MHL Article 81 Caselaw

Summaries of Cases for When Your DSS is Appointed as Guardian

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Foundation of Art. 81 and Powers

Rivers v Katz, 67 NY2d 485 (1986)

Whether and under what circumstances the State may forcibly administer antipsychotic drugs to a mentally ill patient who has been involuntarily confined to a State facility.

When this litigation commenced, appellants were being retained pursuant to orders of court which had found them to be persons in need of involuntary care and treatment in that they have a mental illness for which care and treatment as a patient in a hospital is essential to their welfare and their judgment is so impaired that they are unable to understand the need for such care and treatment.

At the time of this case, retained patients who refused to be medicated with antipsychotic drugs could only avail themselves of the administrative review procedures prescribed by the regulations of the Commissioner of Mental Health.

Several patients who had refused medication, but had their objections overruled after the administrative procedures (and after having been forced to take the medication) thereafter commenced a declaratory judgment action against the Commissioner of Mental Health and officials of the psychiatric center to enjoin the nonconsensual administration of antipsychotic drugs and to obtain a declaration of their common-law and constitutional right to refuse medication.

The Appellate Division consolidated appeals from the respective Special Term order and judgments, and affirmed. The Court of Appeals reversed and held that the due process clause of the New York State Constitution (art I, § 6) affords involuntarily committed mental patients a fundamental right to refuse antipsychotic medication.

The Court of Appeals rejected the argument that the mere fact that appellants were mentally ill reduced in any manner their fundamental liberty interest to reject antipsychotic medication. It also rejected any argument that involuntarily committed patients lose their liberty interest in avoiding the unwanted administration of antipsychotic medication.

However, the right to reject treatment with antipsychotic medication is not absolute and under certain circumstances may have to yield to compelling State interests, such as where the patient presents a danger to himself or other members of society or engages in dangerous or potentially destructive conduct within the institution, the State may be warranted, in the exercise of its police power, in administering antipsychotic medication over the patient's objections. In this case, no claim was made that antipsychotic drugs

are administered to appellants because of circumstances that implicate the State's police power interest.

In situations where the State's police power is not implicated, and the patient refuses to consent to the administration of antipsychotic drugs, there must be a judicial determination of whether the patient has the capacity to make a reasoned decision with respect to proposed treatment before the drugs may be administered pursuant to the State's *parens patriae* power. The determination should be made at a hearing following exhaustion of the administrative review procedures provided for in regulations. The hearing should be de novo, and the patient should be afforded representation by counsel. The State would bear the burden of demonstrating by clear and convincing evidence the patient's incapacity to make a treatment decision. If, after duly considering the State's proof, the evidence offered by the patient, and any independent psychiatric, psychological or medical evidence that the court may choose to procure.

If the court determines that the patient has the capability to make his own treatment decisions, the State shall be precluded from administering antipsychotic drugs. If, however, the court concludes that the patient lacks the capacity to determine the course of his own treatment, the court must determine whether the proposed treatment is narrowly tailored to give substantive effect to the patient's liberty interest, taking into consideration all relevant circumstances, including the patient's best interests, the benefits to be gained from the treatment, the adverse side effects associated with the treatment and any less intrusive alternative treatments. The State would bear the burden to establish by clear and convincing evidence that the proposed treatment meets these criteria.

Based on the foregoing, it is clear that neither mental illness nor institutionalization per se can stand as a justification for overriding an individual's fundamental right to refuse antipsychotic medication on either police power or *parens patriae* grounds. Rather, due process requires that a court balance the individual's liberty interest against the State's asserted compelling need on the facts of each case to determine whether such medication may be forcibly administered.

Matter of Rhodanna C.B., 36 AD3d 106 (2nd Dept., 2006)

The appointment of guardians pursuant to Mental Hygiene Law article 81 with the authority to consent in perpetuity to the administration of psychotropic medication to their ward, over her objection and without any further judicial review or approval, is inconsistent with the due process requirements of *Rivers v Katz*.

