

**Matter of Scott v New York City Dept. of
Health & Mental Hygiene**

2008 NY Slip Op 31767(U)

June 23, 2008

Supreme Court, New York County

Docket Number: 0101023/2008

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **EILEEN A. RAKOWER**
J.S.C.
Justice

PART 5

Index Number : 101023/2008
SCOTT, STEVEN JR.
vs.
DEPARTMENT OF HEALTH
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1
2
3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED

JUN 25 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: June 23, 2008


EILEEN A. RAKOWER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
In the Matter of the Application of
STEVEN MILTON SCOTT, JR., f/k/a STEVEN MILTON
FOSTER,

Petitioner,

Index No.
101023/08

for an Order to change the Records of the Bureau of Vital
Statistics, New York City Department of Health and
Mental Hygiene

- against -

Decision
and Order

NEW YORK CITY DEPARTMENT of HEALTH and
MENTAL HYGIENE,

Respondent.

FILED
X

JUN 25 2008

COUNTY CLERK'S OFFICE
NEW YORK

-----X
HON. EILEEN A. RAKOWER,

Approximately two years ago, petitioner sought a copy of his birth certificate from respondent, Bureau of Vital Statistics, New York City Department of Health and Mental Hygiene (City.) Petitioner's mother, currently institutionalized, is Rebecca Foster. He believes his father to be Steven Milton Scott. He presented City with his personal information, including his Social Security card, which states his name as Steven Milton Foster, but was told that the number printed on the card belonged to a different person. Petitioner states that, unbeknownst to him, his name was legally changed when he was three years old but City refused to tell him the name on his birth certificate or any further information.

Petitioner made inquires of his mother and her present husband seeking information regarding his present legal name. However, his mother is mentally incapacitated, petitioner's name is not listed as that of her present husband and her husband had no information about the name change.

In February, 2007, petitioner filed a motion in the Civil Court seeking an order legally changing his name to Steven Milton Scott, Jr.. As part of that process, petitioner was required to publish his request in a local newspaper. On May 5, 2006,

petitioner posted notice of his request for a legal name change from Steven Milton Foster to Milton Scott, Jr.. Petitioner's motion was granted and an order was issued by the Honorable Manuel J. Mendez, directing that on and after April 13, 2006, petitioner would be known as Steven Milton Scott, Jr..

Petitioner returned to City, with his Court Order, wishing to obtain a birth certificate stating his name as Steven Milton Scott, Jr. but City would not change the certificate. Petitioner next went to Family Court in Queens County. There, Steven M. Scott Sr. filed a paternity petition against Rebecca Foster but, petitioner herein states, the petition was dismissed because his mentally incapacitated mother had no recollection of what she had changed petitioner's name to.

Petitioner now files this Article 78 proceeding seeking an order from the court compelling City to reveal the name now listed on his birth certificate, directing City to change his birth certificate to reflect his name as Steven Milton Scott, Jr. and sealing any other birth certificate records. City does not oppose changing petitioner's name on his birth certificate. City does oppose any change to the certificate regarding the name listed as petitioner's father. Additionally, City provides as exhibits copies of both petitioner's original 1981 birth certificate and the certificate as changed in 1984, rendering that portion of petitioner's application moot.

The court notes that the 1981 original birth certificate states that petitioner's name is Steven Milton Foster, Jr. and the spaces relating to petitioner's father's information are left blank. The 1984 changes to the certificate indicate that petitioner's name is Steven Olawale Bello and his father's information is listed as Olamiji Bello, age 29, born in Lagos, Nigeria. In his reply, petitioner notes that he will need an order from the court to change the name of his father on the birth certificate to Steven Scott, Sr..

Civil Rights Law, Article 6, "Change of Name," §63, states, in pertinent part,

If the court to which the [name change] petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith that the petition is true, and that there is no reasonable objection to the change of name proposed and if the petition be to change the name of an infant, that the interests of the infant will be substantially promoted by the change, the court shall make an order authorizing the petitioner to assume the proposed name.

[* 4]
Public Health Law § 4138(1)(d) states, in pertinent part

A new certificate of birth shall be made whenever proper proof is submitted to the commissioner by the parents, or their attorneys, or the person himself or his attorney, of a judgment, order or decree relating to a change of name granted by a court of competent jurisdiction.

At the very foundation of petitioner's request here is an order from the Civil Court which granted a name change. However, petitioner obtained that order without presenting a birth certificate representing his actual legal name or properly noticing that his legal name was to be changed from Steven Olawale Bello. However sensitive the court may be to petitioner's difficulties in obtaining his name change, it is the responsibility of this court, and City, to adhere to the statutory mandates governing the amendment of important public records and guard against fraud. Regardless of petitioner's intentions, it is now apparent that his prior petition which resulted in the February 21, 2006 name change, was not true. As such, it the obligation of this court to declare the February 21, 2006 order of the Honorable Manuel J. Mendez, void, *ab initio*.

As a result of this application, petitioner now has copies of both his original 1981 birth certificate and the certificate which reflects the 1984 name change. Accordingly, the petitioner is directed to resubmit an application for a name change, as he can now provide his true legal name to the court and in publication.

The court notes that should petitioner seek to establish the official paternity of Steven Milton Scott, Sr., he must return to the Family Court as "[t]he family court has exclusive original jurisdiction over proceedings to determine paternity" (Family Court Act § 115(a)(iii)). Wherefore, it is hereby

ORDERED that the petition is denied; and it is further

ORDERED that the February 21, 2006 order of the Honorable Manuel J. Mendez declaring that petitioner shall be known as and shall assume the name Steven Milton Scott, Jr., is declared void, *ab initio*.

This constitutes the decision and order of the court.

Dated: June 23, 2008


EILEEN A. RAKOWER, J.S.C.

FILED
JUN 25 2008
COUNTY CLERK'S OFFICE
NEW YORK