

Matter of Nostrand

2021 NY Slip Op 34202(U)

November 8, 2021

Supreme Court, New York County

Docket Number: Index No. 157459/2021

Judge: Frank Nervo

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. FRANK NERVO PART 04

Justice

-----X

TONI NOSTRAND

Plaintiff,

- v -

Defendant.

-----X

INDEX NO. 157459/2021
MOTION DATE 08/11/2021
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for MISC. SPECIAL PROCEEDINGS.

This Court declined to sign petitioner’s order to show cause on August 25, 2021, seeking, inter alia, to declare four individuals known under various assumed names were “one and the same” for the purposes of petitioner’s application for dual Italian citizenship. On September 3, 2021, petitioner submitted a letter to judge seeking reconsideration of the Court’s declination.¹

The Court deems the letter request for reconsideration a motion seeking reargument and/or reconsideration and grants the request to reconsider. Upon reconsideration the Court issues the instant decision and order.

¹ The Court notes that the Part Rules require such letters be filed to NYSCEF and mailed to chambers via first-class mail. This Court did not receive a copy of the letter via mail; notwithstanding, the failure to provide a copy of the letter by mail has substantially delayed this order.

As an initial matter, petitioner cites no appellate authority for the proposition that this Court may entertain an application to deem various deceased relatives to be “one and the same” as various assumed names. Petitioner cites various orders of jurists of co-ordinate jurisdiction, for this proposition; however, these decisions provide only that sufficient evidence was produced in those matters and do not otherwise provide a basis for same (see NYSCEF Doc. No. 19-21). Petitioner alleges that such authority is contained in CPLR § 3001, which states in its entirety:

The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. If the court declines to render such a judgment it shall state its grounds. A party who has brought a claim for personal injury or wrongful death against another party may maintain a declaratory judgment action directly against the insurer of such other party, as provided in paragraph six of subsection (a) of section three thousand four hundred twenty of the insurance law.

Notably, neither the petition nor the order to show cause cites CPLR § 3001 as granting this Court authority to declare the identity of unnamed individuals, including deceased individuals. In any event, the plain language of CPLR § 3001 does not provide such relief, the practice commentary following the statute does not discuss such relief, and this Court’s search of case law failed

to uncover any appellate authority providing for such relief. Accordingly, this Court has determined it is without authority to grant the relief sought by petitioner.

Assuming, *arguendo*, that this Court was vested with the authority to declare deceased individuals were “one and the same” as various assumed names, here petitioner has failed to provide requisite proof to satisfy this Court of same. For example, petitioner seeks to declare Kenneth Montovani was known by four names and is the same person as Canadio Montovani, Gabriele Mantovani, and Carlo Mantovani. The evidence in support of this contention comprises: a birth certificate listing the name as “Kenneth Canadio, Gabriele, Carlo Mantovani” with the date of birth partially redacted; a death certificate listing the name as “Kenneth J. Mantovani, Sr.” with the date of birth partially redacted; and a 1930 Census record listing, inter alia, a Kenneth Montovani (NYSCEF Doc. No. 5; NYSCEF Doc. No. 9; NYSCEF Doc. No. 6 at line 77). This evidence is insufficient to declare that Kenneth Canadio Gabriele Carlo Mantovani is the same person as Kenneth J, Mantovani, Sr. or Kenneth Montovani. Put simply, there is no evidence related to the change of spelling regarding Mantovani/Montovani, the introduction of the middle initial “J” on the death certificate, the omission of “Canadio Gabriele Carlo” from the death

certificate, or that Kenneth Mantovani was known as Canadio Montovani, Gabriele Mantovani, or Carlo Mantovani.

Accordingly, it is

ORDERED that petitioner's letter dated September 3, 2021 (NYSCEF Doc. No. 17-21) is deemed an application for leave to reargue/reconsider; and it is further

ORDERED that the Court grants leave to reargue/reconsider; and it is further

ORDERED that upon reconsideration the Court issues the instant decision and order denying the petition in its entirety; and it is further

ORDERED that petitioner shall file notice of entry of a copy of this decision within 10 days and shall provide the Clerk of Part IV with proof of filing of same within 10 days by filing same to NYSCEF with a copy via email to SFC-Part4-Clerk@nycourts.gov. Failure to timely provide proof of notice of entry, as above, may result in sanctions in this Court's discretion; and it is further

ORDERED that petitioner shall affix a copy of this decision and order to all subsequent applications seeking declaratory relief related to the identities of persons named in the petition.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

11/8/2021
DATE


FRANK NERVO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE