

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

2022 NY Slip Op 30723(U)

March 7, 2022

Supreme Court, New York County

Docket Number: Index No. 158876/2021

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14

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DAVID MASTRON,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF HEALTH AND
MENTAL HYGIENE,

Respondent.

INDEX NO. 158876/2021

MOTION DATE 01/21/2022

MOTION SEQ. NO. 001

**DECISION + ORDER,
JUDGMENT ON MOTION**

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HON. ARLENE BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 were read on this motion to/for ARTICLE 78.

The petition to amend the birth certificate of petitioner’s father, Victor Mastron is denied.

Petitioner seeks to make changes to his father’s birth certificate. Specifically, petitioner seeks to change the name of the father on the certificate (petitioner’s grandfather) from “Alberto Mastron” to “Ascensino Mastronardi”, the name of the mother (petitioner’s grandmother) from “Giuseppina Mastron” to “Josephine Mastron”, and the mother’s unmarried name from “Giuseppina Mastron” to “Josephine Russo.”

In opposition, the New York City Department of Health and Mental Hygiene (DOHMH) argues that the documentation provided to amend Albert Mastron’s name contains multiple spellings and aliases and, notably, the name sought is not among the aliases provided. DOHMH also opposes amendments to “Giuseppina Mastron” because the name and age listed on the supporting documents are inconsistent with the name written on the certificate. Petitioner was also unable to provide a copy of his grandmother’s birth certificate for consideration.

In reply, petitioner argues that the name provided on the Ascensino Mastronari birth certificate is Albert Mastron's legal name. With respect to Giuseppina, petitioner argues her certificate of birth may not exist. Instead, petitioner relies on her baptismal certificate, marriage certificate, and immigration documents. Lastly, only in reply does petitioner ask to amend "Albert Mastron's" name to "Ascensino Tarquinio Domencio Mastronardi", and Giuseppina Mastron's age from "24 to "26."

Because the amendments to Albert Mastron's middle name and Giuseppina Mastron's age at the time of Victor Mastron's birth are raised for the first time on reply, they will not be considered by this Court.

Discussion

New York City Health Code, 24 RCNY § 207.01, provides that the "[a]pplication for amendments of a birth certificate shall be made by the parents or surviving parent, or by the legal guardian of the person whose birth certificate is to be corrected or by the person if such person is 18 years of age or over."

Here, the application is not made by a parent, guardian, or the certificate holder. Rather, the petition is brought by the son of the certificate holder, which is not provided for in the health code. Petitioner has failed to cite to either a statute or binding precedent entitling him to make the requested changes. Accordingly, the Court denies the petition.

A person could, of course, seek changes to their own vital records and it makes sense that a parent or guardian could seek changes to a certificate of a person under the age of 18. But this Court declines to extend that reasoning to a child making changes to the birth certificate of a parent. Of course, petitioner's grandparents could have changed their son's birth certificate but they did not. And petitioner's father could have changed his birth certificate but he did not. It is

not up to petitioner to change the records of deceased people to suit his current needs. And petitioner has not explained how the Court can interpret the Health Code to permit petitioner standing to request these changes.

The Court observes the practical implications of what petitioner seeks, and why not allowing it makes sense. Changing the birth records of a parent or grandparent affects not only the requester but every other record that person might touch. It would affect marriage certificates, birth certificates of other children and death certificates. The petition is silent about how these requested changes might affect those records and whether he has named all necessary parties (other individuals who might object to having these changes made). For example, if these changes were allowed, then his parents' marriage certificate would not match up. If petitioner has siblings, then their birth certificates would name a different father, and so on. Vital records are not to be changed because they are not now convenient to petitioner's plans; they are also historical records.

Additionally, even if petitioner had the requisite standing – even if his father was seeking to change his own birth certificate and presented the same documents – this Court would deny the petition because the documents presented are insufficient.

With respect to the amendments to the name of the father listed on the birth certificate (petitioner's grandfather), petitioner provides the birth certificate of "Ascensino Tarquinio Domenico Mastronardi" as support. However, petitioner seeks to amend "Albert Mastron" to "Ascensino Mastronadi", without either of the middle names. DOHMH also correctly points out that the documents presented contain multiple spellings of Albert Mastron's allegedly legal name. For instance, the birth certificate spells the name as "Ascensio Tarquinio Domenico Mastronardi" while the death certificate spells the name as "Ascensino Tarquino Domenico

Mastronardi” (NYSCEF Doc Nos. 5 and 14). But Petitioner is seemingly not seeking to make changes to the death certificate as well.

With respect to the amendments to the name of the mother, petitioner does not provide his grandmother’s birth certificate. Instead, he provides several documents in support of the requested name, but the dates of birth on the provided documents do not match the age indicated on the certificate. Specifically, the baptism certificate for Josephine Russo and the death certificate of Josephine Mastron provide that she was born on April 23, 1893, making her 26 years old at the time of Victor Mastron’s birth, while Victor’s birth certificate lists the age of his mother as 24 (NYSCEF Doc. No. 28 and 15). This Court finds these documents are also insufficient to support the changes requested.

Accordingly, it is hereby

ADJUDGED that the petition is denied, this case is dismissed, and the Clerk is directed to enter judgment accordingly upon presentation of proper papers therefor.

3/7/2022
DATE


ARLENE BLUTH, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: