

Matter of Bandler

2010 NY Slip Op 31336(U)

May 10, 2010

Sup Ct, NY County

Docket Number: 102491-2010

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE

PART 10

Index Number : 102491/2010
BANDLER, DAVID H.
 vs.
LOUISE WISE SERVICES
 SEQUENCE NUMBER : 001
 OTHER RELIEFS

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. 001
 MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: May 10, 2010

HON. JUDITH J. GISCHE 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: IAS PART 10**

-----X
In the matter of the Application of
DAVID BANDLER, known as
"Baby Boy Schwartz" prior to adoption

Petitioner

DECISION/ ORDER
Index No.: 102491-2010
Seq. No.: 001

PRESENT:
Hon. Judith J. Gische
J.S.C.

for access to his **LOUISE WISE SERVICES**
adoption records maintained in the
possession of **SPENCE-CHAPIN SERVICES**
FAMILIES AND CHILDREN,

Respondent

UNFILED JUDGMENT
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and notice of entry cannot be served in this case. To
obtain entry, counsel or authorized representative must
appear in person at the County Clerk's Desk (Room
1415).

Recitation, as required by CPLR § 2219 [a] of the papers
this (these) motion(s):

Papers	Numbered
N/M notice of pet & ver pet w/JEB, SJB & MJF affids	1
Answer w/AKS affirm	2

Upon the foregoing papers, the decision and order of the court is as follows:

GISCHE J.:

This is a petition for an order and judgment directing Spence-Chapin Services to Families and Children ("adoption agency") to unseal the records of petitioner's adoption¹. The adoption agency has answered the petition stating that it takes no position on the relief sought and that it will abide by whatever decision the court makes.

¹Although petitioner states the petition is under section 372 of the Social Services Law, the correct section is Domestic Relations Law section 114, as addressed later in this decision, order and judgment.

Petitioner is an adult male who is married and has three young children.

Petitioner contends that throughout his life he has suffered from a variety of psychological disorders and afflictions directly related to his having been put up for adoption when he was a baby. Both his adoptive parents are alive; they do not know who petitioner's biological parents are.

Petitioner contends that now that he has a family of his own, it is important for him to know about his parents' medical history. Furthermore, according to petitioner, his emotional and psychological problems are so crippling, they have impaired his ability to closely bond with others for many reasons, including his poor self-esteem. Petitioner is 43 years old and presently employed as a software implementation specialist. He has worked in this field for 15 years.

Petitioner has verified the petition and also provided the sworn affidavits of each of his adoptive parents. Both parents consent to the disclosure he seeks.

Petitioner has also provided the sworn affidavit of his therapist who is a clinical psychologist licensed to practice in the State of New Jersey. The psychologist states that petitioner first began psychotherapy with him in December 2006. Although petitioner stopped his sessions for a period of time, he later reentered therapy with him in December 2009. According to the psychologist, petitioner learned he was adopted when he was eight (8) years old and it devastated him, partly because it exacerbated other problems petitioner was having with his siblings (biological children of his adoptive parents).

The psychologist describes a litany of problems that have plagued petitioner over the years. According to the psychologist, petitioner suffers from dysthymic

disorder, depression and attention deficit disorder and other disorders normally associated with children who are adopted. These diagnoses were made using the Diagnostic and Statistical Manual of Mental Disorders.

Petitioner's psychologist opines that were petitioner to learn more about his biological parents this would help petitioner gain a historical understanding of why he was placed for adoption, allow petitioner to feel more "connected," develop a positive sense of identity, improve his relationships with others overall and lift his tendency towards depression. According to the psychologist, petitioner's psychotherapy would also be enhanced and be more productive with this information.

Discussion

Pursuant to Domestic Relations Law section 114, records of adoptions are sealed (DRL § 114). This is part of a longstanding state policy of advancing the adoption process by providing anonymity to the natural parents, shielding the adoptive child from possibly disturbing facts about his or her adoption and fostering a bond between the child and his or her adoptive parents (Matter of Linda F.M., 52 NY2d 236 [1981] *app dismissed sub nom* Mason v. Abrams, 454 US 806 [1981]).

The court, however, has the discretion to order the unsealing of any adoption record for "good cause" (DRL § 114 [4]). By statute, "good cause" may be established on medical grounds (DRL § 114 [4]; In the matter of Marino, 291 AD3d 849 [4th Dept 2002]). Certification from a physician licensed to practice medicine in the State of New York is prima facie evidence of good cause (Id.; In the matter of Marino, *supra*). While such an affidavit may establish good cause, the adoptee must still show "an immediate medical need" for the information sought (Golan v. Louise Wise Services, 69 NY2d 343,

349 [1987]). Thus, there is a balancing of interests between the needs of the person who was placed for adoption and the privacy interests of his or her biological parents (Golan v. Louise Wise Services, *supra*; In the matter of Marino, *supra*).

Here, petitioner sets forth no "immediate medical need" for his adoption records. Though petitioner alludes to a general need for his biological parents' medical history, his primary reason is to address underlying unresolved psychological issues related to his adoption. There is no certification from a medical doctor licensed to practice in this state nor does the psychologist, who provides his sworn affidavit, state that the information sought is needed to address a serious mental illness (In the matter of Timothy A., ___AD3d___, 2010 NY Slip Opn 03222 [3rd Dept 2010]). Quite the contrary, the problems that the psychologist refers to are admittedly those which many adoptees experience. The court is sympathetic to petitioner's issues and if this were the legal standard then almost all adopted children could establish "good cause." This is not, however, the applicable legal standard at this time.

Although there are circumstances under which an adopted child may be entitled to the unsealing of his or her adoption records or limited disclosure, this petitioner has failed to show "good cause" for why the records of his adoption should be unsealed, even though his adoptive parents consent to his having the information and the information may help his psychologist treat him more effectively (In the matter of Timothy A., *supra*). To the extent that petitioner claims the information may provide him with closure and help his self esteem, an adoptee's general curiosity and interest in his or her background does not establish "good cause" to have adoption records unsealed (In the matter of Victor M.I.L., 23 Misc3d 1103 [A] [Surrogate's Ct, Nassau Co. 2009]).

Having failed to make a preliminary showing of "good cause," the petition is denied without a hearing and the court does not reach the further issue of whether petitioner's adoptive parents can be located (In the matter of Golan, supra). The petition is hereby denied and this proceeding dismissed.

Conclusion

It is hereby


ORDERED, DECREED AND ADJUDGED that the petition for an order and judgment requiring Spence-Chapin Services to Families and Children to unseal petitioner's adoption records is hereby denied for the reasons stated and this proceeding is dismissed; and it is further

ORDERED that any relief requested that has not been expressly addressed is hereby denied; and it is further

ORDERED that this constitutes the decision, order and judgment of the court.

Dated: New York, New York
May 10, 2010

So Ordered:



Hon. Judith J. Glsche, J.S.C.

UNFILED JUDGMENT
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