The two children of Rhodanna C.B. petitioned to be appointed the guardians of the personal needs of their middle-aged mother, an alleged incapacitated person who previously has undergone psychiatric hospitalization and who currently lived at home. Following a brief hearing at which no medical testimony or expert evidence was adduced, the Supreme Court rendered a judgment which not only granted the petition to appoint the guardians based on Rhodanna's perceived lack of mental capacity, but which also effectively authorized the guardians to consent to the administration of psychotropic drugs or electroconvulsive therapy to Rhodanna over her objection, without any durational limitation on that authority or judicial review of Rhodanna's capacity or the propriety and necessity of the proposed medical treatment.

Rhodanna was not an institutionalized patient, although it had been determined that she suffered from mental illness. Moreover, no attempt had yet been made to medicate her with psychotropic drugs against her will. Nevertheless, pursuant to Mental Hygiene Law § 81.22 (a) (8), the Supreme Court authorized the guardians to consent to such a course of treatment over Rhodanna's objection and without further court approval, if they, in their sole discretion, deemed it to be appropriate at some point, no matter how far in the future.

Neither Mental Hygiene Law article 81 nor the judgment appealed from expressly requires a judicial reassessment of Rhodanna's capacity to make treatment decisions at any point in the future, even many years following the appointment of a guardian. Indeed, the guardians of Rhodanna have been appointed for an indefinite duration, and are authorized to consent to the administration of psychotropic drugs or electroconvulsive therapy over Rhodanna's objection at any point in the future, regardless of her possible regaining of capacity, without further judicial intervention. Conversely, *Rivers v Katz* mandates that a new determination as to capacity be made each time that a medical provider seeks to administer such a course of treatment to an objecting patient, apparently acknowledging that “the finding that a mentally ill person is unable to make a reasoned decision as to the proposed treatment does not constitute a determination binding in futuro” and “there is recognition of the potential for change in the mental status of a person found to be incapable of deciding a medical treatment issue for himself or herself.

A person's mental capacity can change over the course of time, and due process requires that the question of capacity be evaluated each time the administration of psychotropic medication or electroconvulsive therapy is proposed over the patient's objection. This is especially true in the case of a person such as Rhodanna, who is relatively young and may have guardians for another 30 years or more, during which time her degree of mental capacity may change quickly and dramatically, perhaps as a result of sound medical decisions made by those very guardians. To hold, as the

Supreme Court did, that the single determination of lack of capacity made in this Mental Hygiene Law article 81 guardianship proceeding may forever after deprive Rhodanna of an automatic judicial reassessment of her capacity in the event that such extraordinary medical therapies are proposed against her will in the distant future, affords her far less due process protection than an involuntarily-committed patient who has no guardian at all.

The protection of the liberty interest and autonomy of an incapacitated person, the cornerstone of the decision in *Rivers v Katz* and of Mental Hygiene Law article 81 itself, is achieved only when a guardian's consent to a proposed course of psychotropic drug treatment or electroconvulsive therapy over his ward's objection is subjected to the multiple due process safeguards afforded by an adversarial proceeding before an impartial judicial decision-maker who considers both the current mental capacity of the person and the propriety of the proposed treatment.

Delegation of Authority

Matter of Sutkowy (Wallace), 270 A.D.2d 943 (4th Dept., 2000)

When the Commissioner of Onondaga County DSS petitioned for an expansion of powers of the original order of guardianship, the court granted the relief requested by petitioner, but also mandated that the OCDSS Commissioner personally visit respondent four times per year, pursuant to Mental Hygiene Law §81.20(a) (5), instead of delegating that duty to OCDSS staff.

The 4th Dept. held that the court erred in determining that article 81 of the Mental Hygiene Law required the OCDSS Commissioner personally to visit each of his wards four times per year. The court's view that the OCDSS Commissioner's duties are personal and not ex officio would necessitate modification petitions whenever a new commissioner is appointed; that would be a needless use of judicial resources. Contrary to the court's determination, the OCDSS Commissioner may delegate the duties of guardianship to staff, but the OCDSS Commissioner is ultimately responsible, as the head of the agency, if the staff fails to discharge those duties appropriately.

