| **Matter of Brothers** |
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| 2015 NY Slip Op 30726(U) |
| May 7, 2015 |
| Supreme Court, Madison County |
| Docket Number: 2014-1819 |
| Judge: Eugene D. Faughnan |
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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Madison County Courthouse, Wampsville, New York, on the 10th day of April, 2015.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : MADISON COUNTY

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In the Matter of the Application of CHRISTOPHER M. BROTHERS for Leave to Change Name of Infant from MASON R. WEBER to MASON R. BROTHERS

Petitioner,

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DECISION AND ORDER

Index No. 2014-1819
RJI No. 2014-0414-M

APPEARANCES:

COUNSEL FOR PETITIONER,
CHRISTOPHER M. BROTHERS

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**EUGENE D. FAUGHNAN, J.S.C.**

This action was commenced by Christopher M . Brothers ("Petitioner") seeking to change the name of his 3 year old son from Mason R. Weber to Mason R. Brothers. The Verified Petition was filed on October 16, 2014, along with the infant's birth certificate and a notarized consent from the Petitioner. There is no need for a consent from the Petitioner, as his consent is already established by the fact of him submitting the Petition. There was no consent submitted from Becky Lynn Weber, the infant's mother.

The 2014 Petition states that Petitioner is the father of Mason Weber who was born in Florida on July 31, 2011. It also states the reason for the name change request, indicating that the child resides primarily with the Petitioner who provides sole financial responsibility for the child, and that he wants the child to assume his surname.

The Petition was heard at the Court's regularly scheduled motion term on February 13, 2015. Petitioner was present, appearing without an attorney, and Ms. Weber also appeared with Attorney Scott Bielicki.

At the motion, Petitioner was questioned regarding the Petition and Ms. Weber was also given an opportunity to respond. Ms. Weber is in opposition to the requested name change, and contends that Petitioner refused to be put on the birth certificate, when Mason was born. Subsequently, there was an Order of Filiation establishing Petitioner's parentage.

Petitioner stated that he was living in New York and the mother had gone to Florida, and she gave birth prematurely in Florida, and he was not given a chance to be on the birth certificate. It was the Petitioner who filed a request for a DNA test which showed that he is the father. Further, Mason has been in Petitioner's care, and living with Petitioner since approximately three months of age. Petitioner is the sole financial provider and takes Mason to doctors visits, daycare etc. Petitioner stated that he does not want the child to be confused when he learns his name, and why it is different from Petitioner, and also that he does not want other people to be confused, such as daycare workers. He also wants to pass on his family name. In addition, he points out that Ms. Weber has only had 8 hours per week supervised visitation with the child, and

that if Ms. Weber gets married, she may end up having a different name from Mason.

Ms. Weber countered by arguing that the Petition was deficient on its face because there were insufficient grounds alleged to establish that the proposed name change would be in the child's best interest. The grounds alleged in the Petition were more towards Petitioner's interests and not the child.

The Court recognized that the oral presentation made by the Petitioner did allege some factors that may supportive of a name change, but they were not contained in the original Petition. Therefore, the Court denied the 2014 Petition, without prejudice. The decision made from the bench was memorialized in an Order signed on February 27, 2015 and filed in the Clerk's office on March 6, 2015.

Petitioner then obtained legal counsel and filed another Petition on March 19, 2015 ("2015 Petition") seeking the same relief. That 2015 Petition was served on Ms. Weber and a return date was set for April 10, 2015, another regularly scheduled motion term. On that date, all parties and attorneys were present. After hearing arguments, the Court Reserved Decision and granted both sides an opportunity to submit any additional case law supporting their position. On April 17, 2015 Petitioner submitted a Supplemental Application consisting of an Attorney's Affirmation dated April 15, 2015, and an Affidavit of Petitioner dated April 15, 2015, as well as Exhibits. Mr. Bielicki submitted a letter dated April 23, 2015, citing a case for the Court's consideration. Petitioner's counsel wrote a letter dated April 28, 2015 saying no reply had been received and asking that none be accepted. However, Mr. Bielicki's letter is dated April 23, 2015, which is within 15 days of the motion. In addition, it is not evidence, but merely submission of case law to assist the Court. Therefore, the Court will consider it.

On the other hand, the supplemental submission by Petitioner is actually in the form of new evidence and affidavits. At the conclusion of the motion on April 10, 2015 the parties were allowed to submit case-law, not new information or evidence. Therefore, the Court will not consider the substance of the supplemental submission. The Court will consider the cases that are referenced in those materials, as they are not new evidence, but simply directing the Court's attention to prior decisions and authority.

