

Matter of K.R. v Clerk of N.Y. County
2017 NY Slip Op 31789(U)
August 14, 2017
Supreme Court, New York County
Docket Number: 160431/15
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

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In the Matter of K.R.

Petitioner

INDEX NO. 160431/15
MOT. SEQ. 001

v

DECISION AND ORDER

CLERK OF NEW YORK COUNTY

Respondent.

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NANCY M. BANNON, J.:

I. INTRODUCTION

In this proceeding pursuant to Domestic Relations Law § 235(1) for leave to unseal court records, the petitioner requests that the court direct the unsealing of the New York County Supreme Court case files referable to his now deceased parents' 1968 divorce action and two 1969 custody proceedings commenced by his mother in this court, for the purpose of better understanding the circumstances of his difficult childhood and aiding in his ongoing therapy. The County Clerk of New York County takes no position on the petition. For the reasons set forth below, and given the unique circumstances of this case, the court grants the petition.

II. BACKGROUND

The petitioner, born in 1964, alleges that he was the only child born to his parents, was given his father's last name, was raised solely by his father from the age of four, and has no memories of his mother. Although domiciled in Manhattan as a child and teenager, the petitioner was enrolled in a boarding school in upstate New York under a fictitious name. In 1975, the New York City Civil Court granted his father's petition to change his last name and the child's last name, purportedly for the father's professional purposes. The petitioner asserts that his father was the only parent in his life until the father's death in 2007, and that his mother is now also deceased. According to the petitioner, he was told by his father that his mother had

abandoned both of them shortly after his birth to pursue her career, and died a few years later. She did not.

In 1968, the petitioner's mother commenced an action for a divorce in the California Superior Court, seeking custody of the petitioner. Weeks later, his father commenced an action for a divorce in the Supreme Court, New York County. Two judgments of divorce were entered, one in California awarding custody of the petitioner to the mother upon the default of the father and, shortly thereafter, and a second in New York in favor of the father, awarding custody to him upon the default of the mother. In 1969, the mother commenced two separate actions or proceedings in the Supreme Court, New York County, in which, the petitioner believes, she sought custody of him. Custody remained with the father. The petitioner claims that, as he grew into adolescence, he began to doubt his father's story that his mother abandoned him, and that he has since been "tormented" by the resulting uncertainty, and continues to struggle with his personal relationships notwithstanding years of therapy.

In early 2015, the petitioner was permitted to review the California matrimonial case file, which was unsealed and made available to him by the California Superior Court. The California file contained documents revealing the existence of the aforementioned New York County Supreme Court proceedings. According to the petitioner, it also indicated that the petitioner's father may have forcefully removed him from California to New York against the mother's wishes at an early age, and that she thereafter attempted to regain legal and physical custody. Continuing his search, the petitioner obtained a copy of the New York judgment of divorce but was denied access to the court files since they are sealed pursuant to Domestic Relations Law § 235(1). In the course of the search, he also discovered the name change proceeding, which was not sealed. The petitioner now seeks an order unsealing all three files for the purpose of reviewing and copying their contents. He urges that the information contained in the New York court files may lead to some further understanding of his difficult childhood circumstances, aid in his ongoing therapy, and help to restore his psychological well-being.

III. DISCUSSION

"Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records (Mancheski v Gabeli Group Capital Partners, 39 AD3d 499, 501 [2007]; Gryphon Dom. VI LLC v APP Intl. Fin. Co., B.V., 28 AD2d 1 [2000]; Danco Labs v Chemical Works of Gedeon Richter, 274 AD1 [2000])." Mosallem v Berenson, 76 AD3d

345, 348 (1st Dept. 2010); see 22 NYCRR 216.1; New York Post Corp. v Leibowitz, 2 NY2d 677 (1957). Matrimonial and Family Court matters are among the several exceptions to that policy. Domestic Relations Law § 235(1) provides that, in a matrimonial action or custody and visitation proceeding, the clerk of the court with whom the records of proceedings are to be filed “shall not permit a copy of any of the pleadings, affidavits, findings of fact, conclusions of law, judgment of dissolution, written agreement of separation or memorandum thereof, or testimony, or any examination or perusal thereof, to be taken by any other person than a party, or the attorney or counsel of a party, except by order of the court.” Subsection (5) limits the duration of sealing to 100 years after the date of filing, whereupon such records become “public records available to public inspection.” The purpose of the statute is “the protection of the privacy of the parties to a matrimonial action. Shiles v News Syndicate Co., 27 NY2d 9 (1970).” Janecka v Casey 121 AD2d 28, 30 (1st Dept 1986). The practice commentary explains that “[s]ectopm 235 is designed to provide a protection against the indiscriminate inspection and publication of the details of matrimonial matters” and, “[a]bsent some overriding importance to the persons who would have access to the file, that privacy should be respected.” Scheinkman, Practice Commentaries, McKinney's Cons Laws of NY, Book 14, Domestic Relations Law C235:1.

The statute does not define the circumstances in which an unsealing order may be ordered by the court. However, courts have ruled that the granting of an unsealing application requires a showing of “special circumstances.” See Matter of Donohue, 54 Misc 3d 1211(A) (Surr Ct, Dutchess County 2017); Matter of Madsen v Westchester County Clerk, 43 Misc 3d 1217(A) (Sup Ct, Westchester County 2014). Special circumstances may be shown where the petitioner is able to “articulate and particularize the relevance of the information sought to an important pending matter” (Matter of Madsen v Westchester County Clerk, supra), such as a nexus to pending civil or criminal matters. See Janecka v Casey, supra.

For example, in Janecka, an action for malpractice and wrongful death, the defendant psychiatrists sought to unseal the matrimonial records of the deceased patient and her plaintiff husband. Prior to committing suicide, the deceased had reported to them a hostile and emotionally painful situation at home and feelings of abandonment and neglect since the commencement of the divorce action. The court granted the application, finding such a “sufficient nexus,” and that the relationship of the plaintiff, who sought pecuniary damages, and the deceased, was sufficiently relevant to the malpractice action such that the “shield afforded by Domestic Relations Law § 235 must give way to the need for disclosure of relevant evidence.” Id. at 32; See Hovagim v Marchand's School of Dance, Inc., 225 AD2d 522 (2nd

Dept 1996) [defendant failed to show sufficient nexus between marital proceedings and plaintiff's alleged injury to warrant unsealing of records]; Harvey v Mazel Am. Partners, 179 AD2d 1 (1st Dept 1992) [same]; compare Klipper v Liberty Helicopters, Inc., 110 AD3d 579 (1st Dept. 2013) [transcripts of plaintiff's divorce action found relevant and admissible where plaintiff put his financial status at issue thereby waiving protections afforded by DRL § 235]. The "special circumstances" test was also used in Matter of Madsen v Westchester County Clerk, supra, to deny a request by an author to review the matrimonial court files of a deceased individual and his wife for use in the writing of a biography. That court found the request of the petitioner, a complete stranger to the subject matrimonial case, "to access this information for the purposes of writing a biographical work is insufficient to justify an intrusion into the 100-year period of privacy afforded by DRL 235." Id. This is not such a case, since the petitioner is not a stranger to the files sought and does not seek to publish any information he may obtain from them.

The unique set of facts presented in this case constitutes the requisite "special circumstances" to support an unsealing. First, the petitioner's custody is at issue in all of the subject proceedings. In one of the custody proceedings, he is expressly named in the caption, by his mother petitioning on his behalf. Thus, it can argued that he is essentially a party to all of the proceedings. Furthermore, since the petitioner's parents are both deceased, there can be no prejudice or personal embarrassment to them if the files are unsealed. Since the 53-year-old petitioner is the only child of the marriage, he is very likely the only person who might be embarrassed by the contents of the files. Indeed, he makes that argument, and asserts that his request is due in part to the fact that there are no other living individuals from whom he can seek further information about his childhood. Thus, the importance of the files to the petitioner overrides any possible privacy concerns raised by an unsealing, which would not result in any "indiscriminate inspection and publication of the details" of his parents' divorce. See Scheinkman, Practice Commentaries, McKinney's Cons Laws of NY, Book 14, Domestic Relations Law C235:1. The petitioner is seeking the records only for his own personal use, and certainly not to make them accessible to the public, or publish them in any manner. Compare Shiles v News Syndicate Co., supra; Zappin v Daily News, L.P., — F Supp — 2017 WL 3425765 (SD NY Aug. 9, 2017). Furthermore, the petitioner has "articulate[d] and particularize[d] the relevance of the information sought." Matter of Madsen v Westchester County Clerk, supra. Although this case does not involve another pending litigation, as several reported cases do, there is no requirement in the statute or decisional authorities that an unsealing application be made only in the context of a separate litigation. See e.g Matter of

Madsen v Westchester County Clerk, supra.

Moreover, Domestic Relations Law § 235 does not require matrimonial case records to be sealed for all time. Rather, it sets an upper limit of 100 years, and directs that the records then become public records, open for public inspection. Here, the subject records have been sealed for nearly 50 years. This court concludes that, under the circumstances presented, the unsealing of the subject files almost 50 years after sealing serves the same purpose as unsealing after 100 years, and does no harm to the statutory intent of protecting the parties' privacy and avoiding embarrassment. Stated otherwise, no purpose or policy would be furthered by denying this petitioner access to the requested files.

As previously noted, the California matrimonial case file has already been unsealed, revealing some of the information the petitioner seeks but, since the father defaulted in that action, it contains only the mother's account of the circumstances of the marriage and the grounds upon which she sought a divorce and custody. The petitioner reasonably predicts that the New York matrimonial file, which resulted in a judgment granting custody to the father, will include an affidavit of the father or other additional information that may serve to provide a more complete view of his childhood circumstances.

Finally, the court notes that the while matrimonial and custody matters are presumptively sealed pursuant to DRL § 235, a proceeding to unseal any such files is not. The petitioner has not established "good cause" for proceeding anonymously, a form of partial sealing. See 22 NYCRR 216.1(a); Applehead Pictures, LLC v Perelman, 80 AD3d 181 (1st Dept. 2010). The petitioner did not show, or even allege, that the instant proceeding implicates "a privacy right so substantial as to outweigh the customary and constitutionally embedded presumption of openness in judicial proceedings." "J. Doe 1" v CBS Broadcasting, Inc. 24 AD3d 215, 215 (1st Dept. 2005). Further, by simply denominating himself as "K.R." in the caption without court approval, the petitioner did not follow the proper procedure for using an anonymous caption. See Matter of Doe v New York City Police Dept., 39 Misc 3d 1229(A) (Sup Ct, NY County, May 15, 2013). "If a party wishes to commence an action under seal or use an anonymous caption. . . [t]he County Clerk cannot do either without a court order." Rules of the Sup Ct, Civ Branch, NY County, County Clerk Litigation Functions, Section C(2), *Commencing Actions Claimed to Be Confidential*. Thus, while he has shown his entitlement to the relief requested in the petition, he has not shown that an anonymous caption is warranted. See Howard S. v Lillian S., 62 AD3d 187 (1st Dept. 2009) [anonymous caption is not warranted in

matrimonial action]; Anonymous v Anonymous, 27 AD3d 356 (1st Dept. 2006) [same, with respect to child support aspects of divorce action]. The caption shall be amended to reflect the petitioner's name.

IV. CONCLUSION

Accordingly, it is

ORDERED that, upon the court's own motion, the caption is hereby amended to reflect the name of the petitioner as follows:

In the Matter of KEVIN RICHARDS

v

THE CLERK OF THE COUNTY OF NEW YORK

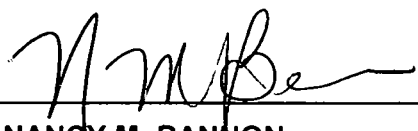
And it is further,

ORDERED that, within 20 days, the petitioner shall serve a copy of this Decision and Order upon the Trial Support Office and the County Clerk, who are directed to amend their records accordingly, and it is further,

ORDERED that the County Clerk of the County of New York is directed to unseal and make available to the petitioner, Kevin Richards, date of birth May 4, 1964, and to no other person or entity, the case files in the following actions, for purposes of review and copying: (1) Jerome Rosenthal v Myra Rosenthal a/k/a Myra DeGrot, New York County Index No. 32392/1968, (2) Matter of Myra Rosenthal on behalf of Jerome Rosenthal, New York County Index No. 30888/1969, and (3) Matter of Myra Rosenthal on behalf of Kevin Rosenthal, New York County Index No. 31159/1969.

This constitutes the Decision and Order of the court.

Dated: August 14, 2017



NANCY M. BANNON
HON. NANCY M. BANNON