Effect of the Guardianship Upon Particular Rights

Marriage

Matter of Edgar V.L., 228 AD3d 549 (1st Dept., 2024)

The 1st Dept. affirmed the order which, after a hearing, adjudged that the marriage between Edgar and Naciri was annulled *ab initio*, ordered that the prenuptial agreement between Edgar and Naciri was *void ab initio* and unenforceable, ordered that Naciri was not entitled to any equitable distribution, support, maintenance, or right of election, stayed all transfer of Edgar's funds and property, and ordered that all property removed by Naciri from his residences be returned.

The record demonstrated that Edgar, who was suffering from significant mental health issues and long-standing and worsening dementia, lacked the capacity to enter into either the prenuptial agreement (which was highly one-sided and detrimental to his interests) or the marriage to Naciri, given the volume of medical records and testimony to that end.

Matter of John M., 79 Misc3d 1230(A) (Sup Ct., New York County, 2023)

The Petitioner proved by clear and convincing evidence that John M. was unable to enter into a marriage with Helen E. and was indeed incapacitated when he married Helen M. The Court noted that if an Art. 81 guardian has been appointed and the IP is found to have been incapable of understanding the nature, effect, and consequences of the marriage, annulment of the marriage is an available remedy for the guardian.

The Court also found that a marriage revoked under Mental Hygiene Law § 81.29(d), unlike a marriage annulled under the Domestic Relations Law is *void ab initio*. As such, Helen E. was not entitled to a spousal share of John M.'s estate and could claim no legal interest as a spouse.

Matter of John M., 234 AD3d 487 (1st Dept., 2025)

This is the decision on the appeal of the above case.

After a hearing on John M.'s capacity to marry, the court properly revoked the marriage rendering it void *ab initio*. Petitioner proved by clear and convincing evidence that John M. was incapacitated at the time of the parties' marriage. The temporary guardian, the court evaluator, petitioner, and a longtime close friend of John M., consistently testified

that at the time of the June 2022 marriage, John M. lacked the mental capacity to understand the significance of a decision to marry.

The marriage took place one month after John M.'s daughter, commenced the guardianship proceeding based on her concerns about his worsening cognitive impairment and possible financial exploitation. The evidence at the hearing established that Helen E., John M.'s former home health aide from his time in a care facility, made multiple attempts to marry him while the investigation into his capacity was ongoing. The Art. 81 court's determination that John M. was incapacitated and in need of a guardian came mere weeks after the parties' marriage**.**

Contrary to Helen E.'s assertion, medical evidence was not necessary to prove incapacity.

Matter of Joseph S. 25 A.D.3d 804 (2nd Dept., 2006)

Supreme Court had made an order granting guardianship and annulling the marriage of the incapacitated person.

On appeal, the 2nd Dept. found that the record supported Supreme Court's annulment of the marriage between Joseph S. and Kho, who was Joseph's former nurse and was 43 years his junior. An annulment is an available remedy in an article 81 proceeding, where the evidence, as here, shows that the party was incapable of understanding the nature, effect, and consequences of the marriage. In this regard, Kho's argument as to lack of notice was unpersuasive, since the petitioner at the close of his case moved to amend the petition to include annulment as an additional form of relief, the Supreme Court advised Kho and her counsel that it would consider the relief, and Kho did not object to the Supreme Court's consideration of the issue. Furthermore, the fact that Kho was not formally joined as a party to the proceeding presented no impediment to the annulment under the circumstances, since she appeared and participated throughout the proceedings while represented by counsel, she received a full opportunity to present evidence regarding the validity of the marriage, and she actively litigated the issue. Accordingly, Kho was deemed to have waived any claim of lack of personal jurisdiction. Since the question of equitable distribution remained undetermined, the matter was remitted to Supreme Court for the resolution of that issue.

However, the Supreme Court erred in invalidating any wills executed after February 1, 2001. Unlike annulment of the marriage, the petitioner did not seek to revoke any wills at any point in the proceeding; thus, the appellants were not given adequate notice or an opportunity to be heard with regard to such relief.

