

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

878

CA 19-01918

PRESENT: CENTRA, J.P., NEMOYER, CURRAN, WINSLOW, AND BANNISTER, JJ.

IN THE MATTER OF JOSEPH ROESCH,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DEBORAH MCCULLOCH, EXECUTIVE DIRECTOR, CENTRAL
NEW YORK PSYCHIATRIC CENTER,
RESPONDENT-RESPONDENT.

JOSEPH ROESCH, PETITIONER-APPELLANT PRO SE.

Appeal from a judgment (denominated order) of the Supreme Court, Oneida County (Bernadette T. Clark, J.), entered July 24, 2019 in a CPLR article 78 proceeding. The judgment denied petitioner's application for poor person status and dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner, a resident of Central New York Psychiatric Center (Center), submitted a poor person application seeking to pursue a CPLR article 78 proceeding against respondent to obtain a refund of money he alleges was improperly taken by the Center as reimbursement for items that petitioner broke or damaged at the Center. Supreme Court denied the application and dismissed the petition. We affirm. An application to proceed as a poor person should be granted if it " 'is not frivolous or, stated another way, . . . has arguable merit' " (*Matter of Young v Monroe County Clerk's Off.*, 46 AD3d 1379, 1380 [4th Dept 2007]; see CPLR 1101 [a], [f] [1]). "[T]he determination whether to grant permission to proceed as a poor person lies within the sound discretion of the trial court" (*Young*, 46 AD3d at 1380), and we conclude that the court did not abuse its discretion here (see *Jefferson v Stubbe*, 107 AD3d 1424, 1424 [4th Dept 2013], *appeal dismissed and lv denied* 22 NY3d 928 [2013]).

Entered: October 2, 2020

Mark W. Bennett
Clerk of the Court