

Matter of A v A

Matter of A v A 2020 NY Slip Op 03468 Decided on June 18, 2020 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on June 18, 2020
Renwick, J.P., Gische, Kapnick, Kern, Moulton, JJ.
11673 500055/19

[*1] In re A etc., Plaintiff-Appellant,

v

A, Defendant-Respondent.

A A, appellant pro se.

McCarthy Fingar LLP, White Plains (Michael S. Kutzin of counsel), for respondent.

Order, Supreme Court, New York County (Tanya R. Kennedy, J.), entered August 8, 2019, which, after a hearing, denied the petition to appoint plaintiff A as guardian, and granted the cross-petition and appointed defendant A as guardian, unanimously affirmed, without costs.

In appointing a guardian, the primary concern is for the best interests of the incapacitated person, based on the facts. The determination is within the court's discretion and wide latitude is given (see *Matter of Von Bulow*, 63 NY2d 221, 224 [1984]). The parties, who divorced in 2014, agree that their daughter, an adult with multiple disabilities, needs a guardian. They each seek to serve in that capacity.

The court providently exercised its discretion in appointing defendant mother as J's guardian, in view of the evidence that she had been diligently caring for J for years and appropriately attended to her needs, and the absence of any evidence supporting plaintiff's claims of improper medical treatment (see *Matter of Gustafson*, 308 AD2d 305, 308 [1st Dept 2003]). Moreover, similar claims by plaintiff had been rejected by the Family Court in an earlier custody proceeding in which defendant was awarded custody of J. On the other hand, plaintiff had no experience caring for J on his own.

Plaintiff asserts that the court should have permitted him to have J [REDACTED], an adult, evaluated by an independent physician. However, he had no right to this relief, which was within the purview of the court evaluator (Mental Hygiene Law § 81.09[c][7]), who declined to seek additional medical advice.

We have considered plaintiff's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 18, 2020

CLERK