Execution of Will

Matter of Colby, 40 AD2d 338, (1st Dept., 1997)

The First Department affirmed the Surrogate Count finding that the appointment of a guardian only months before the incapacitated person executed first of three will codicils did not collaterally estop her from arguing that decedent possessed testamentary capacity at time he executed the codicils, since finding of incapacity under Mental Hygiene Law article 81 is based upon different factors from those involved in finding of testamentary capacity.

The First Department also held that while the decedent (IP) was concededly susceptible to undue influence, there was no evidence of the preliminary executrix/guardian's involvement in the drafting of the testamentary instruments, and thus the burden never shifted to her to demonstrate freedom from undue influence. The objectant's evidence of undue influence was negligible, and the mere opportunity for undue influence does not mean that it was exercised.

The factors for testamentary capacity are: (1) whether the person understood the nature and consequences of executing a will; (2) whether they knew the nature and extent of the property they are disposing of; and (3) whether they knew those who would be considered the natural objects of their bounty and their relations with them.[1] If the petition is concerned about the AIP not having the capacity to execute a will, or if the guardian has this concern after their appointment, they could raise the issue and prove it at the initial hearing or in the context of a modification of powers petition. You would also likely have to demonstrate to the court the necessity of the restriction, such as a person attempting influence the IP.

The statute also requires that title to all property of the incapacitated person shall remain in title to the incapacitated person and not in the guardian. The property shall be subject to the possession of the guardian and to the control of the court for the purposes of administration, sale or other disposition only to the extent directed by the court order appointing the guardian. This is something that the property management guardian must keep in mind as a fiduciary of the incapacitated person.

Matter of McCloskey, 307 AD2d 737 (4th Dept., 2003)

The Fourth Department reversed the Surrogate, finding that the proponents of the alleged incapacitated person's will had proved that the testator possessed testamentary

[1] ***Matter of Kumstar***, 66 N.Y.2d 691 (1985)

capacity. When deciding the issue of testamentary capacity, the court must look to the following factors: (1) whether she understood the nature and consequences of executing a will; (2) whether she knew the nature and extent of the property she was disposing of; and (3) whether she knew those who would be considered the natural objects of her bounty and her relations with them.

In this case, the alleged incapacitated person had executed her will after the filing of the Article 81 petition.

In re Rita R. 26 AD3d 502 (2nd Dept., 2006)

The Second Department held that the Surrogate's Court, having properly found that mental incapacity invalidated incompetent individual's durable powers of attorney, health care proxy, and amended and restated certificate of trust, executed prior to appointment of guardian, should also have invalidated will signed and witnessed at approximately same time.

Other Issues During the Guardianship

Removal of Guardian

Matter of Edgar V.L., 214 AD3d 501 (1st Dept., 2023)

While removal requires a motion on notice, there is no statutory right to a hearing, although a guardian cannot be summarily removed in the absence of a fully developed record or without any findings, and a hearing may be required where material facts are disputed.

Legal Obligations of the IP

M. of Mozelle W., 167 AD3d 636, (2nd Dept., 2018),

The Second Department found that Supreme Court properly denied the motion of a landlord requesting that the local district be liable for the rent arrears of the APS client that APS had filed the Art. 81 petition for and obtained a restraining order against the landlord from evicting the client. Neither of these actions created a legal obligation on the part of the local district to assume any debts of the AIP.

Matter of Leonardo V., AD3d 2025 NY Slip Op 01995 (3rd Dept., 2025)

The 3rd Dept. reversed the order of Supreme Court which directed petitioner to pay the fees of the court evaluator, in a case where the guardianship had been granted.

At the hearing the parties came to an agreement whereby respondent consented to the appointment of a temporary guardian until certain benefits were obtained. The parties consented to this agreement, and a judgment was entered by Supreme Court to that effect. Despite petitioner's objection, the judgment also ordered that petitioner must pay the fees of the court evaluator. Consequently, the court entered a separate order directing petitioner to pay $2,450 to the court evaluator.