*Civil Rights Law §60 et. seq.* provides a statutory procedure for a name change. Under §60 a "petition to change the name of an infant may be made ... by either of his parents..." The statute further provides that the court must be satisfied that the petition is true, and that there is no reasonable objection to the name change, and "that the interests of the infant will be substantially promoted by the change..." *Civil Rights Law §63; see Matter of Sakaris,* 160 Misc.2d 657 (Sup. Ct. Richmond County 1993); *see also Matter of Eberhardt,* 83 AD3d 116 (2nd Dept. 2011); *Matter of Shawn Scott C.,* 134 AD2d 345 (2nd Dept. 1987); *Matter of Learn v. Haskell,* 194 AD2d 859 (3rd Dept. 1993); *Matter of Goldstein,* 104 AD2d 616 (2nd Dept. 1984). To a certain extent, there is overlap between the consideration of a reasonable objection and the interests of the infant being substantially promoted.

Some courts have acknowledged that it is customary in Anglo-American culture for a child to bear the name of the father. *See Eberhardt, supra (citations omitted); Matter of Robinson,* 74 Misc.2d 63 (Civil Ct. N.Y. County 1972). That argument can sometimes form the basis of an objection by a father to an application to change the child's name from the father's to another name. *See e.g. Matter of Robinson, supra; Matter of Goldstein.* When faced with that situation, the petition for "the change of an infant's surname are usually granted only were the natural father is guilty of misconduct, abandonment, or lack of support." *Matter of Goldstein,* 104 AD2d at 616, *citing Matter of Williams,* 86 Misc.2d 87 [Civ. Ct. Queens County 1976]; *Matter of Robinson* [supra]; *Matter of Fein,* 51 Misc.2d 1012 [Civ. Ct. New York County 1966]; *Matter of Baldini,* 17 Misc.2d 195 [City Court, New York, Bronx County 1959], *Matter of Wittlin,* 61 NYS2d 726, 728 [City Court, New York, Kings County 1946]. This approach is outdated in light of the prevalence of single parenthood, mixed families and the like. In any case, the opposite situation is presented for consideration in this application.

The father is seeking the name change to match his surname, and he has been responsible for Mason's care and upbringing. Ms. Weber is entitled to 8 hours of supervised visitation per week. This has been the situation for nearly the entire time since the child was born. Petitioner seeks to have the infant bear his name which is a natural right and custom. Even so, that is not the only, or even, predominant concern. "The child's everyday well-being and [his] current

relationship with [his] present family...school and...society must be considered. And this may be the prime consideration where a [parent] has destroyed the bond...with [the] child by abandonment, failure to support or other misconduct." *Matter of Robinson,* 74 Misc.2d at 65. Consideration of those factors also lends support for a name change. Petitioner has sought, and obtained, custody of the infant as promptly as he could. The mother has been limited to supervised visitation because of her misconduct, and apparently is not providing financial support.

The courts have also noted that "the sharing of a surname by a child with the parent he or she lives with is a legitimate point of concern because it 'minimizes embarrassment, harassment, and confusion in school and social contacts'" *Matter of Learn,* 194 AD2d at 860 *quoting Matter of Shawn Scott C., supra; see Matter of John Phillip M.,* 307 AD2d 318 (2nd Dept. 2003). That criteria would support the name change application here, as the child has been living with Petitioner since about 3 months old.

Although the 2014 Petition was lacking, it has been supplemented by two oral arguments and an amended, or second, 2015 Petition. The Court finds that the record, as more fully developed, does satisfy the requirement that the proposed name change substantially promotes the child's interests. As correctly pointed out by Petitioner, the sharing of the surname between Mason and Petitioner minimizes potential confusion and embarrassment for the child. This is particularly true in this case, where Mason has lived with the Petitioner since 3 months of age, and the mother's involvement has been limited to 8 hours of supervised visitation per week. The Petitioner has routine contacts with Mason's daycare providers, doctors and other social interactions. The Court finds that the Petitioner has shown that the name change would substantially support Mason's interests. The Court further concludes that Ms. Weber has not come forward with a reasonable objection to the proposed name change. *Cf. Matter of Shawn Scott C. supra.* In *Shawn Scott C.*, the child was living with the mother and she objected to the name change. The Court found that she had stated a reasonable objection to the proposed name change. In the instant case, the opposite is true. The child lives with the father, who is seeking the name change.

Mr. Bielicki cites to the case of *Randall v. Tedeno,* 101 Misc.2d 485 (Sup. Ct. New York County 1979) to argue that there is a presumption that a name change is detrimental and must be justified. However, the decision in that case ultimately turned on the fact that the child was living with the mother, who had custody, and had primary caretaking responsibilities. The court concluded that the child should have the name of the mother. That case does not establish a basis to deny the instant Petition.

Based on all the foregoing, it is hereby

**ORDERED AND ADJUDGED,** the Petition filed on March 19, 2015 seeking a name change is hereby **GRANTED,** and it is further

**ORDERED AND ADJUDGED,** Petitioner is to submit a Proposed Name Change Order to the Court, consistent with this Decision and Order, and on notice to Ms. Weber's attorney, within 10 days of the date of this Decision and Order.

This constitutes the Decision and Order of this Court.

Dated: May 7, 2015
Wampsville, New York

HON. EUGENE D. FAUGHNAN
Supreme Court Justice