

Matter of Gibbons v New York City Dept. of Health & Mental Hygiene
2007 NY Slip Op 30694(U)
April 11, 2007
Supreme Court, New York County
Docket Number: 0117267/2006
Judge: Nicholas Figueroa
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. NICHOLAS FIGUEROA

PART 46

Index Number : 117267/2006

GIBBONS, JOHN

vs
NYC DEPT OF HEALTH & MENTAL

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE 12/4/07

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

_____ papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
APR 13 2007
PAPERS NUMBERED
1, 2, 3

NEW YORK
COUNTY CLERK'S OFFICE

*See accompanying decision and
order*

Dated: April 11, 2007

[Signature]

J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

In the Matter of the Application of
JOHN GIBBONS,

Index No. 117267/06

Petitioner,

**DECISION
AND ORDER**

for leave to change, amend, or correct the records of
the Bureau of Vital Statistics, New York City
Department of Health and Mental Hygiene,

- against -

N.Y.C. DEPARTMENT OF HEALTH and
MENTAL HYGIENE,

Respondent.

FILED
APR 13 2007
NEW YORK
COUNTY CLERK'S OFFICE

Nicholas Figueroa, Justice:

Petitioner seeks an order amending his birth certificate, certificate of birth number 156-64-307908, to include his father's name, his father's age at the time of petitioner's birth, and his father's birthplace.

Petitioner is forty-three years old. He was born at the Brooklyn Jewish Hospital on February 19, 1964. His birth certificate indicates that his mother is Sallie Gibbons who was born in the United States and was twenty-five years old at the time of the birth and resided in Brooklyn, New York.

Items 8, 9, and 10 on the birth certificate are blank. These items are the father's name, age at the time of birth and birthplace. Petitioner seeks an order amending the certificate to list George Henry Forbes in item 8, age forty-two in item 9, and Turks and Caicos, British West Indies in item 10.

Respondent rejected petitioner's application on November 1, 2006 in a document stating:

“Miscellaneous Reject Reason Please go to [sic] family court and [sic] have an order of filiation done because you are over the age of 21.”

Petitioner submits the following items in support of his instant application:

- (a) an acknowledgment of paternity, on a form provided by respondent, signed by both his father and mother;
- (b) a copy of his mother's New York State driver's license;
- (c) a copy of his father's Nassau County Board of Elections card;
- (d) a copy of his father's New York State driver's license;
- (e) A consent to change birth record signed by petitioner's mother;
- (f) A consent to change birth record signed by petitioner's father.

All of these documents requiring a witness's signature and notarization are witnessed and notarized.

In addition to those documents, both of petitioner's parents submit verified petitions to change birth records. These documents are on the forms the court provides to *pro se* applicants, such as petitioner; however, these documents are not accompanied by notices of petition and the instant proceeding is under petitioner's name alone.

Respondent opposes the application, alleging that the documentation petitioner submits to the court is insufficient. According to respondent, “there is need to support Petitioner's allegations with testimony from other sources.”

Respondent relies on the unreported case of *Vaca v. Department of Health*, Index Number 109808/97 (Sup. Ct. N.Y.Co., July 31, 1997), in support of this argument. Respondent asserts that this proposition is “well-settled.” Continuing, it urges that, “To hold otherwise would create the

possibility of a fraudulent amendment of a vital public record which affects many legal rights, such as the right of inheritance, the right to social security payments of a deceased parent and the right to be supported by one's parents." Again, respondent relies on an unreported decision, *Thomas v. New York City Department of Health*, Index No. 111319/00 (Sup. Ct. N.Y.Co., 2000), in support of its argument.

Respondent next quotes Family Court Act §517:

"Proceedings to establish the paternity of a child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the child reaches the age of twenty-one years, unless paternity has been acknowledged by the father in writing or by furnishing support."

Respondent argues that the acknowledgment of paternity, under Family court act §517, must be clear and without doubt or equivocation (*Schwerf v. Fowler*, 2 AD2d 541, 542), and that "the father must acknowledge and recognize the child as his own without doubt, coercion or mental reservation" (*Matter of Dolores D. v. Mario N.D.*, 69 Misc.2d 689).

Without explaining how petitioner's proof is insufficient, respondent states that, "However, if petitioner obtains conclusive evidence that 'George Henry Forbes' is the father of John Gibbons, such as a DNA test to establish paternity, or produce evidence that 'George Henry Forbes' clearly acknowledged paternity, then respondent might reconsider its opposition. However, without sufficient documentation, petitioner's request must be denied."

Contrary to respondent's arguments, petitioner has submitted legally sufficient proof in support of his application. His father has acknowledged paternity in sworn documents. Both petitioner's parents consent to the amendment. The court cannot conceive of what additional support could be considered necessary. While the court cannot be certain that petitioner filed the

acknowledgment of paternity with respondent, the other documents submitted on this proceeding provide a sufficient basis for granting the relief requested. These documents show that petitioner and his parents agree that the birth certificate must be corrected to reflect his father's name.

Respondent's opposition papers contain the same conclusory, boiler-plate, assertions that the court has seen in previous cases in which respondent needlessly opposed similar applications (see for example *Matter of Madaleno Gonzalez Tedoro*, Index Number 110259/03, Sup. Ct. NY Co., August 11, 2003). It appears that respondent's representative merely used opposition papers in other proceedings and as a form to oppose the instant petition, without any regard to the specifics of this proceeding.

Respondent provides no support for its argument that the amendment could result in any adverse consequences, such as impairment of inheritance rights. Petitioner's parents both acknowledge that petitioner is their son. Apparently, respondent, an entity having no interest in the matter, expresses a concern that the interested party, petitioner's father, does not. The argument that there might be problems relating to support is absurd, as petitioner is forty-three years old.

Accordingly, it is

ORDERED that the petition is granted, and it is further

ORDERED that the record of birth of John Gibbons, Certificate Number 156-64-30 7908, date of birth February 19, 1964, is corrected, amended and changed as follows:

- (a) The father's name on the birth certificate shall read George Henry Forbes (item 8); and
- (b) The father's age at the time of birth shall read forty-two years (item 9); and
- (c) The father's birthplace shall read Turks and Caicos Islands, British West Indies,

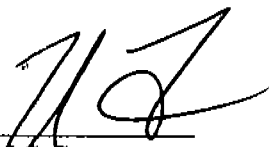
and it is further

ORDERED that petition shall file a certified copy of this order with the New York City Department of Health and Mental Hygiene, which shall amend the official birth in accordance with this order.

This constitutes the decision and order of the court.

Dated: April 11, 2007

ENTER



J.S.C.

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