When a petition for the appointment of a guardian pursuant to MHL Article 81 is granted, the court may award a reasonable compensation to a court evaluator payable by the estate of the allegedly incapacitated person. (MHL §81.09[f]). Conversely, when the petition is denied or dismissed, the court may award a reasonable allowance to a court evaluator payable by the petitioner or by the person alleged to be incapacitated, or both in such proportions as the court may deem just (MHL§81.09[f]). As a result, the court may direct the petitioner to pay such fees or a portion thereof *only* when the petition is denied or dismissed.

Petitioner could have stipulated to the payment of the court evaluator's fees but did not do so. Therefore, the court was without authority to direct petitioner to pay the court evaluator's fees after petitioner declined to do so out of its own benevolence.

The 3rd Dept. did, in a footnote, note the fact that respondent was indigent. Although MHL§81.10(f) relieves indigent individuals of a responsibility to pay, MHL §81.09(f) does not do so, and it is for the Legislature to rectify this apparent inconsistency.

Medical Decision Making

In re Doe, 53 Misc3d 829 (Supreme Court, Kings County, 2016)

The court had appointed a special guardian of the IP and designated the special guardian as the surrogate of the IP with regard to all health care decisions, including the withdrawal of life-sustaining treatment pursuant to Public Health Law§§ 2994–d[4] and [5]. When the special guardian determined to withdraw life-sustaining treatment, relatives of the IP brought a special proceeding to prevent the withdrawal.

The court's decision reviewed the special guardian's testimony about her attempts to ascertain the IP's wishes, and found that the IP's wishes could not be ascertained. The Cour then reviewed what the guardian did in attempting to determine the IP's best interests pursuant to PHL §2994–d[4](a)(ii). The guardian had conducted interviews with medical personnel, and with family members, visited the IP, reviewed the medical chart and consulted with IP's treating physician, and consulted with two doctors to obtain independent medical opinions.

The court found that the special guardian had ascertained that the IP's wishes could not be determined, and that the guardian's decision to withdraw life-sustaining treatment from the IP satisfied the best interests standard set forth in PHL §2994–d[4](a)(ii).

The Court then considered whether the Special Guardian's decision to withdraw life-sustaining treatment from the IP complied with PHL §2994–d[5], which has two tests. If the medical decision maker can satisfy either test, they are permitted to withdraw life-sustaining treatment. The court held the special guardian was able to show that the treatment would be an extraordinary burden to the patient and concurring medical opinions that the patient is permanently unconscious, thus satisfying the requirements of PHL § 2994–d[5](a)(i). The Special Guardian did not establish whether a patient in a persistent vegetative state is able to feel pain so as to satisfy the requirement of PHL § 2994–d[5](a)(ii), which requires a finding that the provision of treatment would involve such pain, suffering or other burden that it would reasonably be deemed inhumane or extraordinarily burdensome under the circumstances and the patient has an irreversible or incurable condition, as determined by an attending physician with the independent

concurrence of another physician to a reasonable degree of medical certainty and in accord with accepted medical standards.

Choice of Abode and Living Arrangements

In the Matter of McNally (Williams), 194 Misc2d 793 (2003). The Court ruled that a woman who suffered from mild to moderate dementia living in an assisted living facility was in an appropriate residence. Although the woman's expressed preference to return to her home was to be respected, returning to her home was not in her best interests because the home is the scene of contentious disputes between two family factions. The women's disinterested psychiatrist and her impartial guardian supported her residing at the facility, as did one of the combative family factions. Moreover, the IP stated that she was comfortable and content at the facility. The court concluded that it:

> …is fully aware of, and sensitive to, the fact that neither it nor a guardian should be empowered to substitute their judgment for that of a person for whom a guardian has been appointed merely because they believe that the decision of such person is not the best one. This is not the case here. Medical testimony establishes that Marion A. Williams suffers from dementia. Her expressed preference is not simply undesirable, it is not rational and abundantly contrary to her best interests.

