

NEW YORK SUPREME COURT

In re Meisels

10 Misc. 3d 659 (N.Y. Sup. Ct. 2005) · Decided November 10, 2005

SUMMARY

The court held that a proceeding under Article 81 of New York’s Mental Hygiene Law to determine incapacity cannot be adjudicated by a religious court because such a determination implicates civil rights and statutory safeguards. It dismissed the guardianship petition for failure to allege specific facts showing incapacity, likely harm, or the need for a guardian. The court also concluded that the alleged incapacitated person’s durable power of attorney and health care proxy provided alternatives to guardianship.

CASE DETAILS

COURT	New York Supreme Court
WRITING FOR THE COURT	John M. Leventhal, J.
JURISDICTION	New York
DECIDED	November 10, 2005
DISPOSITION	dismissed
PROCEDURAL POSTURE	Respondents moved under CPLR 3211(a)(7) to dismiss an Article 81 guardianship petition for failure to state a cause of action. Petitioners cross-moved under CPLR 3025(b) to amend the petition.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the court assessed whether the petition and the materials properly considered alleged facts sufficient to state an Article 81 guardianship claim. Leave to amend under CPLR 3025(b) is freely granted absent prejudice unless the proposed amendment is palpably insufficient or totally devoid of merit.
PRECEDENTIAL VALUE	Published New York Supreme Court opinion
PARTIES	Petitioners seeking appointment of a guardian v. Moses Teitelbaum, Lipa Teitelbaum, Moses Friedman

TOPICS

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PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an Article 81 guardianship proceeding may be heard and determined by a Rabbinical Court or must be adjudicated by a New York State court.
2. Whether the petition alleged sufficient specific facts showing incapacity, inability to manage activities of daily living, likelihood of harm, and the need for a guardian.
3. Whether the alleged incapacitated person's durable power of attorney and health care proxy obviated the need for appointment of a guardian.
4. Whether petitioners should be permitted to amend the petition under CPLR 3025(b).

HOLDINGS

1. An Article 81 proceeding concerning an individual's capacity cannot be heard or determined by an ecclesiastical court; it must be heard and determined by a New York State court.
2. The petition failed to state a cause of action because it contained conclusory allegations and did not plead specific facts showing inability to manage activities of daily living, likely harm, or the need for a guardian.
3. Even assuming incapacity, appointment of a guardian was unnecessary because the alleged incapacitated person had already arranged for management of his personal and property affairs through a durable power of attorney and health care proxy.
4. The court granted leave to amend under CPLR 3025(b), but dismissed the proceeding because the amended allegations and supplemental affirmations remained insufficient.

KEY QUOTATIONS

“An article 81 proceeding cannot be heard or determined other than by a New York State court.” (663)

“A guardianship proceeding is not the proper avenue for a resolution of a family dispute, even when this dispute impacts on the future leadership of the Satmar movement.” (665)

“In light of the above, the cross motion to amend and the motion to dismiss are both granted. This guardianship proceeding is dismissed.” (666)

FACTUAL BACKGROUND

Petitioners, several grandchildren of grand rabbi Moses Teitelbaum, sought appointment of a guardian for his person and property, alleging that he was disoriented, in poor health, and required around-the-clock assistance. The petition focused largely on his restricted contact with some family members and his absence from certain family events, while omitting specific facts showing inability to manage daily activities or a likelihood of harm. Teitelbaum had executed a durable power of attorney and health care proxy designating individuals to manage his affairs, and the court observed that he received extensive assistance from a staff including a secretary, paramedic, butler, chauffeur, cook, and office attendant.

PROCEDURAL HISTORY

Petitioners commenced a New York Mental Hygiene Law article 81 proceeding seeking guardianship of the alleged incapacitated person's person and property. Respondents moved to dismiss, and petitioners sought leave to amend. The court granted both motions, considered the supplemental affirmations as though incorporated into the petition, and dismissed the proceeding.

DISPOSITION

dismissed

CASES CITED

- *Kedroff v Saint Nicholas Cathedral of Russian Orthodox Church of North America*, 344 U.S. 94 (1952)
- *Matter of Wertheim & Co. v Halpert*, 48 N.Y.2d 681, 683 (1979)
- *Fletcher v Kidder, Peabody & Co.*, 81 N.Y.2d 623 (1993)
- *Nestel v Nestel*, 38 A.D.2d 942 (2d Dep't 1972)
- *Matter of Jacobovitz*, 58 Misc. 2d 330 (Sup. Ct. 1968)
- *Matter of Berger*, 81 A.D.2d 584 (2d Dep't 1981)
- *Matter of Goldmar Hotel Corp.*, 283 App. Div. 935 (1st Dep't 1954)
- *Milnes v Salomon Smith Barney*, 2002 N.Y. Slip Op. 50507(U)
- *Matter of Petty*, 256 A.D.2d 281 (1st Dep't 1998)
- *Matter of Parker* [Onondaga County Dept. of Social Serv.], 162 Misc. 2d 733 (Sup. Ct. 1994)
- *Matter of Maher*, 207 A.D.2d 133 (2d Dep't 1994)
- *Matter of Albert S.*, 286 A.D.2d 684 (2d Dep't 2001)
- *Matter of Crump* [Parthe], 230 A.D.2d 850 (2d Dep't 1996)
- *AYW Networks v Teleport Communications Group*, 309 A.D.2d 724 (1st Dep't 2003)
- *Matter of Hoffman*, 288 A.D.2d 892 (4th Dep't 2001)
- *Matter of Rosa B.-S.* [William M.B.], 1 A.D.3d 355 (1st Dep't 2003)
- *Matter of Panartos*, 308 A.D.3d 350 (2d Dep't 2003)
- *Matter of A.G.*, 6 Misc. 3d 447 (Sup. Ct. 2004)