

114 A.D.3d 787  
Supreme Court, Appellate Division, Second Department, New York.

In the Matter of Peter GITZIS, petitioner,  
v.  
Loren BAILY–SCHIFFMAN, etc., et al., respondents.

Feb. 13, 2014.

**Attorneys and Law Firms**

Moshe Mortner, New York, N.Y., for petitioner.

[Eric T. Schneiderman](#), Attorney General, New York, N.Y. ([Susan Anspach](#) of counsel), for respondent Loren Baily–Schiffman.

**Opinion**

\*787 Proceeding pursuant to CPLR article 78 in the nature of mandamus to compel the respondent Loren Baily–Schiffman, an Acting Justice of the Supreme Court, Kings County, to determine the petitioner’s motion to dismiss the underlying proceeding pursuant to Mental Hygiene Law article 81, pending in the Supreme Court, Kings County, under Index No. 100038/13, for the appointment of a guardian of his personal needs and property management.

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs or disbursements.

The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act and only when there exists a clear legal right to the relief sought (*see Matter of Legal Aid Socy. of Sullivan County v. Scheinman*, 53 N.Y.2d 12, 16, 439 N.Y.S.2d 882, 422 N.E.2d 542). The petitioner commenced this proceeding for a writ of mandamus to compel the respondent Loren Baily–Schiffman, an Acting Justice of the Supreme Court, to determine his motion \*788 to dismiss the petition in the underlying guardianship proceeding. Since the instant proceeding was commenced prior to the full submission of the motion (*see CPLR 2219*), the proceeding is premature (*see Matter of Weaver v. Vaughan*, 72 A.D.3d 695, 897 N.Y.S.2d 646; *Goldman v. Seidell*, 234 A.D.2d 547, 651 N.Y.S.2d 923), and the petitioner has failed to demonstrate a clear legal right to the relief sought.

[ENG, P.J.](#), [RIVERA](#), [LEVENTHAL](#) and [HINDS–RADIX, JJ.](#), concur.

**All Citations**

114 A.D.3d 787, 979 N.Y.S.2d 852 (Mem), 2014 N.Y. Slip Op. 01000