***In the Matter of Jospe (McGarry*)**, 2003 N.Y. Slip Op. 50588(U) Supreme Court, Suffolk Co., 2003). The court found that Article 81 required that the least restrictive living alternative be utilized required that the IP's proposed living arrangements be given at least a chance to be tested for viability. The IP was in a psychiatric hospital at the time of the petition and hearing. The treatment team maintained that she could be discharged only to an assisted living facility or adult home. The IP wanted only to return home to her own apartment. While in the hospital she met another patient who happened to be a licensed home health aide. This woman needed a job and a place to live. She and the IP agreed that she would assist the IP in exchange for her room and board. Citing MHL Section 81.22 (a)(9) the court held that the availability of less restrictive alternative resources in the community dictated that the IP should not be removed from her home and granted the guardian the power to change the IP's abode only subject to further court order.

Matter of M.S., Misc.3d 2025 NY Slip Op 50356(U) (Supreme Court, Kings County, 2025)

Rachel E. Freier, J.

UPON the Order to Show Cause seeking to relocate M.S., the Incapacitated Person, dated January 7, 2025; and

UPON the Affirmation in Opposition to the Order to Show Cause dated January 21, 2025; and

UPON the in-person hearing held on February 3, 2025, and the appearances of BENNETT WERNICK, Guardian of the Person and Property; REGINA KIPERMAN, court appointed counsel; DANIEL REITER, attorney for L.S.; KARA MCGUINNESS-HICKEY, of Mental Hygiene Legal Service, attorney for N.S.; and

UPON the testimony of B.K. and L.S.; and

UPON all prior papers and pleadings in this matter;

The Guardian's application to relocate M.S. from the Rehabilitation and Health Care facility to the apartment located at —, Brooklyn New York, is DENIED; and it is further

ORDERED, that M.S. be permanently placed at the Rehabilitation and Health Care facility; and it is further

ORDERED, that the Guardian surrender the apartment located at —, Brooklyn, New York.

Co-Petitioners B.K. and A.S. filed a Verified Emergency Petition dated June 3, 2022, seeking, *inter alia*, guardianship of their mother, M.S. Pursuant to the Order to Show Cause dated June 13, 2022, B.K. and A.S. were appointed Limited Temporary Co-Guardians of M.S. with the powers set forth in the Order to Show Cause. L.S., daughter of M.S., filed a Cross-Petition dated October 19, 2022, to (1) deny Co-Petitioner's application for guardianship; (2) terminate the Limited Temporary Co-Guardianship; and (3) to appoint Cross-Petitioner as guardian of M.S. By Order of this Court dated June 9, 2023, B.K. and A.S. were removed as Limited Temporary Co- Guardians, and an independent Limited Temporary Guardian was appointed. By Order and Judgement of this Court dated May 7, 2024, M.S. was determined to be incapacitated within the meaning of Article 81 of the Mental Hygiene Law. The Order and Judgement appointed an independent Guardian of the Person and Property, Bennett Wernick, to manage the IP's personal needs and property.

According to the testimony of B.K., during the initial Petition for guardianship, the IP was removed from her former residence located at —, Brooklyn, New York, on June 21, 2022, and placed in a hotel for six weeks by the Limited Co-Guardians, B.K. and Abraham. Thereafter, the IP sustained an injury and B.K. and A.S. hospitalized her at — , and subsequently placed her at the Rehabilitation and Health Care facility, located at —, Brooklyn, New York, on August 5, 2022. The IP currently resides at the Rehabilitation and Health Care facility. She is 104 years old, suffers from dementia, and requires 24-hour care.

"A guardian seeking to change an incapacitated person's place of abode must demonstrate that the change is in the incapacitated person's best interests" (*Matter of Emilia*, 221 AD3d 712, 713 [2d Dept 2023] [internal quotation marks omitted]). In the instant matter, considering the IP's age, dementia diagnoses, need for 24-hour care, and the acrimonious relationship between her children, the Court determines that it is not in her best interest to be relocated back into the community (*see In re Beatrice R.H.*, 140 AD3d 875, 876 [2d Dept 2016]). The Rehabilitation and Health Care facility provides the IP with the appropriate level of care. The proposed apartment requires renovations to accommodate the IP's needs, such as wheelchair accessibility. Moreover, it is unclear whether the apartment is ADA compliant.

