

Matter of Villano

2007 NY Slip Op 30486(U)

March 13, 2007

Supreme Court, Suffolk County

Docket Number: 0024394/2006

Judge: Thomas F. Whelan

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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 33 - SUFFOLK COUNTY

PRESENT:

Hon. THOMAS F. WHELAN
Justice of the Supreme Court

MOTION DATE 12/6/06
ADJ. DATES 12/8/06
Mot. Seq. # 002 - MG; ~~ODSP~~

-----X
In the Matter of the application of LINDA J. :
VILLANO, the mother and natural guardian of :
NATHANIEL DAVID VILLANO STRUMZA, :
: :
For leave to change his name to NATHANIEL :
DAVID VILLANO, :
: :
Petitioner. :
: :
-----X

LINDA J. VILLANO
Petitioner Pro Se
12 Willowview Court
Bohemia, NY 11716

HOFFMAN, POLLAND & FURMAN
Attys. For Selim Strumza
220 E. 42nd St.
New York, NY 10017

Upon the following papers numbered 1 to 7 read on this motion to change name
_____; Notice of Motion/Order to Show Cause and supporting papers 1 - 5; Notice
of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 6-7
_____; Replying Affidavits and supporting papers _____; Other _____; (~~and after hearing counsel in support and~~
~~opposed to the motion~~) it is,

ORDERED that this petition by the self-represented, natural mother of the infant, pursuant to Article
6 of the Civil Rights Law, for leave to change the name of the infant, Nathaniel David Villano Strumza, is
granted; and it is further

ORDERED that, regarding a new birth certificate, upon receipt of this Order, the self-represented
petitioner, Linda J. Villano, shall comply with the provisions of § 63 of the Civil Rights Law; and it is
further

ORDERED that, within twenty (20) days of the date herein, the self-represented petitioner, Linda
J. Villano, shall serve a copy of this Order upon counsel for Selim Strumza, by first class mail with a United
States Postal Service Delivery Confirmation Receipt and thereafter file the affidavit of service with the Clerk
of the Court; and it is further

ORDERED that counsel for Selim Strumza, is directed to serve a copy of this Order with Notice of
Entry upon the self-represented petitioner, Linda J. Villano, within thirty (30) days of the date herein and
thereafter file the affidavit of service with the Clerk of the Court.

Self-represented petitioner, Linda J. Villano, seeks an Order for leave to change the name of the infant child born to her in 1992, from Nathaniel David Villano Strumza to Nathaniel David Villano. The only issue before this Court is the petitioner's application for leave to change the name of her infant son.

From a review of the pleadings submitted in support of the petition and in opposition thereto, the Court has determined that a hearing is not necessary to decide the matter.

Petitioner states that the grounds for her request for the name change at this time is that, to date, the child's biological father, supposedly Selim Strumza, has never expressed any interest in any facet of the child's life, whether financially, spiritually, emotionally or educationally; that Mr. Strumza has not made any attempt to contact the infant; that it would be in the best interests for her son to be known solely by the name he has been using and has been known for the past fourteen years; and that since her son has no connection to his biological father, she feels it would be detrimental to her son to be legally known by a name to which he has no emotional attachment. The Court finds no indication or suggestion within the petition and petitioner's reply papers to the biological father's opposition to the petition that there is any notoriety associated with the natural father.

The infant child consents to the name change and has submitted a statement indicating he has been known only by the surname of his birth mother, that is Villano; that he has never spoken to his biological father; that he has not had any contact with his biological father and has never partaken in any activities or events with his biological father; and that he considers a non-party, Glenn McIver, more like his father,¹ who has been with him during medical procedures and who has attended school functions with him.

The supposedly biological father, Selim Strumza, opposes the petition stating that he is the "putative father" of the infant child; that he has not had any relationship with infant child and offers no reason(s) why he has not taken any affirmative steps to insure a continual relationship with the infant; that he makes note that the birth certificate, in fact, does not indicate the identity of the biological father of the infant child; that if anything, the child's last name should be changed to McIver since Mr. McIver has been a significant presence in the child's life; that he refuses to discuss the issue of child support; and that he is suspicious of petitioner's motivations for the name change. The Court notes that Mr. Strumza's affidavit in opposition to the petition does not actually oppose the name change application but rather states there just is no real issue that exists for the name change and that he cannot consent to it. Nor does Mr. Strumza indicate that he would like to be named as the child's biological father on the birth certificate, get involved in the child's life or support the child.

