed as abandoned by decision and order on motion of this Court dated September 19, 2016. That dismissal constituted an adjudication on the merits with respect to all issues which could have been reviewed on that appeal (*see Spiritis v Village of Hempstead Community Dev. Agency*, 63

AD3d 907). We decline to exercise our jurisdiction to determine the merits of the present appeal since the issues it raises could have been raised on the appeal from the prior judgment that was dismissed for failure to perfect (*see Bray v Cox*, 38 NY2d at 350; *Directional Lending, LLC v Guerrerera*, 147 AD3d at 909; *Green Tree Credit, LLC v Jelks*, 120 AD3d at 1300; *Matter of Curtis & Assoc., P.C. v Callaghan*, 119 AD3d at 783; *Spiritis v Village of Hempstead Community Dev. Agency*, 63 AD3d at 907).

AUSTIN, J.P., ROMAN, COHEN and BARROS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court