Additionally, the IP has a dementia diagnosis and relocating her may cause unwarranted stress and confusion. Finally, the strained relationship between the IP's children creates an unsafe environment for the IP. The Boro Park Center is able to monitor the IP's visitors and their interactions. If the IP were relocated back into the community, there would be no buffer between the IP and her children who continue to disagree and openly argue between each other about the IP's care. Therefore, for the reasons stated herein, the motion to relocate the IP to the apartment located at —, Brooklyn, New York, is denied; and it is further

ORDERED, that, to the extent that the Temporary Limited Co-Guardians' final accounting does not include an accounting of expenses paid to procure and/or maintain the apartment located at —, Brooklyn, New York, the Temporary Limited Co-Guardians shall file an amended accounting to include such information.

This is the Decision and Order of the Court.

Social Environment

Matter of Hultay v. Mei Wu S., 140 AD3d 502, (1st Dept., 2016)

A guardian who has the authority to limit the IP's social environment may restrict others from contacting the IP, and enforce that right via a restraining order. The record reflected that the IP had expressed that he did not want contact with his ex-wife, and that he was vulnerable to manipulation.

In Re Luisa P., 153 AD3d 1262 (2nd Dept., 2017)

Luisa P.'s son, Joseph P. was appointed as personal needs guardian, with the authority to limit Luisa P's social environment, including who may visit and contact her, as permitted by MHL §81.22(a)(2). The guardianship order also limited another son's (Giacinto) visitation with the mother to a set schedule and prohibited shouting or raised voices in front of the mother at any time.

Following an incident that took place between Giacinto and one of the mother's home health aides in the presence of the mother and the father at their home, Joseph moved to enjoin Giacinto from visiting or contacting the mother and the father. At a hearing held on the motion, video recordings of the incident made by Giacinto and his son were entered into evidence. The recordings depicted Giacinto conducting himself in a manner that violated the guardianship order's prohibition on shouting or raised voices in front of the mother. It was established at the hearing that the mother and the father no longer wanted Giacinto or his wife and two children to visit them at their home.

Supreme Court enjoined Giacinto from visiting or contacting the mother and the father for a period of two years, and permitted Giacinto's wife and two children to visit them only on Sundays between 2:00 p.m. and 4:00 p.m.

The 2nd Dept. upheld the order, finding that the Supreme Court properly enjoined Giacinto from visiting or contacting the mother and, under the unique circumstances presented in this case, the father as well, in effect, under MHL §81.23(b)(1). The relief granted by the court was warranted in view of the events of May 3, 2015, the expressed desire of the mother and the father that Giacinto not contact them, and the evidence establishing that continued contact with Giacinto was detrimental to the mother's health and welfare.

MHL Article 83

Matter of Brandon D., 233 AD3d 782 (2nd Dept., 2024)

In a guardianship proceeding pursuant to Mental Hygiene Law article 81, Robert L. D. appeals from an order of the Supreme Court, Queens County (Bernice D. Siegal, J.), entered October 19, 2023. The order denied Robert L. D.'s motion pursuant to CPLR 3211(a) to dismiss the petition.

ORDERED that the order is affirmed, with costs.

Brandon D. was residing in Louisiana when he suffered a severe traumatic brain injury, rendering him incapacitated. In May 2022, he was moved to a rehabilitation center in Queens for treatment. In an order issued in October 2022 (hereinafter the Louisiana order), the 24th Judicial District Court for the Parish of Jefferson in Louisiana, after a hearing, appointed Brandon D.'s father (hereinafter the father) as the curator of Brandon D. and appointed Brandon D.'s sister (hereinafter the sister) as the undercuratrix of Brandon D. Despite this, in December 2022, the sister commenced this proceeding pursuant to Mental Hygiene Law article 81 in the Supreme Court, Queens County, to be appointed with Brandon D.'s mother as coguardians of Brandon D.