When a court is petitioned to change a name, it is within the court's discretion to determine if the change is warranted under all of the circumstances presented. Additionally, the court is duty bound to examine all of the facts, including the reasons expressed for the change and the name sought to be approved (*see Application of Sakaris by Sakaris*, 160 Misc2d 657, 610 NYS2d 1007 [Civil Ct, NY County, 1993]; *Application of Douglas*, 60 Misc2d 1057, 304 NYS2d 588 [Sup Ct, NY County, 1969]). While a court has the discretion to grant a name change, it is not without limit. In order for a court to grant a petition for the name change of an infant, it must find that "there is no reasonable objection to the change of name proposed, and . . . that the interests of the infant will be substantially promoted by the change" (*see Civil Rights Law* § 63). The Civil Rights Law does not permit a court-ordered name change merely for the asking. Here, in the matter before the Court, although the supposedly biological father, Selim Strumza, states he cannot consent to the name change application, he clearly admits he has never been a part of the infant's life nor does he demonstrate his willingness to do so at this time.

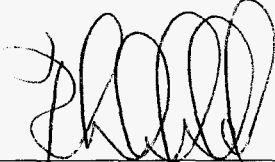
¹ No evidence has been submitted, either in support of or in opposition to the petition, to indicate what the relationship is between Glenn McIver and the infant's mother.

In considering a petition to change a child's name, a court must consider if the best interests of the child would be served by the proposed name change (*see Cohan v Cunningham*, 104 AD2d 716, 480 NYS2d 656 [4th Dept 1984]; *Matter of Keach*, 51 Misc2d 1097, 274 NYS2d 938 [Onondaga County Ct. 1966]). While neither parent has a superior right to the other to determine the surname of the infant child (*see Cohan v Cunningham*, 104 AD2d 716, *supra*), courts have traditionally held that the father of the infant has a natural right to have his son bear his name unless the child's best interests are affected (*see Matter of Baldini*, 17 Misc2d 195, 183 NYS2d 416 [Civil Ct, Bronx County. 1959]). Also, that the filial bond between father and son is one of the strongest and most inviolable of all relationships (*see Corey L. v Martin L.*, 45 NY2d 383, 408 NYS2d 439 [1978]). A name change is warranted only if there is a compelling reason to make such a change (*see Good v Stevenson*, 113 Misc2d 270, 448 NYS2d 981 [Family Ct, Queens County 1982]) recognizing that a better practice is to allow a child to reach majority before a name change is effected (*see Matter of Maliszewski on Behalf of Bowe*, 162 Misc2d 79, 615 NYS2d 977 [Sup Ct NY County 1982]). A compelling reason or reasons to be considered by the court is where the natural father is guilty of misconduct, abandonment or lack of support (*see Rio v Rio*, 132 Misc2d 316, 504 NYS2d 959 [Sup Ct, NY County 1986]; *cf Matter of Goldstein*, 104 AD2d 616, 479 NYS2d 385 [2d Dept 1984], *app den* 64 NY2d 602, 485 NYS2d 84; *Application of Fein*, 51 Misc2d 1012, 274 NYS2d 547 [Civil Ct. NY County 1994]).

It is unquestionable that the supposedly biological father has abandoned the infant child by not having any contact with him, either socially, emotionally, spiritually or financially, in a decade and a half and his description of himself as a "putative father" calls into doubt his sincerity as a parent. It is the opinion of this Court that petitioner has established that the best interests of the infant child would be substantially promoted by changing his name from Nathaniel David Villano Strumza to Nathaniel David Villano (*cf Matter of Robert T.*, 10 AD3d 453, 780 NYS2d 912 [2d Dept 2004]).

Accordingly the petition is granted as herein indicated. This constitutes the Order and decision of the Court.

DATED: 5/13/07


THOMAS F. WHELAN, J.S.C.