In March 2023, the father moved pursuant to CPLR 3211(a) to dismiss the petition. The sister opposed the father's motion. In an order entered October 19, 2023, the Supreme Court denied the father's motion. The father appeals.

Inasmuch as the father failed to properly register the Louisiana order in accordance with Mental Hygiene Law § 83.35, the father's contention that the Louisiana court has continuing jurisdiction fails. Hence, the Supreme Court had subject matter jurisdiction in this proceeding. Brandon D. had been residing in a residential care facility in Queens since May 2022 (*see id.* §§ 81.04[a][1]; 81.05[a]; 83.17[a]; *Matter of Verna HH.* , 302 AD2d 714, 715; *Matter of Sweet v Schiller* , 271 AD2d 450, 450), and, thus, New York is his home state pursuant to Mental Hygiene Law § 83.03(e).

Inasmuch as the father failed to properly transfer or register the Louisiana order in accordance with the requirements of the Mental Hygiene Law (*see id.* §§ 83.33[a], [b]; 83.35), the Supreme Court properly denied dismissal of the petition pursuant to CPLR 3211(a)(5) based on the [*2]doctrines of res judicata and collateral estoppel.

The father's remaining contentions are not properly before this Court.

Accordingly, the Supreme Court properly denied the father's motion pursuant to CPLR 3211(a) to dismiss the petition.

Proceedings Upon Death of the IP

Retained Property

Matter of Shannon, 25 NY3d 345 (2015)

The Court of Appeals held that MHL §81.44 permits a guardian to retain property of an incapacitated person after the incapacitated person has died only for the purpose of paying expenses incurred with respect to the administration of the guardianship, i.e., *administrative* costs, *administrative* liens, and *administrative* claims, and not other claims. These include court examiner fees, guardian fees, attorney fees, and any filing fees for final report.

Matter of Ralph C. (Cavigliano), 175 AD3d 1077 (4th Dept., 2019)

The 4th Department reversed the Supreme Court's decision which had denied the request from the guardian that assets of the incapacitated person be used to pay the guardian's attorney fees incurred in discharging the guardianship after the incapacitated person's death.

Matter of Lillian G., 208 AD3d 877 (2nd Dept., 2022)

The 2nd Department, following the reasoning in Matter of Shannon, modified the order of Supreme Court to delete the provision that the property management guardian pay a $255,000 claim sought by the IP's son, in as much as the claim was unrelated to the administration of the guardianship. Once the IP had died, the guardian lacked the authority to make payment to the son from the guardianship, rather, his recourse was to seek payment from Lillian's estate.

Matter of Hart (D.S.), 79 Misc3d 1101 (Supreme Court, Chemung County, 2023)

The guardian filed for the discharge of the guardianship after the death of the IP. In reviewing the final accounting, the Court surcharged the guardian for failing to pay the court evaluator's and IP's counsel fees. The Court found that the IP had sufficient funds at the time of the guardianship appointment and that the fees should have been paid as a priority over other expenses of the IP.

Final Account

Matter of Shauntray T. (Margaret T.), 176 AD3d 719 (2nd Dept., 2019)

The mother of the incapacitated person, who was also the guardian of the personal needs of the IP, filed objections to the final account of the successor guardian of the property of the IP. Supreme Court, without conducting a hearing denied those objections, and judicially settled the final account. The 2nd Department affirmed the decision, holding that:

- A party who objects to a guardian's final account has the initial burden of coming forward with evidence to establish that the amounts set forth are inaccurate or incomplete
- If the objections raise disputed issues of fact concerning the necessity of disbursements, reasonableness of fees, or management of assets, a hearing should be held
- If the objectant meets his or her initial burden, the accounting party must prove by a preponderance of the evidence that the accounting is accurate and complete

In this case, to the extent that the objectant raised disputed issues as to the propriety of certain disbursements made from guardianship funds for the IP's expenses, the Court agreed with the Court Examiner, who reviewed the final account and extensive supporting documentation, the largely conclusory and unsubstantiated objections, and the responses thereto, and concluded that the challenged disbursements were proper, and that under the circumstances presented, the Supreme Court was not required to hold a hearing.